

Issued: June 25, 2015

FEDERAL MARITIME COMMISSION

46 CFR Part 503

DOCKET NO. 15-05

RIN: 3072-AC60

**Amendments to Regulations Governing Access to
Commission Information and Records; Freedom of Information Act**

AGENCY: Federal Maritime Commission

ACTION: Direct final rule; and request for comments.

SUMMARY: The Federal Maritime Commission proposes to amend its regulations governing access to Commission information and records and its regulations implementing the Freedom of Information Act (FOIA). The proposed revisions would update and consolidate the provisions identifying records available without the need for a FOIA request, including records available on the Commission's public website; revise response time procedures for processing FOIA requests; affirmatively indicate that the Commission uses a multitrack system for processing FOIA requests; and modify the criteria for a FOIA request to qualify for expedited processing.

DATES: This rule is effective without further action on September 1, 2015, unless significant adverse comment is received by August 3, 2015. If significant adverse comment is received, the Federal Maritime Commission will publish a timely withdrawal of the rule in the Federal Register.

ADDRESSES: You may submit comments, identified by the docket number in the heading of this document, by any of the following methods:

- *E-mail:* secretary@fmc.gov. Include in the subject line: “Docket No. 15-05, Comments on Amendments to Regulations Governing Access to Commission Information and Records; Freedom of Information Act.” Comments should be attached to the e-mail as a Microsoft Word or text-searchable PDF document. Comments containing confidential information should not be submitted by e-mail.
- *Mail:* Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001.
- *Docket:* For access to the docket to read background documents or comments received, go to: <http://www.fmc.gov/15-05/>.

FOR FURTHER INFORMATION CONTACT: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001. Phone: (202) 523-5725. E-mail: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION:

The Federal Maritime Commission proposes to amend its regulations governing access to Commission information and records and its regulations implementing the Freedom of Information Act, 5 U.S.C. 552, found in Part 503 of Title 46 of the Code of Federal Regulations. The provisions in Part 503 are designed to facilitate public availability of information; thereby furthering the spirit of FOIA in ensuring an informed citizenry. The Commission last revised Part 503

in 1998 to reflect requirements of the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 04-231). On December 31, 2007, the OPEN Government Act of 2007 (Pub. L. 110-175) amended procedural aspects of FOIA and established new agency requirements for processing FOIA requests. On October 28, 2009, the OPEN FOIA Act of 2009 (Pub. L. 110-175) further amended FOIA.

The proposed amendments to Part 503 will update the Commission's regulations to reflect its practices and provisions of the OPEN Government Act of 2007 and the OPEN FOIA Act of 2009.

The Commission proposes the following revisions to the Subparts of Part 503: revise Subpart A – *General, Statement of Policy* to repurpose this subpart to state the purpose and scope of the rules contained in Part 503; update Subpart B – *Publication in the Federal Register* to recognize that in addition to publishing records in the Federal Register, the Commission also posts records listed in this Subpart on its website (www.fmc.gov); revise Subpart C – *Records, Information and Materials Generally Available to the Public Without Resort to Freedom of Information Act Procedures* to describe records available to the public without the need for a FOIA request, including records available on the Commission's public website; amend Subpart D - *Requests for Records under the Freedom of Information Act* to include procedures for tolling response times, processing FOIA requests under the multitracking system, and expedited processing of FOIA requests; and revise Subpart H - *Public Observation of Federal Maritime*

Commission Meetings and Public Access to Information Pertaining to Commission Meetings to amend a subpart reference.

Subpart A – General

The Commission proposes to revise the heading and language in § 503.1 to use this subsection to describe the scope and purpose of the provisions contained in Part 503. Specifically, the Commission proposes to change the section heading from “Statement of Policy” to “Scope and Purpose.” The Commission also proposes to amend this section to include a list of the subparts contained in Part 503.

Subpart B – Publication in the Federal Register

To promote greater access to information and records, the Commission proposes to amend and update § 503.11 to inform the public that the Commission posts records listed in this Subpart on its website (www.fmc.gov), in addition to publishing these records in the *Federal Register*.

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

Sections 503.21 to 503.24 describe records available to the public without the need for a FOIA request. The Commission last revised these sections in 1998 and proposes to further revise these sections to reflect the availability of information on the Commission’s website, eliminate outdated information, and remove duplicative language.

