

# Rules and Regulations

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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—\$.25.

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. 80-14863 Filed 5-12-80; 8:45 am]

BILLING CODE 6715-01-M

**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 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, 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).

Chapter I of Title II Code of Federal Regulations is amended by the addition of the following new part:

**PART 5—ACCESS TO PUBLIC DISCLOSURE DIVISION DOCUMENTS**

Sec.

5.1 Definitions.

5.2 Policy on disclosure of records.

5.3 Scope.

5.4 Availability of records.

5.5 Request for records.

5.6 Fees.

Authority: 2 U.S.C. 437f(d), 437g(a)(4)(B)(ii), 438(a), and 31 U.S.C. 483a.

**§ 5.1 Definitions.**

(a) "Commission" means the Federal Election Commission established by the Federal Election Campaign Act of 1971, as amended.

(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 U.S.C. 437c(a).

(c) "Request" means to seek access to Commission materials subject to the provisions of the Federal Election Campaign Act of 1971, as amended.

(d) "Requestor" is any person who submits a request to the Commission.

(e) "Act" means the Federal Election Campaign Act, 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 U.S.C. 437g(a)(4)(B)(ii), and 438(a).

**§ 5.2 Policy on disclosure of records.**

(a) The Commission will make the fullest possible disclosure of records to the public, 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 entitled to confidential treatment, the need for the Commission to promote free internal policy deliberations and to pursue its official activities without undue disruption.

(b) Nothing herein shall be deemed to restrict the public availability of Commission records falling outside

provisions of the Act, or to restrict such public access to Commission records as is available pursuant to the Freedom of Information Act and the rules set forth as Part 4 of this chapter.

**§ 5.3 Scope.**

(a) The regulations in this part implement the provisions of 2 U.S.C. 437f(d), 437g(A)(4)(B)(ii), and 438(a).

(b) Public access to such Commission records as are subject to the collateral provisions of the Freedom of Information Act and are not included in the material subject to disclosure under this part (described in 11 CFR 5.4(a)) shall be governed by the rules set forth as Part 4 of this chapter.

**§ 5.4 Availability of records.**

(a) In accordance with 2 U.S.C. 438(a), the Commission shall make the following material available for public inspection and copying through the Commission's Public Disclosure Division:

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

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

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

(4) Opinions of Commissioners rendered in enforcement cases and General Counsel's report and non-exempt 2 U.S.C. 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.

(b) The provisions of this part apply only to existing records; nothing herein shall be construed as requiring the creation of new records.

(c) In order to ensure the integrity of the Commission records subject to the Act and the maximum availability of such records to the public, nothing herein shall be construed as permitting the physical removal of any Commission records from the public facilities maintained by the Public Disclosure Division other than copies of such records obtained in accordance with the provisions of this part.

(d) Release of records under this section is subject to the provisions of 5 U.S.C. 552a.

**§ 5.5 Request for records.**

(a) A request to inspect or copy those public records described in 11 CFR 5.4(a) may be made in person or by mail. The Public Disclosure Division 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, Northwest, Washington, D.C. 20463.

(b) Each request shall describe the records sought with sufficient specificity with respect to names, dates and subject matter to permit the records to be located with a reasonable amount of effort. A requestor will be promptly advised if the requested 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.

(c) Requests for copies of records not available through the Public Disclosure Division shall be addressed to the FOIA Officer, Federal Election Commission, 1325 K Street, Northwest, Washington, D.C. 20463. Requests for Commission records not described in 11 CFR 5.4(a) shall be treated as requests made pursuant to the Freedom of Information Act (5 U.S.C. 552) and shall be governed by 11 CFR Part 4. In the event that the Public Disclosure Division receives a written request for access to materials not describe in 11 CFR 5.4(a), it shall promptly forward such request to the Commission FOIA officer for processing in accordance with the provisions of Part 4 of this chapter.

**§ 5.6 Fees.**

(a) Fees will be charged for copies of records which are furnished a requestor 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 cost of processing requests for those records computed on the basis of the actual number of copies produced and the staff time expended in fulfilling the particular request, 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—\$2.50.

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—\$5.10.  
Report on Financial Activity—\$5.00.  
Financial Control and Compliance Manual—  
\$7.50.

