

December 19, 2000

FEDERAL MARITIME COMMISSION

46 CFR Parts 501, 502

Docket No. 00-13

AGENCY REORGANIZATION AND DELEGATIONS OF AUTHORITY

AGENCY: Federal Maritime Commission.

ACTION: Final Rule.

SUMMARY: The Federal Maritime Commission ("FMC") is revising parts 501 and 502 of its rules to reflect the reorganization of the agency which took effect February 27, 2000, and to delegate authority to certain FMC bureaus.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

Thomas Panebianco
General Counsel
Federal Maritime Commission
800 North Capitol St., N.W.
Washington, D.C. 20573-0001
(202) 523-5740

SUPPLEMENTARY INFORMATION:

The Federal Maritime Commission ("FMC") is revising Parts 501 and 502 of its rules to reflect the reorganization of the agency which took effect February 27, 2000. The FMC was reorganized in

order to more efficiently discharge its duties in light of passage of the Ocean Shipping Reform Act of 1998 ("OSRA"), Pub. L. 105-258, 112 Stat. 1902, which amended the Shipping Act of 1984, 46 U.S.C. app. 1701 et seq.

Each applicable section in Part 501 is revised to reflect the creation of the Permanent Task Force on International Affairs; to reflect the relocation of the Office of Informal Inquiries, Complaints, and Dockets from the Office of the Secretary to the Office of Consumer Complaints in the Bureau of Consumer Complaints and Licensing; to reflect the elimination of the Bureau of Economics and Agreement Analysis and the Bureau of Tariffs, Certifications and Licensing; and to reflect the creation of the Bureau of Trade Analysis and the Bureau of Consumer Complaints and Licensing. In addition, the Bureau of Administration is eliminated and its functions are subsumed under the Office of the Executive Director. As applicable, each section is also amended to reflect changes occasioned by passage of OSRA. Finally, references are eliminated to the Shipping Act, 1916, a statute over which the FMC no longer retains jurisdiction. The entire text of Part 501, including both revised sections and sections that have been retained but not revised because no changes were necessary, is set forth for ease of reading and comprehension.

Section 501.5 continues to describe the functions of the FMC's organizational components. In addition to reflecting the changes described above, the section describes in paragraphs (g) and (h) the functions of the newly created Bureaus of Trade Analysis and Consumer Complaints and Licensing. The Bureau of Trade Analysis consists of the Office of Agreements, Office of Economic and Competition Analysis, and Office of Service Contracts and Tariffs. The Bureau of Consumer Complaints and Licensing consists of the Office of Consumer Complaints, Office of Transportation Intermediaries, and Office of Passenger Vessels and Information Processing. The Deputy Bureau Director of the Bureau of Consumer Complaints and Licensing is designated as the agency's Dispute Resolution Specialist, pursuant to section 3 of the Administrative Dispute Resolution Act of 1996, Pub. L. 104-320. Paragraph (j) of the section is revised by removing references to the Committee on Automated Data Processing and the Incentive Awards Committee, which no longer exist.

Subpart C of Part 501 describes the delegations of authority within the FMC. Under Reorganization Plan No. 7 of 1961, the Commission may delegate any of its functions to other agency entities or employees. Changes as a result of the reorganization are reflected throughout the Subpart.

Two new delegations are also incorporated in the revision. Section 501.26(i) of the existing rules grants the Director, Bureau of Trade Analysis the authority to determine that no action should be taken to prevent an agreement from becoming effective under section 6(c)(1) of the Shipping Act of 1984. However, section 501.26(i)(4) establishes that "new sailing agreements" are deemed to have the potential to result in a significant reduction in competition, and are therefore among the types of agreements (enumerated at section 501.26(i)) not within the above-described authority delegated to the Director, Bureau of Trade Analysis. In this rulemaking, the phrase "new sailing agreements" is removed from the list of agreements (renumbered as section 501.26(e)) deemed to have the potential to result in a significant reduction in competition. By removing "new sailing agreements" from this list, the Director, Bureau of Trade Analysis is thus delegated the authority to determine that no action should be taken to prevent a new sailing agreement from becoming effective.

In new section 501.27(c), the Director, Bureau of Consumer Complaints and Licensing is delegated the authority to approve amendments to escrow agreements for the purpose of changing names of principals, the vessels covered, the escrow agent or the amount of funds held in escrow.

Pursuant to OSRA, reference formerly found at section 501.27(i) to the authority to reject and return service contracts and essential terms publications is removed as it is no longer provided for by regulation.

A revised organization chart is included in Appendix A to Part 501.

Five sections of Part 502 are amended. Sections 502.44 and 502.68, and Appendix A, are revised to delete references to the Shipping Act, 1916, over which the FMC no longer has jurisdiction. Revision of section 502.271 reflects the reorganization of the FMC by clarifying that Special Dockets Officers are now a Part of the Office of Consumer Complaints, in the Bureau of Consumer Complaints and Licensing. Section 502.301 is revised to reflect the transfer of the informal procedure for adjudication of small claims to the Office of Consumer Complaints.

No period of notice and comment is required for this rulemaking as it concerns agency procedure and organization. As a result, no analysis need be completed under the Small Business Regulatory Enforcement Flexibility Act, 15 U.S.C. § 601. This rule does not incorporate any new information collection requirements, and therefore does not require clearance under the Paperwork Reduction Act, 44 U.S.C. § 3501, et seq.

List of Subjects

46 CFR Part 501

Authority delegations, Organization and functions, Seals and insignia.

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Maritime Commission amends 46 CFR Parts 501 and 502 as set forth below:

Revise Part 501 to read as follows:

PART 501 -- THE FEDERAL MARITIME COMMISSION - GENERAL

Subpart A -- Organization and Functions

Sec.

501.1 Purpose.

501.2 General.

501.3 Organizational components of the Federal Maritime Commission.

501.4 Lines of responsibility.

501.5 Functions of the organizational components of the Federal Maritime Commission.

Subpart B -- Official Seal

501.11 Official seal.

Subpart C -- Delegation and Redelelegation of Authorities

501.21 Delegation of authorities.

501.22 (Reserved)

501.23 Delegation to the General Counsel.

501.24 Delegation to the Secretary.

501.25 Delegation to the Executive Director.

501.26 Delegation to the Director, Bureau of Trade Analysis.

501.27 Delegation to the Director, Bureau of Consumer
Complaints and Licensing.

501.28 Delegation to the Director, Bureau of Enforcement.

Subpart D -- Public Requests for Information

501.41 Public requests for information and decisions.

Appendix A to Part 501 - Organization Chart

AUTHORITY: 5 U.S.C. 551-557, 701-706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501-520 and 3501-3520; 46 U.S.C. app. 876, 1111, and 1701-1720; Reorganization Plan No. 7 of

1961, 26 FR 7315, August 12, 1961; Pub. L. 89-56, 79 Stat. 195; 5 CFR Part 2638; Pub. L. 104-320; Pub. L. 89-777, 80 Stat. 1356.

