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§ 502.707 Intervention.

Intervention will ordinarily not be permitted. [Rule 707.]

§ 502.708 Decision.

(a) Except as described in paragraph (b) of this section, the administrative law judge will issue a decision within forty (40) days after the submission of the Bureau of Enforcement's reply.

(b) If oral hearing or argument is conducted or additional information is required, then the decision will be issued within forty (40) days after the oral proceeding or the deadline for submission of additional information, whichever is later.

(c) The decision of the administrative law judge will be final, unless, within twenty-two (22) days from the date of service of the decision, either party files exceptions under § 502.227(a)(1) or the Commission makes a determination to review under § 502.227(a)(3) and (d). [Rule 708.]

§ 502.709 Applicability of other rules to this subpart.

(a) Except as otherwise specifically provided in this subpart or in paragraph (b) of this section, the sections in subparts A through Q, inclusive, of this part do not apply to proceedings covered by this subpart.

(b) The following sections in subparts A through Q apply to proceedings covered by this subpart: §§ 502.1 through 502.11, 502.13 (Filing requirements, Document requirements, and General rules); 502.21 through 502.23 (Appearance, Authority for representation, Notice of appearance, Substitution, and Withdrawal of representative); 502.42 (Bureau of Enforcement); 502.43 (Substitution of parties); 502.101 through 502.105 (Computation of time); 502.114, 502.116 through 502.117 (Service of documents); 502.223 through 502.230 (Decisions). [Rule 709.]

Subpart Y—Paperwork Reduction Act

§ 502.991 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The Commission intends that this section comply with the Act, which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement:

Section	Current OMB control no.
502.27 (Form FMC.12)	3072–0001

[49 FR 44369, Nov. 6, 1984. Redesignated at 58 FR 27211, May 7, 1993]

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AUTHORITY: 5 U.S.C. 331, 552, 552a, 552b, 553; 31 U.S.C. 9701; 46 U.S.C. 303; E.O. 13526 of January 5, 2010 75 FR 707, 3 CFR, 2010 Comp., p. 298, sections 5.1(a) and (b).

SOURCE: 49 FR 44401, Nov. 6, 1984, unless otherwise noted.

Subpart A—General

§ 503.1 Scope and purpose.

This part implements the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, the Privacy Act of 1974, 5 U.S.C. 552a, and the Government in the Sunshine Act (1976), 5 U.S.C. 552b; and sets forth the Commission's regulations governing:

(a) Public availability of Commission information and records at its Office of the Secretary, published in the FEDERAL REGISTER, or posted on the Commission's public Web site (*www.fmc.gov*);

(b) Procedures for requests for testimony by current or former FMC employees relating to official information and production of official Commission records in litigation;

(c) The type of services and amount of fees charged for certain Commission services; and

(d) The Commission's Information Security Program.

[80 FR 52640, Sept. 1, 2015]

Subpart B—Publication in the Federal Register

§ 503.11 Materials to be published.

The Commission shall separately state and concurrently publish the following materials in the FEDERAL REGISTER or on its public Web site

(*www.fmc.gov*) for the guidance of the public:

(a) Descriptions of its central and field organization and 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.

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency.

(e) Every amendment, revision, or repeal of the foregoing.

[49 FR 44401, Nov. 6, 1984, as amended at 64 FR 23547, May 3, 1999; 80 FR 52640, Sept. 1, 2015]

§ 503.12 Effect of nonpublication.

Except to the extent that a person has actual and timely notice of the terms thereof, no person shall in any manner be required to resort to, or be adversely affected by any matter required to be published in the FEDERAL REGISTER and not so published.

§ 503.13 Incorporation by reference.

For purposes of this subpart, matter which is reasonably available to the class of persons affected hereby shall be deemed published in the FEDERAL REGISTER when incorporated by reference therein with the approval of the Director of the Office of the Federal Register.

[49 FR 44401, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

Subpart C—Records, Information and Materials Generally Available to the Public Without Resort to Freedom of Information Act Procedures

SOURCE: 63 FR 53308, Oct. 5, 1998, unless otherwise noted.

§ 503.21 Mandatory public records.

(a) The Commission, as required by the Freedom of Information Act, 5 U.S.C. 552, is responsible for determining which of its records must be made publicly available, for identifying additional records of interest to the public that are appropriate for public disclosure, for posting and indexing such records, and for reviewing and updating posted records and indices on an ongoing basis. The Commission makes the following materials available for public inspection in electronic format on its Web site at *www.fmc.gov:*

(1) Final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases.

(2) Those statements of policy and interpretations which have been adopted by the Commission.

(3) Administrative staff manuals and instructions to staff that affect any member of the public.

(4) Copies of all records, regardless of form or format, which have been released to any person pursuant to a Freedom of Information Act request, and which the Secretary determines have become or are likely to become the subject of subsequent requests for substantially the same records, and a general index of such records.

(b) To prevent unwarranted invasion of personal privacy, the Secretary may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in paragraph (a)(4) of this section. In each case, the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on that portion of the record which is made available or published, unless including that indication would harm an interest protected by an exemption in

§ 503.33 under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made.

(c) The Commission maintains and makes available for public inspection in an electronic format, a current log or index providing identifying information for the public as to any matter which is issued, adopted, or promulgated, and which is required by paragraph (a) of this section to be made available or published.

(1) No final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects any member of the public will be relied upon, used, or cited as precedent by the Commission against any private party unless:

(i) It has been logged or indexed and either made available or published on its public Web site as provided by this subpart; or

(ii) That private party shall have actual and timely notice of the terms thereof.

(2) [Reserved]

(d) Duplication of records may be subject to fees as prescribed in subpart E of this part.

[63 FR 53308, Oct. 5, 1998, as amended at 80 FR 52640, Sept. 1, 2015; 82 FR 2248, Jan. 9, 2017]

§ 503.22 Records available through the Commission's Web site or at the Office of the Secretary.

The following records are also available without the requirement of a FOIA request on the Commission's Web site or by contacting the Office of the Secretary, Federal Maritime Commission, 800 North Capitol St. NW., Washington, DC 20573, *secretary@fmc.gov*. Access to requested records may be delayed if they have been sent to archives. Certain fees may be assessed for duplication of records made available by this section as prescribed in subpart F of this part.

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

(b) Federal Maritime Commission reports.

(c) Official docket files in all formal proceedings including, but not limited to, orders, final decisions, notices, pertinent correspondence, transcripts, exhibits, and briefs, except for materials which are the subject of a protective order.

(d) News releases, consumer alerts, Commissioner statements, and speeches.

(e) 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.

(f) Annual reports of the Commission.

(g) Agreements filed or in effect pursuant to section 5 (46 U.S.C. 40301(d)–(e), 40302–40303, 40305) and section 6 (46 U.S.C. 40304, 40306, 41307(b)–(d)) of the Shipping Act of 1984.

(h) List of FMC-licensed and bonded ocean transportation intermediaries.

(i) Notification of ocean transportation intermediaries license applications, revocations, and suspensions.

(j) General descriptions of the functions, bureaus, and offices of the Commission, phone numbers and email addresses, as well as locations of Area Representatives.

(k) Information about how to file a complaint alleging violations of the Shipping Act, and how to seek mediation or alternative dispute resolution services.

(l) Commonly used forms.

(m) Final and pending proposed rules.

(n) Access to statements of policy and interpretations as published in part 545 of this chapter.

(o) Lists of the location of all common carrier and conference tariffs and publically available terminal schedules of marine terminal operators.

[80 FR 52640, Sept. 1, 2015]

§§ 503.23–503.24 [Reserved]

Subpart D—Requests for Records Under the Freedom of Information Act

SOURCE: 63 FR 53310, Oct. 5, 1998, unless otherwise noted.

§ 503.31 Records available upon written request under the Freedom of Information Act.

(a) *Generally*. Many documents are available on the Commission's public Web site and the Commission encourages requesters visit the Web site before making a request for records under FOIA.

(1) *Electronic or written requests*. A member of the public may request permission to inspect, copy or be provided with any Commission record not described in subpart C of this part or posted on the Commission's Web site at *www.fmc.gov*. Such a request must:

(i) Reasonably describe the record or records sought;

(ii) Be submitted electronically to *FOIA@fmc.gov* or in writing to the Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573.

(iii) Be clearly marked on the subject line of an email or on the exterior of the envelope with the term ''FOIA.''

(2) [Reserved]

(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 this subpart.

(c) In making any record available to a person under this subpart, the Secretary shall provide the record in any form or format requested by the person if the record is readily reproducible by the Secretary in that form or format.

(d) Certain fees may be assessed for processing requests under this subpart as prescribed in subpart F of this part.

[63 FR 53310, Oct. 5, 1998, as amended at 80 FR 52641, Sept. 1, 2015]

§ 503.32 Procedures for responding to requests made under the Freedom of Information Act.

(a) *Determination to grant or deny request*. Upon request by any member of the public for documents, made in accordance with the rules of this part, the Commission's Secretary or his or her delegate in his or her absence, shall determine whether or not such request shall be granted.

(1) Such determination shall be made by the Secretary within twenty (20) business days after receipt of such request, except as provided in paragraphs (b) and (e)(4) of this section, and the Secretary shall immediately notify the requester of:

(i) Such determination and the reasons therefor;

(ii) The right of such person to seek assistance from the agency's FOIA Public Liaison; and

(iii) In the case of an adverse determination, the right of such requester to appeal to the Chairman no less than 90 days after the date of such adverse determination, and the right of such requester to seek dispute resolution services from the agency's FOIA Public Liaison or the Office of Government Information Services.

(2) Upon granting a request, the Secretary shall promptly make records available to the requestor. Upon denial of such a request the Secretary shall promptly notify the requestor of the determination, explain the reason for denial, give an estimate of the volume of matter denied, and set forth the names and titles or positions of each person responsible for the denial of the request.

(3)(i) Any party whose request for documents or other information pursuant to this part has been denied in whole or in part by the Secretary may appeal such determination. Any such appeal must:

(A) Be addressed to: Chairman, Federal Maritime Commission, Washington, D.C. 20573–0001; and

(B) Be filed not later than 90 days following receipt of notification of full or partial denial of records requested.

(ii) The Chairman or the Chairman's specific delegate, in his or her absence, shall make a determination with respect to that appeal within twenty (20) business days after receipt of such appeal, except as provided in paragraph (b) of this section.

(iii) If, on appeal, the denial is upheld, either in whole or in part, the Chairman shall so notify the party submitting the appeal and shall notify such person of the provisions of 5 U.S.C. 552(a)(4) regarding judicial review of such determination upholding

the denial. Notification shall also include the statement that the determination is that of the Chairman of the Federal Maritime Commission and the name of the Chairman.

(b) *Extension of time limits.* (1) In unusual circumstances, as defined in paragraph (b)(2) of this section, the time limits prescribed with respect to initial actions in response to a FOIA request or actions on appeal may be extended by written notice from the Secretary of the Commission to the person making such request, setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten (10) working days, except as provided in paragraph (b)(3) of this section.

