Rules and Regulations

Federal Register
Vol. 65, No. 37
Thursday, February 24, 2000

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DEPARTMENT OF ENERGY

10 CFR Part 708

RIN 1901–AA78

Criteria and Procedures for DOE Contractor Employee Protection Program; Correction

AGENCY: Office of Hearing and Appeals, Department of Energy.

ACTION: Final rule; correction.

SUMMARY: The Department of Energy published a final rule on February 9, 2000, to amend 10 CFR Part 708, the DOE contractor employee protection program (''whistleblower'') regulations. DOE previously adopted an interim final rule amending Part 708, which was published on March 15, 1999, and amended on July 12, 1999. This document corrects an error in the final rule.

DATES: This final rule is effective on March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Roger Klurfeld, or Thomas O. Mann, telephone: (202) 426–1449; e-mail: roger.klurfeld@hq.doe.gov, thomas.mann@hq.doe.gov.

SUPPLEMENTARY INFORMATION: This document makes a correction to a final rule that was published in the **Federal Register** on February 9, 2000 (65 FR 6314). In that rulemaking, an error was made in a section heading numbering.

In rule FR document 00–2797, beginning on page 6314, in the issue of Wednesday, February 9, 2000, make the following correction:

PART 708—[CORRECTED]

§ 708.40 [Corrected]

1. On page 6319, in the third column, correct amendatory instruction 5 to read as follows:

5. A new Section 708.43 is added as follows:

§ 708.43. Does this rule impose an affirmative duty on DOE contractors not to retaliate?

* * * * *

Dated: February 16, 2000.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 00–4346 Filed 2–23–00; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 2, 4 and 5

[Notice 2000–3]

Electronic Freedom of Information Act Amendments

AGENCY: Federal Election Commission.

ACTION: Final rules and statement of basis and purpose.

SUMMARY: The Electronic Freedom of Information Act Amendments of 1996, which amended the Freedom of Information Act, were designed to make government documents more accessible to the public in electronic form. The amendments also expedite and streamline the process by which agencies disclose information generally. The Commission is revising its Freedom of Information Act regulations both to comply with these new requirements and to address issues that have arisen since the rules were originally adopted.

DATES: These rules will become effective on March 27, 2000

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or (800) 424–9530 (toll-free).

SUPPLEMENTARY INFORMATION: The Freedom of Information Act (''FOIA'') provides for public access to all federal agency records except those that are protected from release by specified exemptions. 5 U.S.C. 552. In 1996, Congress enacted the ''Electronic Freedom of Information Act Amendments of 1996'' (''EFOIA''), Public Law 101–231, 110 Stat. 2422. EFOIA extended coverage of the FOIA to electronic records and made other changes in FOIA procedures that expedite and streamline the process by which agencies disclose information. The revisions to the Commission's FOIA rules published today in part conform these rules to the new EFOIA requirements and in part reflect issues that have arisen since the rules were originally adopted.

The Commission's FOIA rules are found at 11 CFR Part 4, while access to documents made public by the Commission's Public Disclosure Division is governed by 11 CFR Part 5. The revisions published today affect 11 CFR 4.1, 4.4, 4.5, 4.7, 5.1 and 5.4. In addition, the Commission is making technical amendments to 11 CFR 2.2 and 2.5, sections of its Government in Sunshine regulations.

The Notice of Proposed Rulemaking (''NPRM'') on these rules was published in the **Federal Register** on March 4, 1999. 64 FR 10405. The Commission received one joint comment in response to the NPRM, from Public Citizen and the Freedom of Information Clearinghouse. This comment is discussed in more detail below.

Statement of Basis and Purpose

EFOIA requires agencies to make covered records available by electronic means. The Commission fully supports this goal and fulfills the bulk of its FOIA requests electronically. For example, during calendar year 1998, of the 462 FOIA requests that the Commission granted in their entirety, 424 were for on-line computer access.[1]

The Commission's home page on the World Wide Web, www.fec.gov, contains a wide range of information on Commission policies and procedures, as well as campaign finance data. The material available includes summaries and searchable databases of campaign contributions; the FEC newsletter, the *Record;* candidate and committee Campaign Guides, reporting forms, and other FEC publications; news releases and media advisories; statistics and data on voting and elections; the text of the Commission's regulations; FEC Advisory Opinions extending back to 1977; summaries of court cases to which the Commission was a party; and images of campaign finance reports filed by

[1] Of the 486 FOIA requests received in 1998, only 24 were denied. Ten of these were denied because the Commission did not have records responsive to the requests; thirteen requests were denied because the Commission had already placed the requested records on the public record prior to the filing of the requests, pursuant to 11 CFR 4.4; and one request was denied due to exempt documents, as stipulated under 11 CFR 4.5.

candidates for the House, presidential campaigns, and other political committees, as well as reports filed by the Democratic Senatorial Campaign Committee and the National Republican Senatorial Committee.

