

provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary standards.

List of Subjects in 40 CFR Part 27

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. sections 6912(a), 6926, 6974(b).

Dated: September 10, 1998.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 98-25321 Filed 9-21-98; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 503, 510, 514, 540, 572, 585, 587 and 588

[Docket No. 98-09]

Update of Existing and Addition of New Filing and Service Fees

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission ("Commission") is revising its existing fees for filing petitions and complaints; various public information services, such as record searches, document copying, and admissions to practice; filing freight forwarder applications; various ATFI-related services; passenger vessel performance and casualty certificate applications; and agreements. These revised fees reflect current costs to the Commission. In addition, the Commission adds three new fees for the publication of the Regulated Persons Index ("RPI") on diskette; the application to amend a passenger vessel operator's Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation and Certification of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages ("Certificates") for the addition or substitution of a vessel to the

applicant's fleet; and the agency's review of corrections of clerical errors in service contracts, as requested by parties to a service contract.

EFFECTIVE DATE: November 2, 1998

FOR FURTHER INFORMATION CONTACT:

Sandra L. Kusumoto, Director, Bureau of Administration, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, D.C. 20573-0001, (202) 523-5866, E-mail: sandrak@fmc.gov.

SUPPLEMENTARY INFORMATION: On July 1, 1998, the Commission published in the **Federal Register** a Notice of Proposed Rulemaking ("NPR" or "Proposed Rule") in Docket No. 98-09, *Update of Existing and Addition of New Filing and Services Fees*, 63 FR 35896. No comments were received.

This rule updates the Commission's current filing and service fees which have been in effect since 1995, and are no longer representative of the Commission's actual costs for providing such services. Fee increases primarily reflect increases in salary and indirect (overhead) costs. For some services, the increase in processing or review time accounts for the increase in the level of proposed fees.

The Commission is eliminating several fees. Fees associated with the provision of subscription services will be discontinued because of diminished public demand for them and because most of the information can be found on the Internet, the Commission's website, or requested from the Office of the Secretary on an *ad hoc* basis. Some fees associated with ATFI Subscriber Tapes have been eliminated in accordance with Docket No. 95-13, *Automated Tariff Filing and Information System* (60 FR 56122, November 7, 1995).

The Commission is instituting three new user fees for: The provision of the RPI on diskette, the issuance of Pub. L. 89-777 Certificates to add or substitute a vessel to the applicant's fleet, and the agency's review of corrections of clerical errors in service contracts, as requested by parties to a service contract under 46 CFR 514.7(k)(2). Provisions of parts 585, 587, and 588 are amended to clarify that fees governing the filing of petitions are applicable.

The Commission intends to update its fees biennially in keeping with OMB guidance. In updating its fees, the Commission will incorporate changes in the salaries of its employees into direct labor costs associated with its services, and recalculate its indirect costs (overhead) based on current level of costs.

This regulatory action was not subject to OMB review under Executive Order

12866, dated September 30, 1993. It is not a major rule under 5 U.S.C. 804(2). In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chairman of the Federal Maritime Commission has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant economic impact on a substantial number of small entities. In the NPR, the Commission stated its intention to certify this rulemaking because it is required to collect fees from the general public to recover the cost of providing certain, specific services; the proposed increases are generally *de minimis*; and in addition, its regulations provide for waiver of fees for those entities that can make the required showing of undue hardship (46 CFR 503.41). No comments were received in this proceeding. Therefore, based on the lack of comments, the *de minimis* nature of the increase, and the statutory requirement that the fees be collected, the certification is continued. This Rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Therefore, OMB review is not required.

List of Subjects

46 CFR Part 502

Administrative practice and procedure, Claims, Equal Access to Justice, Investigations, Lawyers, and Reporting and record keeping requirements.

46 CFR Part 503

Classified information, Freedom of Information, Privacy, and Sunshine Act.

46 CFR Part 510

Freight forwarders, Maritime carriers, Reporting and record keeping requirements, and Surety bonds.

