

ORDER NO. 230

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

Before Commissioners:

Dan G. Blair, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Tony L. Hammond

Regulations to Establish Procedures
for the Freedom of Information Act

Docket No. RM2009-6

NOTICE OF PROPOSED RULEMAKING TO ESTABLISH
PROCEDURES FOR THE FREEDOM OF INFORMATION ACT

(Issued July 1, 2009)

I. INTRODUCTION

The Postal Regulatory Commission (Commission) proposes to update its rules governing Freedom of Information Act (FOIA), 5 U.S.C. 552, requests. The Openness Promotes Effectiveness in our National Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524 (OPEN Government Act) was signed into law on December 31, 2007 and amends 5 U.S.C. 552. The amendments require an update to the Commission's FOIA rules published in 39 CFR 3004.

On January 21, 2009, President Obama issued a memorandum for the heads of all Federal agencies and departments directing a presumption of disclosure for all decisions involving FOIA.¹ At the direction of the President, the Attorney General

¹ Memorandum for the Heads of Executive Departments and Agencies, January 21, 2009 (74 FR 4683 (January 26, 2009)).

issued a memorandum for the heads of all Federal agencies and departments which instructs agencies to use “a presumption of openness” and take proactive steps to publicly post information online in advance of any request.²

As a result of amendments to 5 U.S.C. 552, policy memoranda from the President and Attorney General, and changes to the regulatory framework and organization under the Postal Accountability and Enhancement Act (PAEA), Pub. L. No. 109-435, 120 Stat. 3198 (2006), the Commission proposes to amend its FOIA rules in 39 CFR part 3004.

² Office of the Attorney General, Memorandum for Heads of Executive Departments and Agencies, March 19, 2009.

II. DISCUSSION OF THE PROPOSED RULES

The Commission proposes to implement the OPEN Government Act with modifications to its FOIA rules in 39 CFR part 3004. First, the Commission adds proposed rule 3004.42, which provides each person making a FOIA request with a unique tracking number, and a mechanism to track the status of a FOIA request. Second, the Commission adds a paragraph to the section governing fees charged for requests. Proposed rule 3004.52(e) is added to reflect a change in the statute that does not allow an agency to collect fees if it fails to meet applicable time limits imposed by the statute. Third, the Commission adds proposed rule 3004.60, which designates the Director of the Office of Public Affairs and Government Relations as the FOIA Public Liaison.

To align the Commission's FOIA policies with the President's vision for a more open and accountable government, the Commission makes several changes to part 3004. First, the Commission adds proposed rule 3004.2, announcing the "presumption of openness" to be applied to any requests under FOIA, and stating that it proactively posts public records on its website in advance of any public request. Second, the Commission adds proposed rule 3004.43(c), which allows for a partial grant of a request, rather than a denial, when the Commission cannot make a full disclosure. Third, the Commission edits the language in proposed rule 3004.43 and requires, when a request is denied in whole or in part, an explanation of the basis for withholding the records and a description of the foreseeable harm.

To make the information pertaining to FOIA contained in part 3004 easier to find, the proposed amendment divides the regulations into several smaller individual regulations. For example, proposed rule 3004.6 Fees is separated into five regulations. Subsection (a) of rule 3004.6 becomes proposed rule 3004.50 Fees—definitions as used in this subpart. The information in subsection (b) is relocated to proposed rule 3004.52 Fees—general provisions, and the information in subsection (c)(1) is moved to proposed rule 3004.51 Fees—category of requests. Subsection (c)(2) becomes

proposed rule 3004.53 Fee schedule. Miscellaneous information currently in rule 3004.6(b), (c)(2)(i) and (f) is consolidated in proposed rule 3004.52 Fees—general provisions. Finally, subsections (d) and (e) are relocated to proposed rule 3004.54 Procedure for assessing and collecting fees. The substance of the regulations being divided is not modified, although the existing text is simplified. Similar minor editing is employed throughout the proposed rules and noted in the section-by-section analysis.

