AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

(iv) Verification of disbursement information by contacting reported vendors;

(v) Written questions under order;

(vi) Production of documents under subpoena;

(vii) Depositions.

(3) The provisions of 2 U.S.C. 437g and 11 CFR part 111 will not apply to inquiries conducted under this section except that the provisions of 11 CFR 111.12 through 111.15 shall apply to any orders or subpoenas issued by the Commission.

(4) If, at the close of the inquiry, the Commission determines that no action or no further action is warranted, the Commission shall so notify the candidate. If the inquiry results in an adjustment to the amount of certified matching funds, the procedures set forth at 11 CFR 9036.5 or 9038.1 shall be followed, as appropriate. If the inquiry coincides with an audit undertaken pursuant to 11 CFR 9038.1, the information obtained in the inquiry will be utilized in making the repayment determination. If the inquiry results in an initial or additional repayment determination, the procedures set forth at 11 CFR 9038.2, 9038.4, and 9038.5 shall be followed.

[56 FR 35949, July 29, 1991; 56 FR 42380, Aug. 27, 1991; 60 FR 31888, June 16, 1995]

CHAPTER II—ELECTION ASSISTANCE COMMISSION

Part		*Page*
9405	Procedures for disclosure of records under the Freedom of Information Act	369
9407	Implementation of the Government in the Sunshine Act	378
9409	Testimony by Commission employees relating to official information and production of official records in legal proceedings	382
9410	Implementation of the Privacy Act of 1974	388
9411	Standards of conduct	392
9420	Nondiscrimination on the basis of handicap in programs or activities conducted by the U.S. Election Assistance Commission	392
9428	National Voter Registration Act (42 U.S.C. 1973gg–1 et seq.)	397
9430	Debt collection	401

PART 9405—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

Sec.
9405.1 Purpose and scope.
9405.2 Definitions.
9405.3 Policy on disclosure of records.
9405.4 Availability of records.
9405.5 Categories of exemptions.
9405.6 Discretionary release of exempt records.
9405.7 Requests for records.
9405.8 Appeals of denials of requests for records.
9405.9 Fees in general.
9405.10 Fees to be charged—categories of requesters.
9405.11 Miscellaneous fee provisions.
9405.12 Waiver or reduction of charges.

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

SOURCE: 73 FR 54257, Sept. 18, 2008, unless otherwise noted.

§ 9405.1 Purpose and scope.

The regulations in this part implement the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, with respect to the availability of records for inspection and copying.

§ 9405.2 Definitions.

As used in this part, the term—

Chief FOIA Officer means the person designated under § 9405.3(d) who has Commission-wide responsibility for the efficient and appropriate compliance with the FOIA.

Commercial use request means a FOIA request from or on behalf of a person who seeks information for a use or purpose that furthers his/her commercial, trade, or profit interests, which can include furthering those interests through litigation. The FOIA Officer will determine, whenever reasonably possible, the use to which a requester will put the requested documents. Where the FOIA Officer has reasonable cause to doubt the use for which the requester claims to have made the FOIA request or where that use is not clear from the FOIA request itself, the FOIA Officer will seek additional clarification before assigning the request to a specific category.

Commission means the U.S. Election Assistance Commission, established by the Help America Vote Act of 2002, 42 U.S.C. 15301 *et seq*.

Commissioner means an individual appointed to the Commission by the President and confirmed by the Senate under section 203 of the Help America Vote Act of 2002, 42 U.S.C. 15323.

Direct costs means those expenditures which the Commission actually incurs in searching for, duplicating, and, in the case of commercial use requesters, reviewing documents to respond to a FOIA request. Direct costs include, but are not limited to, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that basic rate to cover benefits) and the cost of operating duplicating equipment. Direct costs do not include overhead expenses, such as the cost of space and heating or lighting the facility in which the records are stored.

Duplication means the process of making a copy of a document necessary to respond to a FOIA request. Examples of the form such copies can take include, but are not limited to, paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape, DVD, or CD). The Commission will honor a requester's specified preference of form or format of disclosure if the records requested are reasonably reproducible with reasonable efforts in the requested form or format.

Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institute of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

Executive Director means the Executive Director of the Commission or his or her designee.

FOIA means Freedom of Information Act, 5 U.S.C. 552, as amended.

FOIA Officer means a person designated by the Chief FOIA Officer under § 9405.3(d) to carry out day-to-day implementation of the FOIA activities of the Commission.

FOIA Public Liaison means a person designated by the Chief FOIA Officer

under § 9405.3(d) to assist in the resolution of any disputes between the requester and the Commission.

FOIA request means to seek the release of records under 5 U.S.C. 552, as amended.

General Counsel means the General Counsel of the Commission or his or her designee.

Non-commercial scientific institution means an organization that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

Record means any information that would be a Commission record subject to the requirements of this part when maintained by the Commission in any format, including, but not limited to, an electronic format. Record includes information that is maintained for the Commission by an entity under Government contract for the purposes of records management.

Representative of the news media means any person or entity that gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. As used in this paragraph, ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, web logs, and publishers of periodicals (but only in those instances in which these entities can qualify as disseminators of news, as defined in this paragraph) who make their products available for purchase or subscription by the general public. As used in this paragraph, a ''web log'' means a publicly available Web site, usually maintained by an individual, with regular entries of commentary, descriptions of events, or other material. A freelance journalist may be regarded as working for a news media entity and therefore, considered a representative of the news media if that person can demonstrate a solid basis for expecting publication by a news organization (whether or not the journalist is actually employed by the entity). A publication contract would present a solid basis for such an expectation. The Commission may also consider the past publication record of the requester in making this determination.

Requester is any person who submits a FOIA request to the Commission for release of a record under 5 U.S.C. 552, as amended.

Review means the process of examining a document located in response to a commercial use request to determine whether any portion of the document located is exempt from disclosure. Review also refers to processing any document for disclosure, *i.e.*, doing all that is necessary to excise exempt portions of the document or otherwise prepare the document for release. Review time includes time spent considering any formal objection to disclosure made by a business submitter requesting confidential treatment but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

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, but not limited to, page-by-page or line-by-line identification of material within documents and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Search time does not include review of material to determine whether the material is exempt from disclosure.

§ 9405.3 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 individuals and other entities with respect to trade secrets and commercial or financial information entitled to privileged and confidential treatment, and the need for the Commission to promote free internal policy deliberations and to pursue its official activities without undue disruption.

(b) All Commission records shall be available to the public unless they are specifically exempt under this part.

(c) In the interest of efficiency and economy, the Commission's preference is to furnish records to requesters in electronic format, when possible.

(d) To carry out this policy, the Commission shall designate a Chief Freedom of Information Act Officer (Chief FOIA Officer). The Chief FOIA Officer shall designate one or more Commission officials, as appropriate, as FOIA Public Liaison and/or as FOIA Officers. A FOIA Public Liaison shall serve as a supervisory official to whom a FOIA requester can raise questions about the service the FOIA requester has received. A FOIA Officer shall have the authority, subject to the direction and supervision of the Chief FOIA Officer, the requirements of this part, and the FOIA, to make decisions concerning disclosure of records to the public.

§ 9405.4 Availability of records.

(a) The FOIA and its provisions apply only to existing Commission records; the FOIA does not require the creation of new records.

(b) 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 that have been adopted by the Commission but have not been published in the FEDERAL REGISTER;

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

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

(4) A general index of the records referred to in paragraph (b)(3) of this section.

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

(d) The Commission shall maintain and make available current indexes and supplements providing identifying information regarding any matter issued, adopted, or promulgated after July 4, 1967. These indexes and supplements shall be published and made available on at least a quarterly basis for public distribution unless the Commission determines by Notice in the FEDERAL REGISTER that publication would be unnecessary, impracticable, or not feasible due to budgetary considerations. Nevertheless, copies of any index or supplement shall be made available upon request at a cost not to exceed the direct cost of duplication.

(e) If documents or files contain both disclosable and non-disclosable information, the non-disclosable information will be deleted and the disclosable information released, unless the disclosable portions cannot be reasonably segregated from the other portions in a manner which will allow meaningful information to be disclosed.

(f) All records created in the process of implementing provisions of 5 U.S.C. 552 will be maintained by the Commission in accordance with the authority granted by the National Archives and Records Service of the General Services Administration.

(g) The Commission encourages the public to explore the information available on the Commission's Web site, located at *http://www.eac.gov*.

§ 9405.5 Categories of exemptions.

(a) No FOIA requests under 5 U.S.C. 552 shall be denied release unless the record contains, or its disclosure would reveal, matters that are:

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are, in fact, properly classified under such Executive Order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute, provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person that are privileged or confidential. Such information includes confidential business information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount of source of income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, if the disclosure is likely to have the effect of either impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information. For purposes of this section, trade secret means a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. Examples of trade secrets may include, but are not limited to, plans, schematics, specifications of materials used in production, source code used to develop software, technical descriptions of manufacturing process, quality control methodology, and test results. The following procedures shall be used for submitting business information in confidence:

(i) Clearly mark any portion of any data or information being submitted that in the submitter's opinion is a trade secret or commercial and financial information that the submitter is claiming should be treated as privileged and confidential and submit such data or information separately from other material being submitted to the Commission;

(ii) A request for confidential treatment shall be addressed to the Chief FOIA Officer, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005 and shall indicate clearly on the envelope that it is a request for confidential treatment.