46 CFR Part 514

Freight, Harbors, Maritime carriers, and Reporting and record keeping requirements.

46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and record keeping requirements, and Surety bonds.

46 CFR Part 572

Administrative practice and procedure, Freight, Maritime carriers, and Reporting and record keeping requirements.

46 CFR Part 585

Administrative practice and procedure, Maritime carriers.

46 CFR Part 587

Administrative practice and procedure, Maritime carriers.

46 CFR Part 588

Administrative practice and procedure, Investigations, Maritime carriers.

Pursuant to 5 U.S.C. 553, the Independent Offices Appropriations Act, 31 U.S.C. 9701, and section 17 of the Shipping Act of 1984, 46 U.S.C. app. § 1716, the Commission is amending title 46 of the Code of Federal Regulations as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 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. app. 817, 820, 826, 841a, 1114(b), 1705, 1707–1711, 1713–1716; E.O. 11222 of May 8, 1965 (30 FR 6469); 21 U.S.C. 853a; and Pub. L. 88–777 (46 U.S.C. app. 817d, 817e).

Subpart D—Rulemaking

2. The fourth sentence of § 502.51 is revised to read as follows:

§ 502.51 Petition for issuance, amendment, or repeal of rule.

* * * Petitions shall be accompanied by remittance of a \$177 filing fee.

* * * * *

Subpart E—Proceedings; Pleadings; Motions; Replies

3. Section 502.62(f) is revised to read as follows:

§ 502.62 Complaints and fee.

* * * * *

(f) The complaint shall be accompanied by remittance of a \$184 filing fee.

* * * * *

4. Section 502.68(a)(3) is revised to read as follows:

§ 502.68 Declaratory orders and fee.

(a) * * *

(3) Petitions shall be accompanied by remittance of a \$177 filing fee.

* * * * *

5. Section 502.69(b) is revised to read as follows:

§ 502.69 Petitions—general and fee.

* * * * *

(b) Petitions shall be accompanied by remittance of a \$177 filing fee. [Rule 69.]

Subpart K—Shortened Procedure

6. The last sentence of § 502.182 is revised to read as follows:

§ 502.182 Complaint and memorandum of facts and arguments and filing fee.

* * * The complaint shall be accompanied by remittance of a \$184 filing fee. [Rule 182.]

Subpart U—Conciliation Service

7. The last sentence of § 502.404(a) is revised to read as follows:

§ 502.404 Procedure and fee.

(a) * * * The request shall be accompanied by remittance of a \$69 service fee.

* * * * *

PART 503—PUBLIC INFORMATION:

8. 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).

§ 503.41 [Amended]

9. In § 503.41, Policy and services available, paragraph (b)(1) is removed, and paragraphs (b)(2) and (b)(3) are redesignated as (b)(1) and (b)(2).

10. In § 503.43, the first two sentences of paragraph (a)(8), paragraphs (c)(1) (i) and (ii), the first sentence of paragraph (c)(2), paragraph (c)(3)(ii) and (iii), paragraph (c)(4), paragraph (e) and paragraph (g) are revised; paragraphs (d), (f) and (h) are removed; revised paragraphs (e) and (g) are redesignated paragraphs (d) and (e); and paragraph (c)(3)(iv) is added to read as follows:

§ 503.43 Fees for services.

(a) * * *

(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. * * *

* * * * *

(c) * * *

(1) * * *

(i) Search will be performed by clerical/administrative personnel at a rate of \$18.00 per hour and by professional/executive personnel at a rate of \$35.00 per hour.

(ii) Minimum charge for record search is \$18.00.

(2) Charges for review of records to determine whether they are exempt from disclosure under § 503.35 shall be assessed to recover full costs at the rate of \$70.00 per hour. * * *

(3) * * *

(ii) By Commission personnel, at the rate of five cents per page (one side) plus \$18.00 per hour.

(iii) Minimum charge for copying is \$4.50.

(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 \$55.00 for each certification.

(d) To have one's name and address placed on the mailing list of a specific docket as an interested party to receive all issuances pertaining to that docket: \$8 per proceeding.

