

FEDERAL TRADE COMMISSION

16 CFR Part 4

Freedom of Information Act; Miscellaneous Rules

AGENCY: Federal Trade Commission (FTC).

ACTION: Proposed rule.

SUMMARY: The Federal Trade Commission proposes to amend its Rules of Practice to address expedited processing and aggregation of requests under the Freedom of Information Act, as amended by the Electronic Freedom of Information Act Amendments of 1996. The Commission also proposes to alter its fee schedule to reflect changes in the costs of providing services, and to add other fees for new services.

DATES: Comments must be submitted on or before September 25, 1998.

ADDRESSES: Comments should be addressed to the Secretary, Federal Trade Commission, 6th Street & Pennsylvania Avenue, NW, Washington, DC 20580.

Comments will be entered on the public record of the Commission and will be available for public inspection in Room 130 at the above address during the hours of 9 a.m. until 5 p.m.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, (202) 326-2447, Office of General Counsel, FTC.

SUPPLEMENTARY INFORMATION: On October 2, 1996, the President signed the Electronic Freedom of Information Act Amendments of 1996 (E-FOIA), Pub. L. 104-231, 110 Stat. 3048, amending the Freedom of Information Act (FOIA), 5 U.S.C. 552. Certain sections of the E-FOIA require or permit the Commission to make various changes in its procedures for FOIA requests and appeals, as well as in the descriptions of its public and non-public records. The Commission has also determined that it is necessary to revise its fee schedule to reflect the fact that the costs of providing services related to the dissemination of information and records under the FOIA have changed since 1992, when the Commission last assessed those costs.

As required by the FOIA, the Commission is seeking public comment on the proposed regulations set forth in this notice. In a separate notice

published elsewhere in today's edition of the **Federal Register**, the Commission has published final regulations to implement other portions of the E-FOIA and to make other related administrative rule changes that do not require public comment. For example, those Rule amendments reflect the recent organizational transfer of initial FOIA and Privacy Act request functions and staff to the Commission's Office of General Counsel, as discussed further in that notice.

Aggregation of Requests

Section (a)(6)(B)(iv) of the FOIA, as amended, permits the Commission to promulgate regulations that provide for the aggregation of clearly related requests by the same requester, or by a group of requesters acting in concert, if the agency reasonably believes that the requests actually constitute a single request that would otherwise satisfy the circumstances for an extension of the statutory time limits. 5 U.S.C. 552(a)(6)(B)(iv). To implement this provision, the Commission proposes to amend Rule 4.11 by redesignating existing paragraph (a)(1)(iii)(D) as (E) and inserting a new paragraph (D).

Expedited Processing

Section (a)(6)(E) of the FOIA, as amended, requires the Commission to promulgate regulations providing for expedited processing of requests for records where the person requesting the records demonstrates a compelling need or in other cases where the Commission determines to expedite processing. See 5 U.S.C. 552(a)(6)(E)(i). The statute defines "compelling need" to include situations 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," or where, with respect to a request made by a person primarily engaged in "disseminating information," there is an "urgency to inform the public concerning actual or alleged Federal Government activity." See 5 U.S.C. 552(a)(6)(E)(v)(I) and (II).

While the kinds of records generally maintained by the Commission make it unlikely that requests for expedited processing will meet the first prong of the "compelling need" standard, the Commission does receive some requests

from parties who may qualify for expedited treatment in certain cases under the standard's second prong. Under that prong, a request must involve a matter of "current exigency" to the public such that a reasonable person might conclude that a delayed response "would compromise a significant recognized interest," other than the public's general "right to know," which is common to all FOIA requests and will not suffice to meet the standard. H.R. Rep. No. 795, 104th Cong. 25-26 (1996) (standard for granting expedited treatment is to be construed narrowly).

The Commission proposes to amend paragraph (a)(1)(i)(E) of Rule 4.11 to implement the statutory standard. As required by the FOIA, the requester shall be responsible for certifying that the standard has been met. Conforming changes are also being proposed in paragraphs (a)(1)(i)(B), (a)(1)(iii)(A), (a)(2)(i)(A), (B), and (a)(2)(ii)(A) of Rule 4.11. (Rule 4.11(a)(1)(iii)(A), as amended, incorporates the expanded 20-day time limit for responding to initial FOIA requests, which is discussed more fully in the Commission's separate document, published elsewhere in today's **Federal Register**, of final rule changes not requiring public comment.)