The revised site includes a Site Index (alphabetical listing of information on the site), a ''What's New'' scrolling menu, daily highlights, and publications written in Spanish. The site also includes the Commission's annual FOIA Report, submitted to Congress pursuant to 5 U.S.C. 552(e), detailed information on how to submit a FOIA request, and a publication, *Availability of FEC Information*, which fulfills the agency's responsibilities under 5 U.S.C. 552(g) to ''prepare and make publicly available upon request, reference material or a guide for requesting records or information from the agency.''

The Commission is continuing to add information to this site. For example, campaign finance reports filed by Senate candidates and committees that support them will be added as soon as copies of those reports, which are filed with the Secretary of the Senate pursuant to 2 U.S.C. 432(g)(1), are made available to the Commission in a form that can be imaged onto the site.

The Commission recently redesigned its web site by reorganizing the available information in a more efficient presentation. It has also implemented Media-Independent Presentation Language, technology designed to allow persons with special needs to access many types of information using a wide variety of hardware and software solutions.

The Commission's 1999 publication, *Availability of FEC Information*, *supra*, provides a detailed listing of the types of documents available from the FEC, including those available under FOIA, as well as directions on how to locate and obtain them. This publication is available from the Public Records Office and also appears on the FEC web site.

The Commission also makes numerous documents available through its electronic FAXLINE, 202–501–3413. Information on documents available through the FAXLINE can be found in a FAXLINE menu (document #411), on the Commission's web site, in the above publication, or by calling the Commission's Public Records Office at 1–800–424–9530, extension #3 (toll free) or 202–694–1120. That Office also responds to E-mail requests at pubrec@fec.gov. The Commission's Information Division can be reached at 1–800–424–9530, ext. #1 (toll free), or 202–694–1100.

Section 2.2 Definitions

The Commission is revising paragraph 2.2(b), a part of its Government in the Sunshine regulations, to delete an obsolete reference to the Secretary of the Senate, the Clerk of the House, or their designees *ex officio* from the definition of ''Commissioner.'' These offices were declared unconstitutional in *FEC* v. *NRA Political Victory Fund*, 6 F.3d 821 (D.C. Cir. 1993), *cert. dismissed for want of jurisdiction*, 513 U.S. 88 (1994).

Section 2.5. Procedures for Closing Meetings

The Commission is also deleting a phrase referring to these *ex officio* members from paragraph (a) of this section.

Section 4.1 Definitions

The Commission is revising paragraph 4.1(b) to delete an obsolete reference to congressional officials who no longer serve on the Commission. *See* discussion of 11 CFR 2.2, *supra.*

Consistent with EFOIA, the Commission is revising the definition of *search* found at paragraph 4.1(h) to clarify that this encompasses all time spent reviewing Commission records, whether manually or by automated means. 5 U.S.C. 552(a)(3)(D). The Commission is also adding new paragraph 4.1(o), which states that the term *record* and any other term used in 11 CFR part 4 in reference to information maintained by the Commission includes any pertinent information that is maintained in an electronic format.

Section 4.4 Availability of Records

The Commission is a full disclosure agency that routinely places numerous categories of records on the public record, consistent with the rights of individuals to privacy; the rights of persons contracting with the Commission with respect to trade secret and commercial or financial information; and the need for the Commission to promote free internal policy deliberations and to pursue its official activities without undue disruption. Examples of categories of records made publicly available by the Commission that do not require a FOIA request include campaign finance reports, which are placed on the public record within 48 hours of receipt at the Commission, as required by 2 U.S.C. 438(a)(4); investigative files in closed enforcement matters, which are placed on the public record within 30 days of the date of the close-out letter, as required under 2 U.S.C. 437g(a)(4)(B)(ii) and 11 CFR 111.20(a); and requests for advisory opinions pursuant to 2 U.S.C. 437f(d) and 11 CFR 112.2. Because these records are made publicly available pursuant to the Federal Election Campaign Act (''FECA''), requests for them generally are not processed under FOIA—requesting them under FOIA may even cause the requester to lose time in gaining the needed information. Consequently, the Commission has restructured and revised parts of paragraph 4.4(a), which deals with the availability of records under FOIA, to reflect this situation.

Section 4.4(a) as formerly written covered both FOIA sections 5 U.S.C. 552(a)(2) and 552(a)(3). Section 552(a)(2) encompasses final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases; statements of policy and interpretations which have been adopted by the Commission but are not published in the **Federal Register**; and administrative staff manuals and instructions to staff that affect a member of the public. Section 552(a)(3) includes all other documents covered by the FOIA, that is, all documents that are not subject to one or more of the exceptions set forth at 5 U.S.C. 552(b).