(e) Applications for admission to practice before the Commission for persons not attorneys at law must be accompanied by a fee of \$86 pursuant to § 502.27 of this chapter.

Subpart G—Access to Any Record of Identifiable Personal Information

11. In § 503.63, the introductory texts of paragraphs (b) and (c) are revised to read as follows:

§ 503.63 Request for information.

* * * * *

(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:

* * * * *

(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:

* * * * *

12. In § 503.65, the introductory text of paragraph (b)(1) and paragraph (b)(2) are revised to read as follows:

§ 503.65 Request for access to records.

* * * * *

(b) * * *

(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:

* * * *

(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.

* * * *

13. In § 503.67, paragraph (b)(1) is revised to read as follows:

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

* * * *

(b) * * *

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

* * * *

14. In § 503.69, paragraph (b)(2) is revised to read as follows:

§ 503.69 Fees.

* * * *

(b) * * *

(2) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at \$55 for each certification.

* * * *

PART 510—LICENSING OF OCEAN FREIGHT FORWARDERS

15. The authority citation for part 510 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718; 21 U.S.C. 862.

Subpart B—Eligibility and Procedure for Licensing; Bond Requirements

16. Section 510.12(b) is revised to read as follows:

§ 510.12 Application for license.

(a) * * *

(b) *Fee.* The application shall be accompanied by a money order, certified check or cashier's check in the amount of \$778 made payable to the Federal Maritime Commission.

* * * *

17. The penultimate sentence in § 510.14(b) is revised to read as follows:

§ 510.14 Surety bond requirements.

(a) * * *

(b) * * * The fee for such supplementary investigation shall be \$224 payable by money order, certified

check or cashier's check to the *Federal Maritime Commission*. * * *

* * * *

18. The first sentence of § 510.19(e) is revised to read as follows:

§ 510.19 Changes in organization.

* * * *

(e) *Application form and fee.*

Applications for Commission approval of status changes or for license transfers under paragraph (a) of this section shall be filed in duplicate with the Director, Bureau of Tariffs, Certification and Licensing ("BTCL"), Federal Maritime Commission, on form FMC-18 Rev., together with a processing fee of \$362, made payable by money order, certified check or cashier's check to the *Federal Maritime Commission*. * * *

* * * *

19. Section 510.26 is added to read as follows:

§ 510.26 Regulated Persons Index

The Regulated Persons Index is a database containing the names, addresses, phone/fax numbers and bonding information, where applicable, of Commission-regulated entities. The database may be purchased for \$84 by contacting BTCL, Federal Maritime Commission, Washington, DC 20573. Contact information is listed on the Commission's website at www.fmc.gov.

PART 514—TARIFFS AND SERVICE CONTRACTS

20. The authority citation for part 514 continues to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814-817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702-1712, 1714-1716, 1718, 1721 and 1722; and sec. 2(b) of Pub. L. 101-92, 103 Stat. 601.

Subpart B—Service Contracts

21. Section 514.7(k)(2) introductory text is revised to read as follows:

§ 514.7 Service contracts in foreign commerce.

* * * *

(k) * * *

(2) *Corrections.* Either party to a filed service contract may request permission to correct clerical or administrative errors in the essential terms of a filed contract. Requests shall be filed, in duplicate, with the Commission's Office of the Secretary within 45 days of the contract's filing with the Commission, accompanied by remittance of a \$233 service fee, and shall include:

* * * *

Subpart C—Form, Content, and Use of Tariff Data

22. In § 514.21, paragraphs (b)(1), (b)(2)(i) through (iv), (c), (e)(1), (f), (g), (i), (j)(1) and (k) are revised; paragraph (l) is removed; paragraph (m) is revised and redesignated paragraph (l); and new paragraph (m) is added to read as follows:

§ 514.21 User charges.

* * * *

(b) *User manual* (of ATFI "Guides"—§ 514.8(b)).