(2) As used in this paragraph, unusual circumstances means, but only to the extent reasonably necessary to the proper processing of the particular request:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(3) If the time limit is extended as prescribed under this section, and the request cannot be processed within the extended time limit, the Secretary shall notify the requestor, and either provide the requestor with an opportunity to limit the scope of the request so that it may be processed within the time limit, or provide the requestor an opportunity to arrange with the Secretary an alternative time frame for processing the request or a modified request. To aid the requester, the Commission will make available its FOIA Public Liaison, who shall assist in the resolution of any dispute between the requester and the Commission, and notify the requester of the right of the requester to seek dispute resolution services from the Office of Government Information Services.

(4) The Secretary may make an initial written request to the requestor for information to clarify the request which will toll the 20-day processing period until such information has been received. The 20-day processing period will recommence after receipt of the requested information.

(5) The Secretary may also make written requests to clarify issues regarding fee assessments. Such written requests will toll the 20-day processing period until such information has been received from the requestor. The 20-day processing period will recommence after receipt of the requested information.

(c) *Aggregation of requests.* Certain requests by the same requestor, or by a group of requestors acting in concert, may be aggregated:

(1) Upon the Secretary's reasonable belief that such requests actually constitute a single request, which if not aggregated would satisfy the unusual circumstances specified in paragraph (b)(2) of this section; and

(2) If the requests involve clearly related matters.

(d) *Multitrack processing of requests.* The Secretary uses multitrack processing of FOIA requests. Requests which seek and are granted expedited processing are put on the expedited track. All other requests are designated either simple or complex requests based on the amount of time and/or complexity needed to process the request. A request may be considered simple if it involves records that are routinely requested and readily available.

(e) *Expedited processing of requests.* (1) The Secretary will provide for expedited processing of requests for records when the person requesting the records can demonstrate a compelling need.

(2) The term *compelling need* means:

(i) A failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to

the life or physical safety of an individual; or

(ii) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(3) A demonstration of compelling need by a person making a request for expedited processing must be made in the form of a statement describing the circumstances and certified by such person to be true and correct to the best of such person's knowledge and belief.

(4) The Secretary shall determine whether to provide expedited processing, and provide notice of the determination to the person making the request, within ten (10) calendar days after the receipt date of the request.

(5) Appeal of the determination not to provide expedited processing should be sought in accordance with the provisions of paragraph (a)(3)(i) of § 503.32, and will be considered expeditiously.

(6) Any request granted expedited processing shall be processed as soon as practicable.

[63 FR 53310, Oct. 5, 1998, as amended at 80 FR 52641, Sept. 1, 2015; 82 FR 2248, Jan. 9, 2017]

§ 503.33 Exceptions to availability of records.

(a) Except as provided in paragraph (b) of this section, the following records may be withheld from disclosure:

(1) Records specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and which are in fact properly classified pursuant to such Executive order. Records to which this provision applies shall be deemed by the Commission to have been properly classified. This exception may apply to records in the custody of the Commission which have been transmitted to the Commission by another agency which has designated the record as nonpublic under an Executive order.

(2) Records related solely to the internal personnel rules and practices of the Commission.

(3) Records specifically exempted from disclosure by statute, provided that such statute:

(i) Requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Trade secrets and commercial financial information obtained from a person and privileged or confidential.

(5) Inter-agency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the Commission, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) Nothing in this section authorizes withholding of information or limiting the availability of records to the public except as specifically stated in this part, nor shall this part be authority to withhold information from Congress.

(c) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this part. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this section under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

(d) Whenever a request is made which involves access to records described in paragraph (a)(7)(i) of this section and the investigation or proceeding involves a possible violation of criminal law, and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Commission may, during only such time as that circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

[63 FR 53310, Oct. 5, 1998, as amended at 82 FR 2249, Jan. 9, 2017]

§ 503.34 Annual report of public information request activity.

(a) On or before February 1 of each year, the Commission must submit to the Attorney General of the United States, in the format required by the Attorney General, a report on FOIA activities which shall cover the preceding fiscal year pursuant to 5 U.S.C. 552(e).

(b) Each such report shall be made available to the public in electronic format.

[63 FR 53310, Oct. 5, 1998, as amended at 80 FR 52641, Sept. 1, 2015; 82 FR 2249, Jan. 9, 2017]

Subpart E—Requests for Testimony by Employees Relating to Official Information and Production of Official Records in Litigation

SOURCE: 79 FR 24351, Apr. 30, 2014, unless otherwise noted.

§ 503.37 Purpose and scope; definitions.

(a) This subpart sets forth the procedures to be followed with respect to:

(1) Service of summonses and complaints or other requests or demands directed to the Federal Maritime Commission (Commission) or to any Commission employee or former employee in connection with litigation arising out of or involving the performance of official activities of the Commission; and

(2) The oral or written disclosure, in response to subpoenas, orders, or other requests or demands of judicial or quasi-judicial authority (collectively ''demands''), whether civil or criminal in nature, or in response to requests for depositions, affidavits, admissions, responses to interrogatories, document production, or other litigation-related matters, pursuant to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, or applicable state rules (collectively ''requests''), of any material contained in the files of the Commission, any information relating to material contained in the files of the Commission, or any information acquired while the subject of the demand or request is or was an employee of the Commission, as part of the performance of that person's duties or by virtue of that person's official status.

(b) This subpart applies in all litigation in which the United States is not a party.

(c) For purposes of this subpart, the term employee includes:

(1) any current or former Commissioner or employee of the Commission;

(2) any other individual hired through contractual agreement or on behalf of the Commission or who has performed or is performing services under such agreement for the Commission;

(3) Any individual who served or is serving in any consulting or advisory capacity to the Commission, whether informal or formal.

(d) The Commission authorizes the General Counsel or the General Counsel's designee to make determinations under this section.

(e) For purposes of this subpart, the term litigation encompasses all pretrial, trial, and post-trial stages of all judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, grand juries, or other judicial or quasi-judicial bodies or tribunals, whether criminal, civil, or administrative in nature. This subpart governs, *inter alia*, responses to requests for discovery, depositions, and other litigation proceedings, as well as responses to informal requests by attorneys or others in situations involving litigation. However, this subpart shall not apply to any claims against the Commission by Federal Maritime Commission employees (present or former), or applicants for Commission employment, for which jurisdiction resides with the U.S. Equal Employment Opportunity Commission; the U.S. Merit Systems Protection Board; the Office of Special Counsel; the Federal Labor Relations Authority; or a labor arbitrator operating under a collective bargaining agreement between the Commission and a labor organization representing Commission employees; or their successor agencies or entities.

(f) For purposes of this subpart, official information means all information of any kind, however stored, that is:

(1) In the custody and control of the Commission;

(2) Relates to information in the custody and control of the Commission; or

(3) Was acquired by Commission contractors, employees, former employees or former contractors as part of their official duties or because of their official status within the Commission while such individuals were employed by or served on behalf of the Commission.

(g) Nothing in this subpart affects disclosure of information under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, the Government in the Sunshine Act, 5 U.S.C. 552b, the Commission's implementing regulations, or pursuant to congressional subpoena.

(h) Nothing in this subpart affects the disclosure of official information to other federal agencies or Department of Justice attorneys in connection with:

(1) Litigation conducted on behalf or in defense of the United States, its agencies, officers, and employees; or

(2) Litigation in which the United States has an interest.

(i) This subpart is intended only to provide guidance for the internal operations of the Commission, and is not intended to, and does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States.

§ 503.38 General prohibition.

(a) No employee or former employee of the Commission shall, in response to a demand or request, produce any material contained in the files of the Commission, or disclose any information relating to or based upon material contained in the files of the Commission, or disclose any information or produce any material acquired as part of the performance of that person's official duties or because of that person's official status, without prior approval of the Commission in accordance with §§ 503.39 and 503.40.

§ 503.39 Factors to be considered in response to demands or requests.

(a) The Commission will determine whether testimony or the production of documents will be authorized according to the following criteria:

(1) Statutory restrictions, as well as any legal objection, exemption, or privilege that may apply;

(2) Relevant legal standards for disclosure of nonpublic information and documents;

(3) Commission rules and regulations;

(4) The public interest;

(5) Minimizing or preventing expenditures of Commission time and resources solely for private purposes.

(6) Minimizing the appearance of improperly favoring one litigant over another;

(7) Minimizing the possibility that the public will misconstrue variances between personal opinions of Commission employees and Commission policy; and

(8) Preserving the integrity of the administrative process.

(b) [Reserved]

§ 503.40 Service of process and filing requirements.

(a) *Service of summonses and complaints.* (1) Except in cases in which the Commission is represented by legal counsel who have entered an appearance or otherwise given notice of their representation, only the General Counsel is authorized to receive and accept subpoenas, or other demands or requests directed to the Commission, or any component thereof, or its employees, or former employees, whether civil or criminal nature, for:

(i) Material, including documents, contained in the files of the Commission;

(ii) Information, including testimony, affidavits, declarations, admissions, responses to interrogatories, or informal statements, relating to material contained in the files of the Commission or which any Commission employee acquired in the course and scope of the performance of his official duties;

(iii) Garnishment or attachment of compensation of current or former employees; or

(iv) The performance or non-performance of any official Commission duty.

(2) All such documents should be delivered or addressed to the General Counsel, Office of the General Counsel, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573.

(3) In the event that any subpoena, demand, or request is sought to be delivered to a Commission employee (including former employees) other than in the manner prescribed in paragraphs (a)(1) and (2) of this section, such attempted service shall be ineffective. Such employee shall, after consultation with the General Counsel:

(i) Decline to accept the subpoena, demand, or request; or

(ii) Return them to the server under cover of a written communication referring to the procedures prescribed in this part.

(4) Acceptance of such documents by the Office of the General Counsel does not constitute a waiver of any defenses that might otherwise exist with respect to service under the Federal Rules of Civil or Criminal Procedure, or other applicable laws, rules, or regulations.

(b) [Reserved]

§ 503.41 Procedure when testimony or production of documents is sought.

The Commission shall follow the procedures set forth in this part.

(a) If oral testimony is sought by a demand in any case or matter in which the United States is not a party, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or by his attorney, setting forth a summary of the testimony sought and its relevance to the proceeding, must be furnished to the Commission. Any authorization for testimony by a present or former employee of the Commission shall be limited to the scope of the demand as summarized in such statement.

(b) When information other than oral testimony is sought by a demand, the Commission shall request a summary of the information sought and its relevance to the proceeding.

(c) Permission to testify or to release documents in all cases will be limited to matters outlined in the affidavit or declaration described in § 503.41(a) and (b), or to such matters as deemed appropriate by the Commission. If the Commission, in considering the factors in § 503.39, allows the release of documents or testimony to be given by an employee, arrangements shall be made for the taking of testimony or receipt of documents by the method least disruptive to the employee's official duties. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or

preserved by any other means allowable by law.

