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ORDER NO. 1267

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Edward J. Gleiman, Chairman;
George A. Omas, Vice Chairman;
Dana B. Covington, Sr.; Ruth Y. Goldway;
and W.H. "Trey" LeBlanc III

Amendments to FOIA Rules

Docket No. RM99-2

ORDER ADOPTING FINAL RULES
IMPLEMENTING THE FREEDOM OF INFORMATION ACT

(Issued October 8, 1999)


The Commission hereby adopts, as a final rule, the revisions to its rules implementing the Freedom of Information Act described and identified in the attachment to this order. The revisions, which were the subject of Commission Order No. 1253, were previously published at 64 FR 50035.

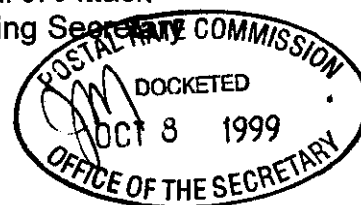
It is ordered:

1. The Commission adopts the revisions identified in the attachment to this order as a final rule implementing the Freedom of Information Act, effective 30 days following publication in the *Federal Register*.
2. The Secretary shall cause this order to be published in the *Federal Register*, in accordance with applicable regulations.

By the Commission.

(S E A L)


Cyril J. Pittack
Acting Secretary



Amendments to Freedom of Information Act Rules

Introduction. In Order No. 1253 (published at 64 FR 50031 on September 15, 1999), the Commission proposed revisions to its rules implementing the Freedom of Information Act, and invited comments. No comments on the proposal were received.

The Commission has reviewed its initial proposal, and has determined that final adoption of the revisions is appropriate. The previous version is unchanged except for clarifying that claims that sensitive business information should be exempt from disclosure can be made under several subparts of 5 U.S.C. § 552(b). Part I of the attachment to this order explains the changes. Part II summarizes the effect of the changes on organization of the rules. Part III sets out the final rules.

Part I – Background

The Commission's rules implementing the requirements of the Freedom of Information Act (FOIA), 5 U.S.C. 552, have not been amended since 1993. Consequently, they do not incorporate changes in applicable law since that time, most notably the requirements added by the Electronic FOIA, Pub. L. 104-231. Also, they do not reflect recent changes in the Commission's methods of information management, which have become increasingly computer-based, or other administrative changes affecting access to information at the Commission.

The rules adopted here are intended to address and accommodate these changes. They also incorporate a major structural change for the convenience of persons interested in obtaining information by various means. This entails the transfer of all provisions describing FOIA access and processes at the Commission to a new Part 3004.

A. Compliance with public inspection and copying requirements as modified by the Electronic FOIA amendments

Subsection (a)(2) of the FOIA requires an agency to make available for public inspection and copying its final opinions in adjudicated cases, policy statements and interpretations not published in the *Federal Register*, and administrative staff manuals and instructions to staff that affect members of the public. The 1996 Electronic FOIA amendments extended this requirement by directing agencies to make such records created on or after November 1, 1996, available by computer telecommunications or other electronic means.

Description of changes. The final rules reflect the actions the Commission has taken to achieve compliance with the amended public inspection and copying requirements. Since 1996, the Commission has operated a website linked to the Internet for the purposes of telecommunication and publication of official information. Recently, the Commission has expanded the material available on its website to include all decisions issued on or after January 1, 1996; orders, notices and other documents issued in proceedings pending before the Commission; the domestic mail classification schedule, which is a compilation of all provisions that define the categories of mail and postal services available in the national postal system; and the rules of practices which govern the conduct of proceedings before the Commission. These materials are now available for viewing and downloading from the Commission's website at www.prc.gov. Accordingly, 39 CFR § 3004.2(c) identifies that domain as the location of the Commission's electronic reading room, and describes generally the categories of information available from the website.

C. Provisions relating to submission of sensitive business information

Section 3004.8 adopts procedures for the Commission's treatment of materials containing sensitive business information that are considerably more detailed than those in current § 3001.42a. Section 3004.8(a) directs any person who submits information believed to be exempt from disclosure under 5 U.S.C. § 552(b) to designate the exempt information by appropriate markings, and provide a brief written statement explaining why the information is exempt. Any such designation expires 10 years after the date of submission, unless the submitter requests and justifies a longer duration.