Paragraphs 11 CFR 4.4(a)(1)–(3), which are largely unchanged, refer to material covered by 5 U.S.C. 552(a)(2), while former paragraphs 4.4(a)(4)–(15) listed other agency documents. The NPRM noted that this latter listing might not have included all covered documents. It was also overinclusive, since it covered materials that are also available from the Commission's Public Disclosure Division. *See* former 11 CFR 4.4(b). The Commission has therefore replaced the listing of covered documents in former paragraphs 4.4(a)(4)–(15) with a general statement in new paragraph 4.4(b) that, in accordance with 5 U.S.C. 552(a)(3), the Commission will make available, upon proper request, all non-exempt Agency records, or portions of records, that have not previously been made public pursuant to 5 U.S.C. 552(a)(1) and (a)(2). Former paragraph 4.4(b), which noted that public access to the materials listed in former paragraphs 4.4(a)(3) and (a)(10)–(15) are also available under the FECA from the Public Disclosure Division, has been repealed, because some of these provisions are being replaced by language in 11 CFR 5.4, while other provisions duplicate language found elsewhere in the regulations.[2]

[2] Records that an agency has previously made available to the public under section 552(a)(2) need not be released again in response to a FOIA request made pursuant to section 552(a)(3). *Department of Justice* v. *Tax Analysts*, 492 U.S. 136, 152 (1989).

The Commission is not revising paragraphs (a)(1) or (a)(2) of section 4.4. The Commission is revising paragraph (a)(3), however, to delete language referring to Commission votes to take no further action in an enforcement action, which sometimes but not always occurs in connection with a decision to close a file. For example, if the Commission votes to accept a conciliation agreement, this serves to end the matter—there is no vote as such to take no further action in the case. A further revision clarifies that all respondents must be notified of the Commission's action before this 30-day period for the Commission to make these records public begins to run.

In addition, the material in former paragraphs 4.4(a)(4), dealing with letter requests for guidance [3] and the Commission's responses thereto; 4.4(a)(5), minutes of Commission meetings; 4.4(a)(6), material routinely prepared for public distribution; and 4.4 (a)(14), audit reports discussed in public session, has been moved to revised 11 CFR 5.4(a), the appropriate location for information available from the Commission's Public Disclosure Division. Former paragraphs 4.4(a)(7), proposals submitted in response to a request for proposals under Federal Procurement Regulations; 4.4(a)(8), contracts for goods and services entered into by the Commission; and 4.4(a)(13), studies published by the Commission's Office of Election Administration, have been deleted, since this material is covered by the new general language in paragraph 4.4(b). Finally, paragraph 4.4(a)(9), statements and certifications required by the Government in the Sunshine Act, 5 U.S.C. 552b, has been repealed, as these documents are covered by the Commission's Sunshine regulations, 11 CFR part 2.

Consistent with new 5 U.S.C. 552(1)(2)(D) and (E), the Commission is revising paragraphs (a)(4) and (5) of section 4.4 to include new material that will be made available under EFOIA. The new categories include copies of all records that have been released to any person in response to a previous FOIA request and that the Commission determines have become, or are likely to become, the subject of subsequent requests for substantially the same records; and a general index of these records. The Commission is also revising the first sentence of paragraph 4.4(c), to include within the listing of indexes and supplements it makes available to the general public the additional documents referenced in EFOIA at 5 U.S.C. 552(a)(2)(E). In particular, the Commission's publication, *Availability of FEC Information*, discussed *supra*, which is available on the Commission's web site, was prepared in response to this new EFOIA requirement.

In addition to the above activity, the comment urged the Commission to put in place the Government Information Locator System required by the Paperwork Reduction Act of 1995 at 44 U.S.C. 3511. The Commission declines to do this, because it is statutorily exempt from coverage under that Act. *See* 44 U.S.C. 3502(1).

As requested by the comment, the Commission is adding new paragraph 4.4(g) to alert the public to the Commission's web site and the wealth of information it contains. However, the Commission is not providing in its regulations a detailed listing of available material, as suggested by the commenters, since new information is added to the web site on an ongoing basis, and because the Commission's 1999 brochure, *Availability of FEC Information*, provides a detailed list of available material—precisely the sort suggested by the commenters.

Section 4.5 Categories of Exemptions

Estimates of the Volume of Materials Denied

EFOIA at 5 U.S.C. 552(a)(6)(F) requires that agency responses denying exempt information include an estimate of the volume of any responsive documents the agency is withholding. It also requires that when an agency withholds only a portion of a record, the response indicate the amount of information deleted from the released record; and that, where possible, this be noted at the place of the deletion. 5 U.S.C. 552(b)(9). Paragraph 4.5(c) of the Commission's regulations has been revised to implement this new requirement.