(d) Upon issuance of a final determination to not authorize testimony or release of Commission information by the Commission, the party or the party's counsel seeking testimony or documents may consult or negotiate with the Commission to refine and limit the demand.

§ 503.42 Fees.

(a) *Generally.* The Commission may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the costs to the Commission.

(b) *Fees for records.* Fees for producing records will include fees for searching, reviewing, and duplicating records, costs of attorney time spent in reviewing the demand or request, and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. Costs for employee time will be calculated on the basis of the hourly pay of the employee (including all pay, allowance, and benefits). Fees for duplication will be the same as those charged by the Commission in its regulations at subpart F of this part.

(c) *Witness fees.* Fees for attendance by a witness will include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based upon the rule of the Federal district court closest to the location where the witness will appear. Such fees will include cost of time spent by the witness to prepare for testimony, in travel, and for attendance at the legal proceeding.

(d) *Payment of fees.* The seeking party must pay witness fees for current Commission employees and any records certification fees by submitting to the General Counsel a check or money order for the appropriate amount made payable to the Treasury of the United States. In the case of testimony by former Commission employees, applicable fees must be paid directly to the former employee in accordance with 28 U.S.C. 1821, per diem and mileage, or other applicable statutes.

(e) *Certification (authentication) of copies of records.* The Commission may certify that records are true copies in order to facilitate their use as evidence. If certified records are sought, the request for certified copies shall be made at least 45 days before the date they will be needed. The request should be sent to the General Counsel. Fees for certification will be the same as those charged by the Commission in its regulations at subpart F of this part.

(f) *Waiver or reduction of fees.* The Commission may, upon a showing of reasonable cause, waive or reduce any fees in connection with testimony, production, or certification of records.

(g) *De minimis fees.* Fees will not be assessed if the total charge would be $10.00 or less.

Subpart F—Fees

SOURCE: 49 FR 44401, Nov. 6, 1984, unless otherwise noted. Redesignated at 79 FR 24351, Apr. 30, 2014

§ 503.48 Policy and services available.

Pursuant to policies established by Congress, the Government's costs for services provided to identifiable persons are to be recovered by the payment of fees (Independent Offices Appropriations Act, 31 U.S.C. 9701 and Freedom of Information Reform Act of 1986, October 27, 1986, 5 U.S.C. 552). Except as otherwise noted, it is the general policy of the Commission not to waive or reduce service and filing fees contained in this chapter. In extraordinary situations, the Commission will accept requests for waivers or fee reductions. Such requests are to be made to the Secretary of the Commission at the time of the information request or the filing of documents and must demonstrate that the waiver or reduction of a fee is in the best interest of the public, or that payment of a fee would impose an undue hardship. The Secretary will notify the requestor of the decision to grant or deny the request for waiver or reduction.

(a) Upon request, the following services are available upon the payment of the fees hereinafter prescribed; except that no fees shall be assessed for search, duplication or review in connection with requests for single copies of materials described in §§ 503.11 and 503.21:

(1) Records/documents search.
(2) Duplication of records/documents.
(3) Review of records/documents.
(4) Certification of copies of records/documents.

(b) Fees shall also be assessed for the following services provided by the Commission:

(1) Placing one's name, as an interested party, on the mailing list of a docketed proceeding.

(2) Processing nonattorney applications to practice before the Commission.

[49 FR 44401, Nov. 6, 1984, as amended at 52 FR 13682, Apr. 24, 1987; 59 FR 59170, Nov. 16, 1994; 63 FR 50535, Sept. 22, 1998. Redesignated at 79 FR 24351, Apr. 30, 2014]

§ 503.49 Payment of fees and charges.

The fees charged for special services may be paid through the mail by check, draft, or postal money order, payable to the Federal Maritime Commission, except for charges for transcripts of hearings. Transcripts of hearings, testimony and oral argument are furnished by a nongovernmental contractor, and may be purchased directly from the reporting firm.

[49 FR 44401, Nov. 6, 1984, redesignated at 79 FR 24351, Apr. 30, 2014]

§ 503.50 Fees for services.

(a) *Definitions.* The following definitions apply to the terms when used in this subpart:

(1) *Search* means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Search for material will be done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. Search is distinguished, moreover, from *review* of material in order to determine whether the material is exempt from disclosure. Searches may be done manually or by computer using existing programming.

(2) *Duplication* means the process of making a copy of a document necessary to respond to a Freedom of Information Act or other request. Such copies can take the form of paper or machine readable documentation (e.g., magnetic tape or disk), among others.

(3) *Review* means the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(4) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the agency must determine the use to which a requester will put the documents requested. Where the agency has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the agency will seek additional clarification before assigning the request to a specific category.

(5) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(6) *Non-commercial scientific institution* means an institution that is not operated on a *commercial* basis as that term is referenced in paragraph (a)(4) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(7) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the

public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of *news*) who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. *Freelance* journalists, may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the agency may also look to the past publication record of a requester in making this determination.

(8) *Direct costs* means those expenditures which the agency actually incurs in searching for and duplicating (and in the case of commercial requester, reviewing) documents to respond to a Freedom of Information Act (''FOIA'') request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 17.5 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(b) *General.* (1) The basic fees set forth in paragraph (c) of this section provide for documents to be mailed with postage prepaid. If copy is to be transmitted by registered, certified, air, or special delivery mail, postage therefor will be added to the basic fee. Also, if special handling or packaging is required, costs thereof will be added to the basic fee.

(2) The fees for search, duplication and review set forth in paragraph (c) of this section reflect the full allowable direct costs expected to be incurred by the agency for the service. Costs of search and review may be assessed even if it is determined that disclosure of the records is to be withheld. Cost of search may be assessed even if the agency fails to locate the records. Requesters much reasonably describe the records sought. The following restrictions, limitations and guidelines apply to the assessment of such fees:

(i) For commercial use requesters, charges recovering full direct costs for search, review and duplication of records will be assessed.

(ii) For educational and non-commercial scientific institution requesters, no charge will be assessed for search or review of records. Charges recovering full direct costs for duplication of records will be assessed, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(iii) For representative of the news media requesters, no charge will be assessed for search or review of records. Charges recovering full direct costs for duplication of records will be assessed, excluding charges for the first 100 pages.

(iv) For all other requesters, no charge will be assessed for review of records. Charges recovering full direct costs for search and duplication of records will be assessed excluding charges for the first 100 pages of duplication and the first two hours of search time. Requests from individuals for records about themselves, filed in a Commission system of records, will be treated under the fee provisions of the Privacy Act of 1984 which permit fees only for duplication.

(v) No fee may be charged for search, review or duplication if the costs of routine collection and processing of the fee are likely to exceed the amount of the fee.

(vi) Documents shall be furnished without any charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. In determining whether a waiver or reduction of

charges is appropriate the following factors will be taken into consideration.

(A) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(B) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(C) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding;

(D) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(E) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(F) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(vii) Whenever it is anticipated that fees chargeable under this section will exceed $25.00 and the requester has not indicated in advance a willingness to pay fees as high as anticipated, the requester will be notified of the amount of the anticipated fee. In such cases the requester will be given an opportunity to confer with Commission personnel with the object of reformulating the request to meet the needs of the requester at a lower cost.

(viii) Interest may be charged record requesters who fail to pay fees assessed. Assessment of interest may begin on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C., and will accrue from the date of the billings. Receipt of payment by the agency will stay the accrual of interest.

(ix) Whenever it reasonably appears that a requester of records or a group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, such requests will be aggregated and fees assessed accordingly. Multiple requests on unrelated subjects will not be aggregated.

(x) The agency may require a requester to make advance payment only when:

(A) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), in which case the requester will be required to pay the full amount owed plus any applicable interest as provided above, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester; or

(B) The agency estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250, in which case, the agency will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or will require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(xi) Unless applicable fees are paid, the agency may use the authorities of the Debt Collection Act (Pub. L. 97–365), including disclosure to consumer reporting agencies and use of collection agencies where appropriate to encourage payment.

(xii) Whenever action is taken under paragraphs (b)(2)(viii) and (b)(2)(ix) of this section, the administrative time limits prescribed in subsection (a)(6) of 5 U.S.C. 552 (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits will begin only after the Commission has received fee payments described above.

(c) *Charges for search, review, duplication and certification.* (1) Records search (including electronic search) will be performed by Commission personnel at the following rates:

(i) Search will be performed by clerical/administrative personnel at a rate of $41 per hour and by professional/executive personnel at a rate of $82 per hour.

(ii) Unless an exception provided in paragraph (b)(2) of this section applies, the minimum charge for record search is $41.

(2) Charges for review of records to determine whether they are exempt from disclosure under § 503.33 must be assessed to recover full costs at the rate of $109 per hour. Charges for review will be assessed only for initial review to determine the applicability of a specific exemptions to a particular record. No charge will be assessed for review at the administrative appeal level.

(3) Charges for duplication of records and documents will be assessed as follows, limited to size 8½″ × 14″ or smaller:

(i) If performed by requesting party at the rate of ten cents per page (one side).

(ii) By Commission personnel, at the rate of ten cents per page (one side) plus $41 per hour.

(iii) Unless an exception provided in paragraph (b)(2) of this section applies, the minimum charge for copying is $8.

(iv) No charge will be made by the Commission for notices, decisions, orders, etc., required by law to be served on a party to any proceeding or matter before the Commission. No charge will be made for single copies of such Commission issuances individually requested in person or by mail.

(4) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $107 for each certification.

(d) Applications for admission to practice before the Commission for persons not attorneys at law must be accompanied by a fee of $229 pursuant to § 502.27 of this chapter.

[49 FR 44401, Nov. 6, 1984, as amended at 52 FR 13683, Apr. 24, 1987; 59 FR 59170, Nov. 16, 1994; 63 FR 50535, Sept. 22, 1998; 67 FR 39859, June 11, 2002; 70 FR 10329, Mar. 3, 2005. Redesignated at 79 FR 24351, Apr. 30, 2014; as amended at 81 FR 59144, Aug. 29, 2016; 83 FR 50294, Oct. 5, 2018; 85 FR 72578, Nov. 13, 2020; 88 FR 16897, Mar. 21, 2023; 88 FR 41040, June 23, 2023]

Subpart G—Information Security Program

SOURCE: 49 FR 44401, Nov. 6, 1984, unless otherwise noted. Redesignated at 79 FR 24351, Apr. 30, 2014

§ 503.51 Definitions.

(a) *Access* means the ability or opportunity to gain knowledge of classified information.

(b) *Classification* means the act or process by which information is determined to be classified information.

(c) *Classification guide* means a documentary form of instruction or source that prescribes the classification of specific information issued by an original classification authority that identifies the elements of information regarding a specific subject that must be classified and establishes the level and duration of classification for each such element.