Should the Commission receive an FOIA request seeking business information that has been properly designated under § 3004.8(a), or one that may be exempt from disclosure under 5 U.S.C. § 552(b), § 3004.8(b) provides that the Commission is to notify the submitter that such a request has been made, and provide a copy of the notice to the requester. Under § 3004.8(c), the submitter has 7 days to submit written objections to the information's disclosure, specifying all grounds for withholding it under the FOIA. The submitter will be considered to have no objection to disclosure if it submits no response by the end of the 7-day period.

If the submitter objects to disclosure, the Commission then decides whether to disclose the information. If the decision is to disclose, § 3004.8(d) requires the Commission to provide the submitter with written notice of that decision and a brief explanation for not sustaining the submitter's objections. Actual disclosure is not to be made until 5 days after the submitter's receipt of the notice. Section 3004.8(e) provides that the Commission need not notify the submitter if it determines not to disclose the information; if the information has been lawfully published or officially made publicly available; or if disclosure is required by a regulation or a statute other than the FOIA.

Finally, § 3004.8(f) specifies that protection of business information made available in formal Commission proceedings, and under the periodic reporting requirements in subpart G of 39 CFR part 3001, is provided under the terms of § 3001.31a. Thus, the procedures in § 3004.8 do not apply to the potential disclosure of

commercially sensitive materials in the course of the Commission's performance of its primary jurisdictional responsibilities.

D. Updated information responsive to publication requirements

Subsection (a)(1) of the FOIA specifies five categories of information that agencies are required to "currently publish in the *Federal Register* for the guidance of the public[.]" The final rules are designed to comply fully with these publication requirements, and also to carry out the intent of the Electronic FOIA Amendments of 1996 to increase the public availability of information through computer telecommunications.

The final rules address publication requirements by incorporating several amendments to existing rules that enhance the information provided regarding the Commission's operations, facilities, and information resources available to the public. Section 3002.2 adds a description of the Commission's statutory functions, including its jurisdictional responsibilities and the means by which the public may participate in Commission proceedings, in response to 5 U.S.C. § 552(a)(1)(B). Section 3002.3 describes the potential sources of public information in the Commission's docket room, physical reading room, and electronic reading room on its website, as directed in 5 U.S.C. § 552(a)(1)(A). Section 3002.4 (e) provides additional detail concerning the information available on the Commission's website, and clarifies the responsibility of the Commission's administrative office to maintain it and the other public information resources of the agency.

Part II. Summary of Effect of Changes on the Rules

In 39 CFR Part 3001, paragraph (c) of existing § 3001.42, captioned "Public information and requests," is deleted in its entirety. Existing § 3001.42(d), captioned "Procedure in event of subpoena," is redesignated as § 3001.42(c). In addition,

§ 3001.42a, captioned "Protection of trade secrets and commercial or financial information" is deleted in its entirety.

In 39 CFR Part 3002, § 3002.1 is retained without change. Provisions currently designated as §§ 3002.2, 3002.3 and 3002.4 are redesignated as §§ 3002.3, 3002.4 and 3002.5, respectively. In the redesignated paragraphs, a new paragraph (c) is added in § 3002.3 and a new paragraph (e) is added in § 3002.4.

The redesignation leaves § 3001.2 available. The Commission uses this space for new text addressing its functions. Accordingly, this section, formerly captioned "The Commission and its offices," is given the new caption of "Statutory functions," and new language appears therein.

A new part 3004, captioned "Freedom of Information Rules" is added. It contains eight paragraphs describing various responsibilities and requirements.

Part III. Final Rules

For the reasons discussed, 39 CFR chapter III is amended. The authority citation for part 3001 continues to read as follows: 39 U.S.C. 404(b), 3603, 3622-3624, 3661, 3662. In § 3001.42, paragraph (c) is removed in its entirety. Paragraph (d) is redesignated as paragraph (c). Section 3001.42a is removed in its entirety.

The authority citation for part 3002 continues to read as follows: 39 U.S.C. 3603; 5 U.S.C. 552. Sections 3002.2, 3002.3 and 3002.4 are redesignated as §§ 3002.3, 3002.4, and 3002.5, respectively. In redesignated § 3002.3, a new paragraph (c) is added. It reads as follows [with asterisks indicating text that is not changed]:

§ 3002.3 The Commission and its offices.