(iii) With each submission of, or offer to submit, business information which a submitter desires to be treated as confidential under paragraph (a)(4) of this section, the submitter shall provide the following, which may be disclosed to the public:

(A) A written description of the nature of the subject information and a justification for the request for its confidential treatment, and

(B) A certification in writing under oath that substantially identical information is not available to the public.

(iv) Approval or denial of requests shall be made only by the Chief FOIA Officer or his or her designees. A denial shall be in writing, shall specify the reason for the denial, and shall advise the submitter of the right to appeal to the Commission.

(v) For good cause shown, the Commission may grant an appeal from a denial by the Chief FOIA Officer or his or her designee if the appeal is filed within 15 days after receipt of the denial. An appeal shall be addressed to the Chief FOIA Officer, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005 and shall clearly indicate that it is a confidential submission appeal. An appeal will be decided within 20 days after its receipt (excluding Saturdays, Sundays, and legal holidays) unless an extension, stated in writing with the reasons therefore, has been provided to the person making the appeal.

(vi) Any business information submitted in confidence and determined to be entitled to confidential treatment shall be maintained in confidence by the Commission and not disclosed except as required by law. In the event that any business information submitted to the Commission is not entitled to confidential treatment, the submitter will be permitted to withdraw the tender unless it is the subject of a

request under the FOIA or of judicial discovery proceedings.

(5) Interagency or intra-agency memoranda or letters that would not be available by law to a party in litigation with the Commission;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution that furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(b) Any portion of a record that reasonably can be segregated from the balance of the record shall be provided to any individual requesting such record after deletion of the portions which are exempt. The amount of information deleted and the exemption under which the deletion is made 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.

(c) If a requested record is one of another government agency or deals with subject matter to which a government agency other than the Commission has exclusive or primary responsibility, the request for such a record shall be promptly referred by the Commission to that agency for disposition or guidance as to disposition.

(d) Nothing in this part authorizes withholding of information or limiting the availability of records to the public, except as specifically provided; nor is this part authority to withhold information from Congress.

[73 FR 54257, Sept. 18, 2008, as amended at 75 FR 49814, Aug. 16, 2010]

§ 9405.6 Discretionary release of exempt records.

The Commission may, in its discretion, release requested records despite the applicability of the exemptions in § 9405.5, if it determines that it is in the public interest and that the rights of third parties would not be prejudiced. The Executive Director will have the authority to determine that requested records may be released despite otherwise applicable exemptions.

§ 9405.7 Requests for records.

(a) Requests for copies of Commission records under the FOIA shall be made in writing and addressed to the Chief FOIA Officer, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005. 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.

(b) 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. In the interest of efficiency and economy, the Commission's preference is to furnish records to requesters in electronic format, whenever possible.

(c) The Commission shall determine within 20 working days after receipt of a request, or 20 working days after an appeal is granted, whether to comply with such request, unless in unusual circumstances the time is extended. The 20-day period shall commence on the date on which the request was first received by the appropriate component of the Commission, but in any event, not later than 10 days after the request is first received by the component of the Commission designated to receive requests under this part. The 20-day period shall not be tolled by the Commission except—

(1) The Commission may make one request of the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester.

(2) If it is necessary to clarify with the requester issues regarding fee assessment.

(3) Under paragraphs (c)(1) or (2) of this section, the Commission's receipt of the requester's response to the Commission's request for information or clarification ends the tolling period.

(d) In the event the time is extended under paragraph (c) of this section, the requester shall be notified of the reasons for the extension and the date on which a determination is expected to be made. An extension may be made if it is—

(1) Necessary to locate records or transfer them from physically separate facilities; or

(2) Necessary to search for, collect, and appropriately examine a large quantity of separate and distinct records that are the subject of a single request; or

(3) Necessary for consultation with another agency that has a substantial interest in the determination of the request.

(e) If the Commission determines that an extension of time 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.

(f) 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.

(g) The Commission will process requests under the FOIA based on the order they are received.

(h) 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, 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 10 days of receipt of the request. Denials of requests for expedited processing may be appealed as set forth in § 9405.8. 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.

(i) Any person denied access to records by the Commission shall be notified immediately of the denial, including the reasons for the decision and notified of his or her right to appeal the adverse determination to the Commission.

(j) The date of receipt of a request under this part shall be the date on which the Chief FOIA Officer actually receives the request.

(k) Each request received by the Chief FOIA Officer will be assigned an individualized tracking number. Requesters may call (866) 747–1471 and, using the tracking number, obtain information about the request, including the date on which the Commission originally received the request and an estimated date on which the Commission will complete action on the request.

[73 FR 54257, Sept. 18, 2008, as amended at 75 FR 49814, Aug. 16, 2010]

§ 9405.8 Appeals of denials of requests for records.

(a) Any person who has been notified under § 9405.7(i) that his/her request for inspection of a record or for a copy of a record has been denied, or who has received no response within 20 working days (or within such extended period as is permitted under § 9405.7(d)) after the request has been received by the Commission, or who has received no response within 20 days after a request for expedited processing has been received by the Commission, may appeal the adverse determination or the failure to respond by requesting the Commission to direct that the record be made available or that the expedited processing shall occur.

(b) The appeal request shall be in writing, shall clearly and prominently state on the envelope or other cover and at the top of the first page ''FOIA Appeal,'' and shall identify the record in the form in which it was originally requested.

(c) The appeal request should be delivered or addressed to the Chief FOIA Officer, U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005.

(d) The requester may state facts and cite legal or other authorities as he or she deems appropriate in support of the appeal request.

(e) The Commission will make a determination with respect to any appeal within 20 working days after receipt of the appeal (or within such extended period as is permitted under § 9405.7). If, on appeal, the denial of the request for a record or a copy is in whole or in part upheld, the Commission shall advise the requester of the denial and shall notify him or her of the provisions for judicial review of that determination as set forth in 5 U.S.C. 552(a)(4).

(f) Because of the risk of misunderstanding inherent in oral communications, the Commission will not entertain any appeal from an alleged denial or failure to comply with an oral request. Any person who has orally requested a copy of a record that he or she believes to have been improperly denied should resubmit the request in writing as set forth in § 9405.7.

§ 9405.9 Fees in general.

(a) *Generally*. The Commission will charge fees that recoup the full allowable direct costs it incurs. The Commission will use the most efficient and least costly means to comply with requests for documentation.

(b) *Manual searches for records*. The Commission will charge fees at the salary rate(s) (basic pay plus 16 percent) of the employee(s) making the search.

(c) *Computer searches for records*. The Commission will charge the actual direct cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search.

(d) *Review of records*. Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review (*i.e.*, the review undertaken the first time the Commission analyzes the applicability of a specific exemption to a particular record or portion of a record). Records or portions of records withheld

in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review are assessable. The Commission will charge at the salary rate(s) (basic pay plus 16 percent) of the employee(s) reviewing records.

(e) *Duplication of records.* Records will be duplicated at a rate of fifteen (15) cents per page. For copies prepared by computers, such as tapes, CDs, DVDs, or printouts, the Commission shall charge the actual cost, including operator time, of production. For other methods of reproduction or duplication, the Commission will charge the actual direct costs of producing the document(s). If the Commission estimates that duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(f) *Other charges.* The Commission will recover the full costs of providing services such as those enumerated below when it provides them in response to a direct request for such services:

(1) Certifying that records are true copies; or

(2) Sending records by special methods such as express mail.

(g) *Payment of fees.* Remittance shall be in the form either of a personal check or bank draft drawn on a bank in the United States or a postal money order. Remittance shall be made payable to the order of the Treasury of the United States and mailed to the Chief FOIA Officer, U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005.

(h) *Receipt of fees.* A receipt for fees paid will be given upon request. Refund of fees paid for services actually rendered will not be made.

(i) *Restrictions on assessing fees.* The Commission shall not assess search fees or duplication fees under this paragraph if the Commission fails to comply with any time limit in these regulations. The Commission will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. With the exception of requesters seeking documents for a commercial use, the Commission will not charge fees for the first 100 pages of duplication and the first two hours of search time.

(1) The elements to be considered in determining the ''cost of collecting a fee'' are the administrative costs of receiving and recording a requester's remittance and processing the fee for deposit in the Treasury Department's special account.

(2) For purposes of these restrictions on assessment of fees, the word ''pages'' means paper copies of 8.5″ x 11″ or 11″ x 14.″ Thus, requesters are not entitled to 100 computer disks, for example.

(3) For purposes of these restrictions on assessment of fees, the term ''search time'' means manual search. To apply this term to searches made by computer, the Commission will determine the hourly cost of operating the CPU and the operator's hourly salary plus 16 percent. When the cost of such search (including operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of salary of the person performing the search (*i.e.*, the operator), the Commission will begin assessing charges for computer search.

§ 9405.10 Fees to be charged—categories of requesters.

There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters.

(a) *Commercial use requesters.* When the Commission receives a request for documents for commercial use, it will assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought. Commercial use requesters are neither entitled to two hours of free search time nor 100 free pages of duplication. The Commission may recover the cost of searching for and reviewing

records even if there is ultimately no disclosure of records (see §9405.11(b)).

(b) *Educational and non-commercial scientific institution requesters.* The Commission shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the record is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in the furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(c) *Representatives of the news media.* The Commission shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, the requester must fit the definition of a representative of the news media as stated in §9405.2, and the request must not be made for commercial use. For purposes of this paragraph, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for commercial use.

(d) *All other requesters.* The Commission shall charge requesters who do not fit into any of the categories above fees that recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge.

