

# ORIGINAL

May 20, 2010

## FEDERAL MARITIME COMMISSION

46 CFR Part 501, 502, 535

[Docket No. 10-04]

[RIN: 3072-AC37]

### AGENCY REORGANIZATION AND DELEGATIONS OF AUTHORITY

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final Rule.

**SUMMARY:** The Federal Maritime Commission (FMC or Commission) amends its regulations relating to agency organization to reflect the reorganization of the agency that took effect January 31, 2010, and to delegate authority to certain FMC bureaus and offices in order to improve the FMC's ability to carry out its statutory responsibilities over the ocean shipping industry in a more responsive manner to the industry's changing needs. This rule also corrects typographical errors in two sections in the Commission's rules.

**DATES:** Effective [Insert date of publication in the Federal Register].

#### FOR FURTHER INFORMATION CONTACT:

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**SUPPLEMENTARY INFORMATION:** The FMC amends Part 501 and section 502.604 of Part 502 of Title 46 of the Code of Federal Regulations to reflect the reorganization of the agency that took effect on January 31, 2010. The FMC was reorganized by restoring the position of the Managing Director to serve as the Commission's Chief Operating Officer responsible for the management and coordination of the Commission's major organizational components to

ensure all offices are cohesively directed toward achieving fair and efficient ocean transportation that helps improve the nation's economy. The reorganization also gives heightened priority to the role of the Commission's Office of Consumer Affairs and Dispute Resolution Services (CADRS), which assists exporters and other consumers and works with the public and ocean transportation industry to mediate disputes without costly lawsuits. The Director of CADRS will serve as the Commission's Ombudsman and handle inquiries and complaints about industry issues and Commission services. CADRS will continue to provide the public and ocean transportation industry a variety of impartial, speedy, and confidential alternative dispute resolution (ADR) services, such as mediation and arbitration. As an independent office, it will be able to assist parties in a neutral and confidential manner, enabling disputants to discuss matters while knowing that their discussions and any information revealed in a dispute resolution proceeding will not be made available to any other Commission official or staff members. This rule also corrects typographical errors in section 501.41(a) of Part 501 and section 535.401(g) of Part 535.

Because the changes made in this proceeding only address internal agency operating procedure and organization, which do not require notice and public procedure pursuant to the Administrative Procedure Act, 5 U.S.C. 553, this rule is published as final. The Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This rule is not a "major rule" under 5 U.S.C. 804(2).

#### **List of Subjects**

46 CFR Part 501

Administrative practice and procedure, Authority delegations, Organization and functions, Seals and insignia.

46 CFR Part 502

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

46 CFR Part 535

Administrative practice and procedure, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons stated in the supplementary information, the Federal Maritime Commission amends 46 CFR Parts 501, 502, and 535 as follows.

**PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL**

1. The authority citation for Part 501 continues to read as follows:

Authority: 5 U.S.C. 551-557, 701-706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501-520 and 3501-3520; 46 U.S.C. 301-307, 40101-41309, 42101-42109, 44101-44106; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961; Pub. L. 89-56, 70 Stat. 195; 5 CFR Part 2638; Pub. L. 104-320, 110 Stat. 3870.

2. Amend § 501.3 by revising paragraphs (c), (d), (h), and (i) to read as follows:

**§ 501.3 Organizational components of the Federal Maritime Commission.**

\* \* \* \* \*

(c) Office of the Secretary. (*FOIA and Privacy Act Officer, Federal Register Liaison, Performance Improvement Officer.*)

(d) Office of the General Counsel. (*Ethics Official, Legislative Counsel.*)

\* \* \* \* \*

(h) Office of the Managing Director. (*Chief Operating Officer, Chief Acquisition Officer, Audit Follow-up and Management Controls Official, Chief Information Officer, Chief Financial Officer, Competition Advocate, Senior Agency Official for Privacy.*)

(1) Office of Budget and Finance.

(2) Office of Human Resources. (*Information Security Officer.*)

- (3) Office of Information Technology. (*Chief Technology Officer, IT Security Officer.*)
- (4) Office of Management Services. (*Physical Security, FMC Contracting Officer.*)
- (5) Bureau of Certification and Licensing.
  - (i) Office of Passenger Vessels and Information Processing.
  - (ii) Office of Ocean Transportation Intermediaries.
- (6) Bureau of Trade Analysis.
  - (i) Office of Agreements.
  - (ii) Office of Economics and Competition Analysis.
  - (iii) Office of Service Contracts and Tariffs.
- (7) Bureau of Enforcement.
- (8) Area Representatives.
  - (i) Office of Consumer Affairs and Dispute Resolution Services. (*Ombudsman, Senior Dispute Resolution Specialist.*)

\* \* \* \* \*

3. Revise § 501.4 to read as follows:

**§ 501.4 Lines of responsibility.**

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

(b) *Office of the Managing Director.* The Bureau of Certification and Licensing, Bureau of Enforcement, Bureau of Trade Analysis, Area Representatives, Office of Budget and Finance, Office of Human Resources, Office of Information Technology, and Office of Management Services report to the Office of the Managing Director. The Office of Equal Employment Opportunity and the Office of the Inspector General receive administrative guidance from the Managing Director. All other units of the Commission receive administrative direction from the Managing Director.

