to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.882–5 is amended by revising the first sentence of paragraph (f)(1) to read as follows:

§ 1.882–5 Determination of interest deduction.

* * * * *

(f) *Effective/applicability date.* (1) This section is applicable for taxable years ending on or after August 15, 2009. * * *

* * * * *

■ **Par. 3.** Section 1.884–1 is amended by revising the fifth sentence of paragraph (e)(5) *Example 2.* (i) to read as follows:

§ 1.884–1 Branch profits tax.

* * * * *

(e) * * *

(5) * * *

Example 2. (i) * * * As a result of the election, assuming A's U.S. assets and U.S. liabilities would otherwise have remained constant, A's U.S. net equity as of the close of 2007 will increase by the amount of the decrease in liabilities ($60) from $200 to $260 and its ECEP will be reduced to zero. * * *

* * * * *

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E9–26274 Filed 11–4–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9465]

RIN 1545–BF71

Determination of Interest Expense Deduction of Foreign Corporations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations (TD 9465) that were published in the **Federal Register** on Monday, September 28, 2009 (74 FR 49315) concerning the determination of the interest expense deduction of foreign corporations engaged in a trade or business within the United States. These final regulations conform the interest expense rules to recent U.S. Income Tax Treaty agreements and adopt other changes to improve compliance.

DATES: This correction is effective on November 5, 2009, and is applicable on September 28, 2009.

FOR FURTHER INFORMATION CONTACT: Anthony J. Marra, (202) 622–3870 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9465) that are the subject of this document are under sections 882 and 884 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9465) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9465), which were the subject of FR Doc. E9–22867, is corrected as follows:

On page 49315, column 3, in the preamble, under the caption **DATES**, the language ''These final regulations are effective September 28, 2009.'' is corrected to read ''*Effective Date:* These final regulations are effective on September 28, 2009.

Applicability Date: These final regulations are applicable for taxable years ending on or after August 15, 2009. A taxpayer may choose to apply the temporary regulations (TD 9281, 71 FR 47443), rather than applying the final regulations, for any taxable year beginning on or after August 16, 2008, but before August 15, 2009.''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. E9–26272 Filed 11–4–09; 8:45 am]

BILLING CODE 4830–01–P

POSTAL REGULATORY COMMISSION

39 CFR Parts 3001 and 3004

[Docket No. RM2009–6; Order No. 322]

Freedom of Information Act Regulations

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting final rules related to the Freedom of Information Act. The final rules reflect several changes made in response to commenters' suggestions. They implement recent amendments clarifying the relationship of these rules to others, and make minor editorial and conforming changes.

DATES: Effective December 7, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION: *Regulatory History,* 74 FR 33388 (July 13, 2009).

I. Introduction
II. Comments
III. Discussion
IV. Section-by-Section Analysis of the Rules
V. Ordering Paragraphs

I. Introduction

In this order, the Postal Regulatory Commission (Commission) adopts rules which govern processing of Freedom of Information Act (FOIA), 5 U.S.C. 552, requests. These final rules revise procedures for the Commission's handling of FOIA requests to reflect the Openness Promotes Effectiveness in our National Government Act of 2007, Public Law 110–175, 121 Stat. 2524 (OPEN Government Act). The Commission finds these updates necessary in light of statutory changes and policy direction from the President and the Attorney General.[1]

The Commission proposed changes to its FOIA rules (39 CFR part 3004) in Order No. 230.[2] The substantive changes included a declaration of a presumption of openness, a provision to allow partial grants of requests, a mechanism for requesters to receive a tracking number for each FOIA request,

[1] *See* OPEN Government Act, Public Law 110–175, 121 Stat. 2524 (2007); *see also* Memorandum for the Heads of Executive Departments and Agencies, January 21, 2009, 74 FR 4683 (January 26, 2009); and Office of the Attorney General, Memorandum for Heads of Executive Departments and Agencies (March 19, 2009); and Department of Justice Office of Information Policy FOIA Post 8, April 17, 2009.

[2] PRC Order No. 230, Notice of Proposed Rulemaking to Establish Procedures for the Freedom of Information Act, July 1, 2009 (Order No. 230).

a rule barring the collection of fees if the Commission does not comply with the 20 working day time limit, and a designation of the FOIA Public Liaison. *See id.* at 3. Following evaluation of comments received, the Commission makes several minor clarifying changes, adds language to distinguish the Chief Freedom of Information Officer from the Freedom of Information Act Liaison, and adopts these revised rules.

II. Comments

The Commission received three comments on the proposed rules.[3] The Commission appreciates the parties' comments on the proposed rules, and incorporates several minor revisions as suggested by the comments. Thus, these final rules differ slightly from the proposed rules in ways designed to clarify and improve the rules in response to the comments.

The Public Representative states that the proposed changes to the Commission's FOIA rules ''appear to be in the interests of the general public.'' Public Representative Comments at 2. However, the Public Representative suggests that the Commission remove or revise proposed rule 3004.11, Non-Public Records, to reflect the reality that all records kept by the Commission are public records. *Id.* The Public Representative believes proposed rules 3004.10 (public records) and 3004.11 (non-public records) may imply that only public records may be requested. *Id.* at 3. The Public Representative also calls for a reduction in the fees charged for reproduction under proposed rule 3004.53 to reflect decreased costs from technology gains. *Id.*

The National Security Archive makes three suggestions. First, it suggests revising proposed rules 3004.10 and 3004.11 to clarify that all records of the Commission are public records, and that many of the statutory exemptions are discretionary. NSA Comments at 1–4. Second, it proposes amending proposed rule 3004.12 to describe the Commission's obligation to post frequently requested records in its electronic reading room. *Id.* at 4–5. Finally, it suggests that the Commission edit proposed rule 3004.52(e) to bar collection of fees for a partial grant of a request, arguing, *inter alia,* that it ''creates an inefficient and inappropriate incentive for the Commission to release whatever records it can most easily aggregate before the time limit runs * * *.'' *Id.* at 6.