Subpart A -- Organization and Functions

§ 501.1 Purpose.

This part describes the organization, functions and Official Seal of, and the delegation of authority within, the Federal Maritime Commission ("Commission").

§ 501.2 General.

(a) Statutory functions. The Commission regulates common carriers by water and other persons involved in the foreign commerce of the United States under provisions of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1701-1720); section 19 of the Merchant Marine Act, 1920 (46 U.S.C. app. 876); the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a); sections 2 and 3, Pub. L. 89-777, Financial Responsibility for Death or Injury to Passengers and for Non-Performance of Voyages (46 U.S.C. app. 817d and 817e); and other applicable statutes.

(b) Establishment and composition of the Commission. The Commission was established as an independent agency by Reorganization Plan No. 7 of 1961, effective August 12, 1961, and

is composed of five Commissioners ("Commissioners" or "members"), appointed by the President, by and with the advice and consent of the Senate. Not more than three Commissioners may be appointed from the same political party. The President designates one of the Commissioners to be the Chairman of the Commission ("Chairman").

(c) Terms and vacancies. The term of each member of the Commission is 5 years and begins when the term of the predecessor of that member ends (i.e., on June 30 of each successive year), except that, when the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified. A vacancy in the office of any Commissioner shall be filled in the same manner as the original appointment, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he or she succeeds. Each Commissioner shall be removable by the President for inefficiency, neglect of duty, or malfeasance in office.

(d) Quorum. A vacancy or vacancies in the Commission shall not impair the power of the Commission to execute its functions. The affirmative vote of a majority of the members of the Commission is required to dispose of any matter before the Commission. For purposes of holding a formal meeting for the transaction of the business of the Commission, the actual presence of two

Commissioners shall be sufficient. Proxy votes of absent members shall be permitted.

(e) Meetings; records; rules and regulations. The Commission shall, through its Secretary, keep a true record of all its meetings and the yea-and-nay votes taken therein on every action and order approved or disapproved by the Commission. In addition to or in aid of its functions, the Commission adopts rules and regulations in regard to its powers, duties and functions under the shipping statutes it administers.

§ 501.3 Organizational components of the Federal Maritime Commission.

The major organizational components of the Commission are set forth in the Organization Chart attached as Appendix A to this part. An outline table of the components/functions follows:

(a) Office of the Chairman of the Federal Maritime Commission. (Chief Executive and Administrative Officer; FOIA and Privacy Act Appeals Officer.)

(1) Information Security Officer.

(2) Designated Agency Ethics Official.

(b) Offices of the Members of the Federal Maritime Commission.

(c) Office of the Secretary. (FOIA and Privacy Act Officer; Federal Register Liaison.)

(d) Office of the General Counsel. (Ethics Official; Chair, Permanent Task Force on International Affairs.)

(e) Office of Administrative Law Judges.

(f) Office of Equal Employment Opportunity.

(g) Office of the Inspector General.

(h) Office of the Executive Director. (Chief Operating Officer; Designated Senior IRM Official; Senior Procurement Executive; Audit Followup and Management Controls; Chief Information Officer; Chief Financial Officer.)

(1) Office of Information Resources Management. (Senior IRM Manager; Computer Security; Forms Control; Records Management.)

(2) Office of Budget and Financial Management.

(3) Office of Human Resources.

(4) Office of Management Services (Physical Security; FMC Contracting Officer).

(i) Bureau of Consumer Complaints and Licensing (Dispute Resolution Specialist).

(1) Office of Consumer Complaints.

(2) Office of Passenger Vessels & Information Processing.

(3) Office of Transportation Intermediaries.

(j) Bureau of Enforcement. (Area Representatives.)

(k) Bureau of Trade Analysis.

- (1) Office of Agreements.
- (2) Office of Economics & Competition Analysis.
- (3) Office of Service Contracts & Tariffs.
- (1) Boards and Committees.
- (1) Executive Resources Board.
- (2) Performance Review Board.

§ 501.4 Lines of responsibility.

(a) Chairman. The Office of the Secretary, the Office of the General Counsel, the Office of Administrative Law Judges, the Office of Equal Employment Opportunity, the Office of the Inspector General, the Office of the Executive Director, and officials performing the functions of Information Security Officer and Designated Agency Ethics Official, report to the Chairman of the Commission.

(b) Office of the Executive Director. The Bureau of Consumer Complaints and Licensing, Bureau of Enforcement, Bureau of Trade Analysis, and the Office of Budget and Financial Management, Office of Human Resources, Office of Information Resources Management, and Office of Management Services report to the Office of the Executive Director. The Office of Equal Employment Opportunity and the Office of the Inspector General receive administrative assistance from the Executive Director. All other units of the Commission receive administrative guidance from the Executive Director.

(c) Bureau of Enforcement and Area Representatives. The Area Representatives report to the Director, Bureau of Enforcement.

§ 501.5 Functions of the organizational components of the Federal Maritime Commission.

As further provided in subpart C of this part, the functions, including the delegated authority of the Commission's organizational components and/or officials to exercise their functions and to take all actions necessary to direct and carry out their assigned duties and responsibilities under the lines of responsibility set forth in § 501.4, are briefly set forth as follows:

(a) Chairman. As the chief executive and administrative officer of the Commission, the Chairman presides at meetings of the Commission, administers the policies of the Commission to its responsible officials, and ensures the efficient discharge of their responsibilities. The Chairman provides management direction to the Offices of Equal Employment Opportunity, Inspector General, Secretary, General Counsel, Administrative Law Judges, and Executive Director with respect to all matters concerning overall Commission workflow, resource allocation (both staff and budgetary), work priorities and similar managerial matters; and establishes, as necessary, various committees and boards to address overall operations of the agency. The Chairman serves as appeals

officer under the Freedom of Information Act, the Privacy Act, and the Federal Activities Inventory Reform Act of 1998. The Chairman appoints the heads of major administrative units after consultation with the other Commissioners. In addition, the Chairman, as "head of the agency," has certain responsibilities under Federal laws and directives not specifically related to shipping. For example, the special offices or officers within the Commission, listed under paragraphs (a)(1) through (a)(4) of this section, are appointed or designated by the Chairman, are under his or her direct supervision and report directly to the Chairman:

(1) Under the direction and management of the Office Director, the Office of Equal Employment Opportunity ("EEO") ensures that statutory and regulatory prohibitions against discrimination in employment and the requirements for related programs are fully implemented. As such, the Office administers and implements comprehensive programs on discrimination complaints processing, affirmative action and special emphasis. The Director, EEO, advises the Chairman regarding EEO's plans, procedures, regulations, reports and other matters pertaining to policy and the agency's programs. Additionally, the Director provides leadership and advice to managers and supervisors in carrying out their respective responsibilities in equal employment opportunity. The Office administers and implements these program

responsibilities in accordance with Equal Employment Opportunity Commission ("EEOC") Regulations at 29 CFR Part 1614 and other relevant EEOC Directives and Bulletins.