4. Amend § 501.5 as follows:

- a. Revise paragraph (a) introductory text;
- b. Revise paragraph (c)(4);
- c. Revise paragraph (d)(7);
- d. Remove paragraph (d)(10);
- e. Revise paragraph (f);
- f. Revise paragraph (h);
- g. Remove and reserve paragraph (i)(3);
- h. Revise paragraph (k);
- i. Amend paragraph (l)(1) by revising the first sentence; and
- j. Add a new paragraph (l)(3) to read as follows.

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

\* \* \* \* \*

(a) *Chairman.* As the chief executive and administrative officer of the Commission, the Chairman presides at meetings of the Commission, administers the policies of the Commission to its responsible officials, and ensures the efficient discharge of their responsibilities. The Chairman provides management direction to the Offices of Equal Employment Opportunity, Inspector General, Secretary, General Counsel, Administrative Law Judges, and Managing Director with respect to all matters concerning overall Commission workflow, resource allocation (both staff and budgetary), work priorities and similar managerial matters; and establishes, as necessary, various committees and boards to address overall operations of the agency. The Chairman serves as appeals officer under the Freedom of Information Act, the Privacy Act, and the Federal Activities Inventory Reform Act of 1998. The Chairman appoints the heads of major administrative units after consultation with the other Commissioners. In addition, the Chairman, as "head of the agency," has certain responsibilities under Federal laws and directives not specifically related to shipping. For example, the special offices or officers within the Commission, listed under paragraphs (a)(1) through (a)(4) of this section, are appointed or designated by the Chairman, are under his or her direct supervision and report directly to the Chairman:

\* \* \* \* \*

(c) \* \* \*

\* \* \* \* \*

(4) Serves as the lead executive responsible for development, in coordination with the Managing Director, of the agency's strategic plan, monitoring of results of strategic goals and objectives, and preparation of all required reports.

(d) \* \* \*

\* \* \* \* \*

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

\* \* \* \* \*

(f) *Office of the Managing Director.*

(1) The Managing Director:

(i) As Chief Operating Officer, is responsible to the Chairman for the management and coordination of Commission programs managed by the Bureaus of Certification and Licensing; Trade Analysis; Enforcement; the Commission's Area Representatives; Offices of Budget and Finance; Human Resources; Management Services; and Information Technology, as more fully described below, and thereby implements the regulatory policies of the Commission and the administrative policies and directives of the Chairman. The Managing Director also provides administrative guidance to the Offices of Equal Employment Opportunity and Inspector General;

(ii) The Office initiates recommendations, collaborating with other elements of the Commission as warranted, for long-range plans, new or revised policies and standards, and rules and regulations;

(iii) Ensures the periodic review and updating of Commission Orders;

(iv) Interprets and administers governmental policies and programs in a manner consistent with Federal guidelines, including those involving financial management, human resources, information technology, and procurement;