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

Section 503.31 provides information on the process for requesting records. The Commission proposes to add a new paragraph encouraging requesters to

review the records on the Commission's public website prior to initiating a FOIA request. In addition, the Commission proposes amending this section to include requirements for submitting FOIA requests electronically.

Tolling

FOIA, as amended, allows an agency to make one reasonable request for information from the FOIA requester and stop, or toll, the 20-day clock for responding to a FOIA requester while the agency is waiting for the requested information from the FOIA requester. 5 U.S.C. § 552(a)(6)(A)(ii)(I). Agencies may also toll the 20-day response clock as many times as necessary in order to clarify any issues with fee assessment. 5 U.S.C. § 552(a)(6)(A)(ii)(II).

Section 503.32 sets forth procedures for responding to requests made under FOIA. This section does not currently include a provision for tolling the statutory 20-day FOIA response period should the Commission need to contact the FOIA requestor to clarify or narrow the scope of the FOIA request. The Commission is proposing to add language that would allow for tolling of response times to implement the Commission's authority to stop the 20-day clock should the Commission need information from the requestor or to clarify issues with fee assessment.

The Commission proposes to add two new paragraphs, (b)(4) and (5) to section 503.32 to reflect Commission processes used to work with a requestor to clarify or narrow the scope of a FOIA request, and to confirm that the requestor understands and authorizes the assessment of fees. The proposed new

paragraphs would require the Commission to submit its request to clarify the scope of records requested or fee assessments in writing to the requestor.

Multitrack Processing of Requests

FOIA expressly authorizes agencies to promulgate regulations providing for "multitrack processing" of FOIA requests and allows agencies to process requests on a first-in, first-out basis within each track. 5 U.S.C. 552(a)(6)(D). During FY 2012, the Commission initiated a multitrack processing system for FOIA requests to better manage and more efficiently respond to FOIA requests. The Commission proposes to revise section 503.32(d) to reflect the Commission's current practices regarding multitrack processing of FOIA requests in which the Commission labels requests as either "simple" or "complex". The proposed rephrasing of the section clarifies the Commission's current practices and provides that a request may be considered "simple" if the type of records being requested are routinely requested and readily available. Initiating a simple track process has permitted the Commission to respond to relatively simple requests more quickly than requests involving complex and/or voluminous records.

Expedited Processing of Requests

Section 503.32(e) currently provides for expedited processing of a FOIA request when (i) the person requesting the records can demonstrate a compelling need; or (ii) in other cases, in the Secretary's discretion. The Commission proposes to delete paragraph (ii) from section 503.32(e). This proposed revision would simplify the Commission's criteria for determining which FOIA requests qualify for expedited processing and establish a practice consistent with other

Federal agencies that only provide expedited processing when a “compelling need” can be demonstrated.

To ensure timely responses to requests for expedited processing, the Commission proposes to revise section 503.32(e)(4) to change “working days” to “calendar days” to coincide with FOIA.

Annual Report

The Commission must submit an annual report on its FOIA related activities to the Attorney General. The Commission revises section 502.23 to reference the activities cited in FOIA, 5 U.S.C. 552(e), rather than list out all activities reported upon.

Subpart I, - *Public Observation of Federal Maritime Commission Meetings and Public Access to Information Pertaining to Commission Meetings*

A technical revision and update of section 503.87(b) is proposed to account for a recent redesignation of subparts with the addition of new subpart E.

Regulatory Analysis and Notices

Regulatory Flexibility Act

This direct final rule is not a “major rule” under 5 U.S.C. 804(2). No notice of proposed rulemaking is required; therefore, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., do not apply.

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires an agency to review regulations to assess their impact on small entities and prepare an initial regulatory flexibility analysis (IRFA), unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities.