The NPRM proposed no changes to the Commission's rules at 11 CFR 4.5(d), which address other agencies' records or subject matter to which a government agency other than the Commission has exclusive or primary jurisdiction. This regulation states that, when a FOIA request seeking such records is received, the request ''shall be promptly referred by the Commission to that agency for disposition or guidance as to disposition.''

The joint comment cites *McGehee* v. *CIA*, 697 F.2d 1095, 1119 (D.C. Cir. 1983), *vacated in part, mot. to intervene granted, reh'g granted*, 724 F.2d 201 (D.C. Cir. l984), and *Paisley* v. *CIA*, 712 F.2d 686, 691 (D.C. Cir. 1983), in urging the Commission to end its practice of routinely referring such requests to the issuing agency. However, these cases reflect the minority view. The Department of Justice's *Freedom of Information Act Guide & Privacy Act Overview*, Sept. 1998 Edition, at 25–26 and accompanying notes, directs agencies to consult with other agencies whenever a FOIA request implicates those agencies' documents. However, ''[w]hen entire records originating with another agency or component are located, those records ordinarily should be referred to their originating agency for its direct response to the requester.'' *See also Crooker* v. *United States Parole Commission*, 730 F.2d 1, 4–5 and n. 3 (1st Cir. 1984). Consequently, the Commission concludes that its current practice and regulatory language comply with the pertinent law.

Section 4.7 Requests for Records

EFOIA requires covered agencies to provide requested records in any form or format requested, if the record is readily reproducible by the agency in that form or format. Each agency must make reasonable efforts to maintain its records in forms or formats that are reproducible electronically, and to search for requested records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system. 5 U.S.C. 552(a)(3)(B), (C).

The Commission is removing and reserving former paragraph 4.7(a), which advises interested parties on how to obtain records from the Commission's Public Records Office, since those records are no longer covered by 11 CFR part 4. Identical information is contained in 11 CFR 5.5, which concerns access to records that may be obtained from the Commission's Public Disclosure Division. That language has not been revised.

The Commission is redesignating former paragraph 4.7(b), addressing what must be contained in a FOIA request, as paragraph 4.7(b)(1) and adding new paragraph 4.7(b)(2) to comply with this new requirement. The new language requires requests for Commission records to specify the preferred form or format, including electronic formats, for the agency's response. The Commission will accommodate requesters as to form or format if the record is readily available in that form. If a requester does not specify the form or format of the response, the Commission will respond in the form or format in which the

[3] Letter requests for guidance are letters that appear to be advisory opinion requests but do not meet the requirements of 2 U.S.C. 437f and 11 CFR Part 112. In appropriate cases Commission staff respond to these requests with information and guidance.

document is most accessible to the Commission.

1. Time Limit for Responding to Requests

EFOIA lengthened the time within which agencies must determine whether to comply with a FOIA request from ten to twenty working days. 5 U.S.C. 552(a)(6)(A)(i). Paragraph 4.7(c) has been revised to conform the Commission's regulations to this new time limit.

In addition, the Commission is revising the first sentence of paragraph 4.7(c) to conform with 5 U.S.C. 552(a)(6)(A). The statutory language provides that each agency shall determine within twenty days after the receipt of a FOIA request whether to comply with the request. However, the former regulation stated that the Commission would provide the requested records within ten days. Given the Commission's workload and the volume of FOIA requests, the Commission believes the statutory timeframe is more realistic than that included in the former rule. Accordingly, the revised regulation states that the Commission will determine within 20 days after receiving a FOIA request whether to comply with that request.

The FOIA at 5 U.S.C. 552(a)(6)(B) permits agencies, upon written notice to the requester, to extend the time limit for responding to a request or deciding an appeal of a denial of a request for not more than ten working days, if ''unusual circumstances'' exist for the extension. EFOIA did not revise the definition of ''unusual circumstances,'' but it did revise that section to permit agencies to further extend the response time by notifying the requesters and providing them with an opportunity to either limit the scope of the request so that no extension is needed, or to arrange with the agency an alternative time frame for processing the request. 5 U.S.C. 552(a)(6)(B)(ii). New paragraph 4.7(d) implements this statutory procedure.

2. Aggregation of Requests

EFOIA authorizes agencies to promulgate regulations providing for the aggregation of related requests by the same requester or a group of requesters acting in concert when the requests would, if treated as a single request, present ''unusual circumstances.'' 5 U.S.C. 552(a)(6)(B)(iv). Such circumstances include the need to search for and collect the requested records from diverse locations; the need to search for, collect, and examine voluminous separate and distinct records which are demanded in a single request; and the need to consult with another agency or among two or more Commission offices that each have a substantial subject matter interest in the records. 5 U.S.C. 552(a)(6)(B)(iii) [former section 552(a)(6)(B)].