(b) In the event the anticipated fees for pending requests under this part from the same requestor exceed \$25.00, such records will not be searched for or made available, nor copies furnished unless the requestor 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 requested information to the particular requestor 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. 80-14604 Filed 5-12-80; 8:45 am]

BILLING CODE 6715-01-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 309

#### Information Made Available for Public Inspection

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Federal Deposit Insurance Corporation ("FDIC") regulation 309.4(b)(4) states that the Summary of Deposits for commercial banks (Form 8020/05) and the Summary of Deposits for mutual savings banks (Form 8020/46) are surveys available for public inspection at the FDIC's discretion. Enactment of the Depository Institutions Deregulation and Monetary Control Act of 1980, Section 308 "Deposit Insurance," necessitates that the FDIC collect, in the Summary of Deposits, additional information that should not be disclosed to the public. Therefore, the Board of Directors of the FDIC is issuing an amendment to its regulations. This amendment limits information made available for public inspection.

**EFFECTIVE DATE:** May 5, 1980.

**FOR FURTHER INFORMATION CONTACT:**

Carol Galbraith, Attorney (202-389-4422), Bank Regulation Section, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

**SUPPLEMENTARY INFORMATION:** Section 309.4 of the FDIC regulations (12 CFR 309.4) concerns information made available for public inspection. Subsection (b)(1) to § 309.4 (12 CFR 309.4(b)(1)) states that the Summary of Deposits for commercial banks (Form 8020/05) and the Summary of Deposits for mutual savings banks (Form 8020/46) are available for public inspection at the FDIC's discretion.

Enactment of the Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. 96-221), Section 308 "Deposit Insurance," necessitates the collection of additional data in the Summary of Deposits. Specifically, the FDIC needs detailed breakdowns on the size of accounts and the number of accounts held by insured banks. The FDIC's Board of Directors is of the opinion that this new information represents confidential financial data and, therefore considers it desirable to exempt from public disclosure those parts of the Summary of Deposits containing the size and number of accounts.

This amendment of § 309.4(b)(4) maintains the confidentiality of data on the size and number of accounts (whereas, § 304.2 requires that the summaries of deposit be reported). Thus, the Board has determined that since this amendment pertains only to disclosure of information by the FDIC, it will not affect the record-keeping or reporting requirements of the banks. Thus the amendment will have no significant direct costs to banks and no cost-benefit analysis is needed.

The alternative approach considered was the creation of an additional form to contain the newly required confidential information on size and number of accounts. That alternative was rejected since use of the Summary of Deposits format is both familiar and more efficient for reporting banks to use.

The regulation will preserve the confidentiality of information that has not been reported in the recent past and that when reported earlier, has been held in confidence (for example in the surveys of the Summary of Accounts and Deposits of 1975 and prior years). By maintaining confidentiality, the regulation enhances competition by encouraging economic research and banking innovation. (For example, to the extent that data on the size and number of accounts for each bank office may reveal the results of marketing research, the public availability of that data

would discourage research and innovation.)

The Board has further determined that because the amendment is a technical change that preserves existing confidentiality of size and number of accounts, for which it is in the interest of reporting banks to make the amendment effective without delay, no purpose would be served by conventional rule-making procedures prescribed by section 553(b) of the United States Code (5 U.S.C. 553(b) and 553(d)), including notice, public participation, and deferred effective date.

Section 309.4(b)(4) is revised to read as follows:

#### § 309.4 Information made available for public inspection.

\* \* \* \* \*

(b) \* \* \*

(4) The following statistical surveys filed by insured banks, which would otherwise be exempt from disclosure under subsection (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(8)); Summary of Deposits for Commercial banks<sup>5</sup> and Summary of Deposits for mutual savings banks,<sup>6</sup> except that information on the size of accounts and the number of accounts will not be available to the public. Requests for information contained in the surveys should be sent to the Chief of the Bank Statistics Branch, Division of Management Systems and Financial Statistics, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

(Sec. 9 "Seventh" and "Tenth", 64 Stat. 881 (12 U.S.C. 1819 "Seventh" and "Tenth"))

By Order of the Board of Directors.

Dated: May 5, 1980.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 80-14704 Filed 5-12-80; 8:45 am]

BILLING CODE 6714-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 35

[Order No. 84; Docket No. RM79-29]

#### Filing of Rate Schedules; Regulations Limiting Percentage Adders in Electric Rates for Transmission Services

May 7, 1980.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.