Fees

Rule 4.8(b)(6), 16 CFR 4.8(b)(6), contains the Commission's uniform schedule of fees that applies to records held by all constituent units of the Commission and to all requests made for materials on the public record and those made under the FOIA and Privacy Act. Periodically, the Commission reviews that rule to update those fees to reflect current costs to the Commission. The Commission last revised the fee schedule in 1992. In most instances, costs have increased since that time, but in a few instances, costs to the Commission have decreased since 1992. The Commission has also determined that the separate category for duplication of "computer paper" is no longer necessary, and that the fees specified for paper copies in general will apply to such duplication. Accordingly, the Commission proposes to amend Rule 4.8(b)(6) to make the following adjustments in its fee schedule.

	Current	Proposed	Unit
Duplication:			
Paper Copy (up to 8½" x 14") (Reproduced by Commission staff)	\$0.14	\$0.14	Per page.
(Reproduced by Requester)	0.05	0.05	Per page.
Microfilm Services:			
Film Copy—Paper to 16mm film	0.02	0.04	Per frame.

	Current	Proposed	Unit
Fiche Copy—Paper to 105mm fiche	0.02	0.08	Per frame.
Film Copy—Duplication of existing 100 ft. roll of 16mm film	3.35	9.50	Per roll.
Fiche Copy—Duplication of existing 105mm fiche	0.04	0.26	Per fiche.
Paper Copy—Converting existing 16mm film to paper (by Commission Staff)	0.23	0.26	Per page.
Paper Copy—Converting existing 105mm fiche to paper (by Commission Staff)	0.23	0.23	Per page.
Film Cassettes	3.60	2.00	Per cassette.
Electronic services:			
Converting paper into electronic format	N/A	2.50	Per page.
Computer programming	N/A	8.00	Per qtr. hour.
Other Fees:			
Computer Tape	18.50	18.50	Per tape.
Certification	10.35	10.35	Each.
Express Mail	*5.00	**3.50	Per request.

* First pound and \$.89 for each additional pound

** For the first pound and \$3.67 for each additional pound (up to \$15.00)

The Commission has determined to retain the existing method, outlined in Rule 4.8(b)(6), for assessing search and review fees.

The Commission believes that the proposed Rule amendments do not require an initial or final regulatory analysis under the Regulatory Flexibility Act because the amendments will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b). Most requests for access to FTC records are filed by individuals, who are not "small entities" within the meaning of that Act, 5 U.S.C. 601(6), and, in any event, the economic impact of the rule changes on all requesters is expected to be minimal, if any. Likewise, the proposed amendments do not appear to contain information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501-3520. The Commission nonetheless solicits

comments on any economic and regulatory impact of the proposed rule; paperwork requirements, if any, that the amendments are believed to impose upon private persons; and possible regulatory alternatives to reduce the amendments' economic impact, if any, while fully implementing the statutory mandate. The Commission will consider any such comments before promulgating the amendments in final form.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information Act.

For the reasons set forth in the preamble, the Federal Trade Commission proposes to amend Title 16, Chapter I, Subchapter A of the Code of Federal Regulations as follows:

PART 4—MISCELLANEOUS RULES

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

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

2. Section 4.8 is amended by revising paragraphs (b)(4) and (b)(6) to read as follows:

§ 4.8 Costs for obtaining Commission records.

* * * * *

(b) * * *

(4) *Waiver of small charges.*

Notwithstanding the provisions of paragraphs (b)(1), (2), and (3) of this section, charges will be waived if the total chargeable fees for a request do not exceed \$14.00.

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(6) *Schedule of direct costs.* The following uniform schedule of fees applies to records held by all constituent units of the Commission.

PAPER FEES

Paper copy (up to 8.5" x 14").	
Reproduced by Commission	\$0.14 per page.
Reproduced by Requester	0.05 per page.

MICROFICHE FEES

Film Copy—Paper to 16mm film	0.04 per frame.
Fiche Copy—Paper to 105mm fiche	0.08 per frame.
Film Copy—Duplication of existing 100 ft. roll of 16mm film	9.50 per roll.
Fiche Copy—Duplication of existing 105mm fiche	0.26 per fiche.
Paper Copy—Converting existing 16mm film to paper (Conversion by Commission Staff)	0.26 per page.
Paper Copy—Converting existing 105mm fiche to paper (Conversion by Commission Staff)	0.23 per page.
Film Cassettes	2.00 per cassette.

ELECTRONIC SERVICES

Converting paper into electronic format (scanning)	2.50 per page.
Computer programming	8.00 per qtr. hour.