New paragraph 4.7(e) implements this statutory provision. As EFOIA requires, the regulation provides that requests will be aggregated only when the Commission ''reasonably believes that such requests actually constitute a single request'' and the requests ''involve clearly related matters.'' 5 U.S.C. 552(a)(6)(B)(iv).

3. Multitrack Processing

EFOIA authorizes agencies to promulgate regulations providing for multitrack processing of requests for records based on the amount of work and/or time involved in processing requests. 5 U.S.C. 552(a)(6)(D)(i). Under this approach, requests for records where little work or time is required will be placed on a faster track, and therefore handled more quickly, than those which entail more work. The statute further permits agencies to include in their regulations a provision granting a FOIA requester whose request does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing. 5 U.S.C. 552(a)(6)(D)(ii).

The Commission believes that multitrack processing is the most efficient and fair way to process FOIA requests. If requests are processed on a strict first in, first out basis, easily filled requests will be processed only after earlier received, complex requests for dozens of documents located in offices throughout the Commission. Accordingly, the Commission is adopting new paragraph 4.7(f) to provide for multitracking and to establish a mechanism whereby requesters may seek to have their requests processed more rapidly.

The commenters urged the Commission to not only adopt a multitrack processing system, but also to specify the guidelines it will follow in placing requests on the various tracks. Contrary to the commenters' assertion, the adoption of a multitrack system itself is discretionary, as is the inclusion of specific standards in the regulatory text. The Commission rarely encounters difficulties in meeting FOIA deadlines and believes a flexible approach is the best way to address this situation.

4. Expedited Processing

EFOIA requires each agency to promulgate regulations providing for the expedited processing of FOIA requests in cases of ''compelling need'' and in other cases, if any, determined by the agency. 5 U.S.C. 552(a)(6)(E)(i). The statute specifies two categories of ''compelling need.'' The first is where a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The second involves a request made by a person primarily engaged in disseminating information who shows there is an urgent need to inform the public concerning actual or alleged federal government activity. 5 U.S.C. 552(a)(6)(E)(v). The statute also sets out procedures for handling requests for expedited processing and for the judicial review of agency denials of such requests. 5 U.S.C. 552(a)(6)(E)(ii)–(iv).

New paragraph 4.7(g) implements EFOIA's expedited processing requirements. The Commission emphasizes that, in keeping with Congress' express intent that the specified criteria for compelling need ''be narrowly applied,'' expedited processing will be granted only in those truly extraordinary cases that meet the specific statutory requirements. H.R. Rep. No. 795, 104th Cong., 2d Sess. 26 (1996) (''House Report''). The legislative history makes it clear that ''the expedited process procedure is intended to be limited to circumstances in which a delay in obtaining information can reasonably be foreseen to cause a significant adverse consequence to a recognized interest.'' *Id.*

A requester seeking expedited processing under the ''imminent threat'' category of the ''compelling need'' definition will have to show that the failure to obtain expeditiously the requested information threatens the life or safety of an individual, and that the threat is ''imminent.'' The fact that an individual or his or her attorney needs information for an approaching litigation deadline is not a ''compelling need'' under this provision.

A requester seeking expedited processing under the second, ''urgency to inform,'' category will have to show that he or she is ''primarily engaged in disseminating information;'' there is an ''urgency to inform the public'' about the information requested; and the information relates to an ''actual or alleged federal government activity.''

To meet the first ''urgency to inform'' criterion, the requester must show that his or her principal occupation is disseminating information to the public. As the legislative history makes clear, ''[a] requester who only incidentally engages in information dissemination,

besides other activities, would not satisfy this requirement.'' *Id.*

To meet the second ''urgency to inform'' criterion, the requester must show more than a general interest in the ''public's right to know.'' *See id.* As explained in the legislative history, a requester must show that a delay in the release of the requested information will ''compromise a significant *recognized* interest,'' and that the requested information ''pertain(s) to a matter of *current* exigency to the American public.'' *Id.* (emphasis added). It will, therefore, be insufficient to base a showing of ''compelling need'' on a reporter's desire to inform the public of something he or she believes might be of public concern if it were publicized. Rather, a reporter must show that the information pertains to a subject currently of significant interest to the public and that delaying the release of the information would harm the public's ability to assess the subject governmental activity.