§9405.11 Miscellaneous fee provisions.

(a) *Charging Interest—notice and rate.* The Commission may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. The fact that the fee has been received by the Commission within the 30-day grace period, even if it is not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of title 31 of the United States Code and will accrue from the date of the billing.

(b) *Charges for unsuccessful search.* The Commission may assess charges for time spent searching, even if it fails to locate the records or if the records located are determined to be exempt from disclosure. If the Commission estimates that search charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(c) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Commission reasonably believes that a requester or a group of requestors acting in concert has submitted requests that constitute a single request involving clearly related matters, the Commission may aggregate those requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

(d) *Advance payments.* The Commission may not require a requester to make an advance payment (*i.e.*, payment before work is commenced or continued on a request) unless:

(1) The Commission estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then, the Commission will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing). Then, the Commission may require the requester to:

(i) Pay the full amount owed plus any applicable interest as provided above

or demonstrate that he or she has, in fact, paid the fee, and

(ii) Make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(3) When the Commission acts under paragraphs (d)(1) or (2) of this section, the administrative time limits prescribed in 5 U.S.C. 552(a)(6) will begin only after the Commission has received payments described in paragraphs (d)(1) and (2) of this section.

(e) *Effect of Debt Collection Act of 1982.* The Commission shall comply with the provisions of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

§ 9405.12 Waiver or reduction of charges.

Records responsive to a request will be furnished without charge when the Chief FOIA Officer determines, based on all available information, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

PART 9407—IMPLEMENTATION OF THE GOVERNMENT IN THE SUNSHINE ACT

Sec.
9407.1 Purpose and scope.
9407.2 Definitions.
9407.3 Open meetings.
9407.4 Notice of meetings.
9407.5 Closed meetings.
9407.6 Procedures for closing meetings.
9407.7 Recordkeeping requirements.
9407.8 Public availability of records.

AUTHORITY: 5 U.S.C. 552b.

SOURCE: 73 FR 54257, Sept. 18, 2008, unless otherwise noted.

§ 9407.1 Purpose and scope.

This part contains the regulations of the U.S. Election Assistance Commission implementing the Government in the Sunshine Act (5 U.S.C. 552b). Consistent with the Act, it is the policy of the Commission that the public is entitled to the fullest practicable information regarding its decision making processes. This part sets forth the basic responsibilities of the Commission with regard to this policy and offers guidance to members of the public who wish to exercise the rights established by the Act. These regulations also fulfill the requirement of 5 U.S.C. 552b(g) that each agency subject to the Act promulgates regulations to implement the open meeting requirements of paragraphs (b) through (f) of section 552b.

§ 9407.2 Definitions.

As used in this part, the term—

Commission means the U.S. Election Assistance Commission, established by the Help America Vote Act of 2002, 42 U.S.C. 15301 *et seq.*

Commissioner means an individual appointed to the Commission by the President and confirmed by the Senate under section 203 of the Help America Vote Act of 2002, 42 U.S.C. 15323.

Executive Director means the Executive Director of the Commission or his or her designee.

General Counsel means the General Counsel of the Commission or his or her designee.

Meeting means the deliberations of at least three Commissioners where such deliberations determine or result in the joint conduct or disposition of official Commission business. A deliberation conducted through telephone or similar communications equipment in which all persons participating can hear each other shall be considered a meeting. For the purposes of this section, ''joint conduct'' does not include situations where the requisite number of members is physically present in one place but not conducting agency business as a body. In addition, the term ''meeting'' does not include a process of notation voting by circulated memorandum for the purpose of expediting consideration of official Commission business. The term ''meeting'' also does not include deliberations on whether to:

(1) Schedule a meeting;

(2) Hold a meeting with less than seven days notice, as provided in § 9407.4(e);

(3) Change the subject matter of a publicly announced meeting or the determination of the Commission to open or close a meeting or portions of a meeting to public observation, as provided in § 9407.4(f);

(4) Change the time or place of an announced meeting, as provided in § 9407.4(g);

(5) Close a meeting or portions of a meeting, as provided in § 9407.5; or

(6) Withhold from disclosure information pertaining to a meeting or portions of a meeting, as provided in § 9407.5.

Public observation means attendance by one or more members of the public at a meeting of the Commission but does not include participation in the meeting.

Public participation means the presentation or discussion of information, raising of questions, or other manner of involvement in a meeting of the Commission by one or more members of the public in a manner that contributes to the disposition of Commission business.

§ 9407.3 Open meetings.

(a) The Commissioners shall not jointly conduct, determine, or dispose of agency business other than in accordance with this section.

(b) Except as otherwise provided in this part, every portion of every Commission meeting shall be open to public observation.

(c) No additional right to participate in Commission meetings is granted to any person by this part. Meetings of the Commission, or portions of a meeting, shall be open to public participation only when an announcement to that effect is issued under § 9407.4(b)(4). Public participation shall be conducted in an orderly, non-disruptive manner and in accordance with any procedures as the chairperson of the meeting may establish. Public participation may be terminated at any time for any reason.

(d) When holding open meetings, the Commission shall make a diligent effort to provide appropriate space, sufficient visibility, and adequate acoustics to accommodate the public attendance anticipated for the meeting. When open meetings are conducted through telephone or similar communications equipment, the Commission shall make an effort to provide sufficient access to the public in a manner which allows the public to clearly hear, see, or otherwise follow the proceedings. The meeting room or other forum selected shall be sufficient to accommodate a reasonable number of interested members of the public. The Commission shall ensure that public meetings are held at a reasonable time and are readily accessible to individuals with disabilities.

(e) Members of the public attending open Commission meetings may use small electronic audio recording devices to record the proceedings. The use of any other recording equipment and cameras requires advance coordination with and notice to the Commission's Communications Office. The chair or acting chair of the Commission may prohibit, at any time, the use of any recording equipment during a public meeting if he or she determines that such recording would disrupt the orderly conduct of the meeting.

§ 9407.4 Notice of meetings.

(a) Except as otherwise provided in this section, the Commission shall make a public announcement at least seven days prior to a meeting.

(b) The public announcement shall include:

(1) The time and place of the meeting;

(2) The subject matter of the meeting;

(3) Whether the meeting is to be open, closed, or portions of a meeting will be closed;

(4) Whether public participation will be allowed; and

(5) The name and telephone number of the person who will respond to requests for information about the meeting.

(c) The public announcement requirement shall be implemented by:

(1) Publishing the announcement on the Commission's Web site; and

(2) Distributing the announcement to affected government entities and persons and organizations that the Executive Director determines may have an interest in the subject matter of the meeting.

(d) The announcement will be submitted for publication in the FEDERAL REGISTER immediately following the public posting and distribution noted in paragraph (c) of this section.

(e) A meeting may be held with less than seven days notice if a majority of the Commission determines by recorded vote that the business of the Commission so requires. The Commission shall make a public announcement to this effect at the earliest practicable time. The announcement shall include the information required by paragraph (b) of this section and shall be issued in accordance with those procedures set forth in paragraphs (c) and (d) of this section that are practicable given the available period of time.

(f) The subject matter of an announced meeting or the determination of the Commission to open or close a meeting or portions of a meeting to public observation may be changed only if:

(1) A majority of the Commissioners determine by a recorded vote that agency business so requires and that no earlier announcement of the change was possible,

(2) The Commission publicly announces the change and the vote of each Commissioner upon such change at the earliest practicable time.

(3) The announcement of the change noted in paragraph (f)(2) of this section is issued in accordance with those procedures set forth in paragraphs (c) and (d) of this section that are practicable given the available period of time.

(g) The time or place of an announced meeting may be changed only if a public announcement of the change is made at the earliest practicable time. The announcement shall be issued in accordance with those procedures set forth in paragraphs (c) and (d) of this section that are practicable given the available period of time.

§ 9407.5 Closed meetings.

(a) A meeting or portions of a meeting may be closed and information pertaining to such meeting or portions of a meeting may be withheld from the public only if the Commission determines that such meeting or portions of a meeting or the disclosure of such information is likely to:

(1) Disclose matters that are:

(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and

(ii) To be properly classified under that Executive Order;

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552) provided that the statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose the trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve either accusing any person of a crime or formally censuring any person;

(6) Disclose information of a personal nature, if disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose either investigatory records compiled for law enforcement purposes or information which, if written, would be contained in such records but only to the extent that the production of the records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to either a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source or sources and, in the case of a record compiled either by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source or sources,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the Commission. This exception shall not apply in any instance where the Commission has already disclosed to the public the content or nature of the proposed action or where the Commission is required by law to make such disclosure on its own initiative prior to taking final action on the proposal; or

(10) Specifically concern the issuance of a subpoena by the Commission; or the participation of the Commission in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration; or the initiation, conduct, or disposition by the Commission of a particular case of formal adjudication under the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(b) Before a meeting or portions of a meeting may be closed to public observation, the Commission shall determine, notwithstanding the exemptions set forth in paragraph (a) of this section, whether the public interest requires that the meeting or portions of a meeting be open consistent with Federal law. The Commission may open a meeting or portions of a meeting that could be closed under paragraph (a) of this section if the Commission finds it to be in the public interest to do so and the disclosure is not otherwise prohibited by Federal law.

§ 9407.6 Procedures for closing meetings.

(a) A meeting or portions of a meeting may be closed and information pertaining to a meeting or portions of a meeting may be withheld under § 9407.5(a) only when a majority of the members of the Commission vote to take the action.