(d) *Classified national security information (hereafter ''classified information'')* means information that has been determined pursuant to Executive Order 12958 or any predecessor order in force to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

(e) *Commission* means the Federal Maritime Commission.

(f) *Declassification* means the authorized change in the status of information from classified information to unclassified information.

(g) *Derivative classification* means the incorporating, paraphrasing, restating or generating in new form information that is already classified, and marking the newly developed material consistent with the classification markings that apply to the source information. Derivative classification includes the classification of information based on classification guidance. The duplication or reproduction of existing classified information is not derivative classification.

(h) *Downgrading* means a determination by a declassification authority that information classified and safeguarded at a specified level shall be classified and safeguarded at a lower level.

(i) *Foreign government information* means:

(1) Information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence;

(2) Information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or

(3) Information received and treated as ''Foreign Government Information'' under the terms of Executive Order 13526 or any predecessor order.

(j) *Mandatory declassification review* means the review for declassification of classified information in response to a request for declassification that meets the requirements under section 3.5 of Executive Order 13526.

(k) *Multiple sources* means two or more source documents, classification guides, or a combination of both.

(l) *National security* means the national defense or foreign relations of the United States.

(m) *Need to know* means a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function.

(n) *Original classification* means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure.

(o) *Original classification authority* means an individual authorized in writing, either by the President, or by agency heads or other officials designated by the President, to classify information in the first instance.

(p) *Self-inspection* means the internal review and evaluation of individual Commission activities and the Commission as a whole with respect to the implementation of the program established under Executive Order 13526 and its implementing directives.

(q) *Senior agency official* means the official designated by the Chairman under section 5.4(d) of Executive Order 13526 to direct and administer the Commission's program under which classified information is safeguarded.

(r) *Source document* means an existing document that contains classified information that is incorporated, paraphrased, restated, or generated in new form into a new document.

(s) *Unauthorized disclosure* means a communication or physical transfer of classified information to an unauthorized recipient.

[64 FR 23547, May 3, 1999, as amended at 76 FR 10263, Feb. 24, 2011]

§ 503.52 Senior agency official.

The Managing Director is designated as Senior Agency Official of the Commission, and shall be responsible for directing, administering and reporting on the Commission's information security program, which includes oversight (self-inspection) and security information programs to ensure effective implementation of Executive Orders 13526 and 12968 and 32 CFR part 2001.

[76 FR 10263, Feb. 24, 2011]

§ 503.53 Oversight Committee.

An Oversight Committee is established, under the chairmanship of the Senior Agency Official with the following responsibilities:

(a) Establish a Commission security education program to familiarize all personnel who have or may have access to classified information with the provisions of Executive Order 13526 and directives of the Information Security Oversight Office. The program shall include initial, refresher, and termination briefings;

(b) Establish controls to ensure that classified information is used, processed, stored, reproduced, and transmitted only under conditions that will provide adequate protection and prevent access by unauthorized persons;

(c) Act on all suggestions and complaints concerning the Commission's information security program;

(d) Recommend appropriate administrative action to correct abuse or violations of any provision of Executive Order 13526; and

(e) Consider and decide other questions concerning classification and declassification that may be brought before it.

[49 FR 44401, Nov. 6, 1984, as amended at 64 FR 23548, May 3, 1999; 76 FR 10263, Feb. 24, 2011]

§ 503.54 Original classification.

(a) No Commission Member or employee has the authority to originally classify information.

(b) If a Commission Member or employee develops information that appears to require classification, or receives any foreign government information as defined in section 6.1(s) of Executive Order 13526, the Member or employee shall immediately notify the Senior Agency Official and appropriately protect the information.

(c) If the Senior Agency Official believes the information warrants classification, it shall be sent to the appropriate agency with original classification authority over the subject matter, or to the Information Security Oversight Office, for review and a classification determination.

(d) If there is reasonable doubt about the need to classify information, it shall be safeguarded as if it were classified pending a determination by an original classification authority. If there is reasonable doubt about the appropriate level of classification, it shall be safeguarded at the higher level of classification pending a determination by an original classification authority.

[49 FR 44401, Nov. 6, 1984, as amended at 64 FR 23548, May 3, 1999; 76 FR 10263, Feb. 24, 2011]

§ 503.55 Derivative classification.

(a) In accordance with Part 2 of Executive Order 13526 and directives of the Information Security Oversight Office, the incorporation, paraphrasing, restating or generation in new form of information that is already classified, and the marking of newly developed material consistent with the classification markings that apply to the source information, is derivative classification.

(1) Derivative classification includes the classification of information based on classification guidance.

(2) The duplication or reproduction of existing classified information is not derivative classification.

(b) Members or employees applying derivative classification markings shall:

(1) Observe and respect original classification decisions; and

(2) Carry forward to any newly created documents the pertinent classification markings.

(3) For information derivatively classified based on multiple sources, the Member or employee shall carry forward:

(i) The date or event for declassification that corresponds to the longest period of classification among the sources; and

(ii) A listing of these sources on or attached to the official file or record copy.

(c) Documents classified derivatively shall bear all markings prescribed by 32 CFR 2001.20 through 2001.23 and shall otherwise conform to the requirements of 32 CFR 2001.20 through 2001.23.

(1) *Classification authority*. The authority for classification shall be shown as follows:

(i) ''Classified by (description of source documents or classification guide),'' or

(ii) ''Classified by multiple sources,'' if a document is classified on the basis of more than one source document or classification guide.

(iii) In these cases, the derivative classifier shall maintain the identification of each source with the file or record copy of the derivatively classified document. A document derivatively classified on the basis of a source document that is marked ''Classified by Multiple Sources'' shall cite the source document in its ''Classified by'' line rather than the term ''Multiple sources.''

(2) *Declassification and downgrading instruction*s. Date or events for automatic declassification or downgrading, or the notation ''Originating Agency's Determination Required'' to indicate

that the document is not to be declassified automatically, shall be carried forward from the source document, or as directed by a classification guide, and shown on ''declassify on'' line as follows:

''Declassify on: (date, description of event);'' or ''Originating Agency's Determination Required (OADR).''

[64 FR 23548, May 3, 1999, as amended at 76 FR 10263, Feb. 24, 2011]

§ 503.56 General declassification and downgrading policy.

(a) The Commission exercises declassification and downgrading authority in accordance with section 3.1 of Executive Order 13526, only over that information originally classified by the Commission under previous Executive Orders. Declassification and downgrading authority may be exercised by the Commission Chairman and the Senior Agency Official, and such others as the Chairman may designate. Commission personnel may not declassify information originally classified by other agencies.

(b) The Commission does not now have original classification authority nor does it have in its possession any documents that it originally classified when it had such authority. The Commission has authorized the Archivist of the United States to automatically declassify information originally classified by the Commission and under its exclusive and final declassification jurisdiction at the end of 20 years from the date of original classification.

[49 FR 44401, Nov. 6, 1984, as amended at 64 FR 23548, May 3, 1999; 76 FR 10263, Feb. 24, 2011]

§ 503.57 Mandatory review for declassification.

(a) Reviews and referrals in response to requests for mandatory declassification shall be conducted in compliance with section 3.5 of Executive Order 13526, 32 CFR 2001.33, and 32 CFR 2001.34.

(b) Any individual may request a review of classified information and material in possession of the Commission for declassification. All information classified under Executive Order 13526 or a predecessor Order shall be subject to a review for declassification by the Commission, if:

(1) The request describes the documents or material containing the information with sufficient specificity to enable the Commission to locate it with a reasonable amount of effort. Requests with insufficient description of the material will be returned to the requester for further information.

(2) The information requested is not the subject of pending litigation.

(3) The information requested has not been reviewed for declassification in the previous two years. If so, the FMC shall inform the requester of this fact and provide the requester with appeal rights in accordance with 32 CFR 2001.33(a)(2)(iii).

(c) Requests shall be in writing, and shall be sent to: Office of the Managing Director, Attn.: Senior Agency Official, Federal Maritime Commission, Washington, DC 20573 or submitted via the FMC's on-line declassification information portal which provides an e-mail address through which requests can be submitted: *http://www.http://www.fmc.gov/about/web_policies_notices_and_acts.aspx.*

(d) If the request requires the provision of services by the Commission, fair and equitable fees may be charged pursuant to 31 U.S.C. 9701.

(e) Requests for mandatory declassification reviews shall be acknowledged by the Commission within 15 days of the date of receipt of such requests.

(f) If the document was derivatively classified by the Commission or originally classified by another agency, the request, the document, and a recommendation for action shall be forwarded to the agency with the original classification authority. The Commission may, after consultation with the originating agency, inform the requester of the referral.

(g) If a document is declassified in its entirety, it may be released to the requester, unless withholding is otherwise warranted under applicable law. If a document or any part of it is not declassified, the Senior Agency Official shall furnish the declassified portions to the requester unless withholding is otherwise warranted under applicable

law, along with a brief statement concerning the reasons for the denial of the remainder, and the right to appeal that decision to the Commission appellate authority within 60 days.

(h) If a declassification determination cannot be made within 45 days, the requester shall be advised that additional time is needed to process the request. Final determination shall be made within one year from the date of receipt of the request. The Commission shall inform the requester in writing of the final determination and of the reasons for any denials. The Commission shall inform the requester in writing of his or her final appeal rights to the Interagency Security Classification Appeals Panel.

(i) When a request has been submitted both under mandatory declassification review and the Freedom of Information Act (FOIA), the agency shall require the requester to select one process or the other. If the requester fails to select one process or the other, the request will be treated as a FOIA request unless the requested materials are subject only to mandatory declassification review.

[76 FR 10263, Feb. 24, 2011]

§ 503.58 Appeals of denials of mandatory declassification review requests.

(a) Within 60 days after the receipt of denial of a request for mandatory declassification review, the requester may submit an appeal in writing to the Chairman through the Secretary, Federal Maritime Commission, Washington, DC 20573. The appeal shall:

(1) Identify the document in the same manner in which it was identified in the original request;

(2) Indicate the dates of the request and denial, and the expressed basis for the denial; and

(3) State briefly why the document should be declassified.

(b) The Chairman shall rule on the appeal within 60 working days of receiving it. If additional time is required to make a determination, the Chairman shall notify the requester of the additional time needed and provide the requester with the reason for the extension. The Chairman shall notify the requester in writing of the final determination and the reasons for any denial.

(c) In accordance with section 5.3 of Executive Order 13526 and 32 CFR 2001.33, within 60 days of such issuance, the requester may appeal a final determination of the Commission under paragraph (b) of this section to the Interagency Security Classification Appeals Panel. The appeal should be addressed to, Executive Secretary, Interagency Security Classification Appeals Panel, Attn: Classification Challenge Appeals, c/o Information Security Oversight Office, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW., Room 5W, Washington, DC 20408.

[76 FR 10264, Feb. 24, 2011]

§ 503.59 Safeguarding classified information.