- (v) Is responsible for coordinating records management activities and developing Paperwork Reduction Act clearances for submission to the Office of Management and Budget;
  - (vi) Is responsible for directing and administering the Commission's training and development function;
  - (vii) Acts as the Commission's representative to the Small Agency Council;
  - (viii) Is the agency's Chief Acquisition Officer under the Services Acquisition Reform Act of 2003, Public Law 108-136, 117 Stat. 1663 and Commission Order 112;
  - (ix) Is the Audit Follow-up and Management (Internal) Controls Official for the Commission under Commission Orders 103 and 106;
  - (x) Is the agency's Chief Financial Officer;
  - (xi) Is the agency's Chief Operating Officer;
  - (xii) Serves as the Senior Agency Official for Privacy under Commission Order 89;
- (2) The Deputy Managing Director is the Commission's Competition Advocate under Commission Order 112.
- (3) The Assistant Managing Director is the Commission's Chief Information Officer and Records Management Officer. The Assistant Managing Director provides direction to the Office of Information Technology in interpreting and administering governmental policies and programs for information technology in a manner consistent with federal guidelines. The Assistant Managing Director initiates recommendations, collaborating with other elements of the Commission as warranted, for long-range plans, new or revised policies and standards, and rules and regulations with respect to the use and security of information and technology.
- (4) Other offices under the management direction of the Managing Director are as follows:
- (i) The *Office of Budget and Finance*, under the direction and management of the Office Director, administers the Commission's financial management program, including fiscal accounting activities, fee and forfeiture collections, and payments, and ensures that Commission obligations and expenditures of appropriated funds are proper; develops annual budget justifications for submission to the Congress and the Office of Management and Budget; develops and administers internal controls systems that provide accountability for agency funds; administers the Commission's travel and cash management programs, ensures accountability for official passports; and assists in the development of proper levels of user fees.
  - (ii) The *Office of Human Resources*, under the direction and management of the Office Director, plans and administers a complete personnel management program including: recruitment and placement; position classification and pay administration; occupational safety and health; employee counseling services; employee relations; workforce discipline; performance appraisal; incentive awards; retirement; personnel security; and the Commission's Human Capital Management Plan. The Office Director serves as the Commission's Human Capital Management Officer. A human resources specialist within the Office serves as the Information Security Officer under Commission Order 80.
  - (iii) The *Office of Information Technology*, under the direction and management of the Office Director, administers the Commission's information technology ("IT") program under the Paperwork Reduction Act of 1995, as amended, as well as other applicable laws that prescribe responsibility for operating the IT program. The Office provides administrative support with respect to information technology to the program operations of the Commission. The Office's functions include: conducting IT management studies and surveys; managing data and voice telecommunications; developing and managing databases and applications; and administering IT

contracts. The Office is also responsible for managing the computer security program. The Director of the Office serves as the Commission's Chief Technology Officer; the IT Security Officer reports to the Director of the Office under Commission Order 80.

(iv) The *Office of Management Services*, under the direction and management of the Office Director, directs and administers a variety of management support service functions of the Commission including conducting internal management reviews and recommending changes in organization and workflow processes. The Director of the Office is the Commission's principal Contracting Officer under Commission Order 112. Programs include: acquisition of all goods and services used by the Commission; building security and emergency preparedness; real and personal property management; printing and copying; mail services; graphic design; equipment maintenance; and transportation. The Office Director is the agency's liaison with the Small Agency Council's Procurement and Administrative Services Committees and with the General Services Administration ("GSA") and the Department of Homeland Security ("DHS") on the Building Security Committee.

\* \* \* \* \*

(h) Under the direction and management of the Bureau Director, the *Bureau of Trade Analysis*, through its Office of Agreements; Office of Economics and Competition Analysis; and Office of Service Contracts and Tariffs, reviews agreements and monitors the concerted activities of common carriers by water, reviews and analyzes service contracts, monitors rates of government controlled carriers, reviews carrier published tariff systems under the accessibility and accuracy standards of the Shipping Act of 1984 (46 U.S.C. 40501(a)-(g)), responds to inquiries or issues that arise concerning service contracts or tariffs, and is responsible for competition oversight and market analysis.

(i) \* \* \*

\* \* \* \* \*

(3) [Reserved]

\* \* \* \* \*

(k) The *Office of Consumer Affairs and Dispute Resolution Services*, under the direction and management of the Office Director, has responsibility for developing and implementing the Alternative Dispute Resolution Program, responds to consumer inquiries and complaints, and coordinates the Commission's efforts to resolve disputes within the shipping industry. The Office reviews existing and proposed legislation and regulations for impact on the shipping industry and its consumers and recommends appropriate policies and regulations to facilitate trade. The Director of the Office of Consumer Affairs and Dispute Resolution Services is designated as the agency's Senior Dispute Resolution Specialist pursuant to section 3 of the Administrative Dispute Resolution Act, Public Law 101-552, as amended by section 4(a) of Public Law 104-320. The Director also serves as the Commission's Ombudsman.

(l) \* \* \*:

(1) The *Executive Resources Board* ("ERB") is composed of members of the Senior Executive Service as designated by the Chairman. \* \* \*

\* \* \* \* \*

(3) The *Maritime Environmental Committee* ("MEC") is an internal Committee made up of Commission staff as designated by the Chairman. The MEC advises the Chairman and the Commission on issues involving environmental and sustainable shipping practices, initiatives, operational proposals, and similar matters affecting entities regulated by the Commission to

assist the Commission in its review and regulation of agreements and in its statutory responsibility for ensuring an efficient ocean transportation system.

5. Amend § 501.24 by revising paragraph (h) to read as follows:

**§ 501.24 Delegation to the Secretary.**

\* \* \* \* \*

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

6. Revise § 501.25 to read as follows:

**§ 501.25 Delegation to and redelegation by the Managing Director.**

The authorities listed in this section are delegated to the Managing Director.

