

FEDERAL MARITIME COMMISSION

46 CFR Part 501

[Docket No. 21-07]

RIN 3027-AC88

Internal Commission Organization and Delegations of Authority

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (Commission) amends its rules governing the Commission's organization and the delegation and redelegation of authorities. These regulatory changes also reflect the implementation of the Commission's Agency Reform and Long-Term Workforce Plan.

DATES: This final rule is effective **September 10, 2021**.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. FINAL RULE

Part 501 describes the basic statutory requirements of the Commission, the internal structure of the Commission, the functions of the Commission's organizational component offices, and outlines the delegation of the Commission's duties and authorities to these offices. The final rule reflects changes made as part of the Commission's Agency Reform and Long-Term Workforce Plan, developed under the guidance of Office of Management and Budget Memorandum 17-22, *Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce*,¹ as well as subsequent organizational changes. The Commission

¹ <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-22.pdf>.

is amending its rules at 46 CFR part 501 to reflect the realignment of various offices and the elimination of certain positions, clarify the authority of office heads to delegate duties in their absence, and eliminate or modify certain out-of-date provisions.

In addition to making necessary updates to part 501, the final rule streamlines the information provided in part 501, removing certain information that the Commission will instead publish on its website or that is currently provided in other parts of the *Code of Federal Regulations*. The chart below describes the existing sections in part 501 and the nature of the changes made in the final rule.

Section	Summary of Existing Section	Changes made in this Final Rule
501.1	Purpose of part 501.	Retain in part 501 and revise to reflect the changes below.
501.2	Lists the Commission’s statutory functions and describes the terms, appointment, and regulations that apply to the Commissioners.	Retain in part 501 and update.
501.3	Discusses outline of the FMC’s organizational components and references the organizational chart in appendix A.	Retain in part 501 and revise to include brief description of each organizational component and reference the FMC website.
501.4	Provides the lines of responsibility and the offices/components that report to the Chairman, the Commission, and the Office of the Managing Director.	Remove from part 501 and provide this information via the organizational chart on the Commission website.
501.5	Provides detailed descriptions of the functions of each organizational component and includes cross references to part 501, subpart C (delegations of authority).	Remove from part 501 and streamline the descriptions of the functions of the organizational components in §501.3.
501.11	Description of the official seal.	Remove from part 501 and publish on the Commission’s website.
501.21	Identifies the authority upon which the FMC may delegate its authority within the FMC. Provides general delegations of authority and rules relating to such delegations.	Retain in part 501 and update.
501.23-.27	Contains specific delegations of authority to the General Counsel, the Secretary, Managing Director, Director of the Bureau of Certification and Licensing, and the Director of the Bureau of Trade Analysis.	Retain delegations in part 501 and revise.

501.41	Provides procedures related to how the public may secure and request information.	Remove from part 501 because part 503 provides information on how to file an information request.
Appendix A	Organizational Chart.	Remove from part 501 and continue to publish on the Commission's website.

Because the changes made in this proceeding reflect changes made to the internal procedure and organization of the Commission, and are routine and administrative, this rule is published as final. *See* 5 U.S.C. 553(b)(A) (excluding rules of agency organization, procedure, and practice from the notice and comment requirements of the Administrative Procedure Act).

II. RULEMAKING ANALYSES AND NOTICES

Congressional Review Act

The final rule is not a “rule” as defined by the Congressional Review Act (CRA), codified at 5 U.S.C. 801 *et seq.*, and is not subject to the provisions of the CRA. The CRA adopts the Administrative Procedure Act’s definition of a “rule” in 5 U.S.C. 551, subject to certain exclusions. *See* 5 U.S.C. 804(3). In particular, the CRA does not apply to rules relating to agency management and personnel and rules of agency organization, procedure, and practice that do not substantially affect the rights or obligations of non-agency parties. *Id.* This final rule relates to agency management and personnel as well as agency organization, procedures, and practices. Specifically, the final rule reflects changes to the internal management structure of the Commission, the elimination and addition of certain positions, and updates to out-of-date provisions regarding the Commission’s internal organization. Neither the regulated community nor the public are substantially affected by these internal organizational changes. Therefore, the final rule is not a “rule” under the CRA and is not subject to the CRA’s requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency promulgates a final rule after being required to publish a notice of proposed rulemaking under the Administrative Procedure Act (APA) (5 U.S.C. 553), the agency must