(b) A separate vote of the Commissioners shall be taken with respect to each meeting or portion of a meeting proposed to be closed and with respect to information which is proposed to be withheld. A single vote may be taken with respect to a series of meetings or portions of a meeting that are proposed to be closed, so long as each meeting or portion of a meeting in the series involves the same particular matter and is scheduled to be held no more than 30 days after the initial meeting in the series. The vote of each participating Commission member shall be recorded, and no proxies shall be allowed.

(c) A person whose interests may be directly affected by a portion of a meeting may request in writing that the Commission close that portion of the meeting for any of the reasons referred to in § 9407.5(a)(5), (6), or (7) . Upon the request of a Commissioner, a recorded vote shall be taken whether to close such meeting or a portion of a meeting.

(d) Before the Commission may hold a meeting that is closed, in whole or part, a certification shall be obtained from the General Counsel that, in his or her opinion, the meeting may properly be closed. The certification shall be in writing and shall state each applicable exemption provision from § 9407.5(a).

(e) Within one day of a vote taken under this section, the Commission shall make publicly available a written copy of such vote reflecting the vote of each Commissioner.

(f) In the case of the closure of a meeting or portions thereof, the Commission shall make publicly available within one day of the vote on such action a full written explanation of the reasons for the closing with a list of all persons expected to attend the meeting and their affiliation.

§ 9407.7 Recordkeeping requirements.

(a) The Commission shall maintain either a complete transcript or electronic recording of the proceedings of each meeting.

(b) In the case of either a meeting or portions of a meeting closed to the public under § 9407.5(a)(8) or (10), the Commission shall maintain a complete transcript, an electronic recording, or a set of minutes of the proceedings. If minutes are maintained, they shall

fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken and the reasons for which such actions were taken, including a description of the views expressed on any item and a record reflecting the vote of each Commissioner. All documents considered in connection with any action shall be identified in the minutes.

(c) The transcript, electronic recording, or copy of the minutes of a meeting shall disclose the identity of each speaker.

(d) The Commission shall maintain a complete verbatim copy of the transcript, a complete electronic recording, or a complete copy of the minutes of the proceedings of each meeting for at least two years, or for one year after the conclusion of any Commission proceeding with respect to which the meeting was held, whichever occurs later.

§ 9407.8 Public availability of records.

The Commission shall make available to the public the transcript, electronic recording, or minutes of a meeting, except for items of discussion or testimony that relate to matters the Commission has determined to contain information that may be withheld under § 9407.5(a). This information shall be made available as soon as practicable after each meeting on the Commission's Web site. Otherwise, requests to receive or review transcripts, electronic recordings, or minutes of a meeting should be addressed to the Communications Director, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005. Copies of a transcript, a transcription of the electronic recording, or the minutes of a meeting (except for items of discussion or testimony that relate to matters withheld under § 9407.5) shall be furnished at cost to any person upon written request pursuant to the requirements of 11 CFR part 9405.

[73 FR 54257, Sept. 18, 2008, as amended at 75 FR 49814, Aug. 16, 2010]

PART 9409—TESTIMONY BY COMMISSION EMPLOYEES RELATING TO OFFICIAL INFORMATION AND PRODUCTION OF OFFICIAL RECORDS IN LEGAL PROCEEDINGS

Sec.

9409.1 Purpose and scope.
9409.2 Applicability.
9409.3 Definitions.
9409.4 Production or disclosure prohibited unless approved by appropriate Commission official.
9409.5 Procedures for demand for testimony or production of documents.
9409.6 Service of subpoenas or requests.
9409.7 Factors to be considered by the General Counsel.
9409.8 Processing demands or requests.
9409.9 Final determination.
9409.10 Restrictions that apply to testimony.
9409.11 Restrictions that apply to released records.
9409.12 Procedure when a decision is not made prior to the time a response is required.
9409.13 Procedures when the General Counsel directs an employee not to testify or provide documents.
9409.14 Fees.
9409.15 Penalties.

AUTHORITY: 44 U.S.C. 3102.

SOURCE: 73 FR 54271, Sept. 18, 2008, unless otherwise noted.

§ 9409.1 Purpose and scope.

(a) This part sets forth policies and procedures you must follow when you submit a demand or request to an employee of the United States Election Assistance Commission to produce official records and information, or provide testimony relating to official information, in connection with a legal proceeding. You must comply with these requirements when you request the release or disclosure of official records and information.

(b) The Commission intends these provisions to:

(1) Promote economy and efficiency in its programs and operations;

(2) Minimize the possibility of involving the Commission in controversial issues not related to its functions;

(3) Maintain the Commission's impartiality among private litigants where the Commission is not a named party; and

(4) Protect sensitive, confidential information and the deliberative processes of the Commission.

(c) In providing for these requirements, the Commission does not waive the sovereign immunity of the United States.

(d) This part is intended only to provide guidance for the internal operations of the Commission and to inform the public about Commission procedures concerning the service of process and responses to demands or requests. The procedures specified in this part, or the failure of any Commission employee to follow the procedures specified in this part, are not intended to create, do not create, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party against the United States.

§ 9409.2 Applicability.

(a) This part applies to demands and requests to employees for factual or expert testimony relating to official information, or for production of official records or information, in legal proceedings in which the Commission is not a named party. However, it does not apply to:

(1) Demands upon or requests for a Commission employee to testify as to facts or events that are unrelated to his or her official duties or that are unrelated to the functions of the Commission;

(2) Demands upon or requests for a former Commission employee to testify as to matters in which the former employee was not directly or materially involved while at the Commission;

(3) Requests for the release of records under the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a; and

(4) Congressional demands and requests for testimony or records.

(b) [Reserved]

§ 9409.3 Definitions.

As used in this part, the term—

Commission means the U.S. Election Assistance Commission, established by the Help America Vote Act of 2002, 42 U.S.C. 15301 *et seq*.

Commission employee or employee means:

(a) Any current or former officer or employee of the Commission;

(b) Any other individual hired through contractual agreement by or on behalf of the Commission or who has performed or is performing services under an agreement for the Commission; and

(c) Any individual who served or is serving in any consulting or advisory capacity to the Commission, whether formal or informal.

(d) This definition does not include persons who are no longer employed by the Commission and who are retained or hired as expert witnesses or who agree to testify about general matters, matters available to the public, or matters with which they had no specific involvement or responsibility during their employment with the Commission.

Demand means a subpoena, or an order or other command of a court or other competent authority, for the production, disclosure, or release of records or for the appearance and testimony of a Commission employee that is issued in a legal proceeding.

General Counsel means the General Counsel of the Commission or a person to whom the General Counsel has delegated authority under this part.

Legal proceeding means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer, or other body that conducts a legal or administrative proceeding. Legal proceeding includes all phases of litigation.

Records or official records and information means:

(a) All documents and materials that are Commission records under the Freedom of Information Act (5 U.S.C. 552);

(b) All other documents and materials contained in files of the Commission; and

(c) All other information or materials acquired by a Commission employee in the performance of his or her official duties or because of his or her official status.

Request means any informal request, by whatever method, for the production of records and information or for

testimony that has not been ordered by a court or other competent authority.

Testimony means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, interviews, and statements made by an individual in connection with a legal proceeding.

§ 9409.4 Production or disclosure prohibited unless approved by appropriate Commission official.

(a) No employee or former employee of the Commission shall, in response to a demand of a court or other authority, produce a record or disclose any information relating to any record of the Commission, or disclose any information or produce any material acquired as part of the performance of his official duties or because of his official status without the prior, written approval of the General Counsel of the Commission.

(b) Any expert or opinion testimony by a former employee of the Commission shall be excepted from the requirements of this part where the testimony involves only general expertise gained while employed at the Commission.

§ 9409.5 Procedures for demand for testimony or production of documents.

(a) A demand directed to the Commission for the testimony of a Commission employee or for the production of documents shall be served in accordance with the Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure, or applicable State procedures and shall be directed to the General Counsel, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005. Acceptance of a demand shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under the applicable laws or rules.

(b) If a subpoena is served on the Commission or a Commission employee before submitting a written request and receiving a final determination, the Commission will oppose the subpoena on grounds that the request was not submitted in accordance with this part.

(c) A written request must contain the following information:

(1) The caption of the legal proceeding, docket number, name and address of the court or other authority involved; and the procedural posture of the legal proceeding.

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance;

(3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought;

(4) A statement as to how the need for the information outweighs the need to maintain any confidentiality of the information and outweighs the burden on the Commission to produce the records or provide testimony;

(5) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than a Commission employee, such as a retained expert;

(6) If testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used in lieu of testimony;

(7) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case;

(9) An estimate of the amount of time that the requester and other parties will require of each Commission employee for time spent by the employee to prepare for testimony, in travel, and for attendance in the legal proceeding; and

(10) Whether travel by the Commission employee is required to provide the testimony; or, in lieu of in-person testimony, whether a deposition may be taken at the employee's duty station.

(d) The Commission reserves the right to require additional information to complete a request where appropriate.

(e) A request should be submitted at least 45 days before the date that records or testimony is required. Requests submitted in less than 45 days before records or testimony is required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(f) Failure to cooperate in good faith to enable the General Counsel to make an informed decision may serve as the basis for a determination not to comply with a request.

(g) Notification to the General Counsel:

(1) Employees shall immediately refer all inquiries and demands made on the Commission to the General Counsel.