(1) *In diskette form:* \$39 for diskette(s) containing all user guides in WordPerfect 5.0 format.

(2) * * *

(i) *Package A:* Fundamentals Guide and System Handbook (125 pages) are made available jointly and are a prerequisite for use of either of the packages in paragraphs (b)(2)(ii) or (b)(2)(iii) of this section: \$49.00.

(ii) *Package B:* Tariff Retrieval Guide: \$49.00.

(iii) *Package C:* Tariff Filing Guide: \$59.00.

(iv) *Package D:* All Guides listed in paragraphs (b)(2)(i) through (b)(2)(iii) of this section: \$99.00.

* * * *

(c) *Registration for user (filer and/or retriever ID and password* (see exhibit 1 to this part and §§ 514.4(d), 514.8(f) and 514.20)): \$174 for initial registration for firm and one individual; \$148 for additions and changes.

* * * *

(e) *Certification of batch filing capability (by appointment through the Office of Information Resources Management)* (§ 514.8(1)).

(1) *User charge:* \$496 per certification submission (covers all types of tariffs for which the applicant desires to be certified as well as recertification required by substantial changes to the ATFI system).

* * * *

(f) *Application for special permission* (§ 514.18): \$179.

(g) *Remote electronic retrieval* (§ 514.20(c)(3)). The fee for remote electronic access to ATFI electronic data is 33 cents for each minute of remote computer access directly to the ATFI database by any individual.

(h) * * *

(i) *Tariff filing fee.* The fee for tariff filing shall be 20 cents per filing object; the fee for filing service contract essential terms shall be \$1.63 per filing set.

(j) *Daily Subscriber Data* (§ 514.20(d)).

(1) Persons requesting download of daily updates must pay 33 cents per minute as provided by § 514.21(g).

(2) * * *

(k) *Miscellaneous tapes.* The fee for tape data, other than the ATFI database described in paragraph (j) of this section, shall be \$46 for the initial tape plus \$25 for each additional tape required.

(l) *Access to ATFI data.* Official ATFI tariff data may be directly accessed by computer by:

(1) *Retrievers.* Any person may, with a proper retrieval USERID and password, enter the official ATFI database to obtain computer access of tariff matter, as provided in this part, but may download ATFI data only through the "Print Screen" function, which prints one screen at a time on paper. The user fee for this computer access is 33 cents a minute, for which the user will be billed at the end of each month.

(2) *Filers.* Any person with a proper filer USERID and password may enter the official ATFI database to obtain computer access of tariff matter as provided in this part, but may download ATFI data only through the "Print Screen" function, which prints one screen at a time on paper, and the filer ATFI-mail-file-transfer function, which prints the contents of the filer's ATFI mail on paper.

(m) *Regulated Persons Index.* The Regulated Persons Index is a database containing the names, addresses, phone/fax numbers and bonding information, where applicable, of Commission-regulated entities. The database may be purchased for \$84 by contacting BTCL, Federal Maritime Commission, Washington, DC 20573. Contact information is listed on the Commission's website at www.fmc.gov.

PART 540—SECURITY FOR THE PROTECTION OF THE PUBLIC

23. The authority citation for part 540 continues to read as follows:

Authority: 5 U.S.C. 552, 553; 31 U.S.C. 9701; secs. 2 and 3, Pub. L. 89-777, 80 Stat. 1356-1358 (46 U.S.C. app. 817e, 817d); sec. 43 of the Shipping Act, 1916 (46 U.S.C. app. 841a); sec. 17 of the Shipping Act of 1984 (46 U.S.C. 1716).

Subpart A—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

24. The last sentence in § 540.4(a) and the last sentence in § 540.4(b) are revised, and another sentence added to § 540.4(b) to read as follows:

§ 540.4 Procedure for establishing financial responsibility.

(a) * * *

Copies of Form FMC-131 may be obtained from the Secretary, Federal Maritime Commission, Washington, DC 20573.