(2) Under the direction and management of the Inspector General, the Office of Inspector General conducts, supervises and coordinates audits and investigations relating to the programs and operations of the Commission; reviews existing and proposed legislation and regulations pertaining to such programs and operations; provides leadership and coordination and recommends policies for activities designed to promote economy, efficiency, and effectiveness in the administration of, and to prevent and detect waste, fraud and abuse in, such programs and operations; and advises the Chairman and the Congress fully and currently about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action.

(3) The Information Security Officer is a senior agency official designated under § 503.52 of this chapter to direct and administer the Commission's information security program, which includes an active oversight and security education program to ensure effective implementation of Executive Orders 12958 and 12968.

(4) The Designated Agency Ethics Official and Alternate are appropriate agency employees formally designated under 5 CFR 2638.202 and § 508.101 of this chapter to coordinate and manage the ethics program as set forth in 5 CFR 2638.203, which includes the functions of advising on matters of employee responsibilities and conduct, and serving as the Commission's designee(s) to the Office of Government Ethics on such matters. They provide counseling and guidance to employees on conflicts of interest and other ethical matters.

(b) Commissioners. The members of the Commission, including the Chairman, implement various shipping statutes and related directives by rendering decisions, issuing orders, and adopting and enforcing rules and regulations governing persons subject to the shipping statutes; and perform other duties and functions as may be appropriate under reorganization plans, statutes, executive orders, and regulations.

(c) Secretary. Under the direction and management of the Secretary, the Office of the Secretary:

(1) Is responsible for the preparation, maintenance and disposition of the official files and records documenting the business of the Commission. In this regard, the Office:

(i) Prepares and, as appropriate, publishes agenda of matters for action by the Commission, prepares and maintains the minutes

with respect to such actions; signs, serves and issues, on behalf of the Commission, documents implementing such actions, and coordinates follow-up thereon.

(ii) Receives and processes formal and informal complaints involving alleged statutory violations, petitions for relief, special dockets applications, applications to correct clerical or administrative errors in service contracts, requests for conciliation service, staff recommendations for investigation and rulemaking proceedings, and motions and filings relating thereto.

(iii) Disseminates information regarding the proceedings, activities, functions, and responsibilities of the Commission to the maritime industry, news media, general public, and other government agencies. In this capacity the Office also:

(A) Administers the Commission's Freedom of Information Act, Privacy Act and Government in the Sunshine Act responsibilities; the Secretary serves as the Freedom of Information Act and Privacy Act Officer.

(B) Authenticates records of the Commission.

(C) Receives and responds to subpoenas directed to Commission personnel and/or records.

(D) Compiles and publishes the bound volumes of Commission decisions.

(E) Coordinates publication of documents, including rules and modifications thereto with the Office of the Federal Register; the Secretary serves as the Federal Register Liaison Officer and Certifying Officer.

(F) Oversees the content and organization of the Commission's web site and authorizes the publication of documents thereon.

(2) Through the Secretary and, in the absence or preoccupation of the Secretary, through the Assistant Secretary, administers oaths pursuant to 5 U.S.C. 2903(b).

(3) Manages the Commission's library and related services.

(d) General Counsel. Under the direction and management of the General Counsel, the Office of the General Counsel:

(1) Reviews for legal sufficiency all staff memoranda and recommendations that are presented for Commission action and staff actions acted upon pursuant to delegated authority under §§ 501.26(e) and 501.26(g).

(2) Provides written or oral legal opinions to the Commission, to the staff, and to the general public in appropriate cases.

(3) Prepares and/or reviews for legal sufficiency, before service, all final Commission decisions, orders, and regulations.

(4) Monitors, reviews and, as requested by the Committees of the Congress, the Office of Management and Budget, or the Chairman,

prepares comments on all legislation introduced in the Congress affecting the Commission's programs or activities, and prepares draft legislation or amendments to legislation; coordinates such matters with the appropriate Bureau, Office or official and advises appropriate Commission officials of legislation which may impact the programs and activities of the Commission. Also prepares testimony for Congressional hearings and responses to requests from Congressional offices.

(5) Serves as the legal representative of the Commission in courts and in administrative proceedings before other Government agencies.

(6) Monitors and reports on international maritime developments, including laws and practices of foreign governments which affect ocean shipping; and identifies potential state-controlled carriers within the meaning of section 3(8) of the Shipping Act of 1984, researches their status, and makes recommendations to the Commission concerning their classification.

(7) Represents the Commission in U.S. Government interagency groups dealing with international maritime issues; serves as a technical advisor on regulatory matters in bilateral and multilateral maritime discussions; and coordinates Commission activities through liaison with other Government agencies and programs and international organizations.

(8) Screens, routes, and maintains custody of U.S. Government and international organization documents, subject to the classification and safekeeping controls administered by the Commission's Information Security Officer.

(9) Reviews for legal sufficiency all adverse personnel actions, procurement activities, Freedom of Information Act and Privacy Act matters and other administrative actions.

(10) The General Counsel, or a person designated by the General Counsel, serves as the Chair of the Permanent Task Force on International Affairs.

(e) Administrative Law Judges. Under the direction and management of the Chief Administrative Law Judge, the Office of Administrative Law Judges holds hearings and renders initial or recommended decisions in formal rulemaking and adjudicatory proceedings as provided in the Shipping Act of 1984, and other applicable laws and other matters assigned by the Commission, in accordance with the Administrative Procedure Act and the Commission's Rules of Practice and Procedure.

(f) The Office of the Executive Director.