(2) An employee who receives a subpoena shall immediately forward the subpoena to the General Counsel. The General Counsel will determine the manner in which to respond to the subpoena.

[73 FR 54271, Sept. 18, 2008, as amended at 75 FR 49814, Aug. 16,2010]

§ 9409.6 Service of subpoenas or requests.

Subpoenas or requests for official records or information or testimony must be served on the General Counsel, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005.

[73 FR 54271, Sept. 18, 2008, as amended at 75 FR 49814, Aug. 16, 2010]

§ 9409.7 Factors to be considered by the General Counsel.

The General Counsel, in his or her sole discretion, may grant an employee permission to testify on matters relating to official information, or produce official records and information, in response to a demand or request. Among the relevant factors that the General Counsel may consider in making this decision are whether:

(a) The purposes of this part are met;

(b) Allowing such testimony or production of records would be necessary to prevent a miscarriage of justice;

(c) The Commission has an interest in the decision that may be rendered in the legal proceeding;

(d) Allowing such testimony or production of records would assist or hinder the Commission in performing its statutory duties or use Commission resources where responding to the demand or request will interfere with the ability of Commission employees to do their work;

(e) Allowing such testimony or production of records would be in the best interest of the Commission or the United States;

(f) The records or testimony can be obtained from other sources;

(g) The demand or request is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand or request arose;

(h) Disclosure would violate a statute, Executive order or regulation;

(i) Disclosure would reveal confidential, sensitive, or privileged information, trade secrets or similar, confidential commercial or financial information, otherwise protected information, or information which would otherwise be inappropriate for release;

(j) Disclosure would impede or interfere with an ongoing law enforcement investigation or proceedings, or compromise constitutional rights;

(k) Disclosure would result in the Commission appearing to favor one litigant over another;

(l) Disclosure relates to documents that were produced by another agency;

(m) A substantial Government interest is implicated;

(n) The demand or request is within the authority of the party making it; and

(o) The demand or request is sufficiently specific to be answered.

§ 9409.8 Processing demands or requests.

(a) After service of a demand or request to testify, the General Counsel will review the demand or request and, in accordance with the provisions of this part, determine whether, or under what conditions, to authorize the employee to testify on matters relating to official information and/or produce official records and information.

(b) The Commission will process requests in the order in which they are

received. Absent exigent or unusual circumstances, the Commission will respond within 45 days from the date a request is received. The time for response will depend upon the scope of the request.

(c) The General Counsel may grant a waiver of any procedure described by this part where a waiver is considered necessary to promote a significant interest of the Commission or the United States or for other good cause.

§ 9409.9 Final determination.

The General Counsel will make the final determination on demands and requests to employees for production of official records and information or testimony. All final determinations are within the sole discretion of the General Counsel. The General Counsel will notify the requester and the court or other authority of the final determination, the reasons for the grant or denial of the demand or request, and any conditions that the General Counsel may impose on the release of records or information, or on the testimony of a Commission employee.

§ 9409.10 Restrictions that apply to testimony.

(a) The General Counsel may impose conditions or restrictions on the testimony of Commission employees including, for example, limiting the areas of testimony or requiring the requester and other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal or will only be used or made available in the particular legal proceeding for which testimony was requested. The General Counsel may also require a copy of the transcript of testimony at the requester's expense.

(b) The Commission may offer the employee's written declaration in lieu of testimony.

(c) If authorized to testify under this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the General Counsel, the employee shall not:

(1) Disclose confidential or privileged information; or

(2) For a current Commission employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of the Commission unless testimony is being given on behalf of the United States.

§ 9409.11 Restrictions that apply to released records.

(a) The General Counsel may impose conditions or restrictions on the release of official records and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or confidentiality agreement must be acceptable to the General Counsel. In cases where protective orders or confidentiality agreements have already been executed, the Commission may condition the release of official records and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the General Counsel so determines, original Commission records may be presented for examination in response to a demand or request, but they are not to be presented as evidence or otherwise used in a manner by which they could lose their identity as official Commission records, nor are they to be marked or altered. In lieu of the original records, certified copies will be presented for evidentiary purposes (see 28 U.S.C. 1733).

§ 9409.12 Procedure when a decision is not made prior to the time a response is required.

If a response to a demand or request is required before the General Counsel's decision is received, a U.S. attorney or a Commission attorney designated for the purpose shall appear with the employee or former employee of the Commission upon whom the demand has been made and shall furnish the court or other authority with a copy of the regulations contained in this part and inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate Commission official and shall

respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

§9409.13 Procedures when the General Counsel directs an employee not to testify or provide documents.

(a) If the General Counsel determines that an employee or former employee should not comply with a subpoena or other request for testimony or the production of documents, the General Counsel will so inform the employee and the party who submitted the subpoena or made the request.

(b) If, despite the determination of the General Counsel that testimony should not be given and/or documents not be produced, a court of competent jurisdiction or other appropriate authority orders the employee or former employee to testify and/or produce documents; the employee shall notify the General Counsel of such order.

(1) If the General Counsel determines that no further legal review of, or challenge to, the order will be sought, the employee or former employee shall comply with the order.

(2) If the General Counsel determines to challenge the order, or that further legal review is necessary, the employee or former employee should not comply with the order. Where necessary, the employee should appear at the time and place set forth in the subpoena. If legal counsel cannot appear on behalf of the employee, the employee should produce a copy of this part and respectfully inform the legal tribunal that he/she has been advised by counsel not to provide the requested testimony and/or produce documents. If the legal tribunal rules that the subpoena must be complied with, the employee shall respectfully decline to comply, citing this section and *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

§9409.14 Fees.

(a) *Generally*. The General Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the costs to the Commission.

(b) *Fees for records*. Requesters will reimburse the Commission for the actual costs of time and resources spent searching, reviewing and duplicating records. Fees for producing records will include fees for searching, reviewing, and duplicating records, costs of attorney time spent in reviewing the demand or request, and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. The Commission will charge fees at the salary rate(s) (basic pay plus 16 percent) of employee time spent searching, reviewing, and duplicating records. Fees for duplication will be the same as those charged by the Commission for records disclosed under the Freedom of Information Act (11 CFR 9405), except that the Commission will charge for the actual costs for each page of duplication and will not provide the first 100 pages for free.

(c) *Witness fees*. Fees for attendance by a witness will include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based upon the rule of the Federal district court closest to the location where the witness will appear. The fees will include cost of time spent by the witness to prepare for testimony, in travel, and for attendance in the legal proceeding.

(d) *Payment of fees*. Witness fees shall be paid for current Commission employees and any records certification fees by submitting to the General Counsel a check or money order for the appropriate amount made payable to the Treasury of the United States. In the case of testimony by former Commission employees, applicable fees shall be paid directly to the former employee in accordance with 28 U.S.C. 1821 or other applicable statutes.

(e) *Certification (authentication) of copies of records*. The Commission may certify that records are true copies to facilitate their use as evidence. To obtain certification a request for certified copies shall be made to the Commission at least 45 days before the date the copies will be needed. The request should be sent to the General Counsel, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005.

(f) *Waiver or reduction of fees.* The General Counsel, in his or her sole discretion, may, upon a showing of reasonable cause, waive or reduce any fees in connection with the testimony, production, or certification of records.

[73 FR 54271, Sept. 18, 2008, as amended at 75 FR 49814, Aug. 16, 2010]

§ 9409.15 Penalties.

(a) An employee who discloses official records or information or gives testimony relating to official information, except as expressly authorized by the Commission or as ordered by a Federal court after the Commission has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Former Commission employees are subject to the restrictions and penalties of 18 U.S.C. 207 and 216.

(b) A current Commission employee who testifies or produces official records and information in violation of this part shall be subject to disciplinary action in addition to any penalties assessed under paragraph (a) of this section.

PART 9410—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.

9410.1 Purpose and scope.
9410.2 Definitions.
9410.3 Procedures for requests pertaining to individual records in a record system.
9410.4 Times, places, and requirements for identification of individuals making requests.
9410.5 Disclosure of requested information to individuals.
9410.6 Request for correction or amendment to record.
9410.7 Commission review of request for correction or amendment of record.
9410.8 Appeal of initial adverse determination on amendment or correction.
9410.9 Disclosure of record to person other than the individual to whom it pertains.
9410.10 Fees.
9410.11 Penalties.

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 73 FR 54257, Sept. 18, 2008, unless otherwise noted.

§ 9410.1 Purpose and scope.

(a) This part sets forth rules that inform the public as to what information is maintained by the U.S. Election Assistance Commission about identifiable individuals and that inform those identifiable individuals how they may gain access to and correct or amend information about them.

(b) The regulations in this part carry out the requirements of the Privacy Act of 1974 (Pub. L. 93–579) and in particular 5 U.S.C. 552a as added by that Act.

(c) The regulations in this part apply only to records disclosed or requested under the Privacy Act of 1974 and not to requests for information made under 5 U.S.C. 552, the Freedom of Information Act, or requests for reports and statements filed with the Election Assistance Commission which are public records and available for inspection and copying.

§ 9410.2 Definitions.

As used in this part, the term—

Commission means the U.S. Election Assistance Commission, established by the Help America Vote Act of 2002, 42 U.S.C. 15301 *et seq.*

Commissioner means an individual appointed to the Commission by the President and confirmed by the Senate under section 203 of the Help America Vote Act of 2002, 42 U.S.C. 15323.

Individual means a citizen of the United States or an alien lawfully admitted for permanent residence.

