

§ 201.174

§ 201.174 Petition for reopening.

A petition for reopening for the purpose of rehearing, reargument, or reconsideration, shall be made in writing, shall state the grounds relied upon, and conform to the requirements of subpart D of this part. If the petition is for the purpose of rehearing, said petition shall state the nature and purpose of the new evidence to be adduced and that such evidence was not available at the time of the prior hearing. If the petition be for reargument or reconsideration, the matter claimed to have been erroneously decided shall be specified and the alleged errors briefly stated. In case of exceptional circumstances, satisfactorily shown by the petitioner, a request for modification of rules or orders may be made by telegram or otherwise, upon notice to all parties or attorneys of record, but such request shall be followed by a petition filed and served in accordance with subpart D of this part.

§ 201.175 Answers to petition to reopen.

Answers to petitions to reopen shall conform to the requirements of subpart D of this part.

Subpart S—Judicial Standards of Practice (Rule 19)

§ 201.181 General matters.

(a) In general, the functions of the Administration involve hearing procedures comparable to those of a court and accordingly parties to proceedings before the Administration and persons representing these parties are expected to conduct themselves with honor and dignity. For the same reasons, the members of the Administration and those of its employees who participate with the Administration in the determination of formal proceedings are expected to conduct themselves with the same fidelity to standards of propriety that characterizes a court and its staff. The standing and the effectiveness of the Administration are in direct relation to the observance by it, its staff and the parties and attorneys appearing before it of the highest of judicial and professional ethics.

(b) It is essential in cases to be determined after notice and hearing and upon a record, or in any other cases which the Administration by order may designate, that the judicial character of the Administration be recognized and protected. As a consequence, from the time of the filing of an application or a petition which can be granted by the Administration only after notice and opportunity for hearing, or in the case of other matters from the time of notice by the Administration that such matters shall be determined after notice and opportunity for hearing, no *ex parte* communications, as hereinafter defined, are to constitute or be considered part of the record on which the final decision is to be predicated.

§ 201.182 Improper pressures.

It is determined to be improper that there be any effort by any person interested in a case before the Administration to attempt to sway the judgment of the Administration by undertaking to bring pressure or influence to bear upon the Administration, its staff, or the presiding officer assigned to the proceeding. It is further determined to be improper that such interested persons or any member of the Administration's staff or the presiding officer directly or indirectly give statements to the press or radio, by paid advertisements or otherwise, designed to influence the Administration's judgment in the matter. In addition, it is further determined to be improper that any person solicit communications to the Administration or any of its members, its staff or the presiding officer in the case other than by counsel of record who shall serve copies thereof on all other parties to the proceeding.

§ 201.183 Ex parte communications.

(a) Requests for expeditious treatment of matters pending with the Administration are deemed communications on the merits and as such are improper except when forwarded from parties to a proceeding and served upon all other parties thereto. Such communications from parties to a proceeding should be in the form of a motion and are to be dealt with as such by the Administration, the presiding officer, and

the parties to the proceeding. Any such request which is not made as a motion shall be placed in the public correspondence file and will not be considered by the Administration or any of its staff members or the presiding officer in connection with the disposition of the case.

(b) Written or oral communications involving any substantive or procedural issue in a matter subject to public hearing directed to a Member of the Administration, its staff, or the presiding officer in the case, from any individual in private or public life shall be deemed a private communication in respect of the merits of the case. These communications, unless otherwise provided for by law or a published rule of the Administration are deemed *ex parte* communications and are not to be considered part of any record or the basis for any official action by the Administration, members of its staff or the presiding officer: *Provided, however*, That this prohibition shall not be determined to apply to informal petitions or applications filed with the Administration; the usual informal communications between counsel including discussions directed toward the development of a stipulation or settlement between parties; communications of a nature deemed proper in proceedings in U.S. Federal courts; and communications which merely inquire as to the status of a proceeding without discussing issues or expressing points of view. Any prohibited communications in writing received by a Member of the Administration, its staff or the presiding officer shall be made public by placing it in the correspondence file of the docket which is available for public inspection and will not be considered by the Administration or the presiding officer as part of the record for decision. If the *ex parte* communication is received orally, a memorandum setting forth the substance of the conversation shall be made and filed in the correspondence section of the appropriate public docket.

Subpart T—Effective Date (Rule 20)

§ 201.185 Effective date and applicability of rules.

The regulations in this part shall become effective October 23, 1964, and shall apply only to cases which are designated for hearing on or after October 23, 1964: *Provided, however*, That the regulations in this part shall be applicable to cases designated for hearing prior to October 23, 1964, if consolidated with a case designated for hearing on or after that date. All other cases designated for hearing prior to October 23, 1964, shall be governed by the rules in effect immediately prior to such date.

PART 202—PROCEDURES RELATING TO REVIEW BY SECRETARY OF TRANSPORTATION OF ACTIONS BY MARITIME SUBSIDY BOARD

Sec.

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AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; sec. 204(b), as amended, 46 U.S.C. 1114(b); Reorganization Plan No. 7 of 1961 (26 FR 7315).

SOURCE: 32 FR 2705, Feb. 9, 1967, unless otherwise noted.

§ 202.1 Purpose.

The rules of this part prescribe procedures relating to Secretarial review of any decision, report, order or action of the Maritime Subsidy Board (Board) pursuant to Department Order 117-A (31 FR 8087, 15331). Section 6 of Department Order 117-A is reprinted here for the convenience of the public.

SEC. 6. *Review and finality of actions by Maritime Subsidy Board.* .01 The Secretary of Transportation (hereinafter referred to as "Secretary") may, on his own motion or on the basis of a petition filed as hereinafter