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FEDERAL ELECTION COMMISSION

11 CFR Part 4

(Notice 1980-18)

Public Records and the Freedom of Information Act

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: This notice contains the final rule amending the Federal Election Commission Regulations implementing the Freedom of Information Act (5 USC 552). Specifically, this rule amends certain sections of 11 CFR Part 4 which were published as part of a final rule on June 8, 1979, and June 27, 1979, at 44 FR 33368 and 44 FR 37491, respectively.

The proposed rule upon which this final rule is based was published on September 17, 1979, at 44 FR 53924. A comment period was specified and one person commented. Slight changes have been made from the proposed rule, both to take into account the comment received and also to make the final rule conform to the Federal Election Campaign Act Amendments of 1979 with respect to section references, definitions, and enforcement procedures.

EFFECTIVE DATE: June 12, 1980.

FOR FURTHER INFORMATION CONTACT: Frederick S. Eiland, Publication Information Officer (202) 523-4065.

SUPPLEMENTARY INFORMATION: These amendments to the Commission's FOIA regulations reflect the fact that records made available to the public by the Commission pursuant to its statutory public disclosure duties (*see* 2 USC 437f(d), 437g(a)(4)(B)(ii), 438(a)) may also be legally obtained by the public through the Freedom of Information Act (5 USC 552). 11 CFR 4.3 and 4.4 have therefore been amended to include such

records in the list of records available pursuant to the FOIA.

The amendments also reflect minor changes necessitated by the Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187 (1980).

The amendments include a schedule of fees which will be charged for records produced pursuant to the FOIA. These fees are based upon a study conducted by the Commission's Office of Planning and Management and are no higher than, and in most cases lower than, the direct cost of search and reproduction as calculated by that study.

With respect to records which are available both pursuant FOIA and also through the Commission's Public Disclosure Division, these amendments, together with 11 CFR Part 5 which is contained in a separate notice published today provide a uniform disclosure policy with respect to both procedures and fees.

The Commission received a comment with respect to the waiver of fees provision in the existing regulations stating that the criteria for determining whether a reduction or waiver of fees is in the "public interest" should be stated. In response to this comment, the amended regulations track the language of 5 USC 552(a)(4)(A) in an effort to indicate that waiver or reduction of fees is in the "public interest" when furnishing the requested information to the requester is considered by the Commission as primarily benefiting the public at large as opposed to primarily benefiting the requester or a limited class of interested persons.

The Commission intends by separate notices to promulgate proposed regulations implementing both the FOIA and the Commission's public disclosure duties under the Act with respect to computer tapes and indices. In the interim, requests for computer tapes and indices will be handled in accordance with a notice published in the *FEC Record*, Vol. 6 No. 2 (February 1980).

Chapter 1, Part 4 of Title 11, Code of Federal Regulations is amended as follows:

§ 4.1 [Amended]

1. 11 CFR 4.1(b) and (e) are amended, 11 CFR 4.1(f) is added:

(b) "Commissioner" means the Secretary of the Senate, the Clerk of the House, or their designees ex officio, or

an individual appointed to the Federal Election Commission pursuant to 2 USC 437c(a).

(e) "Act" means the Federal Election Campaign Act of 1971, as amended by the Federal Election Campaign Act Amendments of 1974, 1976, and 1979, and unless specifically excluded, includes Chapters 95 and 96 of the Internal Revenue Code of 1954 relating to public financing of Federal elections.

(f) "Public Disclosure Division" of the Commission is that division which is responsible for, among other things, the processing of requests for public access to records which are submitted to the Commission pursuant to 2 USC 437f(d), 437g(a)(4)(B)(ii), and 438(a).

§ 4.3 [Amended]

2. 11 CFR 4.3(b) and (c) are deleted and 11 CFR 4.3(a) is designated 11 CFR 4.3.

§ 4.4 [Amended]

3. 11 CFR 4.4(a)(3) is amended and 4.4(a)(10) through (15) are added:

(a) * * *

(3) Opinions of Commissioners rendered in enforcement cases and General Counsel's reports and non-exempt 2 USC 437g investigatory materials in enforcement files will be made available no later than 30 days from the date on which a respondent is notified that the Commission has voted to take no further action and to close such an enforcement file.

(10) Reports of receipts and expenditures, designations of campaign depositories, statements of organization, candidate designations of committees, and the indices compiled from the filings therein.

(11) Requests for advisory opinions, written comments submitted in connection therewith, and responses approved by the Commission.

(12) With respect to enforcement matters, any conciliation agreement entered into between the Commission and any respondent.

(13) Copies of studies published pursuant to the Commission's duty to serve as a national clearinghouse on election law administration.

(14) Audit reports (if discussed in open session).

(15) Agenda for Commission meetings.

§ 4.4 [Amended]

4.11 CFR 4.4 (b), (c), (d), and (e) are redesignated 4.4 (c), (d), (e), and (f), respectively, and a new paragraph (b) is inserted as follows:

(b) Public access to the materials described in subparagraphs (a)(3) and (a)(10) through (a)(15) of this section is also available pursuant to the Federal Election Campaign Act of 1971, as amended, in accordance with the provisions of Part 5 of this chapter.