prepare and make available for public comment a final regulatory flexibility analysis (FRFA) describing the impact of the rule on small entities. 5 U.S.C. 604. An agency is not required to publish a FRFA, however, for the following types of rules, which are excluded from the APA's notice-and-comment requirement: interpretive rules; general statements of policy; rules of agency organization, procedure, or practice; and rules for which the agency for good cause finds that notice and comment is impracticable, unnecessary, or contrary to public interest. *See* 5 U.S.C. 553(b). As explained above, this final rule is a rule of agency organization, procedure, or practice. Therefore, the APA does not require publication of a notice of proposed rulemaking in this instance, and the Commission is not required to prepare a FRFA.

National Environmental Policy Act

The Commission's regulations categorically exclude certain rulemakings from any requirement to prepare an environmental assessment or an environmental impact statement because they do not increase or decrease air, water, or noise pollution or the use of fossil fuels, recyclables, or energy. 46 CFR 504.4. This final rule makes changes to the Commission's internal organization and management structure, and thus falls within the categorical exclusion for matters related to Commission personnel. *See* 46 CFR 504.4(a)(28). Therefore, no environmental assessment or environmental impact statement is required.

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 collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11. This final rule does not contain any collections of information, as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

Effective Date

The Administrative Procedure Act generally requires that a rule may not go into effect earlier than 30 days after publication in the Federal Register, unless an agency finds good cause for prescribing an earlier effective date. *See* 5 U.S.C. 553(c)(3). As described above, the final rule reflects internal organizational changes that have already been made as part of the of the Commission’s Agency Reform and Long-Term Workforce Plan, and these changes do not materially affect regulated entities or the public. Accordingly, a delayed effective date is unnecessary, and the Commission finds that good cause exists for this rule to go into effect immediately upon publication in the Federal Register.

Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards in E.O. 12988 titled, “Civil Justice Reform,” to minimize litigation, eliminate ambiguity, and reduce burden. Section 3(b) of E.O. 12988 requires agencies to make every reasonable effort to ensure that each new regulation: (1) clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

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 of this document to find this action in the Unified Agenda, available at <http://www.reginfo.gov/public/do/eAgendaMain>.

List of Subjects in 46 CFR Part 501

Authority delegations, Commission organization and functions.

For the reasons stated in the preamble, the Commission revises 46 CFR part 501 to read as follows:

PART 501 - THE FEDERAL MARITIME COMMISSION - GENERAL

Subpart A -- Organization and Functions

Sec.

501.1 Purpose.

501.2 General.

501.3 The Commission's organizational components and their functions.

Subpart B -- Delegation and Redelelegation of Authorities

501.11 Delegation of authorities.

501.12 Delegation to the General Counsel.

501.13 Delegation to the Secretary.

501.14 Delegation to and redelegation by the Managing Director.

501.15 Delegation to the Chief Financial Officer.

501.16 Delegation to and redelegation by the Director, Bureau of Certification and Licensing.

501.17 Delegation to and redelegation by the Director, Bureau of Trade Analysis.

Authority: 5 U.S.C. 551-557, 571-584, 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. 40101-41309, 42101-42109, 44101-

44106, and 46101-46108; 5 CFR Part 2638.**Subpart A—Organization and Functions**

§ 501.1 Purpose.

This part describes the organization, functions, and the delegation of authority within, the Federal Maritime Commission (“Commission”).