(1) The Executive Director:

(i) As senior staff official, is responsible to the Chairman for the management and coordination of Commission programs managed by the operating Bureaus of Enforcement; Consumer Complaints and

Licensing; and Trade Analysis, as more fully described in paragraphs (g) through (i) of this section, and thereby implements the regulatory policies of the Commission and the administrative policies and directives of the Chairman;

(ii) Provides administrative guidance to all units of the Commission other than the operating bureaus listed in paragraph (f)(1) of this section, except the Offices of Equal Employment Opportunity and the Inspector General, which are provided administrative assistance;

(iii) Is the agency's Senior Procurement Executive under 41 U.S.C. 414(3) and Commission Order No. 112;

(iv) Is the Designated Senior Information Resources Management Official under 44 U.S.C. 501-520 and 3501-3520 and Commission Order No. 117;

(v) Is the Audit Follow-up and Management (Internal) Controls Official for the Commission under Commission Orders 103 and 106; and

(vi) Is the agency's Chief Operating Officer, as appointed by the Chairman in response to the President's October 1, 1993, memorandum on management reform.

(vii) The Deputy Executive Director is the Commission's Chief Financial Officer.

(2) The Office of the Executive Director ensures the periodic review and updating of Commission orders. Under the direction and management of the Executive Director, the Office of the Executive Director is responsible for the management and coordination of the Offices of: Information Resources Management; Management Services; Budget and Financial Management; and Human Resources. The Office of the Executive Director provides administrative support to the program operations of the Commission. The Executive Director interprets governmental policies and programs and administers these in a manner consistent with Federal guidelines, including those involving information resources, procurement, financial management and personnel. The Office initiates recommendations, collaborating with other elements of the Commission as warranted, for long-range plans, new or revised policies and standards, and rules and regulations, with respect to its program activities. The Executive Director is responsible for directing and administering the Commission's training and development function. The Deputy Executive Director is the Commission's Competition Advocate under 41 U.S.C. 418(a) and Commission Order No. 112, as well as the Commission's representative to the Small Agency Council. Other programs are carried out by its Offices, as follows:

(i) The Office of Information Resources Management, under the direction and management of the Office Director, administers

the Commission's information resources management ("IRM") program under the Paperwork Reduction Act of 1995, as amended, as well as other applicable laws which prescribe responsibility for operating the IRM program. The Office provides administrative support with respect to information resources management to the program operations of the Commission. The Office interprets governmental policies and programs for information management and administers these in a manner consistent with federal guidelines. The Office initiates recommendations, collaborating with other elements of the Commission as warranted, for long range plans, new or revised policies and standards, and rules and regulations with respect to its program activities. The Office's functions include: conducting IRM management studies and surveys; managing data telecommunications; developing and managing databases and applications; coordinating records management activities; administering IRM contracts; and developing Paperwork Reduction Act clearances for submission to the Office of Management and Budget. The Office is also responsible for managing the computer security and the records and forms programs. The Director of the Office serves as Senior IRM Manager, Forms Control Officer, Computer Security Officer, and Records Management Officer.

(ii) The Office of Management Services, under the direction and management of the Office Director, directs and administers a

variety of management support service functions of the Commission. The Director of the Office is the Commission's principal Contracting Officer under Commission Order No. 112. Programs include communications; audio and voice telecommunications; procurement of and contracting for administrative goods and services, including the utilization of small and disadvantaged businesses; management of property, space, printing and copying; mail and records services; forms and graphic designs; facilities and equipment maintenance; and transportation.

(iii) The Office of Budget and Financial Management, under the direction and management of the Office Director, administers the Commission's financial management program, including fiscal accounting activities, fee and forfeiture collections, and payments, and ensures that Commission obligations and expenditures of appropriated funds are proper; develops annual budget justifications for submission to the Congress and the Office of Management and Budget; develops and administers internal controls systems that provide accountability for agency funds; administers the Commission's travel and cash management programs, as well as the Commission's Imprest Funds; ensures accountability for official passports; and assists in the development of proper levels of user fees.

(iv) The Office of Human Resources, under the direction and management of the Office Director, plans and administers a complete personnel management program including: recruitment and placement; position classification and pay administration; occupational safety and health; employee counseling services; employee relations; workforce discipline; performance appraisal; incentive awards; retirement; and personnel security.

(g) Under the direction and management of the Bureau Director, the Bureau of Trade Analysis, through its Office of Agreements; Office of Economics and Competition Analysis; and Office of Service Contracts and Tariffs, reviews agreements and monitors the concerted activities of common carriers by water, reviews and analyzes service contracts, monitors rates of government controlled carriers, reviews carrier published tariff systems under the accessibility and accuracy standards of the Shipping Act of 1984, responds to inquiries or issues that arise concerning service contracts or tariffs, and is responsible for competition oversight and market analysis.

(h) Under the direction and management of the Bureau Director, the Bureau of Consumer Complaints and Licensing:

(1) Through the Office of Consumer Complaints, has responsibility for developing and implementing the Alternative Disputes Resolution Program, responds to consumer inquiries and

complaints, and coordinates the Commission's efforts to resolve disputes within the shipping industry. The Deputy Bureau Director is designated as the agency Dispute Resolution Specialist pursuant to section 3 of the Administrative Dispute Resolution Act of 1996, P.L. 104-320.

(2) Through the Office of Transportation Intermediaries, has responsibility for reviewing applications for Ocean Transportation Intermediary ("OTI") licenses, and maintaining records about licensees.

(3) Through the Office of Passenger Vessels and Information Processing, has responsibility for reviewing applications for certificates of financial responsibility with respect to passenger vessels, managing all activities with respect to evidence of financial responsibility for OTIs and passenger vessel owner/operators, and for developing and maintaining all Bureau databases and records of OTI applicants and licensees.

(i) Bureau of Enforcement; Area Representatives. Under the direction and management of the Bureau Director, the Bureau of Enforcement:

(1) Participates as trial counsel in formal Commission proceedings when designated by Commission order, or when intervention is granted;

(2) Initiates, processes and negotiates the informal compromise of civil penalties under § 501.28 of this part and § 502.604 of this chapter, and represents the Commission in proceedings and circumstances as designated;

(3) Acts as staff counsel to the Executive Director and other bureaus and offices;

(4) Coordinates with other bureaus and offices to provide legal advice, attorney liaison, and prosecution, as warranted, in connection with enforcement matters;

(5) Conducts investigations leading to enforcement action, advises the Federal Maritime Commission of evolving competitive practices in international commerce, assesses the practical repercussions of Commission regulations, educates the industry regarding policy and statutory requirements, and provides liaison, cooperation, and other coordination between the Commission and the maritime industry, shippers, and other government agencies; and

(6) Maintains a presence in locations other than Washington, D.C. through Area Representatives whose activities include the following:

(i) Representing the Commission within their respective geographic areas;

(ii) Providing liaison between the Commission and the shipping industry and interested public; conveying pertinent information

regarding regulatory activities and problems; and recommending courses of action and solutions to problems as they relate to the shipping public, the affected industry, and the Commission;

(iii) Furnishing to interested persons information, advice, and access to Commission public documents;

(iv) Receiving and resolving informal complaints, in coordination with the Director, Office of Consumer Complaints;

(v) Investigating potential violations of the shipping statutes and the Commission's regulations;

(vi) Conducting shipping industry surveillance programs to ensure compliance with the shipping statutes and Commission regulations. Such programs include common carrier audits, service contract audits and compliance checks of ocean transportation intermediaries;

(vii) Upon request of the Bureau of Consumer Complaints and Licensing, auditing passenger vessel operators to determine the adequacy of performance bonds and the availability of funds to pay liability claims for death or injury, and assisting in the background surveys of ocean transportation intermediary applicants;

(viii) Conducting special surveys and studies, and recommending policies to strengthen enforcement of the shipping laws;

(ix) Maintaining liaison with Federal and State agencies with respect to areas of mutual concern; and

(x) Providing assistance to the various bureaus and offices of the Commission as appropriate and when requested.