(b) * * * An application for a Certificate (Performance), excluding an application for the addition or substitution of a vessel to the applicant's fleet, shall be accompanied by a filing fee remittance of \$2,152. An application for a Certificate (Performance) for the addition or substitution of a vessel to the applicant's fleet shall be accompanied by a filing fee remittance of \$1,076.

* * * * *

Subpart B—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages

25. The last sentence in § 540.23(a) and the last sentence in § 540.23(b) are revised, and another sentence added to § 540.23(b) to read as follows:

§ 540.23 Procedure for establishing financial responsibility.

(a) * * * Copies of Form FMC-131 may be obtained from the Secretary, Federal Maritime Commission, Washington, DC 20573.

(b) * * * An application for a Certificate (Casualty), excluding an application for the addition or substitution of a vessel to the applicant's fleet, shall be accompanied by a filing fee remittance of \$938. An application for a Certificate (Casualty) for the addition or substitution of a vessel to the applicant's fleet shall be accompanied by a filing fee remittance of \$469.

* * * * *

PART 572—AGREEMENTS BY OCEAN COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT OF 1984

26. The authority citation for part 572 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1701-1707, 1709-1710, 1712 and 1714-1717.

Subpart D—Filing of Agreements

27. Section 572.401(f) is revised to read as follows:

§ 572.401 General requirements.

* * * * *

(f) Agreement filings for Commission action requiring an Information Form and review by the Commission shall be accompanied by remittance of a \$1,666 filing fee; agreement filings for Commission action not requiring an Information Form, but requiring review by the Commission, shall be accompanied by remittance of a \$841 filing fee; agreement filings reviewed under delegated authority shall be accompanied by remittance of a \$391 filing fee; and agreement filings for terminal and carrier exempt agreements shall be accompanied by remittance of a \$131 filing fee.

PART 585—REGULATIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES

28. The authority citation for part 585 continues to read as follows:

Authority: 5 U.S.C. 553; sec. 19(1)(b), (5), (6), (7), (8), (9), (10), (11) and (12) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), (5), (6), (7), (8), (9), (10), (11) and (12); Reorganization Plan No. 7 of 1961, 75 Stat 840; and sec. 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a.

Subpart C—Conditions Unfavorable to Shipping

29. Section 585.402 is revised to read as follows:

§ 585.402 Filing of Petitions.

All requests for relief from conditions unfavorable to shipping in the foreign trade shall be by written petition. An original and fifteen copies of a petition for relief under the provisions of this part shall be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition shall be accompanied by remittance of a \$177 filing fee.

PART 587—ACTIONS TO ADDRESS CONDITIONS UNDULY IMPAIRING ACCESS OF U.S.-FLAG VESSELS TO OCEAN TRADE BETWEEN FOREIGN PORTS

30. The authority citation for part 587 continues to read as follows:

Authority: 5 U.S.C. 553; secs. 13(b)(5), 15 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(5), 1714 and 1716; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a).

31. Section 587.3(a)(2) is revised to read as follows:

§ 587.3 Petitions for relief.

(a) * * *

(2) An original and fifteen copies of such a petition including any supporting documents shall be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition shall be accompanied by remittance of a \$177 filing fee.

* * * * *

PART 588—ACTIONS TO ADDRESS ADVERSE CONDITIONS AFFECTING U.S.-FLAG CARRIERS THAT DO NOT EXIST FOR FOREIGN CARRIERS IN THE UNITED STATES

32. The authority citation for Part 588 continues to read as follows:

Authority: 5 U.S.C. 553; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a).

33. Section 588.4(a) is revised to read as follows:

§ 588.4 Petitions.

(a) A petition for investigation to determine the existence of adverse conditions as described in § 588.3 may be submitted by any person, including any common carrier, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States. Petitions for relief under this part shall be in writing, and filed in the form of an original and fifteen copies with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition shall be accompanied by remittance of a \$177 filing fee.