§ 501.2 General.

(a) *Statutory functions.* The Commission regulates common carriers by water and other persons involved in the oceanborne foreign commerce of the United States under provisions of title 46, subtitle IV of the United States Code and other applicable statutes.

(b) *Establishment and composition of the Commission.* The Commission was established as an independent agency by Reorganization Plan No. 7 of 1961, effective August 12, 1961, and is composed of five Commissioners (“Commissioners” or “members”), appointed by the President, by and with the advice and consent of the Senate. Not more than three Commissioners may be appointed from the same political party. The President designates one of the Commissioners to serve as the Chairman of the Commission (“Chairman”).

(c) *Terms and vacancies--(1) Length of terms.* The term of each member of the Commission is five years and begins when the term of the predecessor of that member ends (i.e., on June 30 of each successive year).

(2) *Removal.* The President may remove a Commissioner for inefficiency, neglect of duty, or malfeasance in office.

(3) *Vacancies.* A vacancy in the office of any Commissioner is filled in the same manner as the original appointment. An individual appointed to fill a vacancy is appointed only for the unexpired term of the individual being succeeded.

(4) *Term limits--(i) Commissioners initially appointed and confirmed before December 18, 2014.* When a Commissioner’s term ends, the Commissioner may continue to serve until a successor is appointed and qualified.

(ii) *Commissioners initially appointed and confirmed on or after December 18, 2014. (A)* When a Commissioner’s term ends, the Commissioner may continue to serve until a successor is appointed and qualified, limited to a period not to exceed one year.

(B) No individual may serve more than two terms, except that an individual appointed to fill a vacancy may serve two terms in addition to the remainder of the term for which the predecessor of that individual was appointed.

(d) *Quorum.* A vacancy or vacancies in the Commission shall not impair the power of the Commission to execute its functions. The affirmative vote of a majority of the members of the Commission is required to dispose of any matter before the Commission. For purposes of holding a formal meeting for the transaction of the business of the Commission, the actual presence of two Commissioners shall be sufficient. Proxy votes of absent members shall be permitted.

(e) *Meetings; records; rules and regulations.* The Commission shall, through its Secretary, keep a true record of all its meetings and the yea-and-nay votes taken therein on every action and order approved or disapproved by the Commission. In addition to or in aid of its functions, the Commission adopts rules and regulations in regard to its powers, duties, and functions under the shipping statutes it administers.

§ 501.3 The Commission's organizational components and their functions.

(a) *Office of the Chairman of the Federal Maritime Commission--(1) General.* The Chairman is the chief executive and administrative officer of the Commission. In addition, the Chairman, as "head of the agency," has certain responsibilities under Federal laws and directives not specifically related to shipping.

(2) *Management and supervision.* The Chairman provides management direction to the Office of Equal Employment Opportunity, Office of the Secretary, Office of the General Counsel, Office of the Administrative Law Judges, and Office of the Managing Director. Subject to the approval of the Commission, the Chairman appoints the heads of the major organizational units, which include the Office of the Secretary, Office of the General Counsel, Office of the Administrative Law Judges, Office of the Managing Director, Bureau of Trade Analysis, Bureau

of Certification and Licensing, Bureau of Enforcement, and Office of Consumer Affairs and Dispute Resolution Services. The Chairman appoints or designates and oversees the Director, Office of Equal Employment Opportunity, who advises and assists the Chairman, the Commissioners, and other principal officers of the Commission in carrying out their responsibilities relative to Titles VI and VII of the Civil Rights Act of 1964 (as amended), other laws, Executive orders, and regulatory guidelines affecting affirmative employment and the processing of equal employment opportunity (EEO) complaints.

(b) *Commissioners*. The members of the Commission, including the Chairman, implement various shipping statutes and related directives by rendering decisions, issuing orders, and adopting and enforcing rules and regulations governing persons subject to the shipping statutes.