The final ''urgency to inform'' criterion makes it clear that the information must relate to the activities of the Commission and Commission staff. A request for expedited processing can thus be considered for information relating, for example, to a Commission decision. The Commission generally will not, however, grant a request for expedited processing of information that the Commission has collected regarding specific candidates, campaigns or political committees.

EFOIA also authorizes agencies to expand the categories of requests qualifying for expedited processing beyond the two specified in the statute. 5 U.S.C. 552(a)(6)(E)(i)(II). The joint comment urged the Commission to provide expedited service whenever it receives five or more requests for substantially the same records, and gave the hypothetical of fifty or more requesters waiting their turn to receive identical or nearly-identical information.

It is clear from the legislative history that Congress intended to narrowly limit the ''compelling need'' standard. The House Report gives as an example of such need Department of Justice procedures that permit expedited access ''if a delay would result in the loss of substantial due process rights and the information sought is not otherwise available in a timely manner.'' House Report at 26, n. 39. As that Report further explains, ''Given the finite resources generally available for fulfilling FOIA requests, unduly generous use of the expedited processing procedure would unfairly disadvantage other requesters who do not qualify for its treatment.'' House Report at 26. Consequently, the Commission does not believe the receipt of five similar requests is sufficient to trigger this process.

The Commission notes that it rarely receives more than a single request for the same records. It has never received five, much less 50, requests for the same material. Should that occur in the future, this may be a factor used to advance processing of such requests under the multitrack system.

As required by EFOIA at 5 U.S.C. 552(a)(6)(E)(iii), the Commission's rules at 11 CFR 4.7(g)(5) state that the Commission will process requests to grant expedited processing ''as soon as practicable.'' The Commission will also give priority to these requests.

5. Redesignations

The Commission is redesignating former section 4.7(d) as new section 4.7(h) and former section 4.7(e) as new section 4.7(i). The paragraphs set forth appeal rights of persons denied access to records, and the date of receipt of a request, which is the date on which the Commission's FOIA officer actually receives the request, respectively. The text of these paragraphs has not been changed.

Section 5.1 Definitions

The Commission is revising paragraph (b) of section 5.1 to delete an obsolete reference to congressional officials who no longer serve as *ex officio* members of the Commission. *See* discussion of 11 CFR 2.2, *supra.*

Section 5.4 Availability of Records

This section lists the types of records that are available from the Commission's Public Records Office. Paragraph (a)(4) has been revised to clarify that Opinions of Commissioners rendered in enforcement cases, as well as non-exempt General Counsel's Reports, and investigatory materials will be placed on the public record no later than 30 days from the date on which all respondents are notified that the Commission has voted to close the file. The term ''Opinions of Commissioners rendered in enforcement cases'' includes not only Statements of Reasons but any other document a Commissioner might author in this regard. The revision deletes language referring to Commission votes to take no further action, which, as explained above, does not always occur in connection with a decision to close a file. It also clarifies that all respondents must be notified of the Commission's action before this 30-day period begins to run.

The remainder of the section has been revised to mirror the changes made to 11 CFR 4.4, *supra,* addressing records that are available from the Public Disclosure Division and thus are not made available in response to a FOIA request. Former 11 CFR 4.4(a)(4), which pertains to letter requests for guidance and responses thereto, has been moved to new paragraph 5.4(a)(5); former 11 CFR 4.4(a)(5), minutes of Commission meetings, has been moved to new paragraph 5.4(a)(6); former 11 CFR 4.4(a)(6), material routinely prepared for public distribution, *e.g.,* campaign guidelines, the FEC Record, press releases, speeches, [and] notices to candidates and committees, has been moved to new paragraph 5.4(a)(7); former 11 CFR 4.4(a)(14), audit reports, if discussed in open session, has been moved to new paragraph 5.4(a)(8); and former 11 CFR 4.4(a)(15), agendas for Commission meetings, has been moved to new paragraph 5.4(a)(9).

Please note that, in keeping with its status as a full disclosure agency, the Commission defines these terms broadly, to grant the widest possible access to Commission materials. For example, the term ''campaign guidelines'' includes not only those publications called ''Campaign Guides,'' but also other publications that contain useful information to those involved or interested in federal campaigns. These include such publications as the Commission's *Guideline for Presentation in Good Order,* which explains how campaigns seeking matching funds under the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9035 *et seq.*, and other publications to assist publicly-financed campaigns. The term also includes brochures addressing a wide range of campaign-related topics, including, for example, which communications require a disclaimer, and how partnerships are treated under the FECA.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached final rules will not have a significant economic impact on a substantial number of small entities. Most of the changes conform to statutory amendments that expand the options available to covered entities seeking to obtain records from the Commission under the Freedom of Information Act, while others clarify the Commission's current rules in this area. Therefore the rules will not have a significant economic effect on a substantial number of small entities.