* * * * *

(c) The Commission's offices are located at 1333 H Street, NW., Suite 300, Washington, DC 20268. On these premises, the Commission maintains offices for Commissioners and the staff components described in sections 3001.4, 3001.5, 3001.6 and 3001.7; a docket room where documents may be filed with the Commission pursuant to section 3001.9 and examined by interested persons; a public reading room where the Commission's public records are available for inspection and copying; a library containing legal and technical reference materials; and a hearing room where formal evidentiary proceedings are held on matters before the Commission. The Commission also maintains an electronic reading room accessible through the Internet, on its website at www.prc.gov.

In redesignated § 3002.4, add new paragraph (e) to read as follows:

§ 3002.4 Administrative Office.

* * * * *

(e) The Administrative Office is also responsible for the maintenance of the Commission's public information resources, including the docket room, the physical reading room, and the library on the premises of the Commission's offices, as well as the electronic reading room accessible on the Commission's website at www.prc.gov. The information available on the Commission's website is, in general, coextensive with that available from the Commission's docket room and physical reading room, and includes: Commission decisions, rules, orders and notices; testimony, pleadings and reference materials filed in Commission proceedings; and current information concerning Commission activities, employment opportunities, and a calendar of upcoming events.

Add new § 3002.2 to read as follows:

§ 3002.2 Statutory functions.

(a) *Areas of jurisdiction.* The Commission has jurisdiction over changes in postal rates and fees under 39 U.S.C. 3622, and over mail classifications under 39 U.S.C. 3623. It issues Recommended Decisions to the Governors of the Postal Service on these matters. It also acts on postal patrons' appeals from Postal Service decisions to close or consolidate post offices under 39 U.S.C. 404(b). Further, the Commission investigates complaints of substantial national scope concerning postal rates, fees, mail classifications or services under 39 U.S.C. 3662. It also responds to requests of the Postal Service for advisory opinions on changes in the nature of postal services under 39 U.S.C. 3661. Because of the Commission's expertise, Congress occasionally asks it to undertake special studies on postal issues.

(b) *Public participation.* Interested persons may elect to participate in Commission rate and mail classification proceedings as formal intervenors (§ 3001.20), limited participators (§ 3001.20a), or commenters (§ 3001.20b). Interested parties who believe the Postal Service is charging rates which do not conform with the policies of the Postal Reorganization Act, or who believe that they are not receiving postal service in

accordance with the policies of title 39, may lodge a complaint with the Commission under § 3001.82. Persons served by post offices that the Postal Service decides to close or consolidate with other post offices may appeal such determinations under § 3001.111.

Part 3004 is added to read as follows:

PART 3004 — FREEDOM OF INFORMATION RULES

Sec.

- 3004.1 Purpose.
- 3004.2 Reading room.
- 3004.3 Requests for records and or expedited processing.
- 3004.4 Response to requests.
- 3004.5 Appeals.
- 3004.6 Fees.
- 3004.7 Aggregation of requests.
- 3004.8 Submission of business information.

Authority: 39 U.S.C. 3603; 5 U.S.C. 552, 552a.

§ 3004.1 Purpose.

(a) This part is published pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552, to describe the procedures by which a person can request copies of Commission records. It also describes how a submitter of trade secrets or confidential business information can identify information that the submitter believes to be exempt from disclosure under 5 U.S.C. 552(b).

(b) An individual seeking access to a record about himself or herself that is subject to the Privacy Act of 1974 should also consult the Commission's Privacy Act rules in part 3003 for the procedures that apply to requests for records under that Act. Requests for first-party access can be made under both the FOIA and the Privacy Act of 1974.

(c) Information required to be published or made available pursuant to 5 U.S.C. 552(a)(1) and (a)(2) may be found in part 3002, elsewhere in this chapter, in the *Federal Register*, or on the Commission's website at www.prc.gov. The Commission's guide to the FOIA, all required FOIA indexes, and any available annual FOIA reports, are also available at the website in the electronic reading room or elsewhere on the site.

(d) Section 3001.42(b) of this chapter identifies records that the Commission has determined to be public.

§ 3004.2 Reading room.