§ 4.7 [Amended]

5.11 CFR 4.7 (a) and (b) are amended to read as follows:

(a) A request to inspect or copy Commission public records of the type referred to in 11 CFR 4.4(b) may be made in person or by mail. The Public Records Office is open Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. and is located on the first floor, 1325 K Street, N.W., Washington, D.C. 20463.

(b) Request for copies of records pursuant to the Freedom of Information Act shall be addressed to FOIA officer, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. The request shall reasonably describe the records sought with sufficient specificity with respect to names, dates, and subject matter, to permit the records to be located. A requester will be promptly advised if the records cannot be located on the basis of the description given and that further identifying information must be provided before the request can be satisfied.

§ 4.9 [Amended]

6.11 CFR 4.9 is amended to read as follows:

(a) Fees will be charged for copies of records which are furnished a requester under this part and for the staff time spent in locating and reproducing such records. The fees to be levied for services rendered under this part shall not exceed the Commission's direct costs of processing requests for these records enumerated in section 4.4(a) of this part computed on the basis of the actual number of copies produced and the staff time expended in searching for and reproducing such copies in accordance with the following schedule of standard fees:

Paper reproduction of documents by Kodak, IBM, and Xerox copiers—\$.05 per page plus any staff time.

Paper reproduction of microfilm prints made overnight in Baltimore lab—\$.10 per page (no staff time).

Paper reproduction of microfilm prints using Microfilm Reader-Printers—\$.10 per page plus any staff time.

Staff time/first half hour—no charge.

Staff time/each additional half hour—\$.50.

Copy of transcription of Commission proceedings not previously transcribed—\$3.00 per page.

Copy of existing transcription of Commission proceedings—\$.05 per page.

Record certification—\$2.00 per order.

Microfilm-Index—\$1.00 per reel.

Microfilm-Documents—\$10.00 per reel.

Multicandidate Committee Index—\$4.00.

Index of Committee/Sponsor or Sponsor/Committee—\$10.00 each.

Office Account Index—\$2.50.

Advisory Opinion Index—\$5.10.

Report on Financial Activity—\$5.00 per volume.

Financial Control and Compliance Manual—\$7.50.

(b) In the event the anticipated fees for pending requests under this part from the same requester exceed \$25.00, such records will not be searched for or made available, nor copies furnished unless the requester pays, or makes acceptable arrangements to pay, the total amount due, or if the fee is not precisely ascertainable, the approximate amount. In the event an advance payment hereunder shall differ from the actual fees due, an appropriate adjustment will be made at the time the copies are delivered or made available.

(c) The Commission may reduce or waive payments of fees hereunder if it determines that such waiver or reduction is in the public interest because the furnishing of the requester involved can be considered as primarily benefiting the general public as opposed to primarily benefiting the person or organization requesting the information.

Dated: May 2, 1980.

Robert O. Tiernan,

Chairman, Federal Election Commission.

[FR Doc. 80-14663 Filed 5-12-80; 8:45 am]

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11 CFR Part 5

[Notice 1980-19]

Access to Public Disclosure Division Documents

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: This notice contains the final rule adding a new Part 5 to 11 CFR to implement the public access provisions of the Federal Election Campaign Act of 1971, as amended. Prior Commission policy was set forth in the announcement appearing at 40 FR 580 (July 7, 1975).

The proposed rule upon which the final rule is based was published on September 17, 1979, at 44 FR 53924. A comment period was specified and one person commented. Slight changes have been made from the proposed rule both to take into account the comment received and also to make the final rule conform to the Federal Election Campaign Act Amendments of 1979 with respect to section references, definitions, and enforcement procedures.

EFFECTIVE DATE: June 12, 1980.

FOR FURTHER INFORMATION CONTACT: Frederick S. Eiland, Public Information Officer (202) 523-4143.

SUPPLEMENTARY INFORMATION: These regulations create a new Part 5 in 11 CFR which contains a description of those documents which are available to the public pursuant to the Commission's public disclosure duties. (see 2 U.S.C. 437f(d), 437g(a)(4)(B)(ii), 438(a)) and prescribes fees to be charged for their location and reproduction.

The schedule of fees is based upon a study conducted by the Commission's Office of Planning and Management and are no higher than, and in most cases lower than, the direct cost of search and reproduction as calculated by that study.

Minor changes have been made from the proposed regulations where necessitated by the Federal Election Campaign Act Amendments of 1979, Pub. L. 96-187 (1980).

With respect to records covered by this part, these regulations, together with the amendments to 11 CFR Part 4 which are contained in a separate notice published today, provide a uniform disclosure policy with respect to both procedures and fees.

The Commission received a comment with respect to the waiver of fees provision in the proposed regulations stating that the criteria for determining whether a reduction or waiver of fees is in the "public interest" should be stated. In response to this comment, the regulation tracks the language of 5 U.S.C. 552(a)(4)(A) in an effort to indicate that waiver or reduction of fees is in the "public interest" when furnishing the requested information to the requestor is considered by the Commission as primarily benefiting the public at large as opposed to primarily benefiting the requestor or a limited class of interested persons.

The Commission intends by separate notices to promulgate proposed regulations implementing both the FOIA and the Commission's public disclosure duties under the Act with respect to computer tapes and indices. In the

interim, requests for computer tapes and indices will be handled in accordance with a notice published in the *FEC Record*, Vol. 6, No. 2 (February 1980).