This proposed rulemaking will affect only persons who file FOIA requests, and therefore, the Chairman certifies that this rulemaking will not have a significant or negative economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521, requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before making most requests for information if the agency is requesting information from more than ten persons. 44 U.S.C. 3507. The agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the proposed rulemaking. 5 CFR 1320.11. The Commission is not proposing any collections of information, as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), as part of this proposed rule.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at:

<http://www.reginfo.gov/public/do/eAgendaMain>

Direct Final Rule Justification

The Commission expects the amendments to be noncontroversial. Therefore, pursuant to 5 U.S.C. 553, notice and comment are not required and this rule may become effective after publication in the Federal Register unless the Commission receives significant adverse comments within the specified period. The Commission recognizes that parties may have information that could impact the Commission's views and intentions with respect to the revised regulations, and the Commission intends to consider any comments filed. The Commission will withdraw the rule if it receives significant adverse comments. Filed comments that are not adverse may be considered for modifications to part 503 at a future date. If no significant adverse comment is received, the rule will become effective without additional action.

List of Subjects

46 CFR Part 503

Administrative practices and procedures, Archives and records, Classified information, Confidential business information, Freedom of information, Information, Privacy, Records, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set forth in the preamble, the Federal Maritime Commission proposes to amend 46 CFR Part 503 as follows:

PART 503 – PUBLIC INFORMATION

1. The authority citation for part 503 is revised to read::

Authority: 5 U.S.C. 552, 552a, 552b, 553; 31 U.S.C. 9701; Exec. Order No. 13526, 7 Fed. Reg. 707, 723 (Jan. 5, 2010).

Subpart A – General

2. Revise § 503.1 heading to read as follows:

Scope and Purpose

3. Revise § 503.1 to read as follows:

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: (1) 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 website (www.fmc.gov); (2) procedures for requests for testimony by current or former FMC employees relating to official information and production of official Commission records in litigation; (3) the type of services and amount of fees charged for certain Commission services; and (4) the Commission's Information Security Program.

Subpart B – Publication in the Federal Register

4. Amend § 503.11 to revise the first paragraph to read as follows:

The Commission shall separately state and concurrently publish the following materials in the *Federal Register* or on its public website (www.fmc.gov) for the guidance of the public.

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

5. Amend § 503.21 to revise paragraphs (a) and (c) to read as follows:

§ 503.21 Mandatory public records.

(a) The Commission, as required by the Freedom of Information Act, 5 U.S.C. 552, makes the following materials available for public inspection and copying in its Office of the Secretary, or on its website at www.fmc.gov:

* * *

(c) The Commission maintains and makes available for public inspection at the Office of the Secretary, Federal Maritime Commission, Washington, DC 20573, or on its public website at www.fmc.gov, 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.

6. Remove paragraph 503.21(c)(1) and redesignate 503.21(c)(2) as 503.21(c)(1) to read as follows:

(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 website as provided by this subpart; or

* * * * *

7. Amend § 503.22 to read as follows:

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

The following records are also available without the requirement of a FOIA request on the Commission's website 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 section.

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

(2) Federal Maritime Commission reports.

(3) 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.

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

(5) 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.

(6) Annual reports of the Commission.

(7) 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.

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

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

(10) General descriptions of the functions, bureaus, and offices of the Commission, phone numbers and e-mail addresses, as well as locations of Area Representatives.

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

(12) Commonly used forms.

(13) Final and pending proposed rules.

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

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

8. Remove and reserve § 503.23.

9. Remove and reserve § 503.24.

10. Revise Subpart D heading to read:

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

11. Revise § 503.31 to read as follows:

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

(b) *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 website at www.fmc.gov. Such a request must:

(1) ***

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

(3) Be clearly marked on the subject line of an email or on the exterior of the envelope with the term “FOIA.”

(b) ***

(c) ***

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

12. Revise § 503.32 to read as follows:

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

(a) *Determination to grant or deny request.* * * *

(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.

(2) * * *

(3)(i) * * *

(B) Be filed not later than ten (10) business 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) * * *

(b) *Extension of time limits.* * * *

(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) * * *

(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.

(i) [Remove]

(ii) [Remove]

(2) * * *

(3) * * *

(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.

* * * * *

9. Amend § 503.34 to revise paragraph (a) and remove (a)(1)-(7) to read as follows:

§ 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).

(1) through (7) [Remove]

* * * * *

Subpart H - Public Observation of Federal Maritime Commission Meetings and Public Access to Information Pertaining to Commission Meetings

10. Revise § 503.87 to read as follows:

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

* * * * *

(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.

By the Commission.

Karen V. Gregory
Secretary