Finally, the Commission references its rules governing the treatment of non-public materials in several sections.³ Proposed rule 3004.10 references rule 3007.10 as an exception to “public records” as rule 3007.10 allows persons to designate materials as non-public and initially exempt from disclosure. Similarly, proposed rule 3004.30(d) is added which formalizes that FOIA requests for Postal Service records will be referred to the Postal Service. The subsection also indicates that records may be requested through the Commission’s rules in part 3007. Finally, proposed rule 3004.70, which governs submission of business information, references part 3007 and the submitter’s ability to file an application for non-public treatment pursuant to that part.

³ See PRC Order No. 220, Final Rules Establishing Appropriate Confidentiality Procedures, June 19, 2009. 74 FR 30938.

III. SECTION-BY-SECTION ANALYSIS OF CHANGES

Section 3004.1 Purpose. In proposed rule 3004.1 the original language of paragraph (a) is modified to better describe the function of the rules devoted to implementing FOIA. The information in paragraph (b) is updated to state that certain information is available on the Commission's website rather than in the electronic reading room or elsewhere on the site.

Section 3004.2 Presumption of openness. Proposed rule 3004.2 is added to recognize the "presumption of openness" mandated by the President and further explained by the Attorney General and Department of Justice.

Section 3004.10 Public records. Proposed rule 3004.10 replaces rule 3001.42(b)(1) through (b)(11). The information contained in rule 3001.42(b) does not change, although the subsections are relabeled. For example, subsection (b)(1) becomes subsection (a) and subsection (b)(2) becomes subsection (b). Currently, rule 3001.42(b)(2) is lengthy and contains a long list separated by commas. To make the information in the list easier to find, rule 3001.42(b)(2) is divided into subsections (b)(1) through (7) of proposed rule 3004.10. Finally, the statement that offers of settlement are not public would be deleted as it is repeated in rule 3001.42(b)(13)(ii).

Section 3004.11 Non-public records. Proposed rule 3004.11 replaces subsections (b)(12) and (13) of rule 3001.42. Subsections (i) through (vii) of rule 3001.42(b)(12) are redesignated as proposed rule 3004.11(a) through (g), and rule 3001.42(b)(13) is redesignated as proposed rule 3004.11(h).

Section 3004.12 Reading room. Proposed rule 3004.12 contains the same substantive information as current rule 3004.2. The information contained in rule 3004.2(c), which concerns the electronic reading room, is divided into proposed rule 3004.12(a) and (b). Proposed subsection (a) indicates that the Commission has two reading rooms—one at its offices and one on its website. Proposed subsection (b) lists examples of materials accessible in the reading rooms.

Section 3004.13 Notice and publication of public information. Current rule 3001.42(a) is redesignated as proposed rule 3004.13, and is divided into two subsections—one concerning the availability and service of Commission rulings, decisions, and reports, and the second regarding the availability of the Commission’s guiding principles.

Section 3004.20 Commission procedure when served a subpoena. This proposed rule sets forth the procedure the Commission or its officers or employees shall follow when served with a subpoena for materials which are not public files or records. It requires that service of the subpoena shall be immediately reported to the Commission, along with a statement of relevant facts, and the Commission shall take the appropriate action to respond to the subpoena.

Section 3004.30 Relationship among the Freedom of Information Act, the Privacy Act, and the Commission’s procedures for according appropriate confidentiality. Proposed rule 3004.30 replaces rules 3004.1(b) and 3004.6(c)(1)(v). The proposed rule is amended to include a reference to the Commission’s rules governing the treatment of non-public materials, and the policy of referring a FOIA request for Postal Service records to the Postal Service.

Section 3004.40 Hard copy requests for records and for expedited processing. Rule 3004.3, which governs the contents of requests for information made to the Commission under FOIA, is redesignated as proposed rule 3004.40. Subsection (a) is divided into six subsections (a)(1) through (a)(6) to clearly delineate the requirements for hard copy requests, including a new requirement that the requester identify the category of request under proposed rule 3004.51. The substantive information in subsections (b) and (c) is consolidated into proposed subsection (b) and rewritten to make the regulations more clear.