(a) All classified information shall be afforded a level of protection against unauthorized disclosure commensurate with its level of classification.

(b) Whenever classified material is removed from a storage facility, such material shall not be left unattended and shall be protected by attaching an appropriate classified document cover sheet to each classified document.

(c) Classified information being transmitted from one Commission office to another shall be protected with a classified document cover sheet and hand delivered by an appropriately cleared person to another appropriately cleared person.

(d) Classified information shall be made available to a recipient only when the authorized holder of the classified information has determined that:

(1) The prospective recipient has a valid security clearance at least commensurate with the level of classification of the information; and

(2) The prospective recipient requires access to the information in order to perform or assist in a lawful and authorized governmental function.

(e) The requirement in paragraph (d)(2) of this section, that access to classified information may be granted only to individuals who have a need-to-know the information, may be waived for persons who:

(1) Are engaged in historical research projects, or

(2) Previously have occupied policy-making positions to which they were appointed by the President.

(f) Waivers under paragraph (e) of this section may be granted when the Commission Senior Agency Official:

(1) Determines in writing that access is consistent with the interest of national security;

(2) Takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is properly safeguarded; and

(3) Limits the access granted to former presidential appointees to items that the person originated, reviewed, signed, or received while serving as a presidential appointee.

(g) Persons seeking access to classified information in accordance with paragraphs (e) and (f) of this section must agree in writing:

(1) To be subject to a national security check;

(2) To protect the classified information in accordance with the provisions of Executive Order 13526; and

(3) Not to publish or otherwise reveal to unauthorized persons any classified information.

(h) Except as authorized by the originating agency, or otherwise provided for by directives issued by the President, the Commission shall not disclose information originally classified by another agency.

(i) Only appropriately cleared personnel may receive, transmit, and maintain current access and accountability records for classified material.

(j) Each office which has custody of classified material shall maintain:

(1) A classified document register or log containing a listing of all classified holdings, and

(2) A classified document destruction register or log containing the title and date of all classified documents that have been destroyed.

(k) An inventory of all documents classified higher than confidential shall be made at least annually and whenever there is a change in classified document custodians. The Senior Agency Official shall be notified, in writing, of the results of each inventory.

(l) Reproduced copies of classified documents are subject to the same accountability and controls as the original documents.

(m) Combinations to dial-type locks shall be changed only by persons having an appropriate security clearance, and shall be changed whenever such equipment is placed in use; whenever a person knowing the combination no longer requires access to the combination; whenever a combination has been subject to possible compromise; whenever the equipment is taken out of service; and at least once each year. Records of combinations shall be classified no lower than the highest level of classified information to be stored in the security equipment concerned. One copy of the record of each combination shall be provided to the Senior Agency Official.

(n) Individuals charged with the custody of classified information shall conduct the necessary inspections within their areas to insure adherence to procedural safeguards prescribed to protect classified information. The Commission Senior Agency Official shall conduct periodic inspections to determine if the procedural safeguards prescribed in this subpart are in effect at all times.

(o) Whenever classified material is to be transmitted outside the Commission, the custodian of the classified material shall contact the Commission Senior Agency Official for preparation and receipting instructions. If the material is to be hand carried, the Senior Agency Official shall ensure that the person who will carry the material has the appropriate security clearance, is knowledgeable of safeguarding requirements, and is briefed, if appropriate, concerning restrictions with respect to carrying classified material on commercial carriers.

(p) Any person having access to and possession of classified information is responsible for protecting it from persons not authorized access to it, to include securing it in approved equipment or facilities, whenever it is not under the direct supervision of authorized persons.

(q) Employees of the Commission shall be subject to appropriate sanctions, which may include reprimand,

suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanctions in accordance with applicable law and agency regulation, if they:

(1) Knowingly, willfully, or negligently disclose to unauthorized persons information properly classified under Executive Order 13526 or predecessor orders;

(2) Knowingly and willfully classify or continue the classification of information in violation of Executive Order 13526 or any implementing directive; or

(3) Knowingly and willfully violate any other provision of Executive Order 13526 or implementing directive.

(r) Any person who discovers or believes that a classified document is lost or compromised shall immediately report the circumstances to his or her supervisor and the Commission Senior Agency Official, who shall conduct an immediate inquiry into the matter.

(s) Questions with respect to the Commission Information Security Program, particularly those concerning the classification, declassification, downgrading, and safeguarding of classified information, shall be directed to the Commission Senior Agency Official.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984, as amended at 64 FR 23548, May 3, 1999; 76 FR 10264, Feb. 24, 2011]

Subpart H—Access to Any Record of Identifiable Personal Information

SOURCE: 49 FR 44401, Nov. 6, 1984, unless otherwise noted. Redesignated at 79 FR 24351, Apr. 30, 2014

§ 503.60 Definitions.

For the purpose of this subpart:

(a) *Agency* means each authority of the government of the United States as defined in 5 U.S.C. 551(1) and shall include any executive department, military department, government corporation, government controlled corporation or other establishment in the executive branch of the government (including the Executive Office of the President), or any independent regulatory agency.

(b) *Commission* means the Federal Maritime Commission.

(c) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence to whom a record pertains.

(d) *Maintain* includes maintain, collect, use, or disseminate.

(e) *Person* means any person not an individual and shall include, but is not limited to, corporations, associations, partnerships, trustees, receivers, personal representatives, and public or private organizations.

(f) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Federal Maritime Commission, including but not limited to a person's education, financial transactions, medical history, and criminal or employment history, and that contains the person's name, or the identifying number, symbol or other identifying particular assigned to the individual, such as a finger or voice print, or a photograph.

(g) *Routine use* means [with respect to the disclosure of a record], the use of such records for a purpose which is compatible with the purpose for which it was collected.

(h) *Statistical record* means a record in a system of records, maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, but shall not include matter pertaining to the Census as defined in 13 U.S.C. 8.

(i) *System of records* means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol or other identifying particular assigned to the individual.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.61 Conditions of disclosure.

(a) Subject to the conditions of paragraphs (b) and (c) of this section, the Commission shall not disclose any record which is contained in a system of records, by any means of communication, to any person or other agency who is not an individual to whom the record pertains.

(b) Upon written request or with prior written consent of the individual to whom the record pertains, the Commission may disclose any such record to any person or other agency.

(c) In the absence of a written consent from the individual to whom the record pertains, the Commission may disclose any such record, provided such disclosure is:

(1) To those officers and employees of the Commission who have a need for the record in the performance of their duties;

(2) Required under the Freedom of Information Act (5 U.S.C 552);

(3) For a routine use;

(4) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity under the provisions of title 13 U.S.C.;

(5) To a recipient who has provided the Commission with adequate advance written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States, as a record which has sufficient historical or other value to warrant its continued preservation by the United States government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;—

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity authorized by law, provided the head of the agency or instrumentality has made a prior written request to the Secretary of the Commission specifying the particular record and the law enforcement activity for which it is sought;

(8) To either House of Congress, and to the extent of a matter within its jurisdiction, any committee, subcommittee, or joint committee of Congress;

(9) To the Comptroller General, or any authorized representative, thereof, in the course of the performance of the duties of the GAO; or

(10) Under an order of a court of competent jurisdiction.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.62 Accounting of disclosures.

(a) The Secretary shall make an accounting of each disclosure of any record contained in a system of records in accordance with 5 U.S.C. 552a(c)(1) and 552a(c)(2).

(b) Except for a disclosure made under § 503.61(c)(7), the Secretary shall make the accounting described in paragraph (a) of this section available to any individual upon written request made in accordance with § 503.63(b) or § 503.63(c).

(c) The Secretary shall make reasonable efforts to notify the individual when any record which pertains to such individual is disclosed to any person under compulsory legal process, when such process becomes a matter of public record.

§ 503.63 Request for information.

(a) Upon request, in person or by mail, made in accordance with the provisions of paragraph (b) or (c) of this section, any individual shall be informed whether or not any Commission system of records contains a record pertaining to him or her.

(b) Any individual requesting such information in person shall personally appear at the Office of the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573 and shall:

(1) Provide information sufficient, in the opinion of the Secretary, to identify the record, e.g., the individual's own name, date of birth, place of birth, etc.;

(2) Provide identification acceptable to the Secretary to verify the individual's identity, e.g., driver's license, employee identification card or medicare card;

(3) Complete and sign the appropriate form provided by the Secretary.

(c) Any individual requesting such information by mail shall address such request to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573 and shall include in such request the following:

(1) Information sufficient in the opinion of the Secretary to identify the record, e.g., the individual's own name, date of birth, place of birth, etc.;

(2) A signed notarized statement to verify his or her identity.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984, as amended at 63 FR 50535, Sept. 22, 1998]

§ 503.64 Commission procedure on request for information.

Upon request for information made in accordance with § 503.63, the Secretary or his or her delegate shall, within 10 days (excluding Saturdays, Sundays, and legal public holidays), furnish in writing to the requesting party notice of the existence or nonexistence of any records described in such request.

§ 503.65 Request for access to records.

(a) *General.* Upon request by any individual made in accordance with the procedures set forth in paragraph (b) of this section, such individual shall be granted access to any record pertaining to him or her which is contained in a Commission system of records. However, nothing in this section shall allow an individual access to any information compiled by the Commission in reasonable anticipation of a civil or criminal action or proceeding.

(b) *Procedures for requests for access to records.* Any individual may request access to a record pertaining to him or her in person or by mail in accordance with paragraphs (b) (1) and (2) of this section:

(1) Any individual making such request in person shall do so at the Office of the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573 and shall:

(i) Provide identification acceptable to the Secretary to verify the individual's identity, e.g., driver's license, employee identification card, or medicare card; and

(ii) Complete and sign the appropriate form provided by the Secretary.

(2) Any individual making a request for access to records by mail shall address such request to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573 and shall include therein a signed, notarized statement to verify his or her identity.

(3) Any individual requesting access to records under this section in person may be accompanied by a person of his or her own choosing, while reviewing the record requested. If an individual elects to be so accompanied, he or she shall notify the Secretary of such election in the request and shall provide a written statement authorizing disclosure of the record in the presence of the accompanying person. Failure to so notify the Secretary in a request for access shall be deemed to be a decision by the individual not to be accompanied.

(c) *Commission determination of requests for access.* (1) Upon request made in accordance with this section, the Secretary or his or her delegate shall:

(i) Determine whether or not such request shall be granted;

(ii) Make such determination and provide notification within 10 days (excluding Saturdays, Sundays, and legal public holidays) after receipt of such request, and, if such request is granted shall:

(iii) Notify the individual that fees for reproducing copies will be made in accordance with § 503.69.

(2) If access to a record is denied because such information has been compiled by the Commission in reasonable anticipation of a civil or criminal action or proceeding, or for any other reason, the Secretary shall notify the individual of such determination and his or her right to judicial appeal under 5 U.S.C. 552a(g).