(1) The Office of Inspector General (OIG) reports to and is under the general supervision of the Commissioners. The OIG is an independent and objective oversight office created within the Commission that conducts audits and investigations relating to the programs and operations of the Commission and recommends policies designed to promote economy, efficiency, and effectiveness in the administration of, and to prevent and detect waste, fraud, and abuse in, such programs and operations.

(2) [Reserved]

(c) *Office of the Secretary*. The Office of the Secretary is responsible for the preparation, maintenance and disposition of the Commission's official files and records; overseeing the Commission's website; and managing the Commission's library and related services. The Office of the Secretary also administers the Commission's Freedom of Information Act, Privacy Act, and Government in the Sunshine Act responsibilities, with the Secretary serving as the Freedom of Information Act and Privacy Act Officer.

(d) *Office of the General Counsel--(1) General.* The Office of the General Counsel provides legal services to the Commission and to the Commission staff, and manages the Commission's international affairs functions.

(2) *Designated Agency Ethics Official.* The Designated Agency Ethics Official and Alternate are agency employees in the Office of the General Counsel formally designated to coordinate and manage the ethics program and serve as the Commission's designee(s) to the Office of Government Ethics on such matters.

(e) *Office of Administrative Law Judges.* The Office of Administrative Law Judges holds hearings and renders initial decisions in adjudicatory proceedings as provided in 46 U.S.C. chapters 401-413 and 441 and other applicable laws, and other matters assigned by the Commission, in accordance with the Administrative Procedure Act and the Commission's Rules of Practice and Procedure in part 502 of this chapter.

(f) *Office of the Managing Director--(1) General duties of the Managing Director--(i) Chief Operating Officer.* The Managing Director is responsible to the Chairman for the management and coordination of Commission programs managed by the Director of Enterprise Services; Office of Budget and Finance; Office of Consumer Affairs and Dispute Resolution Services; Office of Human Resources; Office of Information Technology; Office of Management Services; Bureau of Certification and Licensing; Bureau of Trade Analysis; Bureau of Enforcement; and the Commission's Area Representatives, as more fully described in paragraphs (f)(2) and (3) of this section, and thereby implements the regulatory policies of the Commission and the administrative policies and directives of the Chairman.

(ii) *Administrative direction.* The Managing Director provides administrative direction to all organizational components, except for the OIG.

(2) *General duties.* The Office of the Managing Director 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. The Office of the Managing Director is responsible for directing and administering the Commission's training and development function.

(3) *Management and supervision.* Other officers and offices under the management direction of the Managing Director are as follows:

(i) *Director, Enterprise Services.* The Director, Enterprise Services (D/ES) is the Commission's Chief Financial Officer (CFO) and has responsibility for internal and external communications relating to the budget and financial management. The D/ES works with the Directors, Office of Budget and Finance, Office of Human Resources, Office of Information Technology, and Office of Management Services, to manage the day-to-day administrative operations of the Commission.

(ii) *Office of Budget and Finance.* The Office of Budget and Finance 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.

(iii) *Office of Consumer Affairs and Dispute Resolution Services.* The Office of Consumer Affairs and Dispute Resolution Services 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.

(iv) *Office of Human Resources.* The Office of Human Resources plans and administers a complete personnel management program.

(v) *Office of Information Technology*. The Office of Information Technology 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.

(vi) *Office of Management Services*. The Office of Management Services administers a variety of management support service functions of the Commission.

(vii) *Bureau of Certification and Licensing*. The Bureau of Certification and Licensing, through the Office of Transportation Intermediaries, has responsibility for reviewing applications and triennial renewals for Ocean Transportation Intermediary ("OTI") licenses, and maintaining records about licensees and registrations, managing all activities with respect to evidence of financial responsibility for OTIs, and for developing and maintaining all Bureau databases and records of OTI applicants, licensees, and registrations. In addition, the Bureau of Certification and Licensing has responsibility for reviewing applications and renewals for certificates of financial responsibility with respect to passenger vessels, reviewing requests for substitution of alternative forms of financial protection, managing all activities with respect to evidence of financial responsibility for passenger vessel owner/operators, and for developing and maintaining all Bureau databases and records of passenger vessel owner/operators.