(a) The Commission maintains a public reading room at its offices at 1333 H Street NW, Washington, DC 20268. The reading room is open from 8:00 a.m. until 4:30 p.m. during business days.

(b) The records available for public inspection and copying in the reading room include: final opinions, statements of policy, administrative staff manuals and instructions that affect a member of the public, copies of selected records released under the FOIA, and indexes required to be maintained under the FOIA, and records described in 39 CFR 3001.42(b) relating to any matter or proceeding before the Commission.

(c) The Commission's electronic reading room is maintained at its website at www.prc.gov. Commission decisions, orders, rules of practice, and other directives affecting the public are available from the electronic reading room. To the extent practicable, other documents available in the reading room are also posted and available on the website.

§ 3004.3 Requests for records and for expedited processing.

(a) A request for records must be in writing and must reasonably describe the records sought. A request should be addressed or delivered to the Secretary of the Commission at the offices of the Commission at 1333 H Street NW., Washington, DC 20268. A request should be clearly identified as "Freedom of Information Act Request"

record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA; an adverse decision on any disputed fee matter, including a denial of a requested fee waiver; and a denial of a request for expedited treatment.

(c) Within ten days after the receipt of a request for expedited processing, the Secretary will:

(1) Grant the request for expedited processing and process the request for records as soon as practicable; or

(2) Deny a request for expedited processing in writing. Any request for records that has been denied expedited processing will be processed in the same manner as a request that did not seek expedited processing. The denial letter will inform the requestor that he/she may, within five days, appeal the denial to the Commission.

(d) If warranted by the unusual circumstances specified in 5 U.S.C. 552(a)(6)(B)(iii), the Secretary may extend the time for a response for up to ten working days. The Secretary will notify the requester of any extension, and the reason for the extension, in writing. The Secretary will also provide the requester with an opportunity to limit the scope of the request or to arrange an alternative time frame for processing the request or a modified request.

§ 3004.5 Appeals

(a) A requester who seeks to appeal any denial must file an appeal in writing with the Commission. The Commission may review any decision of the Secretary on its own initiative. The Commission will grant or deny the appeal in writing, within 20 days (excluding Saturdays, Sundays and legal public holidays) of the date the appeal is received. If on appeal the denial of the request for records is upheld, the Commission will notify the person making such request of the provisions for judicial review of that determination pursuant to 5 U.S.C. 552(c). The Commission will expeditiously consider an appeal of a denial of expedited processing.

(b) If warranted by the unusual circumstances specified in 5 U.S.C. 552(a)(6)(B)(iii), the Commission may extend the time for a response to an appeal for up to ten working days. The Commission will notify the requester of any extension, and the reason for the extension, in writing. The Commission will also provide the requester with an opportunity to limit the scope of the request or to arrange an alternative time frame for processing the request or a modified request.

§ 3004.6 Fees

(a) Definitions pertaining to fees:

(1) *Direct costs* means expenditures the Commission actually incurs in searching for, duplicating, and, where applicable, reviewing documents to respond to a request. They include (without limitation) the salary of the employee performing work (the basic pay rate of such employee plus 16 percent to cover benefits) and the cost of operating required machinery.

(2) *Search* includes all time spent looking for material responsive to a request, including identification of pages or lines within documents. The term covers both manual and computerized searching.

(3) *Duplication* means making copies of documents necessary to respond to a request. Such copies may be paper, microform, audiovisual, or machine-readable.

(4) *Review* means examining documents located in response to a commercial-use request to determine whether any portion is exempt from mandatory disclosure, and processing or preparing documents for release, but not determination of general legal or policy issues regarding application of exemptions.

(5) *Commercial use request* means a request from or on behalf of one seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or person on whose behalf the request is made. In determining the applicability of this term, the use to which a requester will put the document is considered first; where reasonable doubt exists as to the use, the Commission may seek clarification before assigning the request to a category.

(i) A request appearing to be for commercial use will be charged the full direct costs of searching for, reviewing, and duplicating the records sought.

(ii) A request from an educational or noncommercial scientific institution will be charged for the cost of duplication only (excluding charges for the first 100 pages). To be eligible for this category, a requester must show that the request is made under the auspices of a qualifying institution and that the records are not sought for commercial use but are in furtherance of scholarly (in the case of educational institutions) or scientific (in the case of noncommercial scientific institutions) research.