Maintain includes maintain, collect, use, or disseminate.

Record means any item, collection, or grouping of information about an individual that is maintained by the Commission including, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name or the identifying number, symbol, or other identifying information particularly assigned to the individual, such as finger or voice print or a photograph.

Systems of records means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying information particularly assigned to the individual.

§9410.3 Procedures for requests pertaining to individual records in a record system.

(a) Any individual may request the Commission to inform him or her whether a particular record system named by the individual contains a record pertaining to him or her. The request may be made in person or in writing at the location of the record system and to the person specified in the notice describing that record system.

(b) An individual, who believes that the Commission maintains records pertaining to him or her but cannot determine which record system contains those records, may request assistance by mail or in person from the Executive Director, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005 during the hours of 9 a.m. to 5:30 p.m.

(c) Requests under paragraphs (a) or (b) of this section shall be acknowledged by the Commission within 15 working days from the date of receipt of the request. If the Commission is unable to locate the information requested under paragraphs (a) or (b) of this section, it shall so notify the individual within 15 working days after receipt of the request. The notification may request additional information to assist the Commission in locating the record, or it may advise the individual that no record or document exists about that individual.

[73 FR 54257, Sept. 18, 2008, as amended at 75 FR 49814, Aug. 16, 2010]

§9410.4 Times, places, and requirements for identification of individuals making requests.

(a) After being informed by the Commission that a record system contains a record pertaining to him or her, an individual may request that the Commission disclose that record in the manner described in this section. Each request for the disclosure of a record or a copy of a record it shall be made in person or by written correspondence to the U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005 and to the person identified in the notice describing the systems of records. Requests can also be made by specifically authorized agents or by parents or guardians of individuals.

(b) Each individual requesting the disclosure of a record or copy of a record shall furnish the following information with his or her request:

(1) The name of the record system containing the record;

(2) Proof as described in paragraph (c) of this section that he or she is the individual to whom the requested record relates; and

(3) Any other information required by the notice describing the record system.

(c) Proof of identity as required by paragraph (b)(2) of this section shall be provided as described in paragraphs (c)(1) and (c)(2) of this section. Requests made by an agent, parent, or guardian shall be in accordance with the procedures described in §9410.9.

(1) Requests made in writing shall include a statement affirming the individual's identity, signed by the individual and either notarized or witnessed by two persons (including witnesses' addresses). If the individual appears before a notary, he or she shall submit adequate proof of identification in the form of a driver's license, birth certificate, passport, or other identification acceptable to the notary. If the statement is witnessed, it shall include a sentence above the witnesses' signatures that they personally know the individual or that the individual has submitted proof of his or her identification to their satisfaction. In cases involving records of extreme sensitivity, the Commission may determine that the identification is not adequate and may request the individual to submit additional proof of identification.

(2) If the request is made in person, the requester shall submit proof of identification similar to that described in paragraph (c)(1) of this section, acceptable to the Commission.

[73 FR 54257, Sept. 18, 2008, as amended at 75 FR 49814, Aug. 16, 2010]

§9410.5 Disclosure of requested information to individuals.

(a) Upon submission of proof of identification as required by §9410.4, the Commission shall allow the individual to see and/or obtain a copy of the requested record or shall send a copy of

the record to the individual by registered mail. If the individual requests to see the record, the Commission may make the record available either at the location where the record is maintained or at a place more suitable to the requestor, if possible. The record shall be made available as soon as possible, but in no event later than 15 working days after proof of identification. The individual may have a person or persons of his or her own choosing accompany him or her when the record is disclosed.

(b) The Commission must furnish each record requested by an individual under this part in a form intelligible to that individual.

(c) If the Commission denies access to a record to an individual, he or she shall be advised of the reason for the denial and advised of the right to judicial review.

(d) Upon request, an individual will be provided access to the accounting of disclosures from his or her record under the same procedures as provided above and in § 9410.4.

§ 9410.6 Request for correction or amendment to record.

(a) Any individual who has reviewed a record pertaining to him or her that was furnished under this part may request that the Commission correct or amend all or any part of that record.

(b) Each individual requesting a correction or amendment shall send or provide in person the written request to the Commission through the person who furnished the record.

(c) Each request for a correction or amendment of a record shall contain the following information:

(1) The name of the individual requesting the correction or amendment;

(2) The name of the system of records in which the record sought to be amended is maintained;

(3) The location of the system of records from which the individual record was obtained;

(4) A copy of the record sought to be amended or corrected or a sufficiently detailed description of that record;

(5) A statement of the material in the record that the individual desires to correct or amend; and

(6) A statement of the basis for the requested correction or amendment including any material that the individual can furnish to substantiate the reasons for the correction or amendment sought.

§ 9410.7 Commission review of request for correction or amendment of record.

(a) The Commission shall, not later than 10 working days after the receipt of the request for a correction or amendment of a record under § 9410.6, acknowledge receipt of the request and inform the individual whether additional information is required before the correction or amendment can be considered.

(b) If no additional information is required, within 10 working days from receipt of the request, the Commission shall either make the requested correction or amendment or notify the individual of its refusal to do so, including in the notification the reasons for the refusal and the appeal procedures provided in § 9410.8.

(c) The Commission shall make each requested correction or amendment to a record if that correction or amendment will negate inaccurate, irrelevant, untimely, or incomplete information in the record.

(d) The Commission shall inform prior recipients of a record of any amendment or correction or notation of dispute of the individual's record if an accounting of the disclosure was made. The individual may request a list of prior recipients if an accounting of the disclosure was made.

§ 9410.8 Appeal of initial adverse determination on amendment or correction.

(a) Any individual whose request for a correction or amendment has been denied in whole or in part may appeal that decision to the Commissioners no later than 180 days after the adverse decision is rendered.

(b) The appeal shall be in writing and shall contain the following information:

(1) The name of the individual making the appeal;

(2) Identification of the record sought to be amended;

(3) The record system in which that record is contained;

(4) A short statement describing the amendment sought; and

(5) The name and location of the Commission official who initially denied the correction or amendment.

(c) Not later than 30 working days after the date on which the Commission receives the appeal, the Commissioners shall complete their review of the appeal and make a final decision thereon. However, for good cause shown, the Commissioners may extend that 30-day period. If the Commissioners extend the period, the individual requesting the review shall be promptly notified of the extension and the anticipated date of a decision.

(d) After review of an appeal, the Commission shall send a written notice to the requestor containing the following information:

(1) The decision and, if the denial is upheld, the reasons for the decision;

(2) The right of the requestor to institute a civil action in a Federal District Court for judicial review of the decision; and

(3) The right of the requestor to file with the Commission a concise statement setting forth the reasons for his or her disagreement with the Commission's denial of the correction or amendment. The Commission shall make this statement available to any person to whom the record is later disclosed, together with a brief statement, if appropriate, of the Commission's reasons for denying the requested correction or amendment. The Commission shall also send a copy of the statement to prior recipients of the individual's record if an accounting of the disclosures was made.

§9410.9 Disclosure of record to person other than the individual to whom it pertains.

(a) Any individual who desires to have a record covered by this part disclosed to or mailed to another person may designate such person and authorize the person to act as his or her agent for that specific purpose. The authorization shall be in writing, signed by the individual, and notarized or witnessed as provided in §9410.4(c).

(b) The parent of any minor individual or the legal guardian of any individual who has been declared by a court of competent jurisdiction to be incompetent due to physical or mental incapacity or age may act on behalf of that individual in any matter covered by this part. A parent or guardian who desires to act on behalf of such an individual shall present suitable evidence of parentage or guardianship, by birth certificate, certified copy of a court order, or similar documents, and proof of the individual's identity in a form that complies with §9410.4(c).

(c) An individual to whom a record is to be disclosed in person under this part may have a person or persons of his or her own choosing accompany him or her when the record is disclosed.

§9410.10 Fees.

(a) The Commission shall not charge an individual for the cost of making a search for a record or the cost of reviewing the record. When the Commission makes a copy of a record as a necessary part of the process of disclosing the record to an individual, the Commission shall not charge the individual for the cost of making that copy. When the Commission makes a copy of a record in response to a request from an individual, the Commission may charge the individual for the reasonable cost of making the copy.

(b) If an individual requests that the Commission furnish a copy of the record, the Commission shall charge the individual for the cost of making the copy. The fee that the Commission has established for making a copy is fifteen (15) cents per page.

§9410.11 Penalties.

Any person who makes a false statement in connection with any request for a record or an amendment or correction thereto under this part is subject to the penalties prescribed in 18 U.S.C. 494 and 495 and 5 U.S.C. 552a (i)(3).

PART 9411—STANDARDS OF CONDUCT

AUTHORITY: 5 CFR parts 2634 through 2638; 5 CFR part 2641; 5 CFR parts 734 and 735.

SOURCE: 73 FR 54275, Sept. 18, 2008, unless otherwise noted.

§ 9411.1 Cross-reference to executive branch-wide regulations.

(a) Employees of the U.S. Election Assistance Commission are subject to the following standards of conduct and ethical requirements:

(1) Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture as provided in 5 CFR part 2634;

(2) Standards of Ethical Conduct for Employees of the Executive Branch as provided in 5 CFR part 2635;

(3) Limitations on Outside Earned Income, Employment and Affiliations for Certain Noncareer Employees as provided in 5 CFR part 2636;

(4) Regulations Concerning Post-Employment Conflict of Interest as provided in 5 CFR part 2637;

(5) Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest) as provided in 5 CFR part 2638;

(6) Post-Employment Conflict of Interest Restrictions as provided in 5 CFR part 2641;

(7) Political Activities of Federal Employees as provided in 5 CFR part 734; and

(8) Employee Responsibilities and Conduct as provided in 5 CFR part 735.

