

commercial and agency records centers, including small businesses.

We did not believe that we could adopt any of the other alternatives [(1), (2) or (4)] for minimizing the impact of the proposed rule on small entities, given the objective of ensuring appropriate protection for Federal records when they leave agency office space. We believe that the 10-year period we will provide for complying with certain requirements will moderate the impact on small businesses since they will be able to plan for the necessary modifications and implement them during normal maintenance, e.g., removing roof-mounted equipment when roof repairs or replacement is done. However, we do not believe that it is appropriate to exempt or delay small businesses' compliance with basic fire detection and suppression requirements. It is also not feasible to exempt or delay small businesses' compliance with requirements imposed by other authorities, e.g., DOJ building security requirements.

Questions for Comment To Assist Regulatory Flexibility Analysis

1. Please provide comment on any or all of the provisions in the proposed rule with regard to

- The impact of the provision(s) including the benefits and costs, if any, on small entities, and
- Other alternatives, if any, NARA should consider, as well as the costs and benefits of those alternatives to small entities.

2. Please identify any Federal rules, other than the MSHA regulations discussed in this notice, that may duplicate, overlap, or conflict with the proposed rule. In addition, please identify any industry standards not cited in NARA's proposed rule that would be more appropriate. Please identify such industry standards by name of the organization establishing the standard, formal title, and edition date, and state how the public can get copies of the standard.

3. Please discuss the extent to which existing commercial records centers, especially those that qualify as a small business, have incorporated either the requirements of National Fire Protection Association (NFPA) 232, Standard for the Protection of Records (1995 Edition) for facilities smaller than 50,000 c.f. or the guidance in NFPA 232A, Guide for Fire Protection of Archives and Records Centers (1995 Edition) for larger facilities.

4. How many records centers that are small businesses presently store records for Federal agencies or would be interested in such future business

opportunity? Please include the basis for your response to this question (e.g., industry survey).

Dated: September 10, 1999.

John W. Carlin,

Archivist of the United States.

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POSTAL RATE COMMISSION

39 CFR Part 3001, 3002, and 3004

[Docket No. RM99-2; Order No. 1253]

Freedom of Information Act Administrative Rulemaking

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes changes to its rules of practice to implement the Electronic Freedom of Information Act and to reflect improved methods of information management. The proposed changes will establish consistency with current law. They also will improve the Commission's administration of related responsibilities and the public's ability to exercise rights to obtain or review certain information.

DATES: Comments will be accepted until September 30, 1999.

ADDRESSES: Send comments regarding this document to the attention of Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H Street NW., Washington, DC 20268-0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 1333 H Street NW, Washington, DC 20268-0001, 202-789-6824.

SUPPLEMENTARY INFORMATION: 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. Additionally, the current rules do not reflect recent changes in the Commission's methods of information management, which have become increasingly computer-based, as well as other administrative changes affecting access to information at the Commission. The proposed rules are intended to address and accommodate these interim changes. They also incorporate a major structural change—transfer of all provisions describing FOIA access and processes at the

Commission to a new part 3004—for the convenience of persons interested in obtaining information by various means.

A. Compliance With Public Inspection and Copying Requirements as Modified by the Electronic FOIA Amendments

Subsection (a)(2) of the FOIA [5 U.S.C. 552(a)(2)] 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.

The proposed rules reflect the actions the Commission has taken to achieve compliance with the amended public inspection and copying requirements. Beginning in 1996, the Commission has operated a website linked to the Internet for the purpose of telecommunication and publication of official information. Recently, the Commission has expanded the material available on its website to include all its 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. All these materials are now available for viewing and downloading from the Commission's website at www.prc.gov. Accordingly, proposed 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.

B. Transfer of FOIA Procedural Rules to New Part 3004

Currently, the rules describing public information available at the Commission and procedures for obtaining access are contained in 39 CFR 3001.42 and 3001.42a, within the rules of general applicability included in part 3001, which is a compilation of all the Commission's rules of practice and procedure. For the convenience of persons interested primarily in obtaining access to public information, the Commission proposes rules which incorporate a major structural change.

Rules describing the procedures for obtaining access to public information at the Commission, fees associated with some retrieval and copying services, and procedures relating to the submission and disclosure of sensitive business information would be transferred to a new part 3004, to be entitled "Freedom of Information Rules." Rules describing the Commission's public information resources generally would be retained in § 3001.42, with additional detailed information in part 3002, the organizational description of the Commission.

In addition, the rules proposed for inclusion in the new part 3004 would revise and update the provisions transferred from 3001.42 and 42a to conform to current FOIA legal requirements and practices. Proposed 3004.1 and 3004.2 describe the purpose of the rules and the sources of the Commission's public information, including the physical and electronic reading rooms. Proposed 3004.3 provides both for regular FOIA requests and requests for expedited processing based on a demonstration of compelling need. The time limit specified in proposed 3004.4 for responding to requests would be changed from 10 days to 20 days, in accordance with the 1996 amendments. The period for filing an appeal of a denial of a request with the Commission, currently 20 days, would be extended to one year under proposed 3004.4(a)(2).