(j) Boards and Committees.

The following boards and committees are established by separate Commission orders to address matters relating to the overall operations of the Commission:

(1) The Executive Resources Board is comprised of three voting members, chosen from the ranks of those above the grade 15 level, with the majority being career members of the Senior Executive Service. The members serve staggered terms of three years, beginning October 1 of each year; the member serving in the last year of his/her term serves as Chairman. The board meets on an ad hoc basis to discuss, develop and submit recommendations to the Chairman on matters related to the merit staffing process for career appointments in the Senior Executive Service, including the executive qualifications of candidates for career appointment. The board also plans and manages the Commission's executive development programs. Serving the board in a non-voting advisory capacity are the Director, Office of Equal Employment Opportunity, the Training Officer, and the Director, Office of Human Resources, who also serves as the board's secretary. Commission Order No. 95.

(2) The Performance Review Board is chaired by a Commissioner designated by the Chairman, and is composed of a standing register of members which is published in the Federal Register. Once a year, the PRB Chairman appoints performance review panels from the membership to review individual performance appraisals and other relevant information pertaining to Senior Executives at the Commission, and to recommend final performance ratings to the Chairman. Commission Order No. 115. Every three years, the PRB considers supervisors' recommendations as to whether Senior Executives of the Commission should be recertified under the Ethics Reform Act of 1989, and makes appropriate recommendations to the Commission's Chairman. Commission Order No. 118.

Subpart B -- Official Seal

§ 501.11 Official seal.

(a) Description. Pursuant to section 201(c) of the Merchant Marine Act, 1936, as amended (46 U.S.C. app. 1111(c)), the Commission prescribes its official seal, as adopted by the Commission on August 14, 1961, which shall be judicially noticed. The design of the official seal is described as follows:

(1) A shield argent paly of six gules, a chief azure charged with a fouled anchor or; shield and anchor outlined of the third;

on a wreath argent and gules, an eagle displayed proper; all on a gold disc within a blue border, encircled by a gold rope outlined in blue, and bearing in white letters the inscription "Federal Maritime Commission" in upper portion and "1961" in lower portion.

(2) The shield and eagle above it are associated with the United States of America and denote the national scope of maritime affairs. The outer rope and fouled anchor are symbolic of seamen and waterborne transportation. The date "1961" has historical significance, indicating the year in which the Commission was created.

(b) Design.



Subpart C -- Delegation and Redelelegation of Authorities

§ 501.21 Delegation of authorities.

(a) Authority and delegation. Section 105 of Reorganization Plan No. 7 of 1961, August 12, 1961, authorizes the Commission to delegate, by published order or rule, any of its functions to a

division of the Commission, an individual Commissioner, an administrative law judge, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business or matter. In subpart A of this part, the Commission has delegated general functions, and in this subpart C, it is delegating miscellaneous, specific authorities set forth in §§ 501.23, et seq., to the delegates designated therein, subject to the limitations prescribed in subsequent subsections of this section.

(b) Deputies. Where bureau or office deputies are officially appointed, they are hereby delegated all necessary authority to act in the absence or incapacity of the director or chief.

(c) Redelegation. Subject to the limitations in this section, the delegates may redelegate their authorities to subordinate personnel under their supervision and direction; but only if this subpart is amended to reflect such redelegation and notice thereof is published in the Federal Register. Under any redelegated authority, the redelegator assumes full responsibility for actions taken by subordinate redelegatees.

(d) Exercise of authority; policy and procedure. The delegates and redelegatees shall exercise the authorities delegated or redelegated in a manner consistent with applicable

laws and the established policies of the Commission, and shall consult with the General Counsel where appropriate.

(e) Exercise of delegated authority by delegator. Under any authority delegated or redelegated, the delegator (Commission), or the redelegator, respectively, shall retain full rights to exercise the authority in the first instance.

(f) Review of delegatee's action. The delegator (Commission) or redelegator of authority shall retain a discretionary right to review an action taken under delegated authority by a subordinate delegatee, either upon the filing of a written petition of a party to, or an intervenor in, such action; or upon the delegator's or redelegator's own initiative.

(1) Petitions for review of actions taken under delegated authority shall be filed within ten (10) calendar days of the action taken:

(i) If the action for which review is sought is taken by a delegatee, the petition shall be addressed to the Commission pursuant to § 502.69 of this chapter.

(ii) If the action for which review is sought is taken by a redelegatee, the petition shall be addressed to the redelegator whose decision can be further reviewed by the Commission under paragraph (f)(1)(i) of this section, unless the Commission decides

to review the matter directly, such as, for example, in the incapacity of the redelegator.

(2) The vote of a majority of the Commission less one member thereof shall be sufficient to bring any delegated action before the Commission for review under this paragraph.

(g) Action - when final. Should the right to exercise discretionary review be declined or should no such review be sought under paragraph (f) of this section, then the action taken under delegated authority shall, for all purposes, including appeal or review thereof, be deemed to be the action of the Commission.

(h) Conflicts. Where the procedures set forth in this section conflict with law or any regulation of this chapter, the conflict shall be resolved in favor of the law or other regulation.

§ 501.22 (Reserved).

§ 501.23 Delegation to the General Counsel.

The authority listed in this section is delegated to the General Counsel: authority to classify carriers as state-controlled carriers within the meaning of section 3(8) of the Shipping Act of 1984, except where a carrier submits a rebuttal statement pursuant to § 565.3(b) of this chapter.

§ 501.24 Delegation to the Secretary.

The authorities listed in this section are delegated to the Secretary (and, in the absence or preoccupation of the Secretary, to the Assistant Secretary).

(a) Authority to approve applications for permission to practice before the Commission and to issue admission certificates to approved applicants.

