

September 12, 1990

FEDERAL MARITIME COMMISSION

46 CFR PART 503

[DOCKET NO. 90-17]

PUBLIC INFORMATION

AGENCY: Federal Maritime Commission.

ACTION: Final Rule.

SUMMARY: The Federal Maritime Commission ("Commission") amends its rules regarding public access to records of the Commission. These amendments update and clarify the Commission rules to reflect current agency organization and practice. The amendments also will serve to clarify when Freedom of Information Act procedures apply to record requests.

EFFECTIVE

DATE: [Insert date of publication in Federal Register].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Part 503 of Title 46 Code of Federal Regulations contains the Commission's rules and regulations regarding dissemination of public information. Included in these rules is a description of records of the Commission that are available to the public and the procedures for obtaining access to such records. The existing rules need to be made more current, particularly with respect to agency organization and practice, and to make clear

when the Freedom of Information Act procedures apply. To this end the Commission published a notice of proposed rulemaking (55 FR 29071; July 17, 1990).

No comments were submitted to the Proposed Rule. The Commission, accordingly, has determined to adopt the Proposed Rule as final, with one minor clarification. A discussion of the rule changes follows.

Existing §§503.24 and 503.25 are consolidated into a single revised §503.31. This amendment deletes any reference to the Commission's Communication Center which no longer exists and updates the list of records which are routinely available in the Office of the Secretary. It also clarifies that those listed records are available without any requirement for a written request, but that availability may be delayed for records which have been sent to archives. The proposed amendment is clarified to indicate that the provisions of this section do not apply to requests for docket materials which are the subject of a protective order. Requests for such materials must be pursuant to §503.33.

Section 503.32 presently contains a list of records that are available through the Office of the Secretary upon written request. This rule clarifies that those records are available without resort to the Freedom of Information Act procedures.

Section 503.33 is revised to clarify that requests for any Commission records not covered in §§503.31 and 503.32 must be made pursuant to a Freedom of Information Act request. The present listing of categories of records subject to this provision is deleted. This listing is incomplete and, in some respects, outdated. Moreover, no purpose is served by attempting to list categories of records subject to this provision because it applies to all records not previously listed.

Part 503 also contains rules implementing the Government in the Sunshine Act. Amendment of these rules is necessary to reflect current Commission organization. To this

end, §503.74 is amended to include the Managing Director of the Commission in the listing of Commission personnel who may request the closure of a Commission meeting under the Sunshine Act. While the Managing Director was included in this listing when the rule was originally adopted in 1977 (42 FR 12047; March 2, 1977) the reference was removed in 1984 when the rule was republished (49 FR 44411; November 6, 1984). At that time the position of Managing Director did not exist.

The Federal Maritime Commission has determined that this Final Rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, because it will not result in: (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., that this Final Rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions.

List of Subjects in 46 CFR Part 503:

Classified information, Freedom of information Act, Privacy, Sunshine Act.

Part 503 of 46 CFR is amended as follows:

1. The authority citation for Part 503 continues to read as follows:

AUTHORITY: 5 U.S.C. 552, 552a, 552b, 553; E.O. 12356, 47 FR 14874, 15557, 3 CFR 1982 Comp., p.167.

2. Sections 503.24 and 503.25 are removed and the heading of Subpart D, the text of section 503.31, the introductory text of section 503.32, and the text of section 503.33 are revised to read as follows:

Subpart D--Procedure Governing Availability of Commission Records--Freedom of Information Act

§503.31 Records available at the Office of the Secretary.

The following records are available for inspection and copying at the Federal Maritime Commission, Office of the Secretary, Washington, D.C. 20573, without the requirement of a written request. Access to requested records may be delayed if they have been sent to archives.

(a) Proposed and final rules and regulations of the Commission including general substantive rules and statements of policy and interpretations.

(b) Rules of Practice and Procedure.

(c) Reports of decisions (including concurring and dissenting opinions), orders and notices in all formal proceedings and pertinent correspondence.

(d) Official docket files (transcripts, exhibits, briefs, etc.) in all formal proceedings,¹ except for materials which are the subject of a protective order.

(e) Correspondence to or from the Commission or Administrative Law Judges concerning docketed proceedings.

(f) Press releases.

¹Copies of transcripts may be purchased from the reporting company contracted for by the Commission. Contact the Office of the Secretary for the name and address of this company.

(g) Approved summary minutes of Commission actions showing final votes, except for minutes of closed Commission meetings which are not available until the Commission publicly announces the results of such deliberations.

(h) Annual reports of the Commission.

§503.32 Records generally available.

The following Commission records are generally available for inspection and copying, without resort to Freedom of Information Act procedures, upon request in writing addressed to the Office of the Secretary:

* * * * *

§503.33 Other records available upon written request under the Freedom of Information Act.

(a) A member of the public who requests permission to inspect, copy or be provided with any Commission records not described in §§503.31 and 503.32 shall:


(1) Submit such request in writing to the Secretary, Federal Maritime Commission, Washington, D.C. 20573. Any such request shall be clearly marked on the exterior with the letters FOIA; and

(2) Reasonably describe the record or records sought.

(b) The Secretary shall evaluate each request in conjunction with the official having responsibility for the subject matter area and the General Counsel, and the Secretary shall determine whether or not to grant the request in accordance with the provisions of §§503.34 and 503.35.

3. In section 503.74, paragraph (a) is amended by adding a comma after the phrase "any member of the agency" and inserting the words "the Managing Director."

By the Commission.


Joseph C. Polking
Secretary