Section 3004.41 Electronic requests for records and for expedited processing. Proposed rule 3004.41 sets forth the requirements for electronically submitted requests for information made to the Commission under FOIA. The rule contains similar

requirements to proposed rule 3004.40, but requires that the electronic request utilize the form for FOIA requests on the Commission's website.

Section 3004.42 Tracking of requests. Proposed rule 3004.42 is added to reflect an amendment to FOIA which requires that agencies provide a tracking number and mechanism to monitor requests that take longer than 10 days to complete.

Section 3004.43 Response to requests. Proposed rule 3004.43 explains the Commission's actions upon receiving a request. Currently, the information in this proposed regulation is found in rule 3004.3. The information contained in subsection (a) is reorganized in multiple subsections within proposed rule 3004.43. Subsection (c) is added to require that partial disclosures shall be made, if feasible, when a full disclosure is not possible. Former rule 3004.3(b) contains superfluous information and is deleted. Subsection (f) is added to proposed rule 3004.43 replacing rule 3004.3(d).

Section 3004.44 Appeals. Proposed rule 3004.44 replaces rule 3004.5(a). The substantive information in subsection (a) is reorganized into three subsections to simplify the regulations.

Section 3004.45 Extension of response time limit. The information currently in rule 3004.4(d) and rule 3004.5(b) is consolidated and reorganized into two subsections in proposed rule 3004.45.

Section 3004.50 Fees—definitions as used in this part. Current rule 3004.6(a) is redesignated as proposed rule 3004.50. In addition, rather than making each definition its own paragraph as in rule 3004.6(a), the definitions are arranged in alphabetical order without any subsection designation. This allows definitions to be added alphabetically in the future without a redesignation of subsections. The definition of "Representative of the news media" is modified to conform with an amendment to the definition in the statute.

Section 3004.51 Fees—category of requests. The fees the Commission charges for processing FOIA requests are determined by the category of the requester—commercial, educational and scientific, news media, and other. Proposed rule 3004.53 replaces rule 3004.6(c)(1) in identifying the processing fees for each type

of requester. The language of rule 3004.6(c)(1)(i) through (iv) is not modified, although titles identifying the category of user are added to each subsection. Rule 3004.6(c)(1)(v) is rewritten to clarify the types of fees.

Section 3004.52 Fees—general provisions. Proposed rule 3004.52 consolidates general fee information currently found in rule 3004.6(b), (c)(2)(i), and (f). The part of rule 3004.6(c)(2)(i) that explains that the Commission may charge for conducting a search even if no records are found or the records located are exempt from disclosure is relocated to proposed rule 3004.53(a). The information in rule 3004.6(b) is moved to proposed rule 3004.52(b) and (c). Subsection (f) is redesignated as proposed rule 3004.52(d). Proposed rule 3004.52(e) is added to reflect a change in the statute which does not allow an agency to recover fees if it fails to comply with time limits imposed by the statute. However, subsection (e) does allow the Commission to charge fees for a partial disclosure while review continues on other sensitive records which may be responsive to the request.

Section 3004.53 Fee schedule. Rule 3004.6(c)(2) is redesignated as proposed rule 3004.53.

Section 3004.54 Procedure for assessing and collecting fees. Proposed rule 3004.54 explains the Commission's assessment of interest and the circumstances under which the Commission requires advance payment of fees. Currently, the information in this proposed rule can be found in rule 3004.3. Rule 3004.6(e) is replaced by proposed rule 3004.54(a), which edits the original text to clarify the information. Subsection (d) of rule 3004.6 is redesignated as proposed rule 3004.54(b).

Section 3004.60 Freedom of Information Act Public Liaison. Proposed rule 3004.60 is added to designate the Director of the Office of Public Affairs and Government Relations as the FOIA Public Liaison. The FOIA Public Liaison provides an avenue for the public to informally resolve FOIA disputes with the Commission.