(viii) *Bureau of Trade Analysis*. The Bureau of Trade Analysis reviews agreements and monitors the concerted activities of ocean common carriers and marine terminal operators, reviews and analyzes service contracts, monitors rates of government-controlled carriers, reviews carrier published tariff systems, responds to inquiries or issues that arise concerning service contracts or tariffs, and is responsible for competition oversight and market analysis.

(ix) *Bureau of Enforcement*. The Bureau of Enforcement conducts investigations and recommends enforcement action, and provides legal support related to enforcement to other Commission offices. The Bureau of Enforcement also: participates as trial counsel in formal

Commission proceedings when designated by Commission order, or when intervention is granted; negotiates informal compromises of civil penalties subject to the prior approval of the Commission; prepares and presents compromise agreements for Commission approval; and represents the Commission in proceedings and circumstances as designated.

(x) *Area Representatives.* Area Representatives represent the Commission within their respective geographic area; act as a liaison between the Commission and interested parties such as members of the shipping industry, state and local governments, and members of the public; furnish to interested persons information, advice, and access to Commission public documents; receive and resolve informal complaints, in coordination with the Director, Office of Consumer Affairs and Dispute Resolution Services; investigate potential violations of the shipping statutes and the Commission's regulations; and provide assistance to the various bureaus and offices of the Commission, as appropriate and when requested.

Subpart B—Delegation and Redelelegation of Authorities

§ 501.11 Delegation of authorities.

(a) *Authority and delegation.* The provision at 46 U.S.C. 46106 authorizes the Commission to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, an administrative law judge, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter. The Commission delegates specific authorities to the delegates designated in §§ 501.12 through 501.17, subject to the limitations prescribed in this section.

(b) *Temporary redelegation.* When the head of a bureau or office is absent or incapacitated, they may temporarily redelegate their authorities to subordinate personnel under their supervision and direction or to another bureau or office head for the period of their absence or incapacitation.

(c) *Redelegation.* Other than temporary redelegations under paragraph (b) of this section, and subject to the limitations in this section, the delegates may redelegate their authorities to subordinate personnel under their supervision and direction only if this subpart is amended to reflect such redelegation and notice thereof is published in the Federal Register.

(d) *Exercise of authority; policy and procedure.* The delegates and redelegates shall exercise the authorities delegated or redelegated in a manner consistent with applicable laws and the established policies of the Commission, and shall consult with the General Counsel where appropriate.

(e) *Exercise of delegated authority by delegator.* Under any authority delegated or redelegated, the delegator (Commission), or the redelegator, respectively, shall retain full rights to exercise the authority in the first instance.

(f) *Review of delegate's action.* The delegator (Commission) or redelegator of authority shall retain a discretionary right to review an action taken under delegated authority by a subordinate delegatee, either upon the filing of a written petition of a party to, or an intervenor in, such action; or upon the delegator's or redelegator's own initiative.

(1) *Petition.* Petitions for review of actions taken under delegated authority shall be filed within ten (10) calendar days of the action taken:

(i) If the action for which review is sought is taken by a delegatee, the petition shall be addressed to the Commission pursuant to § 502.94 of this chapter.

(ii) If the action for which review is sought is taken by a redelegatee, the petition shall be addressed to the redelegator whose decision can be further reviewed by the Commission under paragraph (f)(1)(i) of this section, unless the Commission decides to review the matter directly, such as, for example, if the redelegator is incapacitated.

(2) *Discretionary review.* The vote of a majority of the Commission less one member (e.g., two Commissioners if there are a total of four or five sitting Commissioners; one

Commissioner if there are a total of three or fewer sitting Commissioners) shall be sufficient to bring any delegated action before the Commission for review under this paragraph (f).