(d) *Manner of providing access.* (1) If access is granted, the individual making such request shall notify the Secretary whether the records requested are to be copied and mailed to the individual.

(2) If records are to be made available for personal inspection, the individual shall arrange with the Secretary a mutually agreeable time and place for inspection of the record.

(3) Fees for reproducing and mailing copies of records will be made in accordance with § 503.69.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984, as amended at 63 FR 50535, Sept. 22, 1998]

§ 503.66 Amendment of a record.

(a) *General.* Any individual may request amendment of a record pertaining to him or her according to the procedure in paragraph (b) of this section.

(b) *Procedures for requesting amendment of a record.* After inspection of a record pertaining to him or her, an individual may file with the Secretary a request, in person or by mail, for amendment of a record. Such request shall specify the particular portions of the record to be amended, the desired amendments and the reasons therefor.

(c) *Commission procedures on request for amendment of a record.* (1) Not later than ten (10) days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of a request made in accordance with this section to amend a record in whole or in part, the Secretary or his or her delegate shall:

(i) Make any correction of any portion of the record which the individual believes is not accurate, relevant, timely or complete and thereafter inform the individual of such correction; or

(ii) Inform the individual, by certified mail, return receipt requested, of refusal to amend the record, setting out the reasons therefor, and notify the individual of his or her right to appeal that determination to the Chairman of the Commission under § 503.67.

(2) The Secretary shall inform any person or other agency to whom a record has been disclosed of any correction or notation of dispute made by the Secretary with respect to such records, in accordance with 5 U.S.C. 552a(c)(4) referring to amendment of a record, if an accounting of such disclosure has been made.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.67 Appeals from denial of request for amendment of a record.

(a) *General.* An individual whose request for amendment of a record pertaining to him or her is denied, may further request a review of such determination in accordance with paragraph (b) of this section.

(b) *Procedure for appeal.* Not later than thirty (30) days (excluding Saturdays, Sundays, and legal public holidays) following receipt of notification of refusal to amend, an individual may file an appeal to amend the record. Such appeal shall:

(1) Be addressed to the Chairman, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573; and

(2) Specify the reasons for which the refusal to amend is challenged.

(c) *Commission procedure on appeal.* (1) Upon appeal from a denial to amend a record, the Chairman of the Commission or the officer designated by the Chairman to act in his or her absence, shall make a determination whether or not to amend the record and shall notify the individual of that determination by certified mail, return receipt requested, not later than thirty (30) days (excluding Saturdays, Sundays and legal public holidays) after receipt of such appeal, unless extended pursuant to paragraph (d) of this section.

(2) The Chairman shall also notify the individual of the provisions of 5 U.S.C. 552a(g)(1)(A) regarding judicial review of the Chairman's determination.

(3) If, on appeal, the refusal to amend the record is upheld, the Commission shall permit the individual to file a statement setting forth the reasons for disagreement with the Commission's determination.

(d) The Chairman, or his or her delegate in his or her absence, may extend up to thirty (30) days the time period prescribed in paragraph (c)(1) of this section within which to make a determination on an appeal from refusal to amend a record for the reasons that a fair and equitable review cannot be completed within the prescribed time period.

[49 FR 44401, Nov. 6, 1984, as amended at 63 FR 50536, Sept. 22, 1998]

§ 503.68 Exemptions.

(a) The system of records designated FMC–25 Inspector General File is exempt from the provisions of 5 U.S.C. 552a except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11) and (i) to the extent it

contains information meeting the criteria of 5 U.S.C. 552a(j)(2) pertaining to the enforcement of criminal laws. Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

(b) The following systems of records are exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G), (H) and (I) and (f), which otherwise require the Commission, among other things, to provide the individual named in the records an accounting of disclosures and access to and opportunity to amend the records. The scope of the exemptions and the reasons therefor are described for each particular system of records.

(1) *FMC–1 Personnel Security File.* All information about individuals that meets the criteria of 5 U.S.C. 552a(k)(5), regarding suitability, eligibility or qualifications for Federal civilian employment or for access to classified information, to the extent that disclosure would reveal the identity of a source who furnished information to the Commission under a promise of confidentiality. Exemption is required to honor promises of confidentiality.

(2) *FMC–7 Licensed Ocean Freight Forwarders File.* All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory materials compiled for law enforcement purposes. Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

(3) *FMC–22 Investigatory Files.* All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory material compiled for law enforcement purposes. Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

(4) *FMC–24 Informal Inquiries and Complaint Files.* All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory material compiled for law enforcement purposes. Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasion of personal privacy of third parties.

(5) *FMC–25 Inspector General File.* (i) All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory material compiled for law enforcement purposes. Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

(ii) All information about individuals that meets the criteria of 5 U.S.C. 552a(k)(5), regarding suitability, eligibility or qualifications for Federal civilian employment or for access to classified information, to the extent the disclosure would reveal the identity of a source who furnished information to the Commission under the promises of confidentiality. Exemption is required to honor promises of confidentiality.

(6) *FMC–26 Administrative Grievance File.* (i) All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory material compiled for law enforcement purposes, Exemption is appropriate to avoid compromise of ongoing investigations, disclosure of the identity of confidential sources and unwarranted invasions of personal privacy of third parties.

(ii) All information about individuals that meets the criteria of 5 U.S.C. 552a(k)(5), regarding suitability, eligibility or qualification for Federal civilian employment or for access to classified information, to the extent that disclosure would reveal the identity of a source who furnished information to the Commission under a promise of confidentiality. Exemption is required to honor promises of confidentiality.

[59 FR 15636, Apr. 4, 1994]

§ 503.69 Fees.

(a) *General.* The following Commission services are available, with respect to requests made under the provisions of this subpart, for which fees will be charged as provided in paragraphs (b) and (c) of this section:

(1) Copying records/documents.

(2) Certification of copies of documents.

(b) *Fees for services.* The fees set forth below provide for documents to be mailed with ordinary first-class postage prepaid. If a copy is to be transmitted by registered, certified, air, or special delivery mail, postage therefor will be added to the basic fee. Also, if special handling or packaging is required, costs thereof will be added to the basic fee.

(1) The copying of records and documents will be available at the rate of ten cents per page (one side), limited to size 8¼″ x 14″ or smaller.

(2) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $107 for each certification.

(c) *Payment of fees and charges.* The fees charged for special services may be paid by check, draft, or postal money order, payable to the Federal Maritime Commission.

[49 FR 44401, Nov. 6, 1984, as amended at 59 FR 59171, Nov. 16, 1994; 81 FR 59144, Aug. 29, 2016; 88 FR 16898, March 21, 2023; 88 FR 41040, June 23, 2023]

Subpart I—Public Observation of Federal Maritime Commission Meetings and Public Access to Information Pertaining to Commission Meetings

SOURCE: 49 FR 44401, Nov. 6, 1984, unless otherwise noted. Redesignated at 79 FR 24351, Apr. 30, 2014

§ 503.70 Policy.

It is the policy of the Federal Maritime Commission, under the Provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b, Sept. 13, 1976) to entitle the public to the fullest practicable information regarding the decisional processes of the Commission. The provisions of this subpart set forth the procedural requirements designed to provide the public with such information while continuing to protect the rights of individuals and to maintain the capabilities of the Commission in carrying out its responsibilities under the shipping statutes administered by this Commission.

§ 503.71 Definitions.

The following definitions apply for purposes of this subpart:

(a) *Agency* means the Federal Maritime Commission;

(b) *Information pertaining to a meeting* means, but is not limited to the following: the record of any agency vote taken under the provisions of this subpart, and the record of the vote of each member; a full written explanation of any agency action to close any portion of any meeting under this subpart; lists of persons expected to attend any meeting of the agency and their affiliation; public announcement by the agency under this subpart of the time, place, and subject matter of any meeting or portion of any meeting; announcement of whether any meeting or portion of any meeting shall be open to public observation or be closed; any announcement of any change regarding any meeting or portion of any meeting; and the name and telephone number of the Secretary of the agency who shall be designated by the agency to respond to requests for information concerning any meeting or portion of any meeting;

(c) *Meeting* means the deliberations of a majority of the members serving on the agency which determine or result in the joint conduct of or disposition of official agency business, but does not include:

(1) Individual member's consideration of official agency business circulated to the members in writing for disposition on notation;

(2) Deliberations by the agency in determining whether or not to close a portion or portions of a meeting or series of meetings as provided in §§ 503.74 and 503.75;

(3) Deliberations by the agency in determining whether or not to withhold from disclosure information pertaining to a portion or portions of a meeting or series of meetings as provided in § 503.80; or

(4) Deliberations pertaining to any change in any meeting or to changes in the public announcement of such a meeting as provided in § 503.83;

(d) *Member* means each individual Commissioner of the agency;

(e) *Person* means any individual, partnership, corporation, association, or public or private organization, other

than an agency as defined in 5 U.S.C. 551(1));

(f) *Series f meetings* means more than one meeting involving the same particular matters and scheduled to be held no more than thirty (30) days after the initial meeting in such series.

[49 FR 44401, Nov. 6, 1984, as amended at 64 FR 23549, May 3, 1999]

§ 503.72 General rule—meetings.

(a) Except as otherwise provided in §§ 503.73, 503.74, 503.75, 503.76, and 503.84, every portion of every meeting and every portion of a series of meetings of the agency shall be open to public observation.

(b) The opening of a portion or portions of a meeting or a portion or portions of a series of meetings to public observation shall not be construed to include any participation by the public in any manner in the meeting. Such an attempted participation or participation shall be cause for removal of any person so engaged at the discretion of the presiding member of the agency.

[49 FR 44401, Nov. 6, 1984, as amended at 85 FR 9682, Feb. 20, 2020]

§ 503.73 Exceptions—meetings.

Except in a case where the agency finds that the public interest requires otherwise, the provisions of § 503.72(a) shall not apply to any portion or portions of an agency meeting or portion or portions of a series of meetings where the agency determined under the provisions of § 503.74 or § 503.75 that such portion or portions of such meeting or series of meetings is likely to:

(a) Disclose matters that are (1) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (2) in fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practices of any agency;

(c) Disclose matters specifically exempted from disclosure by any statute other than 5 U.S.C. 552 (FOIA), provided that such statute (1) requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records or information would

(1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial or an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action unless the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(j) Specifically concern the agency's issuance of a subpena, or the agency's

participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.74 Procedures for closing a portion or portions of a meeting or a portion or portions of a series of meetings on agency initiated requests.

(a) Any member of the agency, the Managing Director or the General Counsel of the agency may request that any portion or portions of a series of meetings be closed to public observation for any of the reasons provided in § 503.73 by submitting such request in writing to the Secretary of the agency in sufficient time to allow the Secretary to schedule a timely vote on the request pursuant to paragraph (b) of this section.