Section 3004.70 Submission of business information. Rule 3004.8 is redesignated as proposed rule 3004.70. Titles are added to each subsection to clarify the information contained therein. Proposed rule 3004.70(a) is added to indicate the

overlap between this rule and application for non-public treatment pursuant to part 3007.

IV. PUBLIC REPRESENTATIVE

Pursuant to 39 U.S.C. 505, Jeremy L. Simmons is appointed the officer of the Commission (Public Representative) to represent the interests of the general public in the captioned docket.

V. ORDERING PARAGRAPHS

It is Ordered:

1. Docket No. RM2009-6 is established for the purpose of amending the Commission's rules governing the Freedom of Information Act.
2. Pursuant to 39 U.S.C. 505, Jeremy L. Simmons is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
3. Interested persons may submit initial comments no later than 30 days from the date of publication of this Notice in the *Federal Register*.
4. Reply Comments may be filed no later than 45 days from the date of publication of this Notice in the *Federal Register*.
5. The Secretary shall arrange for publication of this Notice in the *Federal Register*.

List of Subjects

39 CFR Part 3001

Administrative practice and procedure, Confidential business information, Postal Service

39 CFR Part 3004

Administrative practice and procedure, Archives and records, Freedom of information, Organization, Privacy, Reporting and recordkeeping requirements.

By the Commission.

Judith M. Grady
Acting Secretary

For the reasons stated in the preamble, under the authority at 39 U.S.C. 504, the Postal Regulatory Commission proposed to amend 39 CFR chapter III as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(d) 503; 3661.

2. Remove § 3001.42 in its entirety.

PART 3004—PUBLIC RECORDS AND FREEDOM OF INFORMATION ACT

3. Part 3004 is revised to read as follows:

PART 3004—PUBLIC RECORDS AND FREEDOM OF INFORMATION ACT

Sec.

3004.1 Purpose.

3004.2 Presumption of openness.

- 3004.10 Public records.
- 3004.11 Non-public records.
- 3004.12 Reading room.
- 3004.13 Notice and publication of public information.
- 3004.20 Commission procedure when served a subpoena.
- 3004.30 Relationship among the Freedom of Information Act, the Privacy Act, and the Commission's procedures for according appropriate confidentiality.
- 3004.40 Hard copy requests for records and for expedited processing.
- 3004.41 Electronic requests for records and for expedited processing.
- 3004.42 Tracking of requests.
- 3004.43 Response to requests.
- 3004.44 Appeals.
- 3004.45 Extension of response time limit.
- 3004.50 Fees—definitions as used in this subpart.
- 3004.51 Fees—category of requests.
- 3004.52 Fees—general provisions.
- 3004.53 Fee schedule.
- 3004.54 Procedure for assessing and collecting fees.
- 3004.60 Freedom of Information Act Public Liaison.
- 3004.70 Submission of business information.

Authority: 5 U.S.C. 552; 39 U.S.C. 503.

§ 3004.1 Purpose.

(a) This part implements the Freedom of Information Act (FOIA), 5 U.S.C. 552, and describes the procedures by which a person may request copies of Commission records pursuant to FOIA. It contains the rules that the Commission follows in handling requests, such as the amount of time it has to make a determination regarding release of records and what fees to charge. 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) Information required to be published or made available pursuant to 5 U.S.C. 552(a)(1) and (a)(2) may be found in 39 CFR Part 3002, in the *Federal Register*, or on the Commission's website at <http://www.prc.gov>. The Commission's guide to FOIA, all required FOIA indexes, and any available annual FOIA reports are also available on the website.

(c) Section 3004.10 identifies records that the Commission has determined to be public.

§ 3004.2 Presumption of openness.

(a) The Commission shall be proactive and systematically, in a timely manner, post public records online in advance of any public request.

(b) It is the stated policy of the Commission that FOIA requests shall be administered with a clear presumption of openness.

§ 3004.10 Public records.