* * * * *

By the Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 98-25219 Filed 9-21-98; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket 97-99; FCC 98-155]

Relocation of the Digital Electronic Message Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: With this Memorandum Opinion and Order, the Commission denies Petitions for reconsideration of the Commission's order relocating the Digital Electronic Message Service (DEMS) from the 18 GHz band to the 24 GHz band. In its decision, the

Commission rejects petitioners arguments that the Commission improperly applied the military and good cause exemptions from notice and comment rulemaking, failed to address the validity of the under DEMS licenses, failed to specify sufficient reason to increase the amount of spectrum allocated for DEMS in the 24 GHz band and failed to consider the potential use of the 24 GHz band for feeder links in conjunction with the Broadcast Satellite Service. The Commission also amends Footnote US341 of the U.S. Table of Allocations to reflect the current status of relevant radionavigation facilities. **EFFECTIVE DATE:** November 23, 1998.

FOR FURTHER INFORMATION CONTACT: James Taylor (202) 418-2113 of the International Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* in ET Docket No. 97-99; FCC 98-155, adopted July 9, 1998 and released July 17, 1998. The complete text of this *Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036, telephone: 202-857-3800, facsimile: 202-857-3805.

Summary of Memorandum Opinion and Order

1. This *Memorandum Opinion and Order* denies petitions for reconsideration of the Commission's *Order*, FCC 97-95, 12 FCC Rcd. 4990 (1997), modifying Commission rules without public notice and comment and relocating the Digital Electronic Message Service (DEMS), a terrestrial point-to-multipoint microwave service, from the 18.82-18.92 GHz and 19.16-19.26 GHz bands (18 GHz band) to the 24 GHz band (Relocation Order).

2. In January and March 1997, the National Telecommunications and Information Agency (NTIA), acting on behalf of the Department of Defense, requested that the Commission protect military satellite communications systems operating in the 18 GHz band in the Washington, D.C. and Denver, CO areas from interference. NTIA stated that DEMS licensees could cause interference to the Government systems and that the relocation was essential to fulfill requirements for Government military systems to perform satisfactorily. To facilitate a solution to the interference problem, NTIA made 400 Megahertz of replacement spectrum

available at the 24.25-24.45 GHz and 25.05-25.25 GHz bands, and suggested that the Commission expeditiously relocate DEMS without notice and comment based upon the military and good cause exemptions to the Administrative Procedure Act.

3. Petitioners argue that the Commission improperly applied the military and good cause exemptions from notice and comment rulemaking, failed to address the validity of the underlying DEMS licenses, failed to specify sufficient reason to increase the amount of spectrum allocated for DEMS in the 24 GHz band and failed to consider the potential use of the 24 GHz band for feeder links in conjunction with the Broadcast Satellite Service.

4. The Commission found that the decision to move all of DEMS from the 18 GHz to the 24 GHz band nationwide was within the scope of the military exemption to the notice and comment requirement because NTIA, on the behalf of DOD, specifically requested that the Commission protect government systems and relocate DEMS without notice and comment. The Commission found that the exemption encompasses relocation actions outside of Washington D.C. and Denver, CO, and that addressing the interference problems in those two areas alone would preclude DEMS in those areas because it is unlikely that 24 GHz equipment could be manufactured at economic prices solely for the Washington, D.C. and Denver, CO markets. Additionally, the Commission found that the good cause exemption to the APA's notice and comment requirements provides an independent source for the Commission's actions in the 18 GHz Relocation Order and that the Relocation Order includes a sufficient statement of "good cause."

5. WebCel asserts the Commission failed to address issues raised in Teledesic's withdrawn pleading, initially filed in September, 1996 but withdrawn in March 1997, concerning the status of DEMS licenses now relocated to 24 GHz pursuant to the Relocation Order. The Wireless Telecommunications Bureau, Enforcement Division, investigated the validity of the DEMS licenses issued to DSC and MSI and found no violations of DEMS construction and operating requirements.

6. When the Commission relocated DEMS from the 18 GHz band to the 24 GHz band, it allocated on a per channel basis four times the amount of spectrum at 24 GHz as was allocated at 18 GHz. Petitioners challenged this determination, arguing that the Commission's assumptions regarding