(g) *Action—when final.* Should the right to exercise discretionary review be declined or should no such review be sought under paragraph (f) of this section, then the action taken under delegated authority shall, for all purposes, including appeal or review thereof, be deemed to be the action of the Commission.

(h) *Conflicts.* Where the procedures set forth in this section conflict with law or any regulation of this chapter, the conflict shall be resolved in favor of the law or other regulation.

§ 501.12 Delegation to the General Counsel.

(a) Authority to classify carriers within the meaning of 46 U.S.C. 40102(9) except where a carrier submits a rebuttal statement pursuant to §565.3(b) of this chapter.

(b) Authority to review for legal sufficiency all adverse personnel actions, procurement activities, Freedom of Information Act matters, Privacy Act matters, and requests for testimony by employees and production of official records in litigation and other administrative actions, pursuant to part 503, subpart E, of this chapter.

§ 501.13 Delegation to the Secretary.

(a) Authority to approve applications for permission to practice before the Commission and to issue admission certificates to approved applicants.

(b) Authority to extend the time to file exceptions or replies to exceptions, and the time for Commission review, relative to initial decisions of administrative law judges and decisions of Special Dockets Officers.

(c) Authority to extend the time to file appeals or replies to appeals, and the time for Commission review, relative to dismissals of proceedings, in whole or in part, issued by administrative law judges.

(d) Authority to establish and extend or reduce the time:

(1) To file documents either in docketed proceedings or relative to petitions filed under part 502 of this chapter, which are pending before the Commission itself; and

(2) To issue initial and final decisions under § 502.61 of this chapter.

(e) Authority to prescribe a time limit for the submission of written comments with reference to agreements filed pursuant to 46 U.S.C. chapter 403.

(f) Authority, in appropriate cases, to publish in the Federal Register notices of intent to prepare an environmental assessment and notices of finding of no significant impact.

(g) Authority to prescribe a time limit less than ten days from the date published in the Federal Register for filing comments on notices of intent to prepare an environmental assessment and notice of finding of no significant impact and authority to prepare environmental assessments of no significant impact.

§ 501.14 Delegation to and redelegation by the Managing Director.

(a) Authority to adjudicate, with the concurrence of the General Counsel, and authorize payment of, employee claims for not more than \$10,000.00, arising under the Military and Civilian Personnel Property Act of 1964 (31 U.S.C. 3721) and the Federal Tort Claims Act (28 U.S.C. 1346(b), 2671-2680).

(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 classify all positions GS-1 through GS-15 and wage grade positions.

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

§ 501.15 Delegation to the Chief Financial Officer.

(a) 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.

(b) Authority, in the absence or preoccupation of the Managing Director, to sign travel orders, non-docketed 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.

§ 501.16 Delegation to and redelegation by the Director, Bureau of Certification and Licensing.

(a) In relation to OTI licenses:

(1) Authority to approve or disapprove applications for OTI licenses; issue or reissue or transfer such licenses; and approve extensions of time in which to furnish the name(s) and ocean transportation intermediary experience of the managing partner(s) or officer(s) who will replace the qualifying partner or officer upon whose qualifications the original licensing was approved;

(2) Authority to issue a letter stating that the Commission intends to deny an OTI application unless, within 20 days, applicant requests a hearing to show that denial of the application is unwarranted; deny applications where an applicant has received such a letter and has not requested a hearing within the notice period; and rescind, or grant extensions of, the time specified in such letters;

(3) Authority to revoke the license of an OTI upon the request of the licensee;

(4) Authority to, upon receipt of notice of cancellation of any instrument evidencing financial responsibility, notify the licensee in writing that its license will automatically be suspended or revoked, effective on the cancellation date of such instrument, unless new or reinstated evidence of financial responsibility is submitted and approved prior to such date, and subsequently order such suspension or revocation for failure to maintain proof of financial responsibility;

(5) Authority to revoke the ocean transportation intermediary license of a non-vessel-operating common carrier not in the United States for failure to designate and maintain a person in the United States as legal agent for the receipt of judicial and administrative process;

(6) Authority to approve changes in an existing licensee's organization; and

(7) Authority to return any application which on its face fails to meet the requirements of the Commission's regulations, accompanied by an explanation of the reasons for rejection.