(a) Except as provided in § 3004.11 and in § 3007.10 of this chapter, the public records of the Commission include all submissions and filings as follows:

(1) Requests of the Postal Service for decisions or advisory opinions, public reports, complaints (both formal and informal), and other papers seeking Commission action;

(2) Financial, statistical and other reports to the Commission, and other filings and submittals to the Commission in compliance with the requirements of any statute, executive order, or Commission rule, regulation or order;

(3) All answers, replies, responses, objections, protests, motions, stipulations, exceptions, other pleadings, notices, depositions, certificates, proofs of service, transcripts and briefs in any matter or proceeding;

(4) Exhibits, attachments and appendices to, amendments and corrections of, supplements to, or transmittals or withdrawals of any of the foregoing; and

(5) Commission correspondence related to the foregoing.

(b) All other parts of the formal record in any matter or proceeding set for formal or statutory hearing and any Commission correspondence related thereto, including:

- (1) Notices or Commission orders initiating the matter or proceeding;
- (2) Designation of the presiding officer;
- (3) Transcript of hearings;
- (4) Offers of proof, motions and stipulations made during a hearing;
- (5) Exhibits received in evidence during a hearing;
- (6) Certifications to the Commission; and
- (7) Anything else upon which action of a presiding officer or the

Commission may be based.

(c) Proposed testimony or exhibit filed with the Commission but not yet offered or received in evidence.

(d) Presiding officer actions and all presiding officer correspondence and memoranda to or from anyone other than staff assigned to provide assistance to the presiding officer.

(e) Commission decisions, reports, opinions, orders, notices, findings, determinations and other actions in any matter or proceeding and all Commission minutes which have been approved.

(f) Commission correspondence relating to any furnishing of data or information by the Postal Service.

(g) Commission correspondence with respect to the furnishing of data, information, comments, or recommendations to or by another branch, department, or agency of the Government where furnished to satisfy a specific requirement of a statute or where made public by that branch, department or agency.

(h) Commission correspondence and reports on legislative matters under consideration by the Office of Management and Budget or Congress, but only if and

after authorized for release or publication by that office, the Commission, or the Member of Congress involved.

(i) Commission correspondence on the interpretation or applicability of any statute, rule, regulation, decision, advisory opinion, or public report issued by the Commission and letters of opinion on that subject signed by the General Counsel and sent to persons other than the Commission, a Commissioner or any of the staff.

(j) Copies of all filings by the Commission, and all orders, judgments, decrees, and mandates directed to the Commission in court proceedings involving Commission action and all correspondence with the courts or clerks of court.

(k) The Commission's administrative and operating manuals as issued.

§ 3004.11 Non-public records.

(a) The public records of the Commission do not include records that are:

(1) Specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and, in fact, properly classified pursuant to such executive order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memoranda or letters which would not be available by law to a party other than a person or entity in litigation with the Commission;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and

(7) Investigatory records compiled for law enforcement purposes to the extent specified in 5 U.S.C. 552(b)(7).

(b) The following are examples of information that are not part of the public records of the Commission:

(1) Written communications between or among the Commission, members of the Commission, the Secretary, and expressly designated members of the staff while particularly assigned, in accordance with all applicable legal requirements, to aid the Commission in the drafting of any decision, advisory opinion, or public report and findings, with or without opinion, or report in any matter or proceeding;

(2) Reports and records compiled or created by the Inspector General of the Commission designated as confidential; and

(3) Unaccepted offers of settlement in any matter or proceeding unless or until made public by act of the offeror.

§ 3004.12 Reading room.

(a) The Commission maintains a public reading room at its offices (901 New York Avenue NW., Suite 200, Washington, DC 20268-0001) and an electronic reading room at <http://www.prc.gov>. The public reading room at its offices is open during business hours.

(b) The records available for public inspection and printing include, for example: decisions, reports, opinions, orders, notices, findings, determinations, statements of policy, copies of selected records released under FOIA, indexes required to be maintained under FOIA, and records described in § 3004.10 relating to any matter or proceeding before the Commission.