(iii) A request from a representative of the news media will be charged the cost of duplication only (excluding charges for the first 100 pages).

(iv) A request from any other requester will be charged the full direct cost of searching for and duplicating records responsive to the request, except that the first 100 pages of duplication and the first two hours of search will be furnished without charge.

(v) A request from a record subject for records about himself or herself filed in a Commission Privacy Act system of records will be charged fees as provided under the Commission's Privacy Act regulations in Part 3003 of this chapter.

(2) Fees will be calculated as follows:

(i) Manual search: at the salary rate (basic pay plus 16 percent) of the employee(s) making the search. Search time may be charged for even if the Commission fails to locate records or if records located are exempt from disclosure.

(ii) Computer search: at the actual direct cost of providing the search, including computer search time directly attributable to searching for records responsive to the request, runs, and operator salary apportionable to the search.

(iii) Review (commercial-use requests): at the salary rate (basic pay plus 16 percent) of the employee(s) conducting the review. Charges are imposed only for the review necessary at the initial administrative level to determine the applicability of any exemption, and not for review at the administrative appeal level of an exemption already applied.

(iv) Duplication: at 15 cents per page for paper copy, which the Commission has found to be the reasonable direct cost thereof. For copies of records prepared by computer (such as tapes or printouts), the actual cost of production, including operator time, will be charged.

(v) Additional services: postage, insurance, and other additional services that may be arranged for by the requester will be charged at actual cost.

(d) Interest at the rate prescribed in 31 U.S.C. 3717 will be charged on unpaid fee bills, starting on the 31st day after the bill was sent. Receipt of a fee by the Commission, whether processed or not, will stay the accrual of interest.

(e) Advance payment may be required only when the allowable fees are likely to exceed \$250, in which case advance payment in part or in full may be required of requesters with no history of prompt payment, and satisfactory assurance of payment from requesters with such history; or when the requester has previously failed to pay a fee timely (within 30 days of the billing date), in which case the Commission may require full payment of the amount owed, plus applicable interest, or a demonstration that the fee has in fact been paid, together with full advance payment of the estimated fee. When advance payment is required, the administrative time limits prescribed in subsection (a)(6) of the FOIA begin only after such payment has been received.

(f) Records will be provided without charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

§ 3004.7 Aggregation of requests.

Should the Secretary or the Commission reasonably believe that a requester or a group of requesters acting in concert, have attempted to evade fees or to seek a procedural advantage over other requesters by breaking down a request into a series of requests, the Commission may aggregate the separate requests and treat them as a single request. Multiple requests involving unrelated subjects will not be aggregated.

§ 3004.8 Submission of business information.

(a) Any person who submits to the Commission a trade secret or commercial or financial information that the submitter reasonably believes to be exempt from disclosure under 5 U.S.C. 552(b) must designate the exempt information by appropriate markings at the time of submission or at a reasonable time after submission. The submission should be accompanied by a brief written statement explaining why the information is exempt. Any designation will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer period.

(b) Before disclosing, in response to a FOIA request, any information properly designated under this part, the Commission will provide the submitter with written notice that a request seeks disclosure of the information. The Commission may also provide notice when it has reason to believe that business information possibly exempt from disclosure may fall within the scope of any FOIA request. The requester will be provided a copy of any notice sent to the submitter.

(c) A submitter has seven days to submit written objections to the disclosure specifying all grounds for withholding the information under the FOIA. If the submitter fails to respond to the notice, the submitter will be considered to have no objection to the disclosure of the information.

(d) If, after considering the submitter's objections to disclosure, the Commission decides to disclose the information, it will give the submitter written notice of the decision and a brief explanation of the reasons for not sustaining the submitter's objections. The actual disclosure will not be made before five days after the submitter has received the notice.

(e) A submitter may not receive notice if the Commission determines that the information should not be disclosed; if the information has been lawfully published or officially made available to the public; or if a statute (other than the FOIA) or a regulation requires disclosure.

(f) Protection of information made available pursuant to proceedings subject to the rules in 39 CFR part 3001, including information provided pursuant to that subpart

requiring the filing of periodic reports, is provided upon request to the Commission as described in rule 3001.31a.