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

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

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

(2) The authority under paragraph (c)(1) of this section is redelegated to the Director, Office of Budget and Finance.

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

(2) The authority under paragraph (d)(1) of this section is redelegated to the Director, Office of Human Resources.

7. Amend § 501.28 by revising paragraph (a) to read as follows:

**§ 501.28 Delegation to the Director, Bureau of Enforcement.**

\* \* \* \* \*

(a) As set forth in § 502.604(g) of this chapter, the Director, Bureau of Enforcement, has the delegated authority to issue Notice and Demand Letters and to compromise civil penalty claims, subject to the prior approval of the Managing Director. This delegation shall include the authority to compromise issues relating to the retention, suspension, or revocation of ocean transportation intermediary licenses.

\* \* \* \* \*

8. Remove § 501.29.
9. Amend § 501.41 as follows:
  - a. Amend paragraph (a) by removing the reference “paragraph (d)” and adding the reference “paragraph (c)” in its place; and
  - b. Revise paragraph (c) to read as follows.

**§ 501.41 Public requests for information and decisions.**

\* \* \* \* \*

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

- (1) Office of the Secretary;
- (2) Office of the General Counsel;
- (3) Office of Administrative Law Judges;
- (4) Office of Equal Employment Opportunity;
- (5) Office of the Inspector General;
- (6) Office of Consumer Affairs and Dispute Resolution Services;
- (7) Office of the Managing Director;
- (i) Office of Budget and Finance;
- (ii) Office of Human Resources;
- (iii) Office of Information Technology;
- (iv) Office of Management Services;
- (v) Bureau of Certification and Licensing;
- (vi) Bureau of Trade Analysis;
- (vii) Bureau of Enforcement; and
- (viii) Area Representatives will provide information and decisions to the public within their geographic areas, or will expedite the obtaining of information and decisions from headquarters. The addresses of these Area Representatives are as follows. Further information on Area Representatives, including Internet e-mail addresses, can be obtained on the Commission's website at “<http://www.fmc.gov>.”

Houston Area Representative  
650 Sam Houston Parkway, #230  
Houston, TX 77060-5908

Los Angeles Area Representative  
P.O. Box 230  
839 South Beacon Street, Room 320  
San Pedro, CA 90733-0230

New Orleans Area Representative  
 P.O. Box 700  
 Saint Rose, LA 70087-0700

New York Area Representative  
 Building No. 75, Room 205B  
 JFK International Airport  
 Jamaica, NY 11430-1827

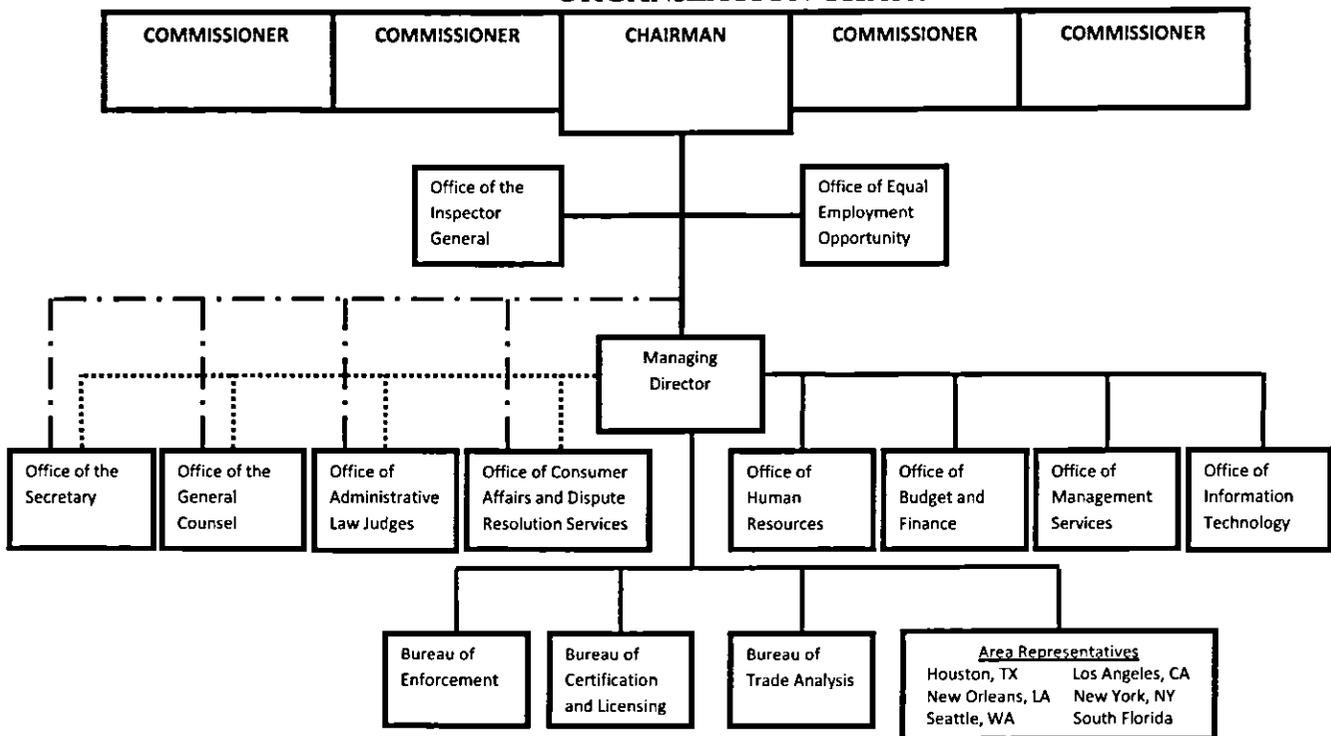
Seattle Area Representative  
 The Fabulich Center, Suite 508  
 3600 Port of Tacoma Road  
 Tacoma, WA 98424-1044