§ 3004.13 Notice and publication of public information.

(a) Decisions, advisory opinions, orders, and public reports will be made available to the public by posting on the Commission's website at <http://www.prc.gov> and will be served upon parties to the proceedings in accordance with §§ 3001.9 through 3001.12.

(b) Descriptions of the Commission's organization, its methods of operation, statements of policy and interpretations, procedural and substantive rules, and amendments thereto are published in the *Federal Register*, and are available on the Commission's website, <http://www.prc.gov>.

§ 3004.20 Commission procedure when served a subpoena.

If an officer or employee of the Commission is served with a subpoena duces tecum, material that is not part of the public files and records of the Commission shall be produced only as authorized by the Commission. Service of such a subpoena shall immediately be reported to the Commission with a statement of all relevant facts. The Commission will thereupon enter such order or give such instructions as it deems advisable.

§ 3004.30 Relationship among the Freedom of Information Act, the Privacy Act, and the Commission's procedures for according appropriate confidentiality.

(a) *Coverage.* FOIA applies to all Commission records and provides the public with access to government records.

(b) *Requesting records subject to the Privacy Act.* A request by an individual for his or her own records contained in a system of records will be considered under the Privacy Act pursuant to part 3003 of this chapter. If there is any record that the Commission need not release to such individual under those provisions, the Commission will also consider that request under FOIA, and will release the record if FOIA requires it.

(c) *Requesting another individual's record.* Request for records of individuals which may not be granted under the Privacy Act shall be considered under FOIA.

(1) If the Commission makes a disclosure in response to a request and the disclosure is permitted by the Privacy Act's disclosure provision, 5 U.S.C. 552a(b), the Commission will rely on the Privacy Act to govern the disclosure.

(2) In some circumstances, the Privacy Act may prohibit the Commission's ability to release records which may be released under FOIA.

(d) *Requesting a Postal Service record.* The Commission maintains custody of Postal Service records.

(1) Postal Service records which are covered by the Commission's treatment of non-public materials under part 3007 of this chapter may be requested following the procedures set forth in that part.

(2) A request to the Commission for Postal Service records via a Freedom of Information Act request pursuant to 5 U.S.C. 552 shall be referred to the Postal Service.

§ 3004.40 Hard copy requests for records and for expedited processing.

(a) A hard copy request for records must:

- (1) Be in writing;
- (2) Reasonably describe the records sought;
- (3) Include a daytime telephone number;
- (4) Be clearly identified as “Freedom of Information Act Request” both in the text of the request and on the envelope;
- (5) Identify the category of requester under § 3004.51; and
- (6) Be submitted to the Secretary of the Commission at the offices of the Commission (901 New York Avenue NW., Suite 200, Washington, DC 20268-0001).

(b) *Expedited processing.* A person demonstrating a compelling need as defined in 5 U.S.C. 552(a)(6)(E)(v) may request expedited processing at the time of an initial request (or appeal) or at a later time. In addition to the requirements in paragraph (a) of this section, an expedited request for records must:

- (1) Demonstrate a compelling need as defined in 5 U.S.C. 552(a)(6)(E)(v);
- (2) Be clearly identified as “Expedited Freedom of Information Act Request” both in the text of the request and on the envelope; and
- (3) Certify the statement of compelling need to be true and correct to the best of the requester’s knowledge and belief. At its discretion, the Commission may waive the requirement for certification.

§ 3004.41 Electronic requests for records and for expedited processing.

(a) An electronic request for records must:

- (1) Be made via the Commission’s online FOIA request form at <http://www.prc.gov>;
- (2) Reasonably describe the records sought;

- (3) Include a daytime telephone number and valid e-mail address; and
- (4) Identify the category of requester under § 3004.51.

(b) *Expedited processing.* A person satisfying the requirements of subsection (a) may request expedited processing at the time of the initial request or at a later time by:

- (1) Demonstrating a compelling need as defined in 5 U.S.C. 552(a)(6)(E)(v);
- (2) Clearly identifying the request as an “Expedited Freedom of Information Act Request” in the body of the submission; and
- (3) Certifying the statement of compelling need to be true and correct to the best of the requester’s knowledge and belief. At its discretion, the Commission may waive the requirement for certification.

