

Federal Register the time and place of any public meetings. Oral statements will be scheduled on a first come first serve basis by calling the telephone number listed in the **Federal Register** notice that announces these meetings. All statements will be made part of the public record and will be considered in the development of the final rule.

FOR FURTHER INFORMATION CONTACT: For general information contact: National Lead Information Center's Clearinghouse, 1-800-424-LEAD(5323). For technical and policy questions contact: Jonathan Jacobson, (202) 260-3779;

jacobson.jonathan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 3, 1998 (63 FR 30302)(FRL-5791-9), EPA issued a proposed rule under Title IV of the Toxic Substances Control Act (TSCA)(15 U.S.C. 2683, 2682, and 2684). Section 403 of TSCA directs EPA to promulgate regulations identifying lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil. Section 402 of TSCA directs EPA to promulgate regulations governing lead-based paint activities. Section 404 of TSCA requires that any State that seeks to administer and enforce the requirements established by the Agency under section 402 of TSCA must submit to the Administrator a request for authorization of such a program. The proposed rule provided for a 90-day public comment period. In response to requests by interested parties, EPA is extending the comment period on its proposed rule by 30 days. Comments must now be received by October 1, 1998.

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead-based paint, Lead poisoning, Reporting and recordkeeping requirements.

Dated: July 15, 1998.

William H. Sanders,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 98-19521 Filed 7-21-98; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

46 CFR Part 503

[Docket No. 98-11]

Availability of Records to the Public— Electronic Freedom of Information Act

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission proposes to revise its regulations on public access to Commission records, materials, and information in order to clarify existing rules, provide information concerning the electronic availability of information and records, and to incorporate the requirements of the Electronic Freedom of Information Act Amendments of 1996.

DATES: Submit comments on or before August 21, 1998.

ADDRESSES: Address all comments concerning this proposed rule to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., NW, Room 1046, Washington, DC 20573-0001.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., NW, Room 1046, Washington, DC 20573-0001, (202) 523-5725, E-mail: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION: The Electronic Freedom of Information Act Amendments of 1996 ("EFOIA") Pub. L. 104-231, 110 Stat. 3408, provides for the availability of government records maintained in electronic form, and encourages the use of new technology to enhance public access to government information. It also provides for more time and greater flexibility in the processing of requests for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. The Commission's rules at 46 CFR 503, subparts C and D, govern the availability of Commission records and procedures for requesting information under the FOIA. The Commission now proposes to update those subparts to reflect the changes made by EFOIA. In addition, modifications are proposed to clarify and reorganize the subparts.

Clarification and Reorganization of Subparts C and D

The proposed rule would reorganize subparts C and D. Subpart C currently identifies records that are required by FOIA to be made available for public inspection and copying, and for which a FOIA request is not required. Subpart D also contains procedures for obtaining records without resort to a FOIA request, as well as procedures for requesting records pursuant to FOIA. Under the proposed rule subpart C would concern itself with information that is made available without requiring a FOIA request, while subpart D is confined to procedures for obtaining information through a FOIA request.

The proposed rule also changes subpart and section headings where

doing so is more descriptive. In various places throughout the text of the proposed rule, "the Secretary" is substituted for "the Commission" in order to specify which Commission official has responsibility for a function and should be contacted. Also added throughout the proposed rule are cross references to the Commission's fee provisions, to make the fees for a service easier to find.

Proposed Subpart C

Proposed subpart C would consist of four sections, each listing materials available and how they can be accessed.

Proposed section 503.21, *Mandatory public records*, consists of the current § 503.21, with some minor language changes and additions. Proposed § 503.21(a)(4), is new, and incorporates EFOIA's requirement that the Commission make available certain records which are potentially subject to subsequent requests and an index of such records. EFOIA's requirement that the extent of certain deletions be indicated on released records would be added in § 503.21(b). Proposed § 503.21(c) combines current §§ 503.22 and 503.23.

Proposed § 503.22 names those records available from the Secretary without prior request and relocates current § 503.31. The proposed rule would relocate and reorganize this section for ease of reading and to avoid duplication.

Proposed § 503.23 names those records generally available from the Secretary only upon prior written request and is substantively similar to current § 503.32, but adds a cross reference to applicable Commission rules regarding access to tariffs.

Proposed § 503.24, *Information available on the web site*, is new and contains a list of Commission materials found on the Commission's Internet home page. Addition of this section would effectuate one of the main stated purposes of EFOIA, i.e., to encourage the use of electronic telecommunications.

Proposed Subpart D

Proposed subpart D is renamed to read "Requests for records under the Freedom of Information Act." In addition to incorporating changes made by EFOIA, some paragraphs of subpart D are revised, reorganized, and renamed for clarification.