(8) The authorities contained in paragraphs (a)(3) and (4) of this section are redelegated to the Director, Transportation Intermediaries, in the Bureau of Certification and Licensing.

(b) In relation to Certificates:

(1) Authority to approve applications for Certificates (Performance) and Certificates (Casualty) for passenger vessels, evidenced by a surety bond, guaranty, escrow agreements, or insurance policy, or combination thereof; and issue, reissue, or amend such Certificates;

(2) Authority to issue a written notice to an applicant stating intent to deny an application for a Certificate (Performance) and/or (Casualty), indicating the reason therefor, and advising applicant of the time for requesting a hearing as provided for under § 540.8(c) or § 540.26(c) of this chapter; deny any application where the applicant has not submitted a timely request for a hearing; and rescind such notices and grant extensions of the time within which a request for hearing may be filed;

(3) Authority to issue a written notice to a certificant stating that the Commission intends to revoke, suspend, or modify a Certificate (Performance) and/or (Casualty), indicating the reason therefor, and advising of the time for requesting a hearing as provided for under § 540.8(c) or § 540.26(c) of this chapter; revoke, suspend or modify a Certificate (Performance) and/or (Casualty) where the certificant has not submitted a timely request for hearing; and rescind such notices and grant extensions of time within which a request for hearing may be filed;

(4) Authority to revoke a Certificate (Performance) and/or (Casualty) which has expired, and/or upon request of, or acquiescence by, the certificant; and

(5) Authority to notify a certificant when a Certificate (Performance) and/or (Casualty) has become null and void in accordance with §§ 540.8(a) and 540.26(a) of this chapter.

(c) Authority to approve amendments to escrow agreements filed under § 540.5(b) of this chapter when such amendments are for the purpose of changing names of principals, changing the vessels covered by the escrow agreement, changing the escrow agent, and changing the amount of funds held in escrow, provided that the changes in amount of funds result in an amount of coverage that complies with the requirements in the introductory text of § 540.5 of this chapter.

(d) Authority to grant requests to substitute alternative financial responsibility pursuant to § 540.9(1) of this chapter based upon existing protection available to purchases of passenger vessel transportation by credit card by an amount up to fifty (50) percent of the passenger vessel operator's highest two-year unearned passenger revenues.

§ 501.17 Delegation to and redelegation by the Director, Bureau of Trade Analysis.

(a) Authority to determine that no action should be taken to prevent an agreement or modification to an agreement from becoming effective under 46 U.S.C. 40304(c), and to shorten the review period under 46 U.S.C. 40304(c)(1) and (e)(1), when the agreement or modification involves solely a restatement, clarification, or change in an agreement which adds no new substantive authority beyond that already contained in an effective agreement. This category of agreement or modification includes, for example, the following: a restatement filed to conform an agreement to the format and organization requirements of part 535 of this chapter; a clarification to reflect a change in the name of a country or port or a change in the name of a party to the agreement; a correction of typographical or grammatical errors in the text of an

agreement; a change in the title of persons or committees designated in an agreement; or a transfer of functions from one person or committee to another.

(b) Authority to grant or deny applications filed under § 535.407 of this chapter for waiver of the form, organization, and content requirements of §§ 535.401 through 535.406 of this chapter.

(c) Authority to grant or deny applications filed under § 535.504 of this chapter for waiver of the Information Form requirements in subpart E of part 535 of this chapter.