C. Provisions Relating to Submission of Sensitive Business Information

Proposed 3004.8 would adopt procedures for the Commission's treatment of materials containing sensitive business information that are considerably more detailed than those incorporated in current 3001.42a. Proposed 3004.8(a) would direct any person who submits information believed to be exempt from disclosure under 5 U.S.C. 552(b)(4) to designate the exempt information by appropriate markings, and provide a brief written statement explaining why the information is exempt. Any such designation would expire 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 3004.9(a), or that the Commission believes may be exempt from disclosure under 552(b)(4), under proposed 3004.8(b) the Commission would notify the submitter that such a request has been made, and provide a copy of the notice to the requester.

Under proposed 3004.8(c), the submitter would have 7 days to submit written objections to the information's disclosure, specifying the grounds for withholding it under the FOIA. The submitter would be considered to have no objection to disclosure if it submits no response by the end of the 7-day period.

If the submitter has objected to disclosure, the Commission would then decide whether to disclose the information. If the Commission decides to disclose, under 3004.8(d) it would provide the submitter written notice of that decision and a brief explanation for not sustaining its objections. Actual disclosure would not be made until 5 days after the submitter's receipt of the notice. Proposed 3004.8(e) provides that the Commission may 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 statute other than the FOIA.

Finally, proposed 3004.8(f) would specify 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 to be adopted in proposed 3004.8 would 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 proposed 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 proposed rules address the Act's publication requirements by incorporating several amendments to existing rules that would enhance the information provided regarding 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). Proposed § 3002.4(e) would provide additional detail concerning the information available on the Commission's website, as well as clarifying the responsibility of the Commission's administrative office to maintain it and the other public

information resources of the agency. Proposed § 3002.2 would add 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).

Ordering paragraphs. Ordering paragraph No. 1 directed interested persons to submit comments on the proposed revisions, which were set out in Appendix A to this order, no later than July 26, 1999. [Changes set out in the referenced appendix appear in this **Federal Register** notice in a style that conforms to Office of the Federal Register publication requirements.] Ordering paragraph No. 2 directed the Secretary of the Commission to arrange for publication of the notice and order in the **Federal Register** in a manner consistent with applicable requirements. [The order was distributed to the Docket No. R97-1 service list upon issuance (June 15, 1999).]

List of Subjects in 39 CFR Parts 3001, 3002 and 3004

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

For the reasons discussed in the preamble, 39 CFR chapter III is proposed to be amended 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(b), 3603, 3622-3624, 3661, 3662.

2. In § 3001.42, remove paragraph (c) in its entirety, and redesignate paragraph (d) as (c).

3. Remove § 3001.42a in its entirety.

PART 3002—ORGANIZATION

4. The authority citation for part 3002 continues to read as follows:

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

5. Redesignate §§ 3002.2, 3002.3 and 3002.4 as §§ 3002.3, 3002.4 and 3002.5, respectively.

6. In redesignated § 3002.3, add a new paragraph (c) to read as follows:

§ 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 3002.4, 3002.5, 3002.6 and 3002.7; a docket room where documents may be filed with the Commission pursuant to 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.

7. 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.

8. 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.

9. 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 for 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)(4).

(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 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" both in the text of the request and on the envelope. A requester should include a daytime telephone number.

(b) A request for expedited processing may be made in cases in which the requester demonstrates a compelling need as defined in 5 U.S.C. 552(a)(6)(E)(v). The Commission may otherwise grant requests for expedited processing at its discretion. A request for expedited processing should be clearly identified as "Expedited Freedom of Information Act Request" both in the text of the request and on the envelope.

(c) A demonstration of compelling need by a requester seeking expedited processing must be made by a statement certified by the requester 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.

(d) A request for expedited processing may be made at the time of an initial request (or appeal) or at a later time.

§ 3004.4 Response to requests.

(a) Within 20 days (excluding Saturdays, Sundays, and legal public holidays) after receipt of a request for a Commission record, the Secretary of the Commission will:

(1) Determine to comply with the request and immediately notify the requester of the determination and of any fees that must be paid; or

(2) Deny the request in writing. The denial letter will explain the reason for the denial, including each exemption used as a basis for withholding of the records sought. The denial letter will include an estimate of the volume of requested matter that was denied. If disclosure of a record has been partially denied, the amount of information deleted will be indicated on the released portion if technically feasible. 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 may be withheld. The denial letter will inform the requestor that he/she may, within one year, appeal the denial to the Commission.

(b) A denial is any form of adverse determination, including: A determination to withhold any requested record in whole or in part; a determination that a requested 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.

(6) *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.

(7) *Noncommercial scientific institution* means an institution, not operated on a "commercial" basis (as referenced in paragraph (a)(5) of this section), which is operated solely for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

(8) *Representative of the news media* means any person actively gathering news for an entity organized and operated to publish or broadcast news to the public. News means information about current events or that would be of current interest to the public. Freelance journalists will be regarded as working for a news medium if they demonstrate (for example, by a publication contract or a past record of publication) a solid basis for expecting publication through such organization even though not actually employed by it.

(b) Except in the case of commercial-use requesters, the first 100 pages of duplication and the first two hours of search time are provided without charge. 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. *Search time* for these purposes refers to manual searching; if the search is performed by computer, the amount not charged for will be the search cost equivalent to two hours' salary of the person performing the search. 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 two hours' search or 100 pages of duplication will be made before comparing the remaining fee and the cost of collection.

(c) Fees will be charged in accordance with the following provisions:

(1) The level of fee charged depends on the category of requester:

(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 Freedom of Information Act 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)(4) 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 39 CFR 3001.31a.

Dated: August 31, 1999.

Margaret P. Crenshaw,
Secretary.

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