

ownership associated with the equipment under applicable state and local law.

(d) * * * Cable operators may impose reasonable insurance requirements on leased access programmers. Cable operators shall bear the burden of proof in establishing reasonableness.

* * * * *

(f) (1) A cable operator shall provide billing and collection services for commercial leased access cable programmers, unless the operator demonstrates the existence of third party billing and collection services which in terms of cost and accessibility, offer leased access programmers an alternative substantially equivalent to that offered to comparable non-leased access programmers.

* * * * *

(g) Cable operators shall not unreasonably limit the length of leased access contracts. The termination provisions of leased access contracts shall be commercially reasonable and may not allow operators to terminate leased access contracts without a reasonable basis.

(h) Cable operators may not prohibit the resale of leased access capacity to persons unaffiliated with the operator, but may provide in their leased access contracts that any sublessees will be subject to the non-price terms and conditions that apply to the initial lessee, and that, if the capacity is resold, the rate for the capacity shall be the maximum permissible rate.

4. Section 76.975 is amended by revising paragraphs (b), (c), (d) and (e) to read as follows:

§ 76.975 Commercial leased access dispute resolution.

* * * * *

(b) (1) Any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available or to charge rates for such capacity in accordance with the provisions of Title VI of the Communications Act, or our implementing regulations, §§ 76.970 and 76.971, may file a petition for relief with the Commission. Persons alleging that a cable operator's leased access rate is unreasonable must receive a determination of the cable operator's maximum permitted rate from an independent accountant prior to filing a petition for relief with the Commission.

(2) Parties to a dispute over leased access rates shall have five business days to agree on a mutually acceptable accountant from the date on which the programmer provides the cable operator with a written request for a review of its leased access rates. Parties that fail to

agree on a mutually acceptable accountant within five business days of the programmer's request for a review shall each be required to select an independent accountant on the sixth business day. The two accountants selected shall have five business days to select a third independent accountant to perform the review. Operators of systems subject to small system relief shall have 14 business days to select an independent accountant when an agreement cannot be reached. For these purposes, systems subject to small system relief are systems that either:

- (i) Qualify as small systems under § 76.901(c) and are owned by a small cable company as defined under § 76.901(e); or
- (ii) Have been granted special relief.

(3) The final accountant's report must be completed within 60 days of the date on which the final accountant is selected to perform the review. The final accountant's report must, at a minimum, state the maximum permitted rate, and explain how it was determined without revealing proprietary information. The report must be signed, dated and certified by the accountant. The report shall be filed in the cable system's local public file.

(4) If the accountant's report indicates that the cable operator's leased access rate exceeds the maximum permitted rate by more than a *de minimis* amount, the cable operator shall be required to pay the full cost of the review. If the final accountant's report does not indicate that the cable operator's leased access rate exceeds the maximum permitted rate by more than a *de minimis* amount, each party shall be required to split the cost of the final accountant's review, and to pay its own expenses incurred in making the review.

(5) Parties may use alternative dispute resolution (ADR) processes to settle disputes that are not resolved by the final accountant's report.

(c) A petition must contain a concise statement of the facts constituting a violation of the statute or the Commission's Rules, the specific statute(s) or rule(s) violated, and certify that the petition was served on the cable operator. Where a petition is based on allegations that a cable operator's leased access rates are unreasonable, the petitioner must attach a copy of the final accountant's report. In proceedings before the Commission, there will be a rebuttable presumption that the final accountant's report is correct.

(d) Where a petition is not based on allegations that a cable operator's leased access rates are unreasonable, the petition must be filed within 60 days of the alleged violation. Where a petition

is based on allegations that the cable operator's leased access rates are unreasonable, the petition must be filed within 60 days of the final accountant's report, or within 60 days of the termination of ADR proceedings. Aggrieved parties must certify that their petition was filed within 60 days of the termination of ADR proceedings in order to file a petition later than 60 days after completion of the final accountant's report. Cable operators may rebut such certifications.

(e) The cable operator or other respondent will have 30 days from the filing of the petition to file a response. If a leased access rate is disputed, the response must show that the rate charged is not higher than the maximum permitted rate for such leased access, and must be supported by the affidavit of a responsible company official. If, after a response is submitted, the staff finds a *prima facie* violation of our rules, the staff may require a respondent to produce additional information, or specify other procedures necessary for resolution of the proceeding.

* * * * *

5. Section 76.977 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 76.977 Minority and educational programming used in lieu of designated commercial leased access capacity.

(a) * * * The channel capacity used to provide programming from a qualified minority programming source or from any qualified educational programming source pursuant to this section may not exceed 33 percent of the channel capacity designated pursuant to 47 U.S.C. 532 and must be located on a tier with more than 50 percent subscriber penetration.