(b) Upon receipt of any request made under paragraph (a) of this section, the Secretary of the agency shall schedule a time at which the members of the agency shall vote upon the request, which vote shall take place not later then eight (8) days prior to the scheduled meeting of the agency.

(c) At the time the Secretary schedules a time for an agency vote as described in paragraph (b) of this section, he or she shall forward the request to the General Counsel of the agency who shall act upon such request as provided in § 503.77.

(d) At the time schedule d by the Secretary as provided in paragraph (b) of this section, the members of the agency, upon consideration of the request submitted under paragraph (a) of this section and consideration of the certified opinion of the General Counsel of the agency provided to the members under § 503.77, shall vote upon that request. That vote shall determine whether or not any portion or portions of a meeting may be closed to public observation for any of the reasons provided in § 503.73, and whether or not the public interest requires that the portion or portions of the meeting or meetings remain open, notwithstanding the applicability of any of the reasons provided in § 503.73 permitting the closing of any meeting to public observation.

(e) In the case of a vote on a request under this section to close to public observation a portion or portions of a meeting, no such portion or portions of any meeting may be closed unless, by a vote on the issues described in paragraph (d) of this section, a majority of the entire membership of the agency shall vote to close such portion or portions of a meeting by recorded vote.

(f) In the case of a vote on a request under this section to close to public observation a portion or portions of a series of meetings as defined in § 503.71, no such portion or portions of a series of meetings may be closed unless, by a vote on the issues described in paragraph (d) of this section, a majority of the entire membership of the agency shall vote to close such portion or portions of a series of meetings. A determination to close to public observation a portion or portions of a series of meetings may be accomplished by a single vote on each of the issues described in paragraph (d) of this section, provided that the vote of each member of the agency shall be recorded and the vote shall be cast by each member and not by proxy vote.

[49 FR 44401, Nov. 6, 1984, as amended at 55 FR 38330, Sept. 18, 1990]

§ 503.75 Procedures for closing a portion of a meeting on request initiated by an interested person.

(a) Any person as defined in § 503.71, whose interests may be directly affected by a portion of a meeting of the agency, may request that the agency close that portion of a meeting for the reason that matters in deliberation at that portion of the meeting are such that public disclosure of that portion of a meeting is likely to:

(1) Involve accusing any person of a crime, or formally censuring any person;

(2) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy; or

(3) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel.

(b) Any person described in paragraph (a) of this section who submits a request that a portion of a meeting be closed shall submit an original and 15 copies of that request to the Secretary, Federal Maritime Commission, Washington, DC 20573, and shall state with particularity that portion of a meeting sought to be closed and the reasons therefor as described in paragraph (a) of this section.

(c) Upon receipt of any request made under paragraphs (a) and (b) of this section, the Secretary of the agency shall:

(1) Furnish a copy of the request to each member of the agency; and

(2) Furnish a copy of the request to the General Counsel of the agency.

(d) Upon receipt of a request made under paragraphs (a) and (b) of this section, any member of the agency may request agency action upon the request to close a portion of a meeting by notifying the Secretary of the agency of that request for agency action.

(e) Upon receipt of a request for agency action under paragraph (d) of this section, the Secretary of the agency shall schedule a time for an agency vote upon the request of the person whose interests may be directly affected by a portion of a meeting, which vote shall take place prior to the scheduled meeting of the agency.

(f) At the time the Secretary receives a request for agency action and schedules a time for an agency vote as described in paragraph (e) of this section, the request of the person whose interests may be directly affected by a portion of a meeting shall be forwarded to the General Counsel of the agency who shall act upon such request as provided in § 503.77.

(g) At the time scheduled by the Secretary, as provided in paragraph (e) of this section, the members of the agency, upon consideration of the request of the person whose interests may be directly affected by a portion of a meeting submitted under paragraphs (a) and (b) of this section, and consideration of the certified opinion of the General Counsel of the agency provided to the members under § 503.77, shall vote upon that request. That vote shall determine whether or not any portion or portions of a meeting or portion or portions of a series of meetings may be closed to public observation for any of the reasons provided in paragraph (a) of this section, and whether or not the public interest requires that the portion or portions of the meeting or meetings remain open, notwithstanding the applicability of any of the reasons provided in paragraph (a) of this section permitting the closing of any portion of any meeting to public observation.

(h) In the case of a vote on a request under this section to close to public observation a portion of a meeting, no such portion of a meeting may be closed unless, by a vote on the issues described in paragraph (g) of this section, a majority of the entire membership of the agency shall vote to close such portion of a meeting by a recorded vote.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.76 Effect of vote to close a portion or portions of a meeting or series of meetings.

(a) Where the agency votes as provided in § 503.74 or § 503.75, to close to public observation a portion or portions of a meeting or a portion or portions of a series of meetings, the portion or portions of a meeting or the portion or portions of a series of meetings shall be closed.

(b) Except as otherwise provided in §§ 503.80, 503.81 and 503.82, not later than the day following the day on which a vote is taken under § 503.74 or § 503.75, by which it is determined to close a portion or portions of a meeting or a portion or portions of a series of meetings to public observation, the Secretary shall make available to the public:

(1) A written copy of the recorded vote reflecting the vote of each member of the agency;

(2) A full written explanation of the agency action closing that portion or those portions to public observation; and

(3) A list of the names and affiliations of all persons expected to attend the portion or portions of the meeting or the portion or portions of a series of meetings.

(c) Except as otherwise provided in §§ 503.80, 503.81 and 503.82, not later than the day following the day on which a vote is taken under § 503.74, or § 503.75, by which it is determined that the portion or portions of a meeting or the portion or portions of a series of meetings shall remain open to public observation, the Secretary shall make available to the public a written copy of the recorded vote reflecting the vote of each member of the agency.

§ 503.77 Responsibilities of the General Counsel of the agency upon a request to close any portion of any meeting.

(a) Upon any request that the agency close a portion or portions of any meeting or any portion or portions of any series of meetings under the provisions of §§ 503.74 and 503.75, the General Counsel of the agency shall certify in writing to the agency, prior to an agency vote on that request, whether or not in his or her opinion the closing of any such portion or portions of a meeting or portion or portions of a series of meetings is proper under the provisions of this subpart and the terms of the Government in the Sunshine Act (5 U.S.C. 552b). If, in the opinion of the General Counsel, the closing of a portion or portions of a meeting or portion or portions of a series of meetings is proper under the provisions of this subpart and the terms of the Government in the Sunshine Act (5 U.S.C. 552b), his or her certification of that opinion shall cite each applicable, particular, exemptive provision of that Act and provision of this subpart.

(b) A copy of the certification of the General Counsel as described in paragraph (a) of this section, together with a statement of the officer presiding over the portion or portions of any meeting or the portion or portions of a series of meetings setting forth the time and place of the relevant meeting or meetings, and the persons present, shall be maintained by the Secretary for public inspection.

§ 503.78 General rule—information pertaining to meeting.

(a) As defined in § 503.71, all information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings of the agency shall be disclosed to the public unless excepted from such disclosure under §§ 503.79 through 503.81 or § 503.84.

(b) All inquiries as to the status of pending matters which were considered by the Commission in closed session should be directed to the Secretary of the Commission. Commission personnel who attend closed meetings of the Commission are prohibited from disclosing anything that occurs during those meetings. An employee's failure to respect the confidentiality of closed meetings constitutes a violation of Commission's General Standards of Conduct. The Commission can, of course, determine to make public the events or decisions occurring in a closed meeting, such information to be disseminated by the Office of the Secretary. An inquiry to the Office of the Secretary as to whether any information has been made public is not, therefore, improper. However, a request of or attempt to persuade a Commission employee to divulge the contents of a closed meeting constitutes a lack of proper professional conduct inappropriate to a person practicing before this agency, and requires that the employee file a report of such event so that a determination can be made whether disciplinary action should be

initiated pursuant to § 502.30 of this chapter.

[49 FR 44401, Nov. 6, 1984, as amended at 85 FR 9682, Feb. 20, 2020]

§ 503.79 Exceptions—information pertaining to meeting.

Except in a case where the agency finds that the public interest requires otherwise, information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings need not be disclosed by the agency if the agency determines, under the provisions of §§ 503.80 and 503.81 that disclosure of that information is likely to disclose matters which are:

(a) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and in fact properly classified pursuant to such Executive order;

(b) Related solely to the internal personnel rules and practices of an agency;

(c) Specifically exempted from disclosure by any statute other than 5 U.S.C. 552 (FOIA), provided that such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Trade secrets and commercial or financial information, obtained from a person and privileged or confidential;

(e) Involved with accusing any person of a crime, or formally censuring any person;

(f) Of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such record or information would

(1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial or an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, unless the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(j) Specifically concerned with the agency's issuance of a subpena, the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.80 Procedures for withholding information pertaining to meeting.

(a) Any member of the agency, or the General Counsel of the agency may request that information pertaining to a portion or portions of a meeting or to a portion or portions of a series of meetings be withheld from public disclosure for any of the reasons set forth in § 503.79 by submitting such request in writing to the Secretary not later than two (2) weeks prior to the commencement of the first meeting in a series of meetings.

(b) Upon receipt of any request made under paragraph (a) of this section, the Secretary shall schedule a time at

which the members of the agency shall vote upon the request, which vote shall take place not later than eight (8) days prior to the scheduled meeting of the agency.

(c) At the time scheduled by the Secretary in paragraph (b) of this section, the Members of the agency, upon consideration of the request submitted under paragraph (a) of this section, shall vote upon that request. That vote shall determine whether or not information pertaining to a meeting may be withheld from public disclosure for any of the reasons provided in § 503.79, and whether or not the public interest requires that the information be disclosed notwithstanding the applicability of the reasons provided in § 503.79 permitting the withholding from public disclosure of the information pertaining to a meeting.

(d) In the case of a vote on a request under this section to withhold from public disclosure information pertaining to a portion or portions of a meeting, no such information shall be withheld from public disclosure unless, by a vote on the issues described in paragraph (c) of this section, a majority of the entire membership of the agency shall vote to withhold such information by recorded vote.

(e) In the case of a vote on a request under this section to withhold information pertaining to a portion or portions of a series of meetings, no such information shall be withheld unless, by a vote on the issues described in paragraph (c) of this section, a majority of the entire membership of the agency shall vote to withhold such information. A determination to withhold information pertaining to a portion or portions of a series of meetings from public disclosure may be accomplished by a single vote on the issues described in paragraph (c) of this section, provided that the vote of each member of the agency shall be recorded and the vote shall be cast by each member and not by proxy vote.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.81 Effect of vote to withhold information pertaining to meeting.

(a) Where the agency votes as provided in § 503.80 to withhold from public disclosure information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings, such information shall be excepted from the requirements of §§ 503.78, 503.82 and 503.83.

(b) Where the agency votes as provided in § 503.80 to permit public disclosure of information pertaining to a portion of portions of a meeting or portion or portions of a series of meetings, such information shall be disclosed to the public as required by §§ 503.78, 503.82 and 503.83.