(d) Authority to grant or deny applications filed under § 535.705 of this chapter for waiver of the reporting requirements in subpart G of part 535 of this chapter.

(e) Authority to determine that no action should be taken to prevent an agreement or modification of an agreement from becoming effective under 46 U.S.C. 40304(c)(1) for all unopposed agreements and modifications to agreements which will not result in a significant reduction in competition. Agreements which are deemed to have the potential to result in a significant reduction in competition and which, therefore, are not covered by the delegation in this paragraph (e) include but are not limited to:

(1) New agreements authorizing the parties to collectively discuss or fix rates (including terminal rates).

(2) New agreements authorizing the parties to pool cargoes or revenues.

(3) New agreements authorizing the parties to establish a joint service or consortium.

(4) New equal access agreements.

(f) Authority to grant or deny shortened review pursuant to § 535.605 of this chapter for agreements for which authority is delegated in paragraph (e) of this section.

(g) Subject to review by the General Counsel, authority to deny, but not approve, requests filed pursuant to § 535.605 of this chapter for a shortened review period for agreements for which authority is not delegated under paragraph (e) of this section.

(h) Authority to issue notices of termination of agreements which are otherwise effective under the Shipping Act of 1984, after publication of notice of intent to terminate in the Federal Register, when such terminations are:

(1) Requested by the parties to the agreement;

(2) Deemed to have occurred when it is determined that the parties are no longer engaged in activity under the agreement and official inquiries and correspondence cannot be delivered to the parties; or

(3) Deemed to have occurred by notification of the withdrawal of the next to last party to an agreement without notification of the addition of another party prior to the effective date of the next to last party's withdrawal.

(i) Authority to determine whether agreements for the use or operation of terminal property or facilities, or the furnishing of terminal services, are within the purview of 46 U.S.C. chapter 403.

(j) Authority to request controlled carriers to file justifications for existing or proposed rates, charges, classifications, rules, or regulations, and to review responses to such requests for the purpose of recommending to the Commission that a rate, charge, classification, rule, or regulation be found unlawful and, therefore, requires Commission action under 46 U.S.C. 40704(b)-(e).

(k) Authority to recommend to the Commission the initiation of formal proceedings or other actions with respect to suspected violations of the shipping statutes and rules and regulations of the Commission.

(l)(1) Authority to approve for good cause or disapprove special permission applications submitted by common carriers, or conferences of such carriers, subject to 46 U.S.C. chapter 405, for relief from statutory and/or Commission tariff requirements.

(2) The authority under this paragraph (l) is redelegated to the Director of Agreements, Service Contracts, and Tariffs, in the Bureau of Trade Analysis.

(m)(1) Authority to approve or disapprove special permission applications submitted by a controlled carrier subject to the provisions of 46 U.S.C. chapter 407 for relief from statutory and/or Commission tariff requirements.

(2) The authority under this paragraph (m) is redelegated to the Director of Agreements, Service Contracts, and Tariffs, in the Bureau of Trade Analysis.

(n)(1) The authority to accept, deny, or deactivate a Form FMC-1 submitted by ocean common carriers, non-vessel-operating common carriers, conferences, and marine terminal operators under parts 520 and 525 of this chapter.

(2) The authority under this paragraph (n) is redelegated to the Director of Agreements, Service Contracts, and Tariffs, in the Bureau of Trade Analysis.

(o) Authority contained in part 530 of this chapter to approve, but not deny, requests for permission to correct clerical or administrative errors in the essential terms of filed service contracts.

(p) Authority to require Monitoring Reports from, or prescribe alternative periodic reporting requirements for, parties to agreements under § 535.702(c) and (d) of this chapter.

(q) Authority to require parties to agreements subject to the Monitoring Report requirements in § 535.702(a)(2) of this chapter to report their agreement commodity data on a sub-trade basis pursuant to § 535.703(d) of this chapter.

By the Commission.

Rachel E. Dickon,
Secretary.