§ 3004.42 Tracking of requests.

(a) Upon receipt of a request, the Commission shall assign a unique tracking number to the request and within 3 days (excluding Saturdays, Sundays and legal holidays) and provide that number to the person making the request.

(b) Any person with a tracking number may call or e-mail the Commission’s Office of Public Affairs and Government Relations (PAGR) to check the status of a request. PAGR may be e-mailed at *PRC-PAGR@prc.gov* or called at 202-789-6800.

§ 3004.43 Response to requests.

(a) Within 20 days (excluding Saturdays, Sundays and legal holidays) after receipt of a request for a Commission record, the Secretary of the Commission will notify the requester of its determination to grant or deny the request.

(b) *Granting request.* If granting the request, the Commission will notify the requester of any fees that must be paid.

(c) *Partial granting of request.* If the Commission is unable to grant the request in its entirety, any reasonably segregable portion of the request shall be provided, with deleted portions treated as specified in paragraph (d) of this section, and the Commission will notify the requester of any fees that must be paid.

(d) *Denying request.* If denying the request, in whole or in part, the Commission will inform the requester in writing of:

(1) The reason for the denial, including each exemption used as a basis for withholding of the records sought and, if applicable, the harm to an interest protected by a statutory exemption;

(2) An estimate of the volume of requested matter that was denied:

(i) If disclosure of a record has been partially denied, the amount of information deleted will be indicated on the released portion if technically feasible; and

(ii) If revealing the amount or location of a denied record will harm an interest protected by an exemption, then the description of the amount or location of deleted information shall be withheld.

(3) The right to appeal the denial to the Commission within 1 year.

(e) *Expedited processing.* Within 10 days (excluding Saturdays, Sundays and legal holidays) after receipt of a request for expedited processing, the Secretary of the Commission will:

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

(2) Deny the request for expedited processing by informing the individual of:

(i) The denial in writing;

(ii) The right to appeal the denial to the Commission in writing;

and

(iii) The procedures for appealing the denial.

(3) 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.

(f) Where a compelling need is not shown in an expedited request as specified in § 3004.21(b)(1), the Commission may grant requests for expedited processing at its discretion.

§ 3004.44 Appeals.

(a) The Commission may review any decision of the Secretary of the Commission on its own initiative.

(b) A requester who seeks to appeal any denial must file an appeal with the Commission.

(c) *Response to appeal.*

(1) The Commission will grant or deny the appeal in writing within 20 days (excluding Saturdays, Sundays and legal 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 requester of the provisions for judicial review of that determination pursuant to 5 U.S.C. 552(c).

(2) The Commission will expeditiously consider an appeal of a denial of expedited processing.

§ 3004.45 Extension of response time limit.

(a) The Commission may extend the time limit for a response at the request stage and at the appeal stage up to 10 working days due to unusual circumstances as specified in 5 U.S.C. 552(a)(6)(B)(iii).

(b) The Commission will:

(1) Notify the requester of any extension and the reason for the extension in writing; and

(2) Provide the requester with an opportunity to limit the scope of the request or to arrange an alternative timeframe for processing the request or a modified request. The applicable time limits are not tolled while the Commission waits for a response from the requester under this subsection.

§ 3004.50 Fees—definitions as used in this part.

Commercial use means a request from or on behalf of a person 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.

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

Duplication means copying the documents necessary to respond to a request. Such copies may be paper, microform, audiovisual, or machine-readable.

Educational institution means a preschool, a public or private elementary or secondary school, an institution of graduate or undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

Noncommercial scientific institution means an institution, not operated on a commercial basis (as referenced above), which is operated solely for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

Representative of the news media means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of “news”) who make their products available for purchase or by subscription or by free distribution to the general public. These examples are not all inclusive and may include alternate media to disseminate news. A freelance journalist

shall be regarded as working for a news media entity if the journalist can demonstrate a solid basis for expecting publication through that entity (e.g., by a publication contract or prior publication record), whether or not the journalist is actually employed by the entity.