List of Subjects

11 CFR Part 2

Sunshine Act.

11 CFR Part 4

Freedom of information.

11 CFR Part 5

Archives and records.

For the reasons set forth in the preamble, Chapter I of Title 11 of the Code of Federal Regulations is amended to read as follows:

PART 2—SUNSHINE REGULATIONS; MEETINGS

1. The authority citation for part 2 continues to read as follows:

Authority: Sec. 3(a), Pub. L. 94–409, 5 U.S.C. 552b.

2. Section 2.2 is amended by revising paragraph (b) to read as follows:

§ 2.2 Definitions.

* * * * *

(b) *Commissioner* or *Member. Commissioner* or *Member* means an individual appointed to the Federal Election Commission pursuant to 2 U.S.C. 437c(a), but does not include a proxy or other designated representative of a Commissioner.

* * * * *

3. Section 2.5 is amended by revising paragraph (a) to read as follows:

§ 2.5 Procedures for closing meetings.

(a) *General.* No meeting or portion of a meeting may be closed to the public observation under this section unless a majority of the Commissioners votes to take such action. The closing of one portion of a meeting shall not justify closing any other portion of a meeting.

* * * * *

PART 4—PUBLIC RECORDS AND THE FREEDOM OF INFORMATION ACT

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

Authority: 5 U.S.C. 552, as amended.

5. Section 4.1 is amended by republishing the introductory text, revising paragraphs (b) and (h) and adding new paragraph (o) to read as follows:

§ 4.1 Definitions.

As used in this part:

* * * * *

(b) *Commissioner* means an individual appointed to the Federal Election Commission pursuant to 2 U.S.C. 437c(a).

* * * * *

(h) *Search* means all time spent reviewing, manually or by automated means, Commission records for the purpose of locating those records that are responsive to a FOIA request, including page-by-page or line-by-line identification of material within documents. Search time does not include review of material in order to determine whether the material is exempt from disclosure.

* * * * *

(o) *Record* and any other term used in this part in reference to information includes any information that would be a Commission record subject to the requirements of this part when maintained by the Commission in any format, including an electronic format.

6. Section 4.4 is amended by revising paragraphs (a) and (b) and the first sentence of paragraph (c), and adding new paragraph (g) to read as follows:

§ 4.4 Availability of records.

(a) In accordance with 5 U.S.C. 552(a)(2), the Commission shall make the following materials available for public inspection and copying:

(1) Statements of policy and interpretation which have been adopted by the Commission;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Opinions of Commissioners rendered in enforcement cases, General Counsel's Reports and non-exempt 2 U.S.C. 437g investigatory materials shall be placed on the public record of the Agency no later than 30 days from the date on which all respondents are notified that the Commission has voted to close such an enforcement file;

(4) Copies of all records, regardless of form or format, which have been released to any person under this paragraph (a) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(5) A general index of the records referred to in paragraph (a)(4) of this section.

(b) In accordance with 5 U.S.C. 552(a)(3), the Commission shall make available, upon proper request, all non-exempt Agency records, or portions of records, not previously made public pursuant to 5 U.S.C. 552(a)(1) and (a)(2).

(c) The Commission shall maintain and make available current indexes and supplements providing identifying information regarding any matter issued, adopted or promulgated after April 15, 1975 as required by 5 U.S.C. 552(a)(2)(C) and (E). * * *

* * * * *

(g) The Commission encourages the public to explore the information available on the Commission's World Wide Web site, located at http://www.fec.gov. The site includes a Commission publication, *Availability of FEC Information,* which provides a detailed listing of the types of documents available from the FEC, including those available under FOIA, and directions on how to locate and obtain them.

7. Section 4.5 is amended by revising paragraph (c) to read as follows:

§ 4.5 Categories of exemptions.

* * * * *

(c) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by an exemption in paragraph (a) of this section under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

* * * * *

8. Section 4.7 is amended by removing and reserving paragraph (a); redesignating paragraph (b) as paragraph (b)(1); adding new paragraph (b)(2); revising the first sentence of paragraph (c); redesignating paragraph (d) as paragraph (h); redesignating paragraph (e) as paragraph (i); and adding new paragraphs (d), (e), (f) and (g), to read as follows:

§ 4.7 Requests for records.

(a) [Reserved]

(b) (1) * * *

(2) Requests for Commission records and copies thereof shall specify the preferred form or format (including electronic formats) of the response. The Commission shall accommodate requesters as to form or format if the record is readily available in that form or format. When requesters do not specify the form or format of the response, the Commission shall respond in the form or format in which the document is most accessible to the Commission.