Proposed § 503.31 is substantively the same as current § 503.33 and describes generally the FOIA request process, but adds a provision that the Commission will make records available in any form

or format requested, if they are readily reproducible in that format.

Proposed § 503.32 tracks current section § 503.34 and describes the procedures to be followed in responding to FOIA requests. It contains the following additions:

1. Proposed paragraph (a)(1) extends to twenty (20) working days the time allowed to determine whether to grant a request, in conformity with EFOIA.

2. Proposed paragraph (a)(2) adds the requirement that notifications of denial of a request generally inform the requestor of the volume of records denied and identify those responsible for the denial.

3. Proposed paragraph (a)(3) clarifies existing language to simply allow a requestor ten (10) working days in which to appeal the denial of a request for records, rather than the current provision that provides for a reasonable time up to ten working days.

4. Proposed paragraph (b)(3) is a new provision that incorporates provisions in EFOIA that a requestor may be provided the opportunity to limit the scope of a request so that it can be processed faster.

5. Proposed paragraph (c) is also new and incorporates EFOIA provisions that allow the aggregation of separate requests that involve related matters.

6. Proposed new paragraphs (d) and (e) incorporate EFOIA provisions that allow the promulgation of regulations that provide for multitask processing of requests and expedited processing of requests.

Proposed § 503.33, *Exceptions to the availability of records*, is current § 503.35, as modified to reflect current statutory requirements, including the addition of new paragraph (c) which is added to incorporate EFOIA's requirements that partial deletions of exempted records generally indicate the amount of information deleted on the released portion of the record.

Proposed § 503.34 sets forth new provisions governing the Commission's annual report, as required by EFOIA.

This rule is not a significant regulatory action as defined by Executive Order 12886, Regulatory Planning and Review, and therefore, is not subject to review by the Office of Information and Regulatory Affairs, in the Office of Management and Budget.

This rule concerns internal administrative procedures for making information available to the public, and, accordingly, the Chairman certifies that this rule will not have a significant economic impact on a substantial number of small entities.

The proposed rule contains no additional information collection or

record keeping requirement. Therefore, the requirements of the Paperwork Reduction Act, 44 U.S.C. 1305 *et seq.* do not apply.

List of Subjects in 46 CFR Part 503

Classified information, Freedom of information, Privacy, Sunshine Act. For the reasons set out in the preamble, the Commission proposes to amend 46 CFR 503 as follows:

PART 503—PUBLIC INFORMATION

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

Authority: 5 U.S.C. 552, 552a, 552b, 553; 31 U.S.C. 9701; E.O. 12958 of April 20, 1995 (60 FR 19825), sections 5.2 (a) and (b).

2. Revise subparts C and D of Part 503 to read as follows:

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

Sec.

503.21 Mandatory public records.

503.22 Records available at the Office of the Secretary.

503.23 Records available upon written request.

503.24 Information available via the internet.

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

§ 503.21 Mandatory public records.

(a) The Commission, as required by the Freedom of Information Act, 5 U.S.C. 552, shall make the following materials available for public inspection and copying:

(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 and copying a current 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) The index shall be available at the Office of the Secretary, Federal Maritime Commission, Washington, DC 20573. Publication of such indices has been determined by the Commission to be unnecessary and impracticable. The indices shall, nonetheless, be provided to any member of the public at a cost not in excess of the direct cost of duplication of any such index upon request therefor.

(2) 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 indexed and either made available or published as provided by this subpart; or

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

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

§ 503.22 Records available at the Office of the Secretary.

(a) The following records will be made available for inspection and copying at the Office of the Secretary, Federal Maritime Commission, 800 North Capitol St., NW, Washington, DC 20573, without the requirement of a written request. Access to requested records may be delayed if they have been sent to archives.

(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) Reports of decisions (including concurring and dissenting opinions),

orders and notices in all formal proceedings.

(3) Official docket files in all formal proceedings including, but not limited to, orders, notices, pertinent correspondence, transcripts, exhibits, and briefs, except for materials which are the subject of a protective order. Copies of transcripts may only be available from the reporting company contracted by the Commission. Contact the Office of the Secretary for the name and address of this company.

(4) News releases.

(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.

(b) Certain fees may be assessed for duplication of records made available by this section as prescribed in subpart E of this part and in part 514 of this chapter.

§ 503.23 Records available upon written request.

(a) The following Commission records are generally available for inspection and copying, without resort to Freedom of Information Act procedures, upon request in writing addressed to the Office of the Secretary, Federal Maritime Commission, Washington, D.C. 20573:

(1) Agreements filed and in effect pursuant to sections 5 and 6 of the Shipping Act of 1984.