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

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.

§ 3004.51 Fees—category of requests.

(a) The level of fee charged depends on the category of requester.

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

(2) *Educational and noncommercial scientific institutions.* 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.

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

(4) *Other requesters.* A request from any other person will be charged the full direct cost of searching for, review of, and duplicating records responsive to the request, except that the first 100 pages of duplication and the first 2 hours of search will be furnished without charge.

(b) *Privacy Act.* A request by an individual for his or her own records in a system of records will be charged fees as provided under the Commission's Privacy Act regulations in part 3003 of this chapter.

§ 3004.52 Fees—general provisions.

(a) The Commission may charge search fees even if no records are found or if the records found are exempt from disclosure.

(b) Except in the case of commercial use requesters, the first 100 pages of duplication and the first 2 hours of search time are provided without charge.

(1) A page for these purposes is a letter- or legal-size sheet, or the equivalent amount of information in a medium other than paper copy.

(2) Search time for these purposes refers to manual searching; if the search is performed by computer, the 2 hours provided without charge will be equal to 2 hours' salary of the person performing the search.

(c) No requester will be charged a fee when the Commission determines that the cost of collecting the fee would equal or exceed the fee itself. In determining whether cost of collection would equal or exceed the fee, the allowance for 2 hours' search or 100 pages of duplication will be made before comparing the remaining fee and the cost of collection.

(d) 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.

(e) No requester will be charged a fee after any search or response which occurs after the applicable time limits as described in §§ 3004.42 and 3004.44, so long as there are no unusual or exceptional circumstances, such as those used to justify an extension of the time limit as described in § 3004.44. The Commission may, however, charge fees for a partial grant of a request while it reviews other sensitive records, which may be responsive to the request, if it is made within the applicable time limits.

§ 3004.53 Fee schedule.

(a) Fees will be calculated as follows:

(1) *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.

(2) *Computer search.* At the 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.

(3) *Review (commercial use).* 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.

(4) *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 actually incurred cost of production, including employee time, will be charged.

(5) *Additional services.* Postage, insurance, and other additional services that may be arranged for by the requester will be charged at actually incurred cost.

(b) Fees may be waived at the discretion of the Commission.

§ 3004.54 Procedure for assessing and collecting fees.

(a) Advance payment may be required if the requester failed to pay previous bills in a timely fashion or when the fees are likely to exceed \$250.

(1) Where the requester has previously failed to pay within 30 days of the billing date, the Commission may require the requester to pay an advance payment of the estimated fee together with either the past due fees (plus applicable interest) or proof that the past fees were paid.

(2) When advance payment is required, the administrative time limits prescribed in 5 U.S.C. 552(a)(6) (§ 3004.42) begin only after such payment has been received.

(b) Interest at the rate published by the Secretary of the Treasury as 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.

§ 3004.60 Freedom of Information Act Public Liaison.

The Commission designates the Director of the Office of Public Affairs and Government Relations as the FOIA Public Liaison who shall assist in the resolution of any dispute between a requester and the Commission. The FOIA Public Liaison may be contacted via e-mail at *PRC-PAGR@prc.gov* or telephone at 202-789-6800.

§ 3004.70 Submission of business information.

(a) *Overlap with treatment of non-public materials.* Any person who submits materials to the Commission (submitter) that the person reasonably believes to be exempt from public disclosure may submit materials under seal and lodge an application for non-public treatment as described in § 3007.10.

(b) *Notice of request.* If a FOIA request seeks materials designated as exempt from public disclosure, the Commission will provide the submitter with notice of the request. 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.

(c) *Objections to disclosure.* A submitter may file written objections to the request specifying all grounds for withholding the information under FOIA within 7 days of the date of the notice. 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) *Notice of decision.* 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 3 days after the submitter has received the notice.