* * * * *

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[(OST) Docket No. 1; Amdt. 1-284]

Organizations and Delegation of Powers and Duties; Delegation to the Commandant, United States Coast Guard and Administrator, Maritime Administration

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule revises in part the delegations of Secretarial authority

under the Deepwater Port Act of 1974, as amended. The Secretary reserves the authority to issue, amend, or transfer a deepwater port license. The rule delegates certain functions under the Act to the Administrator of the Maritime Administration and provides for coordination between the Maritime Administration and the United States Coast Guard in processing applications for licenses for construction and operation of deepwater ports. The rule also delegates to the Commandant of the Coast Guard additional Secretarial authority under the Oil Pollution Act of 1990. The rule does not change the previous delegation of Deepwater Port Act authority to the Administrator of the Research and Special Programs Administration.

EFFECTIVE DATE: This rule is effective March 12, 1997.

FOR FURTHER INFORMATION CONTACT: Paul B. Larsen, Office of the Assistant General Counsel for Environmental, Civil Rights, and General Law at (202) 366-9161 Department of Transportation, 400 7th Street SW., Washington, DC 20590.

SUMMARY INFORMATION: This rule revises the Secretary's delegations of authority under the Deepwater Port Act, as amended. The Secretary reserves the authority to issue, amend, or transfer a license for the construction and operation of a deepwater port (33 U.S.C. 1503(b)). The rule provides for effective service to the public through coordination between the Administrator of the Maritime Administration (MARAD) and the Commandant of the United States Coast Guard for the processing of applications for the issuance, transfer, or amendment of a license for the construction and operation of a deepwater port. The Secretary delegates to the Administrator of MARAD several authorities under the Deepwater Port Act which the Secretary had previously reserved in 46 CFR 1.44(o).

The rule also delegates to the Commandant of the Coast Guard the Secretary's authority under the Oil Pollution Act of 1990 to prescribe regulations to lower the liability limits of deepwater ports (33 U.S.C. 2704(d)(2)(C)).

The rule does not change the Secretary's previous delegation of Deepwater Port Act authority to the Administrator of the Research and Special Programs Administration in 49

CFR 1.53(a)(3) for establishment, enforcement, and review of regulations concerning the safe construction, operation or maintenance of pipelines on Federal lands and the Outer Continental Shelf (33 U.S.C. 1520).

Since this amendment is ministerial and relates only to departmental management, organization, procedure, and practice, it is exempt from prior notice and comment requirements under 5 USC 553 (b)(3)(A). The Department has determined that notice and comment on it are unnecessary and impractical. The changes will not have substantive impact and the Department does not expect meaningful comments on them. Therefore there is good cause under 5 USC 553(d)(3) to make this rule effective in fewer than 30 days after publication in the Federal Register.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub. L. 101-552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.44(o) is revised to read as follows:

§ 1.44 Reservation of authority.

* * * * *

(o) *Deepwater ports.* The authority to issue, transfer, or amend a license for the construction and operation of a deepwater port (33 U.S.C. 1503(b)).

* * * * *

3. Section 1.46(s) is revised to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(s) Carry out the following powers and duties vested in the Secretary by the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501-1524):

(1) The authority to process applications for the issuance, transfer or amendment of a license for the construction and operation of a deepwater port (33 U.S.C. 1503(b)) *in coordination* with the Administrator of the Maritime Administration.

(2) Carry out other functions and responsibilities vested in the Secretary by the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501-1524), except as reserved by § 1.44(o) and delegated by §§ 1.53(a)(3) and 1.66(aa).

* * * * *

4. Section 1.46(l) is amended by inserting after the word "sections", the phrase "1004(d)(2)(C)."

5. Section 1.66(aa) is added to read as follows:

§ 1.66 Delegation to Maritime Administrator.

* * * * *

(aa) Carry out the following powers and duties vested in the Secretary by the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501-1524):

(1) The authority to process applications for the issuance, transfer, or amendment of a license for the construction and operation of a deepwater port (33 U.S.C. 1503(bb)) in coordination with the Commandant of the Coast Guard.

(2) Approval of fees charged by adjacent coastal States for use of a deepwater port and directly related land-based facilities (33 U.S.C. 1504(h)(2)).

(3) In collaboration with the Assistant Secretary for Aviation and International Affairs and the Assistant Secretary for Transportation Policy, consultation with the Secretary of State relating to international actions and cooperation in the economic, trade and general transportation policy aspects of the ownership and operation of deepwater ports (33 U.S.C. 1510).

(4) Submission of notice of the commencement of a civil suit (33 U.S.C. 1515(b)(2)).

(5) Intervention in any civil action to which the Secretary is not a party (33 U.S.C. 15150).

(6) Authority to request the Attorney General to seek the suspension or termination of a deepwater port license and to initiate a proceeding before the Surface Transportation Board (33 U.S.C. 1507, 1511(a)).

Issued in Washington, DC on March 3, 1997.

Rodney E. Slater,

Secretary of Transportation.

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