(b) For purposes of this part, employee shall have the definition given to it by each standard of conduct or ethical requirement in paragraph (a) of this section.

PART 9420—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE U.S. ELECTION ASSISTANCE COMMISSION

Sec.

9420.1 Purpose and scope.
9420.2 Definitions.
9420.3 General prohibitions against discrimination.
9420.4 Program accessibility: Discrimination prohibited.
9420.5 Program accessibility: Existing facilities.
9420.6 Program accessibility: New construction and alterations.
9420.7 Communications.
9420.8 Compliance procedures.

AUTHORITY: 29 U.S.C. 794.

SOURCE: 73 FR 54275, Sept. 18, 2008, unless otherwise noted.

§ 9420.1 Purpose and scope.

This part sets forth the nondiscrimination policy of the U.S. Election Assistance Commission to prohibit discrimination on the basis of handicap in programs or activities conducted by the Commission.

§ 9420.2 Definitions.

As used in this part, the term—

Auxillary aids means services, including attendant services, or devices that enable handicapped persons, including those with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Commission. For example, auxiliary aids useful for disabled persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for disabled persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDDs), interpreters, notetakers, written materials, and other similar services and devices.

Commission means the U.S. Election Assistance Commission, established by the Help America Vote Act of 2002, 42 U.S.C. 15301 *et seq*.

Complete complaint means a written statement that contains the complainant's name and address and describes the complaintant's name and address and describes the Commission's actions in sufficient detail to inform the Commission of the nature and date of the alleged violation of section 504, as defined in this part. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or

third parties shall describe or identify (by name if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property whether owned, leased or used on some other basis by the Commission.

Handicapped person means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one of more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term ''physical or mental impairment'' includes, but is not limited to, such diseases and conditions as orthopedic; visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; mental retardation; emotional illness; and drug addition and alcoholism.

(2) *Major life activities* include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means:

(i) Has a physical or mental impairment that does not substantially limit major life activities, but is treated by the Commission as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward the impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition, but is treated by the Commission as having an impairment.

Qualified handicapped person means (1) with respect to any Commission program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who, with reasonable accommodation, meets the essential eligibility requirements and who can achieve the purpose of the program or activity; and

(2) With respect to any other program or activity, a handicapped person who meets essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617) and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by the Commission and not to any federally assisted programs or activities that it administers.

§ 9420.3 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Commission.

(b)(1) The Commission, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangement, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in

or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aids, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving aid, benefit, or service.

(2) The Commission may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Commission may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The Commission may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Commission; or

(ii) Defeat or substantially impair the accomplishment of objectives of a program or activity with respect to handicapped persons.

(5) The Commission, in selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The Commission may not administer a certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the Commission establish requirements for the programs or activities of certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. The programs or activities of entities that are certified by the Commission are not, themselves, covered by this part.

(c) The exclusion of non-handicapped persons from the benefits of a program limited by Federal statute or Executive Order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive Order to a different class of handicapped persons is not prohibited by this part.

(d) The Commission will administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§ 9420.4 Program accessibility: Discrimination prohibited.

Except as otherwise provided in 11 CFR 9420.6 and 11 CFR 9420.7, no qualified handicapped person shall be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Commission because its facilities are inaccessible to or unusable by handicapped persons.

§ 9420.5 Program accessibility: Existing facilities.

(a) *General.* The Commission will operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the Commission to make each of its existing facilities accessible to and usable by handicapped persons;

(2) Require the Commission to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. The Commission has the burden of proving that compliance with 11 CFR 9420.6(a) would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the Commission after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Commission will take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that handicapped person receive the benefits and services of the program or activity.

(b) *Methods.* The Commission may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The Commission is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The Commission, in making alterations to existing buildings will meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151–4157, and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Commission will give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The Commission shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes will be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Commission will develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan will be developed with the assistance of interested persons, including handicapped persons and organizations representing handicapped persons. A copy of the transition plan will be made available for public inspection. The plan will, at a minimum—

(1) Identify physical obstacles in the Commission's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the person or groups with whose assistance the plan was prepared.

§ 9420.6 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Commission shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act, 42 U.S.C. 4151–4157 apply to buildings covered by this section.

§ 9420.7 Communications.

(a) The Commission will take appropriate steps to ensure effective communication with applicants, participants,

personnel of other Federal entities, and members of the public.

(1) The commission will furnish appropriate auxiliary aids when necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Commission.

(i) In determining what type of auxiliary aid is necessary, the Commission will give primary consideration to the requests of the handicapped person.

(ii) Where the Commission communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDDs) or equally effective telecommunication systems will be used.

(b) The Commission will ensure that interested persons, including persons with impaired vision or hearing can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) To the extent that the Commission controls signage at its facilities, the Commission will provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. To the extent practicable, the international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) The Commission will take appropriate steps to provide handicapped persons with information regarding their section 504 rights under the Commission's programs or activities.

(e) This section does not require the Commission to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. The Commission has the burden of proving that compliance with this section would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the Commission after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Commission will take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§ 9420.8 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the Commission.

(b) The Commission will process complaints alleging violations of section 504 with respect to employment according to the procedures established in 29 CFR 1614.101 et seq. pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Rehabilitation Act Officer.

(d)(1) Requirement to file complaint with the Rehabilitation Act Officer.

(i) Any person who believes that he or she or any specific class of persons of which he or she is a member has been subjected to discrimination prohibited by this part may file a complaint with the Rehabilitation Act Officer.

(ii) Any person who believes that a denial of his or her services will result or has resulted in discrimination prohibited by this part may file a complaint with the Rehabilitation Act Officer.

(2) *Timing of filing of complaint.* All complete complaints must be filed within 180 days of the alleged act of discrimination. The Commission may extend this period for good cause.

(3) Complaints filed under this part shall be addressed to the Rehabilitation Act Officer, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005.

(e) The Commission will notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building

or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), are not readily accessible and usable to handicapped persons.

(f) *Review of complaints*—(1) The Commission will accept and investigate a complete complaint that is filed in accordance with paragraph (d) of this section and over which it has jurisdiction. The Rehabilitation Act Officer will notify the complainant and the respondent of receipt and acceptance of the complaint.

(2) If the Rehabilitation Act Officer receives a complaint that is not complete, he or she will notify the complainant within 30 days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the Rehabilitation Act Officer will dismiss the complaint without prejudice.

(3) If the Rehabilitation Act Officer receives a complaint over which the Commission does not have jurisdiction, the Commission will promptly notify the complainant and will make reasonable efforts to refer the complaint to the appropriate government entity.

(g) Within 180 days of receipt of a complete complaint for which it has jurisdiction, the Commission will notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law.

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the Commission of a letter required by § 9420.9(g). The Commission may extend this time for good cause.

(i) Timely appeals to the Commission shall be addressed to the Rehabilitation Act Officer, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005.

(j) The Commission will notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Commission determines it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The Commission may extend the time limits in paragraphs (g) and (j) of this section for good cause.

(l) The Commission may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

[73 FR 54275, Sept. 18, 2008, as amended at 75 FR 49815, Aug. 16, 2010]

PART 9428—NATIONAL VOTER REGISTRATION ACT (42 U.S.C. 1973gg–1 et seq.)

Subpart A—General Provisions

Sec.
9428.1 Purpose & scope.
9428.2 Definitions.

Subpart B—National Mail Voter Registration Form

9428.3 General Information.
9428.4 Contents.
9428.5 Format.
9428.6 Chief state election official.

Subpart C—Recordkeeping and Reporting

9428.7 Contents of reports from the states.

AUTHORITY: 42 U.S.C. 1973gg–1 *et seq.*, 15532

SOURCE: 59 FR 32323, June 23, 1994, unless otherwise noted. Redesignated at 74 FR 37520, July 29, 2009.

Subpart A—General Provisions

§ 9428.1 Purpose & scope.

The regulations in this part implement the responsibilities delegated to the Commission under Section 9 of the National Voter Registration Act of 1993, Public Law 103–31, 97 Stat. 77, 42 U.S.C. 1973gg–1 *et seq.* (''NVRA''). They describe the format and contents of the national mail voter registration form and the information that will be required from the states for inclusion in the Commission's biennial report to Congress.

§ 9428.2 Definitions.

As used in this part:

(a) *Form* means the national mail voter registration application form, which includes the registration application, accompanying general instructions for completing the application, and state-specific instructions.

(b) *Chief state election official* means the designated state officer or employee responsible for the coordination of state responsibilities under 42 U.S.C. 1973gg–8.

(c) *Active voters* means all registered voters except those who have been sent but have not responded to a confirmation mailing sent in accordance with 42 U.S.C. 1973gg–6(d) and have not since offered to vote.

(d) *Inactive voters* means registrants who have been sent but have not responded to a confirmation mailing sent in accordance with 42 U.S.C. 1973gg–6(d) and have not since offered to vote.

(e) *Duplicate registration application* means an offer to register by a person already registered to vote at the same address, under the same name, and (where applicable) in the same political party.

(f) *State* means a state of the United States and the District of Columbia not exempt from coverage under 42 U.S.C. 1973gg–2(b).