(c) The Commission shall determine within twenty working days after receipt of a request, or twenty working days after an appeal is granted, whether to comply with such request, unless in

unusual circumstances the time is extended or subject to § 4.9(f)(3), which governs advance payments. * * *

(d) If the Commission determines that an extension of time greater than ten working days is necessary to respond to a request satisfying the ''unusual circumstances'' specified in paragraph (c) of this section, the Commission shall so notify the requester and give the requester an opportunity to limit the scope of the request so that it may be processed within the time limit prescribed in paragraph (c) of this section, or arrange with the Commission an alternative time frame for processing the request or a modified request.

(e) The Commission may aggregate and process as a single request requests by the same requester, or a group of requesters acting in concert, if the Commission reasonably believes that the requests actually constitute a single request that would otherwise satisfy the unusual circumstances specified in paragraph (c) of this section, and the requests involve clearly related matters.

(f) The Commission uses a multitrack system to process requests under the Freedom of Information Act that is based on the amount of work and/or time involved in processing requests. Requests for records are processed in the order they are received within each track. Upon receipt of a request for records, the Commission shall determine which track is appropriate for the request. The Commission may contact requesters whose requests do not appear to qualify for the fastest tracks and provide such requesters the opportunity to limit their requests so as to qualify for a faster track. Requesters who believe that their requests qualify for the fastest tracks and who wish to be notified if the Commission disagrees may so indicate in the request and, where appropriate and feasible, shall also be given an opportunity to limit their requests.

(g) The Commission shall consider requests for the expedited processing of requests in cases where the requester demonstrates a compelling need for such processing.

(1) The term compelling need means:

(i) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal government activity.

(2) Requesters for expedited processing must include in their requests a statement setting forth the basis for the claim that a ''compelling need'' exists for the requested information, certified by the requester to be true and correct to the best of his or her knowledge and belief.

(3) The Commission shall determine whether to grant a request for expedited processing and notify the requester of such determination within ten days of receipt of the request. Denials of requests for expedited processing may be appealed as set forth in § 4.8. The Commission shall expeditiously determine any such appeal. As soon as practicable, the Commission shall process the documents responsive to a request for which expedited processing is granted.

* * * * *

PART 5—ACCESS TO PUBLIC DISCLOSURE DIVISION DOCUMENTS

9. The authority citation for part 5 continues to read as follows:

Authority: 2 U.S.C. 437f(d), 437g(a)(4)(B)(ii), 438(a), and 31 U.S.C. 9701.

10. Section 5.1 is amended by revising paragraph (b) to read as follows:

§ 5.1 Definitions.

* * * * *

(b) *Commissioner* means an individual appointed to the Federal Election Commission pursuant to 2 U.S.C. 437c(a).

* * * * *

11. Section 5.4 is amended by revising paragraph (a)(4) and adding new paragraphs (a)(5) through (a)(9) to read as follows:

§ 5.4 Availability of records.

(a) * * *

(4) Opinions of Commissioners rendered in enforcement cases and General Counsel's Reports and non-exempt 2 U.S.C. 437g investigatory materials shall be placed on the public record of the Agency no later than 30 days from the date on which all respondents are notified that the Commission has voted to close such an enforcement file.

(5) Letter requests for guidance and responses thereto.

(6) The minutes of Commission meetings.

(7) Material routinely prepared for public distribution, e.g. campaign guidelines, FEC Record, press releases, speeches, notices to candidates and committees.

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

(9) Agendas for Commission meetings.

* * * * *

Dated: February 17, 2000.

Darryl R. Wold,

Chairman, Federal Election Commission.

[FR Doc. 00–4318 Filed 2–23–00; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Regulation T]

Credit by Brokers and Dealers; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Foreign Margin Stocks (Foreign List) is composed of certain foreign equity securities that qualify as *margin securities* under Regulation T. The Foreign List is published twice a year by the Board.

EFFECTIVE DATE: March 1, 2000.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2837, or Scott Holz, Senior Counsel, Legal Division, (202) 452–2966, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired *only,* contact Diane Jenkins, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

SUPPLEMENTARY INFORMATION: Listed below is a complete edition of the Board's Foreign List. The Foreign List was last published on August 26, 1999 (64 FR 46559), and became effective September 1, 1999.

The Foreign List is composed of foreign equity securities that qualify as margin securities under Regulation T by meeting the requirements of § 220.11(c) and (d). Additional foreign securities qualify as margin securities if they are deemed by the Securities and Exchange Commission (SEC) to have a ''ready market'' under SEC Rule 15c3–1 (17 CFR 240.15c3–1) or a ''no-action'' position issued thereunder. This includes all foreign stocks in the FTSE World Index Series.

It is unlawful for any creditor to make, or cause to be made, any representation to the effect that the inclusion of a security on the Foreign List is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other similar communication containing