(2) Agreements filed under section 5 of the Shipping Act of 1984 which have been noticed in the **Federal Register**.

(3) Tariffs filed under the provisions of the Shipping Act of 1984, and terminal tariffs filed pursuant to part 514 of this chapter, under the procedures set forth in § 514.20(c) or § 514.8(k).

(4) List of certifications of financial responsibility pertaining to Pub. L. 89-777.

(5) List of licensed ocean freight forwarders.

(b) Certain fees may be assessed for duplication of records made available by this section as prescribed in subpart E of this part and in part 514 of this chapter.

§ 503.24 Information available via the internet.

(a) The Commission maintains an internet web site. The Commission home page may be found at <http://www.fmc.gov>.

(b) The following general information, records, and resources are accessible through the home page:

(1) General descriptions of the functions, bureaus, and offices of the Commission, phone numbers and e-mail addresses for Commission officials, as well as locations of Area Representatives;

(2) Information about filing complaints;

(3) Commonly used forms;

(4) A public information handbook describing the types of information available from the Commission and how to access such information;

(5) A Freedom of Information Act Electronic Reading Room which contains:

(i) Copies of final decisions in adjudicatory proceedings issued since November 1, 1996;

(ii) Recently issued final rules and pending proposed rules;

(iii) Access to statements of policy and interpretations as published in 46 CFR 571; and

(iv) Records created by the Commission since November 1, 1996, and made available under § 503.21, paragraph (a)(4).

(6) Commission regulations as codified in Title 46 of the Code of Federal Regulations;

(7) News releases issued by the Commission;

(8) Statements and remarks from the Chairman and Commissioners;

(9) A connection to the Government Information Locator Service maintained by the Government Printing Office, which identifies Commission databases; and

(10) Privacy Act information.

(c) Comments or questions regarding the home page should be addressed via e-mail to webmaster@fmc.gov.

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

Sec.

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

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

503.33 Exceptions to availability of records.

503.34 Annual report of public information request activity.

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

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

(a) A member of the public may request permission to inspect, copy or be provided with any Commission records not described in subpart C. Such a request must:

(1) Reasonably describe the record or records sought;

(2) Be submitted in writing to the Secretary, Federal Maritime Commission, Washington, D.C. 20573; and

(3) Be clearly marked on the exterior with the letters "FOIA".

(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 of requests under this subpart as prescribed in subpart E of this part.

§ 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) days (excluding Saturdays, Sundays and legal public holidays) after receipt of such request, except as provided in paragraph (c) of this section.

(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, set forth the names and titles or positions of each person responsible for the denial of the request, and notify the party of its right to appeal that determination to the Chairman.

(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 ten (10) working days following receipt of notification of denial or receipt of a part of the 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) days (excepting Saturdays, Sundays and legal public holidays) 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.

(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 may provide for multitrack processing of requests based on the amount of time or work involved in processing requests.

(e) *Expedited processing of requests.*

(1) The Secretary will provide for expedited processing of requests for records when:

(i) The person requesting the records can demonstrate a compelling need; or

(ii) In other cases, in the Secretary's discretion.

(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) working days after the 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.

§ 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 which would not be available by law to a party other than an agency in litigation with the Commission.

(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.

(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.

§ 503.34 Annual report of public information request activity.

(a) On or before February 1 of each year, the Commission shall submit to the Attorney General of the United States, as required by the Attorney General, a report which shall cover the preceeding fiscal year and which shall include:

(1) The number of determinations made not to comply with requests for records made to the Commission under this subpart and the reasons for each such determination;

(2)(i) The number of appeals made by persons under § 503.32, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

(ii) A complete list of all statutes relied upon to authorize withholding of information under § 503.33(a)(3), a description of whether a court has upheld the Commission's decision to withhold information under each such

statute, and a concise description of the scope of any information withheld;

(3) The number of requests for records pending before the Commission as of September 30 of the preceding year, and the median number of days that such requests had been pending as of that date;

(4) The number of requests for records received by the Commission and the number of requests which the Commission processed;

(5) The median number of days taken to process different types of requests;

(6) The total amount of fees collected for processing requests; and

(7) The number of full-time staff devoted to processing requests for records under this section, and total amount expended for processing such requests.

(b) Each such report shall be made available to the public at the Office of the Secretary, Federal Maritime Commission, Washington, DC 20573 and on the Commission's web site.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98-19432 Filed 7-21-98; 8:45 am]

BILLING CODE 6730-01-P