(b) Authority to extend the time to file exceptions or replies to exceptions, and the time for Commission review, relative to initial decisions of administrative law judges and decisions of Special Dockets Officers.

(c) Authority to extend the time to file appeals or replies to appeals, and the time for Commission review, relative to dismissals of proceedings, in whole or in part, issued by administrative law judges.

(d) Authority to establish and extend or reduce the time:

(1) To file documents either in docketed proceedings or relative to petitions filed under Part 502 of this chapter, which are pending before the Commission itself; and

(2) To issue initial and final decisions under § 502.61 of this chapter.

(e) Authority to prescribe a time limit for the submission of written comments with reference to agreements filed pursuant to section 5 of the Shipping Act of 1984.

(f) Authority, in appropriate cases, to publish in the Federal Register notices of intent to prepare an environmental assessment and notices of finding of no significant impact.

(g) Authority to prescribe a time limit less than ten days from date published in the Federal Register for filing comments on notices of intent to prepare an environmental assessment and notice of finding of no significant impact and authority to prepare environmental assessments of no significant impact.

(h) Authority, in the absence or preoccupation of the Executive Director and Deputy Executive Director, to sign travel orders, nondocketed recommendations to the Commission, and other routine documents for the Executive Director, consistent with the programs, policies, and precedents established by the Commission or the Executive Director.

§ 501.25 Delegation to and redelegation by the Executive Director.

Except where specifically redelegated in this section, the authorities listed in this section are delegated to the Executive Director.

(a) Authority to adjudicate, with the concurrence of the General Counsel, and authorize payment of, employee claims for not more than \$1,000.00, arising under the Military and Civilian Personnel Property Act of 1964, 31 U.S.C. 3721.

(b) Authority to determine that an exigency of the public business is of such importance that annual leave may not be used by employees to avoid forfeiture before annual leave may be restored under 5 U.S.C. 6304.

(c) (1) Authority to approve, certify, or otherwise authorize those actions dealing with appropriations of funds made available to the Commission including allotments, fiscal matters, and contracts relating to the operation of the Commission within the laws, rules, and regulations set forth by the Federal Government.

(2) The authority under this paragraph is redelegated to the Director, Office of Budget and Financial Management.

(d) (1) Authority to classify all positions GS-1 through GS-15 and wage grade positions.

(2) The authority under this paragraph is redelegated to the Director, Office of Human Resources.

§ 501.26 Delegation to the Director, Bureau of Trade Analysis.

The authorities listed in this section are delegated to the Director, Bureau of Trade Analysis.

(a) Authority to determine that no action should be taken to prevent an agreement or modification to an agreement from becoming effective under section 6(c)(1), and to shorten the review period under section 6(e), of the Shipping Act of 1984, when the agreement

or modification involves solely a restatement, clarification or change in an agreement which adds no new substantive authority beyond that already contained in an effective agreement. This category of agreement or modification includes, for example, the following: a restatement filed to conform an agreement to the format and organization requirements of Part 535 of this chapter; a clarification to reflect a change in the name of a country or port or a change in the name of a party to the agreement; a correction of typographical or grammatical errors in the text of an agreement; a change in the title of persons or committees designated in an agreement; or a transfer of functions from one person or committee to another.

(b) Authority to grant or deny applications filed under § 535.406 of this chapter for waiver of the form, organization and content requirements of §§ 535.401, 535.402, 535.403, 535.404 and 535.405 of this chapter.

(c) Authority to grant or deny applications filed under § 535.505 of this chapter for waiver of the information form requirements of §§ 535.503 and 535.504 of this chapter.

(d) Authority to grant or deny applications filed under §535.709 of this chapter for waiver of the reporting and record retention requirements of §§ 535.701, 535.702, 535.703, 535.704, 535.705, 535.706, 535.707 and 535.708 of this chapter.

(e) Authority to determine that no action should be taken to prevent an agreement or modification of an agreement from becoming effective under section 6(c)(1) of the Shipping Act of 1984 for all unopposed agreements and modifications to agreements which will not result in a significant reduction in competition. Agreements which are deemed to have the potential to result in a significant reduction in competition and which, therefore, are not covered by this delegation include but are not limited to:

(1) New agreements authorizing the parties to collectively discuss or fix rates (including terminal rates).

(2) New agreements authorizing the parties to pool cargoes or revenues.

(3) New agreements authorizing the parties to establish a joint service or consortium.

(4) New equal access agreements.

(f) Authority to grant or deny shortened review pursuant to § 535.605 of this chapter for agreements for which authority is delegated in paragraph (e) of this section.

(g) Subject to review by the General Counsel, authority to deny, but not approve, requests filed pursuant to § 535.605 of this chapter for a shortened review period for agreements for which authority is not delegated under paragraph (e) of this section.

(h) Authority to issue notices of termination of agreements which are otherwise effective under the Shipping Act of 1984, after publication of notice of intent to terminate in the Federal Register, when such terminations are:

(1) Requested by the parties to the agreement;

(2) Deemed to have occurred when it is determined that the parties are no longer engaged in activity under the agreement and official inquiries and correspondence cannot be delivered to the parties; or

(3) Deemed to have occurred by notification of the withdrawal of the next to last party to an agreement without notification of the addition of another party prior to the effective date of the next to last party's withdrawal.

(i) Authority to determine whether agreements for the use or operation of terminal property or facilities, or the furnishing of terminal services, are within the purview of section 5 of the Shipping Act of 1984.

(j) Authority to request controlled carriers to file justifications for existing or proposed rates, charges classifications, rules or regulations, and review responses to such requests for the purpose of recommending to the Commission that a rate, charge, classification, rule or regulation be found unlawful

and, therefore, requires Commission action under section 9(d) of the Shipping Act of 1984.

(k) Authority to recommend to the Commission the initiation of formal proceedings or other actions with respect to suspected violations of the shipping statutes and rules and regulations of the Commission.

(1)(1) Authority to approve for good cause or disapprove special permission applications submitted by common carriers, or conferences of such carriers, subject to the provisions of section 8 of the Shipping Act of 1984, for relief from statutory and/or Commission tariff requirements.

(2) The authority under this paragraph is redelegated to the Director, Office of Service Contracts and Tariffs.

(m)(1) Authority to approve or disapprove special permission applications submitted by a controlled carrier subject to the provisions of section 9 of the Shipping Act of 1984 for relief from statutory and/or Commission tariff requirements.

(2) The authority under this paragraph is redelegated to the Director, Office of Service Contracts and Tariffs, in the Bureau of Trade Analysis.

(n) Authority contained in Part 530 of this chapter to approve, but not deny, requests for permission to correct clerical

or administrative errors in the essential terms of filed service contracts.