(g) *Closed primary state* means a state that requires party registration as a precondition to vote for partisan races in primary elections or for other nominating procedures.

Subpart B—National Mail Voter Registration Form

§ 9428.3 General information.

(a) The national mail voter registration form shall consist of three components: An application, which shall contain appropriate fields for the applicant to provide all of the information required or requested under 11 CFR 9428.4; general instructions for completing the application; and accompanying state-specific instructions.

(b) The state-specific instructions shall contain the following information for each state, arranged by state: the address where the application should be mailed and information regarding the state's specific voter eligibility and registration requirements.

(c) States shall accept, use, and make available the form described in this section.

[59 FR 32323, June 23, 1994. Redesignated and amended at 74 FR 37520, July 29, 2009]

§ 9428.4 Contents.

(a) *Information about the applicant.* The application shall provide appropriate fields for the applicant's:

(1) Last, first, and middle name, any suffix, and (optional) any prefix;

(2) Address where the applicant lives including: street number and street name, or rural route with a box number; apartment or unit number; city, town, or village name; state; and zip code; with instructions to draw a locational map if the applicant lives in a rural district or has a non-traditional residence, and directions not to use a post office box or rural route without a box number;

(3) Mailing address if different from the address where the applicant lives, such as a post office box, rural route without a box number, or other street address; city, town, or village name; state; and zip code;

(4) Month, day, and year of birth;

(5) Telephone number (optional); and

(6) Voter identification number as required or requested by the applicant's state of residence for election administration purposes.

(i) The application shall direct the applicant to consult the accompanying state-specific instructions to determine what type of voter identification number, if any, is required or requested by the applicant's state.

(ii) For each state that requires the applicant's full social security number as its voter identification number, the state's Privacy Act notice required at 11 CFR 9428.6(c) shall be reprinted with the instructions for that state.

(7) Political party preference, for an applicant in a closed primary state.

(i) The application shall direct the applicant to consult the accompanying state-specific instructions to determine if the applicant's state is a closed primary state.

(ii) The accompanying instructions shall state that if the applicant is registering in a state that requires the

declaration of party affiliation, then failure to indicate a political party preference, indicating ''none'', or selecting a party that is not recognized under state law may prevent the applicant from voting in partisan races in primary elections and participating in political party caucuses or conventions, but will not bar an applicant from voting in other elections.

(8) Race/ethnicity, if applicable for the applicant's state of residence. The application shall direct the applicant to consult the state-specific instructions to determine whether race/ethnicity is required or requested by the applicant's state.

(b) *Additional information required by the Act*. (42 U.S.C. 1973gg–7(b) (2) and (4)). The form shall also:

(1) Specify each eligibility requirement (including citizenship). The application shall list U.S. Citizenship as a universal eligibility requirement and include a statement that incorporates by reference each state's specific additional eligibility requirements (including any special pledges) as set forth in the accompany state instructions;

(2) Contain an attestation on the application that the applicant, to the best of his or her knowledge and belief, meets each of his or her state's specific eligibility requirements;

(3) Provide a field on the application for the signature of the applicant, under penalty of perjury, and the date of the applicant's signature;

(4) Inform an applicant on the application of the penalties provided by law for submitting a false voter registration application;

(5) Provide a field on the application for the name, address, and (optional) telephone number of the person who assisted the applicant in completing the form if the applicant is unable to sign the application without assistance;

(6) State that if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(7) State that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(c) *Other information*. The form will, if appropriate, require an applicant's former address or former name or request a drawing of the area where the applicant lives in relation to local landmarks.

[59 FR 32323, June 23, 1994; 59 FR 40639, Aug. 9, 1994. Redesignated and amended at 74 FR 35720, July 29, 2009]

§ 9428.5 Format.

(a) The application shall conform to the technical specifications described in the Commission's National Mail Voter Registration Form Technical Specifications.

(b) *Size*. The application shall consist of a 5″ by 8″ application card of sufficient stock and weight to satisfy postal regulations. The application card shall be attached by a perforated fold to another 5″ by 8″ card that contains space for the information set forth at 11 CFR 9428.4(c).

(c) *Layout*. (1) The application shall be sealable.

(2) The outside of the application shall contain an appropriate number of address lines to be completed by the applicant using the state information provided.

(3) Both sides of the application card shall contain space designated ''For Official Use Only.''

(d) *Color*. The application shall be of ink and paper colors of sufficient contrast to permit for optical scanning capabilities.

(e) *Signature field*. The application shall contain a signature field in lieu of a signature line.

(f) *Type size*. (1) All print on the form shall be of the largest practicable type size.

(2) The requirements on the form specified in 11 CFR 9428.4(b)(1), (6), and (7) shall be in print identical to that used in the attestation portion of the application required by 11 CFR 9428.4(b)(2).

[59 FR 32323, June 23, 1994. Redesignated and amended at 74 FR 37520, July 29, 2009]

§ 9428.6 Chief state election official.

(a) Each chief state election official shall certify to the Commission within 30 days after July 25, 1994:

(1) All voter registration eligibility requirements of that state and their corresponding state constitution or statutory citations, including but not limited to the specific state requirements, if any, relating to minimum age, length of residence, reasons to disenfranchise such as criminal conviction or mental incompetence, and whether the state is a closed primary state.

(2) Any voter identification number that the state requires or requests; and

(3) Whether the state requires or requests a declaration of race/ethnicity;

(4) The state's deadline for accepting voter registration applications; and

(5) The state election office address where the application shall be mailed.

(b) If a state, in accordance with 11 CFR 9428.4(a)(2), requires the applicant's full social security number, the chief state election official shall provide the Commission with the text of the state's privacy statement required under the Privacy Act of 1974 (5 U.S.C. 552a note).

(c) Each chief state election official shall notify the Commission, in writing, within 30 days of any change to the state's voter eligibility requirements or other information reported under this section.

[59 FR 32323, June 23, 1994. Redesignated and amended at 74 FR 35720, July 29, 2009]

Subpart C—Recordkeeping and Reporting

§ 9428.7 Contents of reports from the states.

(a) The chief state election official shall provide the information required under this section with the Commission by March 31 of each odd-numbered year beginning March 31, 1995 on a form to be provided by the Commission. Reports shall be mailed to: National Clearinghouse on Election Administration, Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005. The data to be reported in accordance with this section shall consist of applications or responses received up to and including the date of the preceding federal general election.

(b) Except as provided in paragraph (c) of this section, the report required under this section shall include:

(1) The total number of registered voters statewide, including both ''active'' and ''inactive'' voters if such a distinction is made by the state, in the federal general election two years prior to the most recent federal general election;

(2) The total number of registered voters statewide, including both ''active'' and ''inactive'' voters if such a distinction is made by the state, in the most recent federal election;

(3) The total number of new valid registrations accepted statewide between the past two federal general elections, including all registrations that are new to the local jurisdiction and re-registrations across jurisdictional lines, but excluding all applications that are duplicates, rejected, or report only a change of name, address, or (where applicable) party preference within the local jurisdiction;

(4) If the state distinguishes between ''active'' and ''inactive'' voters, the total number of registrants statewide that were considered ''inactive'' at the close of the most recent federal general election;

(5) The total number of registrations statewide that were, for whatever reason, deleted from the registration list, including both ''active'' and ''inactive'' voters if such a distinction is made by the state, between the past two federal general elections;

(6) The statewide number of registration applications received statewide (regardless of whether they were valid, rejected, duplicative, or address, name or party changes) that were received from or generated by each of the following categories:

(i) All motor vehicle offices statewide;

(ii) Mail;

(iii) All public assistance agencies that are mandated as registration sites under the Act;

(iv) All state-funded agencies primarily serving persons with disabilities;

(v) All Armed Forces recruitment offices;

(vi) All other agencies designated by the state;

(vii) All other means, including but not limited to, in person, deputy registrars, and organized voter registration drives delivering forms directly to registrars;

(7) The total number of duplicate registration applications statewide that, between the past two federal general elections were received in the appropriate election office and generated by each of the categories described in paragraphs (b)(6) (i) through (vii) of this section;

(8) The statewide number of confirmation notices mailed out between the past two federal general elections and the statewide number of responses received to these notices during the same period;

(9) Answers to a series of questions with categorical responses for the state to indicate which options or procedures the state has selected in implementing the NVRA or any significant changes to the state's voter registration program; and

(10) Any additional information that would be helpful to the Commission for meeting the reporting requirement under 42 U.S.C. 1973gg–7(a)(3).

(c) For the State report due March 31, 1995, the chief state election official need only provide the information described in paragraph (b)(2) of this section and a brief narrative or general description of the state's implementation of the NVRA.

[59 FR 32323, June 23, 1994, as amended at 59 FR 64560, Dec. 15, 1994. Redesignated and amended at 74 FR 37520, July 29, 2009;75 FR 49815, Aug. 16, 2010]

PART 9430—DEBT COLLECTION

Sec.

9430.1 Cross-reference to executive branch-wide debt collection regulations.
9430.2–9430.5 [Reserved]

AUTHORITY: 31 U.S.C. 3716(b); 31 U.S.C. 3711(d)(2); 31 CFR parts 900–904,

SOURCE: 74 FR 27906, June 12, 2009, unless otherwise noted.

§ 9430.1 Cross-reference to executive branch-wide debt collection regulations.

The U.S. Election Assistance Commission adopts the regulations at 31 CFR parts 900–904, governing administrative collection, offset, compromise, and the suspension or termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701(b).

§§ 9430.2–9430.5 [Reserved]