(c) Not later than the day following the date on which a vote is taken under § 503.80, by which the information pertaining to a meeting is determined to be disclosed, the Secretary shall make available to the public a written copy of such vote reflecting the vote of each member of the agency on the question.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.82 Public announcement of agency meeting.

(a) Except as provided in §§ 503.80 and 503.81 regarding a determination to withhold from public disclosure any information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings, or as otherwise provided in paragraph (c) of this section, the Secretary of the agency shall make public announcement of each meeting of the agency.

(b) Except as otherwise provided in this section, public announcement of each meeting of the agency shall be accomplished not later than one week prior to commencement of a meeting or the commencement of the first meeting in a series of meetings, and shall disclose:

(1) The time of the meeting;

(2) The place of the meeting;

(3) The subject matter of each portion of each meeting or series of meetings;

(4) Whether any portion or portions of a meeting or portion or portions of any series of meetings shall be open or closed to public observation; and

(5) The name and telephone number of the Secretary of the agency who shall respond to requests for information about a meeting.

(c) The announcement described in paragraphs (a) and (b) of this section may be accomplished less than one week prior to the commencement of any meeting or series of meetings, provided the agency determines by recorded vote that the agency business requires that any such meeting or series of meetings be held at an earlier date. In the event of such a determination by the agency, public announcement as described in paragraph (b) of this section shall be accomplished at the earliest practicable time.

(d) Immediately following any public announcement accomplished under the provisions of this section, the Secretary of the agency shall submit a notice for publication in the FEDERAL REGISTER disclosing:

(1) The time of the meeting;

(2) The place of the meeting;

(3) The subject matter of each portion of each meeting or series of meetings;

(4) Whether any portion or portions of a meeting or portion or portions of any series of meetings is open or closed to public observation; and

(5) The name and telephone number of the Secretary of the agency who shall respond to requests for information about any meeting.

(e) No comments or further information relating to a particular item scheduled for an agency meeting will be accepted by the Secretary for consideration subsequent to public announcement of such meeting; except that the Commission, on its own initiative, or pursuant to a written request, may in its discretion, permit a departure from this limitation for exceptional circumstances.

[49 FR 44401, Nov. 6, 1984, as amended at 52 FR 27002, July 17, 1987]

§ 503.83 Public announcement of changes in meeting.

(a) Except as provided in §§ 503.80 and 503.81, under the provisions of paragraphs (b) and (c) of this section, the time or place of a meeting or series of meetings may be changed by the agency following accomplishment of the announcement and notice required by § 503.82, provided the Secretary of the agency shall publicly announce such change at the earliest practicable time.

(b) The subject matter of a portion or portions of a meeting or a portion or portions of a series of meetings, the time and place of such meeting, and the determination that the portion or portions of a series of meetings shall be open or closed to public observation may be changed following accomplishment of the announcement required by § 503.82, provided:

(1) The agency, by recorded vote of the majority of the entire membership of the agency, determines that agency business so requires and that no earlier announcement of the change was possible; and

(2) The Secretary of the agency publicly announces, at the earliest practicable time, the change made and the vote of each member upon such change.

(c) Immediately following any public announcement of any change accomplished under the provisions of this section, the Secretary of the agency shall submit a notice for publication in the FEDERAL REGISTER disclosing:

(1) The time of the meeting;

(2) The place of the meeting;

(3) The subject matter of each portion of each meeting or series of meetings;

(4) Whether any portion or portions of any meeting or any portion or portions of any series of meetings is open or closed to public observation;

(5) Any change in paragraphs (c) (1), (c) (2), (c) (3), or (c) (4) of this section; and

(6) The name and telephone number of the Secretary of the agency who shall respond to requests for information about any meeting.

§ 503.84 Nonpublic Collaborative Discussions.

(a) *General.* Notwithstanding § 503.72, a majority of the Commissioners may hold a meeting that is not open to public observation to discuss official agency business if:

(1) No formal or informal vote or other official agency action is taken at the meeting;

(2) Each individual present at the meeting is a Commissioner or an employee of the Commission;

(3) At least one (1) Commissioner from each political party is present at

the meeting, if there are sitting Commissioners from more than one party; and

(4) The General Counsel of the Commission is present at the meeting.

(b) *Disclosure of nonpublic collaborative discussions.* Except as provided under paragraph (c) of this section, not later than two (2) business days after the conclusion of a meeting under paragraph (a) of this section, the Commission shall make available to the public, in a place easily accessible to the public:

(1) A list of the individuals present at the meeting; and

(2) A summary of the matters discussed at the meeting, except for any matters the Commission properly determines may be withheld from the public under § 503.73.

(c) *Exception.* If the Commission properly determines matters may be withheld from the public under § 503.73, the Commission shall provide a summary with as much general information as possible on those matters withheld from the public.

(d) *Ongoing proceedings.* If a meeting under paragraph (a) of this section directly relates to an ongoing proceeding before the Commission, the Commission shall make the disclosure under paragraph (b) of this section on the date of the final Commission decision.

[85 FR 9682, Feb. 20, 2020]

§ 503.85 Agency recordkeeping requirements.

(a) In the case of any portion or portions of a meeting or portion or portions of a series of meetings determined by the agency to be closed to public observation under the provisions of §§ 502.73 through 503.75, the following records shall be maintained by the Secretary of the agency:

(1) The certification of the General Counsel of the agency required by § 503.77;

(2) A statement from the officer presiding over the portion or portions of the meeting or portion or portions of a series of meetings setting forth the time and place of the portion or portions of the meeting or portion or portions of the series of meetings, the persons present at those times; and

(3) Except as provided in paragraph (b) of this section, a complete transcript or electronic recording fully recording the proceedings at each portion of each meeting closed to public observation.

(b) In case the agency determines to close to public observation any portion or portions of any meeting or portion or portions of any series of meetings because public observation of such portion or portions of any meeting is likely to specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing, the agency may maintain a set of minutes in lieu of the transcript or recording described in paragraph (a)(3) of this section. Such minutes shall contain:

(1) A full and clear description of all matters discussed in the closed portion of any meeting;

(2) A full and accurate summary of any action taken on any matter discussed in the closed portion of any meeting and the reasons therefor;

(3) A description of each of the views expressed on any matter upon which action was taken as described in paragraph (b)(2) of this section;

(4) The record of any rollcall vote which shall show the vote of each member on the question; and

(5) An identification of all documents considered in connection with any action taken on a matter described in paragraph (b)(1) of this section.

(c) All records maintained by the agency as described in this section shall be held by the agency for a period of not less than two (2) years following any meeting or not less than one (1) year following the conclusion of any agency proceeding with respect to which that meeting or portion of a meeting was held.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984, as amended at 85 FR 9682, Feb. 20, 2020]

§ 503.86 Public access to records.

(a) All transcripts, electronic recordings or minutes required to be maintained by the agency under the provisions of §§ 503.85(a)(3) and 503.85(b) shall be promptly made available to the public by the Secretary of the agency, except for any item of discussion or testimony of any witnesses which the agency determines to contain information which may be withheld from public disclosure because its disclosure is likely to disclose matters which are:

(1)(i) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by any statute other than 5 U.S.C. 552 (FOIA), provided that such statute

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involved with accusing any person of a crime, or formally censuring any person;

(6) Of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records or information would

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, unless the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concerned with the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(b) Requests for access to the records described in this section shall be made in accordance with procedures described in subparts C and D of this part.

(c) Records disclosed to the public under this section shall be furnished at the expense of the party requesting such access at the actual cost of duplication or transcription.

[49 FR 44401, Nov. 6, 1984, as amended at 64 FR 23549, May 3, 1999]

§ 503.87 Effect of provisions of this subpart on other subparts.

(a) Nothing in this subpart shall limit or expand the ability of any person to seek access to agency records under subpart D (§§ 503.31 to 503.36) of this part except that the exceptions of § 503.86 shall govern requests to copy or inspect any portion of any transcript,

electronic recordings or minutes required to be kept under this subpart.

(b) Nothing in this subpart shall permit the withholding from any individual to whom a record pertains any record required by this subpart to be maintained by the agency which record is otherwise available to such an individual under the provisions of subpart H of this part.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984, as amended at 80 FR 52641, Sept. 1, 2015]

PART 504—PROCEDURES FOR ENVIRONMENTAL POLICY ANALYSIS

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AUTHORITY: 5 U.S.C. 552, 553; 46 U.S.C. 305 and 41107–41109; 42 U.S.C. 4332(2)(b), and 42 U.S.C. 6362.

SOURCE: 49 FR 44415, Nov. 6, 1984, unless otherwise noted.

§ 504.1 Purpose and scope.

(a) This part implements the National Environmental Policy Act of 1969 (NEPA) and Executive Order 12114 and incorporates and complies with the Regulations of the Council on Environmental Quality (CEQ) (40 CFR part 1500 *et seq*.).

(b) This part applies to all actions of the Federal Maritime Commission (Commission). To the extent possible, the Commission shall integrate the requirements of NEPA with its obligations under section 382(b) of the Energy Policy and Conservation Act of 1975, 42 U.S.C. 6362.

(c) Information obtained under this part is used by the Commission to assess potential environmental impacts of proposed Federal Maritime Commission actions. Compliance is voluntary but may be made mandatory by Commission order to produce the information pursuant to section 15 of the Shipping Act of 1984 (46 U.S.C. 40104). The penalty for violation of a Commission order under section 13 of the Shipping Act of 1984 (46 U.S.C. 41107–41109) may not exceed $5,000 for each violation, unless the violation was willfully and knowingly committed, in which case the amount of the civil penalty may not exceed $25,000 for each violation, as adjusted by § 506.4 of this chapter. (Each day of a continuing violation constitutes a separate offense.)

[49 FR 44415, Nov. 6, 1984, as amended at 64 FR 23549, May 3, 1999; 74 FR 50718, Oct. 1, 2009]

§ 504.2 Definitions.

(a) *Shipping Act of 1984* means the Shipping Act of 1984 (46 U.S.C. 40101–41309).

(b) *Common carrier* means any common carrier by water as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), including a conference of such carriers.

(c) *Environmental impact* means any alteration of existing environmental conditions or creation of a new set of environmental conditions, adverse or beneficial, caused or induced by the action under consideration.

(d) *Potential action* means the range of possible Commission actions that may result from a Commission proceeding in which the Commission has not yet formulated a proposal.

(e) *Proposed action* means that stage of activity where the Commission has determined to take a particular course of action and the effects of that course of action can be meaningfully evaluated.

(f) *Environmental assessment* means a concise document that serves to ''provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact'' (40 CFR 1508.9).

(g) *Recyclable* means any secondary material that can be used as a raw material in an industrial process in which it is transformed into a new product replacing the use of a depletable natural resource.

(h) *Marine Terminal Operator* means a person engaged in the United States in the business of furnishing wharfage,