§ 501.27 Delegation to the Director, Bureau of Consumer Complaints and Licensing.

(a) (1) Authority to:

(i) Approve or disapprove applications for ocean transportation intermediary licenses; issue or reissue or transfer such licenses; and approve extensions of time in which to furnish the name(s) and ocean transportation intermediary experience of the managing partner(s) or officer(s) who will replace the qualifying partner or officer upon whose qualifications the original licensing was approved;

(ii) Issue a letter stating that the Commission intends to deny an ocean transportation intermediary application, unless within 20 days, applicant requests a hearing to show that denial of the application is unwarranted; deny applications where an applicant has received such a letter and has not requested a hearing within the notice period; and rescind, or grant extensions of, the time specified in such letters;

(iii) Revoke the license of an ocean transportation intermediary upon the request of the licensee;

(iv) Upon receipt of notice of cancellation of any instrument evidencing financial responsibility, notify the licensee in writing that its license will automatically be suspended or revoked, effective on the cancellation date of such instrument, unless new or reinstated evidence of financial responsibility is submitted and approved prior to such date, and subsequently order such suspension or revocation for failure to maintain proof of financial responsibility;

(v) Revoke the ocean transportation intermediary license of a non-vessel-operating common carrier not in the United States for failure to designate and maintain a person in the United States as legal agent for the receipt of judicial and administrative process;

(vi) Approve changes in an existing licensee's organization;
and

(vii) Return any application which on its face fails to meet the requirements of the Commission's regulations, accompanied by an explanation of the reasons for rejection.

(2) The authorities contained in paragraphs (a)(1)(iii) and (a)(1)(iv) of this section are redelegated to the Director, Office of Transportation Intermediaries, in the Bureau of Consumer Complaints and Licensing.

(b) Authority to:

(1) Approve applications for Certificates (Performance) and Certificates (Casualty) for passenger vessels, evidenced by a surety bond, guaranty or insurance policy, or combination thereof; and issue, reissue, or amend such Certificates;

(2) Issue a written notice to an applicant stating intent to deny an application for a Certificate (Performance) and/or (Casualty), indicating the reason therefor, and advising applicant of the time for requesting a hearing as provided for under § 540.26(c) of this chapter; deny any application where the applicant has not submitted a timely request for a hearing; and rescind such notices and grant extensions of the time within which a request for hearing may be filed;

(3) Issue a written notice to a certificant stating that the Commission intends to revoke, suspend, or modify a Certificate (Performance) and/or (Casualty), indicating the reason therefor, and advising of the time for requesting a hearing as provided for under § 540.26(c) of this chapter; revoke, suspend or modify a Certificate (Performance) and/or (Casualty) where the certificant has not submitted a timely request for hearing; and rescind such notices and grant extensions of time within which a request for hearing may be filed;

(4) Revoke a Certificate (Performance) and/or (Casualty) which has expired, and/or upon request of, or acquiescence by, the certificant; and

(5) Notify a certificant when a Certificate (Performance) and/or (Casualty) has become null and void in accordance with §§ 540.8(a) and 540.26(a) of this chapter.

(c) Authority to approve amendments to escrow agreements filed under § 540.5(b) when such amendments are for the purpose of changing names of principals, changing the vessels covered by the escrow agreement, changing the escrow agent, and changing the amount of funds held in escrow, provided that the changes in amount of funds results in an amount of coverage that complies with the requirements in the introductory text of § 540.5.

§ 501.28 Delegation to the Director, Bureau of Enforcement.

The authorities listed in this section are delegated to the Director, Bureau of Enforcement. Notwithstanding the provisions of § 501.21, the Director may delegate or redelegate, in writing, specific authority to individuals within the Bureau of Enforcement other than the Deputy Director.

(a) Authority to compromise civil penalty claims has been delegated to the Director, Bureau of Enforcement, by § 502.604(g) of this chapter. This delegation shall include the authority to

compromise issues relating to the retention, suspension or revocation of ocean transportation intermediary licenses.

(b) Authority to approve administrative leave for Area Representatives.

Subpart D -- Public Requests for Information

§ 501.41 Public requests for information and decisions.

(a) General. Pursuant to 5 U.S.C. 552(a)(1)(A), there is hereby stated and published for the guidance of the public the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions, principally by contacting by telephone, in writing, or in person, either the Secretary of the Commission at the Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, or the Area Representatives listed in paragraph (d) of this section. See also Part 503 of this chapter.

(b) The Secretary will provide information and decisions, and will accept and respond to requests, relating to the program activities of the Office of the Secretary and of the Commission, generally. Unless otherwise provided in this chapter, any document, report, or other submission required to be filed with the

Commission by statute or the Commission's rules and regulations relating to the functions of the Commission or of the Office of the Secretary shall be filed with or submitted to the Secretary.

(c) The Directors of the following bureaus and offices will provide information and decisions, and will accept and respond to requests, relating to the specific functions or program activities of their respective bureaus and offices as set forth in this chapter; but only if the dissemination of such information or decisions is not prohibited by statute or the Commission's Rules of Practice and Procedure:

- (1) Office of the General Counsel
- (2) Office of the Administrative Law Judges
- (3) Office of the Executive Director
- (4) Office of the Inspector General
- (5) Office of Equal Employment Opportunity
- (6) Bureau of Enforcement
- (7) Bureau of Trade Analysis
- (8) Bureau of Consumer Complaints and Licensing
- (9) Office of Management Services
- (10) Office of Human Resources
- (11) Office of Budget and Financial Management
- (12) Office of Information Resources Management
- (13) Office of Consumer Complaints

(d) The Area Representatives will provide information and decisions to the public within their geographic areas, or will expedite the obtaining of information and decisions from headquarters. The addresses of these Area Representatives are as follows. Further information on Area Representatives, including Internet e-mail addresses, can be obtained on the Commission's home page at "<http://www.fmc.gov>."