OTHER FEES

Computer Tape	18.50 each.
Certification	10.35 each.
Express Mail	3.50 for first pound and 3.67 for each additional pound (up to 15.00)

Search and Review Fees

Agency staff is divided into three categories: clerical, attorney/economist, and other professional. Fees for search and review are assessed on a quarter-hourly basis, and are determined by identifying the category into which the staff member(s) conducting the search or review belong(s), determining the average quarter-hourly wages of all staff

members within that category, and adding 16 percent to reflect the cost of additional benefits accorded to government employees. The exact fees are calculated and announced periodically and are available from the Consumer Response Center, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580; (202) 326-2222.

* * * * *
3. Section 4.11 is amended by redesignating paragraphs (a)(1)(i)(E) and (a)(1)(iii)(D) as new paragraphs (a)(1)(i)(F) and (a)(1)(iii)(E), respectively; by adding new paragraphs (a)(1)(i)(E) and (a)(1)(iii)(D); and by revising paragraphs (a)(1)(i)(B), (a)(1)(iii)(A), (a)(2)(i)(A), (a)(2)(i)(B), and (a)(2)(ii)(A) to read as follows:

§ 4.11 Disclosure requests.

- (a) * * *
- (1) * * *
- (i) * * *

(B) Failure to mark the envelope and the request in accordance with paragraph (a)(1)(i)(A) of this section, or the filing of a request for expedited treatment under paragraph (a)(1)(i)(E) of this section, will result in the request (or requests, if expedited treatment has been requested) being treated as received on the date that the processing unit in the Office of General Counsel actually receives the request(s).

* * * * *
(E) *Expedited treatment.* Requests may include an application for expedited treatment. Where such an application is not included with an initial request for access to records under paragraph (a)(1) of this section, the application may be included in any appeal of that request filed under paragraph (a)(2). Such application, which shall be certified by the requester to be true and correct to the best of such person's knowledge and belief, shall describe the compelling need for expedited treatment, including an explanation as to why a failure to obtain the 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, with respect to a request made by a person primarily engaged in disseminating information, an explanation of the urgency to inform the public concerning actual or alleged Federal Government activity. The Assistant General Counsel

for Legal Counsel (Management & Access) or his or her designee will, within 10 calendar days of receipt of a request for expedited treatment, notify the requester, in writing, of the decision to either grant or deny the request for expedited treatment, and, if the request is denied, advise the requester that this determination may be appealed to the General Counsel.

* * * * *

(iii) *Time limit for initial determination.* (A) The Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee will, within 20 working days of the receipt of a request, either grant or deny, in whole or in part, such request, unless the request has been granted expedited treatment in accordance with this section, in which case the request will be processed as soon as practicable.

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(D) If the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee reasonably believes that requests made by a requester, or a group of requesters acting in concert, actually constitute a single request that would otherwise involve unusual circumstances, as specified in paragraph (a)(1)(iii)(B) of this section, and the requests involve clearly related matters, those multiple requests may be aggregated.

* * * * *

- (2) * * *
- (i) * * *

(A)(1) If an initial request for expedited treatment is denied, the requester, at any time before the initial determination of the underlying request for records by the Assistant General Counsel for Legal Counsel (Management & Access) or his or her designee (or, if the request for expedited treatment was filed with any appeal filed under paragraph (a)(2)(i)(A)(2) of this section, at any time before the General Counsel's determination on such an appeal), may

appeal the denial of expedited treatment to the General Counsel.

(2) If an initial request for records is denied in its entirety, the requester may, within 30 days of the date of the determination, appeal such denial to the General Counsel. If an initial request is denied in part, the time for appeal will not expire until 30 days after the date of the letter notifying the requester that all records to which access has been granted have been made available.

(3) The appeal shall be in writing and should include a copy of the initial request and a copy of the response to that initial request, if any. The appeal shall be addressed as follows:

Freedom of Information Act Appeal, Office of the General Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

(B) Failure to mark the envelope and the appeal in accordance with paragraph (a)(2)(i)(A) of this section will result in the appeal (and any request for expedited treatment filed with that appeal) being treated as received on the actual date of receipt by the Office of General Counsel.

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- (ii) * * *

(A) Regarding appeals from initial denials of a request for expedited treatment, the General Counsel will either grant or deny the appeal expeditiously; regarding appeals from initial denials of a request for records, the General Counsel will, within 20 working days of the receipt of such an appeal, either grant or deny it, in whole or in part, unless expedited treatment has been granted in accordance with this section, in which case the appeal will be processed as soon as practicable.

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By direction of the Commission.
Donald S. Clark,
Secretary.
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