South Florida Area Representative  
 P.O. Box 813609  
 Hollywood, FL 33081-3609  
 \* \* \* \* \*

10. Revise Appendix A to Part 501 to read as follows:

**Appendix A to Part 501 - Federal Maritime Commission Organization Chart**

**FEDERAL MARITIME COMMISSION  
 ORGANIZATION CHART**



## **PART 502—RULES OF PRACTICE AND PROCEDURE**

11. The authority citation for Part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 441, 552, 553, 556(c), 559, 561-569, 571-596; 5 U.S.C. 571-584; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. 305, 40103-40104, 40304, 40306, 40501-40503, 40701-40706, 41101-41109, 41301-41309, 44101-44106; E.O. 11222 of May 8, 1965, 30 FR 6469, 3 CFR 1964-1965 Comp. P. 306; 21 U.S.C. 853a.

12. Amend § 502.604 by revising paragraph (b) and (g) to read as follows:

### **§ 502.604 Compromise of penalties: Relation to assessment proceedings.**

\* \* \* \* \*

(b) *Notice.* When the Commission considers it appropriate to afford an opportunity for the compromise of a civil penalty, it will, except when otherwise authorized by the Commission, or where circumstances render it unnecessary, send a Notice and Demand Letter (“NDL”) to the respondent, by registered or certified mail, or by other means reasonably calculated to give notice. The NDL will describe specific violation(s) on which the claim is based, including the particular facts, dates and other elements necessary for the respondent to identify the specific conduct constituting the alleged violation; the amount of the penalty demanded; the availability of alternative dispute resolution, including mediation, through the Commission’s Office of Consumer Affairs and Dispute Resolution Services; and the names of Commission personnel with whom the demand may be discussed, if the person desires to compromise the penalty. The NDL also will state the deadlines for the institution and completion of compromise negotiations and the consequences of failure to compromise.

\* \* \* \* \*

(g) *Delegation of compromise authority.* The Director, Bureau of Enforcement, is delegated authority to issue NDLs and compromise civil penalties as set forth in this subpart, provided, however, that approval of the Managing Director is obtained prior to issuance of each NDL and provided further that compromise agreements shall not be effective unless approved by the Managing Director, whose signature evidencing approval shall appear on compromise agreements, in addition to that of the Director of the Bureau of Enforcement. The Director, Bureau of Enforcement, has the authority to negotiate the terms of compromise agreements.

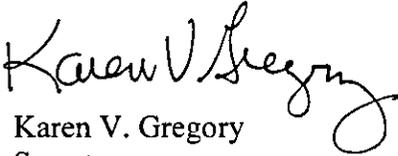
## **PART 535—OCEAN COMMON CARRIER AND MARINE TERMINAL OPERATOR AGREEMENTS SUBJECT TO THE SHIPPING ACT OF 1984.**

13. The authority citation for Part 535 continues to read as follows:

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. 305, 40101-40104, 40301-40307, 40501-40503, 40901-40904, 41101-41109, 41301-41302, and 41305-41307.

14. In § 535.401, amend paragraph (g) by removing the reference “§ 501.26(e)” and adding the reference “§ 501.27(e)” in its place.

By the Commission.

  
Karen V. Gregory  
Secretary