Los Angeles

Los Angeles Area Representative
U.S. Customs House Building
P.O. Box 3164
300 S. Ferry Street, Room 1018
Terminal Island Station
San Pedro, CA 90731

Miami

Miami Area Representative
Customs Management Center
909 SE, 1st Ave., Room 705
Miami, FL 33131

New Orleans

New Orleans Area Representative
U.S. Customs House
423 Canal Street, Room 309B

New Orleans, LA 70130

New York

New York Area Representative

P.O. Box 3461

Church Street Station

New York, NY 10008

Seattle

Seattle Area Representative

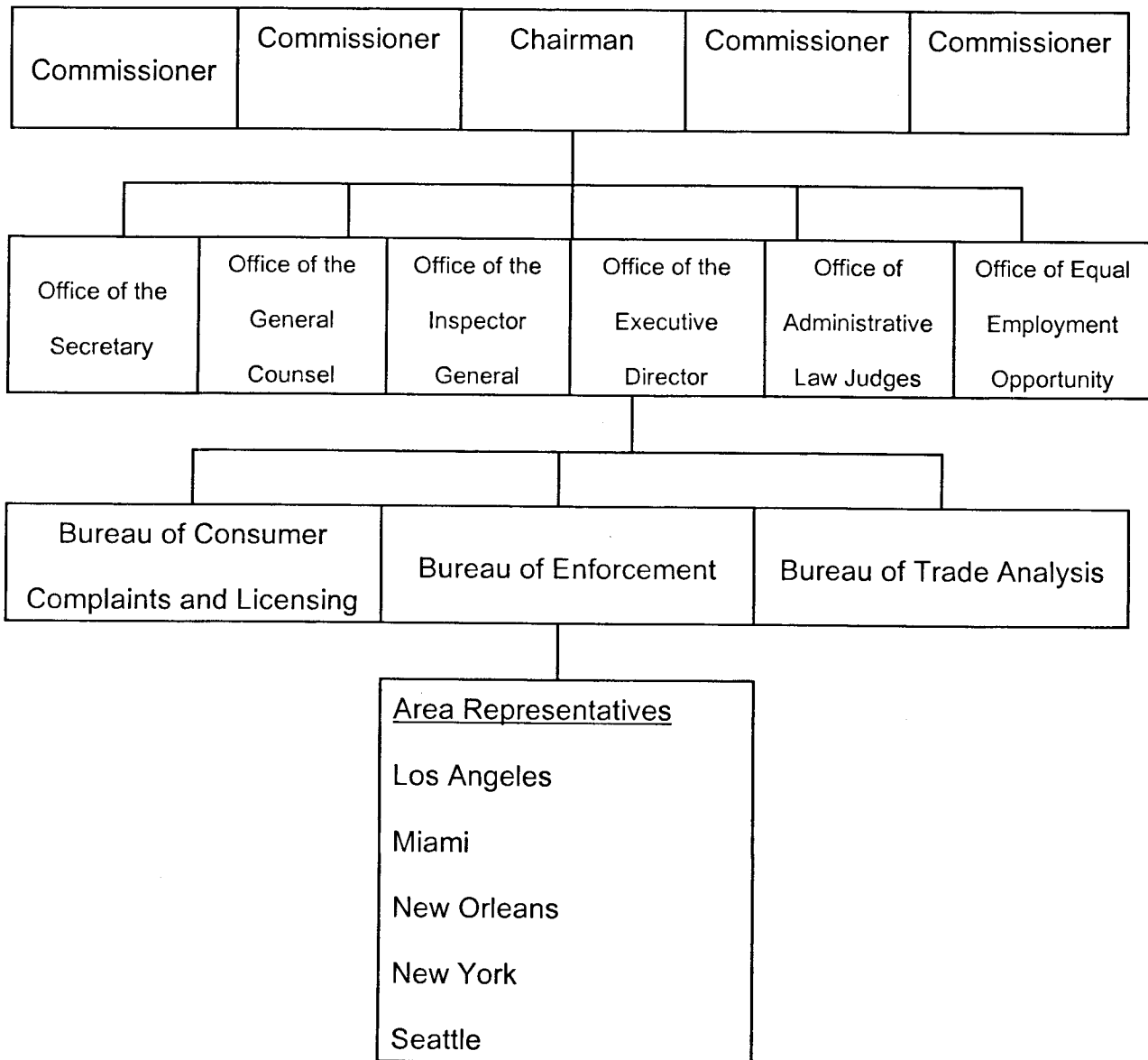
c/o U.S. Customs Service

7 South Nevada Street, Suite 100

Seattle, WA 98134

(e) Any document, report or other submission required to be filed with the Commission by statute or the Commission's rules and regulations relating to the specific functions of the bureaus and offices shall be filed with or submitted to the Director of such Bureau or Office.

Appendix A - Federal Maritime Commission Organization Chart



PART 502 - RULES OF PRACTICE AND PROCEDURE

1. The authority citation is corrected and revised to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561-569, 571-596; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. app. 1114(b), 1705, 1707-1711, 1713-1716; E.O. 11222 of May 8, 1965 (30 FR 6469); 21 U.S.C. 853a; Pub. L. 105-258; and Pub. L. 89-777 (46 U.S.C. app. 817d, 817e).

2. In section 502.44, revise paragraph (c) to read as follows:

§ 502.44 Necessary and proper parties in certain complaint proceedings.

* * * * *

(c) If complaint is made with respect to an agreement filed under section 5(a) of the Shipping Act of 1984, the parties to the agreement shall be made respondents. (Rule 44).

3. In section 502.68, revise the fourth sentence of paragraph (b) to read as follows:

§ 502.68 Declaratory orders and fees.

* * * * *

(b) * * * Such matters must be adjudicated either by filing of a complaint under section 11 of the Shipping Act of 1984 and §

502.62, or by filing of a petition for investigation under § 502.69.

* * * * *

4. In section 502.271, revise paragraph (f)(1) to read as follows:

§ 502.271 Special docket application for permission to refund or waive freight charges.

* * * * *

(f)(1) The Secretary in his discretion shall either forward an application to the Office of Consumer Complaints, in the Bureau of Consumer Complaints and Licensing, for assignment to a Special Dockets Officer, or assign an application to the Office of Administrative Law Judges. Authority to issue decisions under this subpart is delegated to the assigned Special Dockets Officer or Administrative Law Judge.

* * * * *

5. In section 502.301, revise paragraph (b) to read as follows:

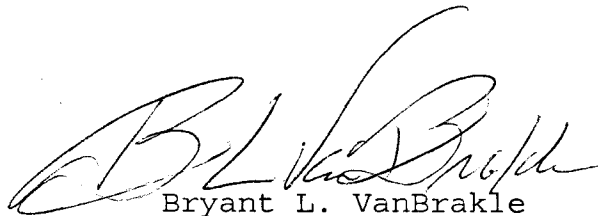
§ 502.301 Statement of policy.

* * * * *

(b) With the consent of both parties, claims filed under this subpart in the amount of \$10,000 or less will be referred to the Office of Consumer Complaints, in the Bureau of Consumer Complaints

and Licensing, for assignment to and decision by a Settlement Officer without the necessity of formal proceedings under the rules of this part. Authority to issue decisions under this subpart is delegated to the assigned Settlement Officer.

6. In Appendix A to Subpart W, remove the phrase "and the Shipping Act, 1916."



Bryant L. VanBrakle
Secretary