The Greeting Card Association (GCA) suggests that the Commission clarify the relationship between its FOIA rules (part 3004) and its confidentiality rules (part 3007). GCA comments that proposed rule 3004.30(d)(1) should be clarified because it makes ''no provision for legitimately confidential third-party information which is not also a Postal Service record.'' GCA Comments at 2. GCA also expresses concern that the protections afforded in part 3007 are broader than the FOIA exemptions, and thus the FOIA procedures may undermine the protections afforded under part 3007. *Id.* at 3–5. Similarly, GCA comments that the title of proposed rule 3004.70, ''Submission of business information,'' is narrower than the FOIA exemptions and part 3007 in general. *Id.* at 6.

III. Discussion

This rulemaking amends the Commission's rules for Freedom of Information Act requests to reflect changes in 5 U.S.C. 552 as updated by the OPEN Government Act and policy articulated by the President and the Attorney General. The rules also provide procedures which accommodate FOIA policies and requirements as well as the Commission's rules for according appropriate confidentiality, 39 CFR part 3007. The Commission endeavors to conduct its business transparently; it proactively discloses a wealth of information to the public. In these rules, the Commission identifies the Secretary of the Commission as the officer responsible for answering all FOIA requests.

When the Commission receives a FOIA request, it must balance parties' legitimate conflicting interests. For example, on one hand, the Public Representative and National Security Archive urge the Commission to adopt FOIA rules which provide the public with open access to Commission records. On the other hand, GCA is concerned that confidential material parties submit to the Commission remains protected as articulated in part 3007. Both interests are valid, and the Commission strikes an appropriate balance with its FOIA rules. Four issues are raised by the comments to the Commission's previously proposed rules.

Public vs. *non-public records.* The Public Representative and the National Security Archive comment that proposed rule 3004.11, Non-public records, should be modified or deleted to remove a source of possible confusion. The Public Representative and the National Security Archive state that all Commission records are public records, and a rule describing non-public records may lead the public to believe they may not request such records under FOIA. *See* NSA Comments at 1–4.

The Commission agrees with the Public Representative's and the National Security Archive's characterization that all records of the Commission are public records. It also agrees that proposed rule 3004.11, Non-public records, may be misleading. The purpose of the rule is to offer some guidance to the public as to the types of records the Commission is likely to claim exempt from disclosure under 5 U.S.C. 552(b). However, in the interest of avoiding confusion, the Commission re-titles proposed rule 3004.11 with language proposed by the National Security Archive. Rule 3004.11 is now ''Use of exemptions'' and provides a summary of the possible exemptions the Commission may claim under FOIA.

Reading room. Similarly, the National Security Archive suggests amending proposed rule 3004.12 to describe the Commission's duty to post frequently requested records, or records the Commission believes to be of great public interest. *Id.* at 2–4.

The Commission finds the National Security Archive's suggestions to revise proposed rule 3004.12 reasonable. The Commission adds a paragraph to that rule which describes the Commission's duty to post frequently requested records, and without a request, those records the Commission believes to be of significant public interest.

Fees. Both the Public Representative and the National Security Archive comment on the Commission's fees as outlined in proposed rules 3004.52 and 3004.53. The Public Representative encourages the Commission to reduce its fees for duplication found in proposed rule 3004.53(a)(4) to reflect the lower actual cost of duplication. The Commission allows that technology gains have lowered the cost of duplication, but it must also take into account the cost of materials, operator time, and other direct costs. As a result of these considerations, the Commission finds it reasonable to reduce the duplication fee in proposed rule 3004.53(a)(4) from 15 cents to 10 cents per page for paper copies.

The Commission is not persuaded by the National Security Archive's recommendation to eliminate proposed rule 3004.52(e), which allows the Commission to charge a fee for the

[3] Comments of the National Security Archive on the Postal Regulatory Commission's Proposed Freedom of Information Act Regulations, August 10, 2009 (NSA Comments); Initial Comments of the Greeting Card Association, August 12, 2009 (GCA Comments); and Public Representative Comments on Proposed Rulemaking to Establish Procedures for the Freedom of Information Act, August 12, 2009 (Public Representative Comments).

partial grant of a request while it reviews other sensitive records which may be responsive to the request. The Commission's files frequently contain records submitted by a third party or on behalf of a third party which are commercially sensitive.[4] The Commission must protect such materials from disclosure or risk that third parties will not provide it with the materials necessary to fulfill its statutory obligations. Therefore, when the Commission receives a request for voluminous records, it must be able to segregate those records that it can release immediately and those which trigger due process rights for other parties prior to the Commission making a determination regarding public release.

The Commission appreciates the National Security Archive's concern that this rule may create an incentive for the Commission to quickly release a set of records to charge a fee, and postpone consideration of release for ''other sensitive records.'' However, to amend the rule as the National Security Archive suggests would constrain the Commission's ability to give the submitters of non-public materials an opportunity to address their concerns about the possible release of their confidential information. In the interest of avoiding confusion, the Commission amends the proposed rule to remove the ambiguous ''sensitive records'' language and replace it with a specific reference to the exemptions.

Relationship between part 3004 and part 3007. GCA raises several concerns about the relationship between the FOIA rules (part 3004) and the confidentiality rules (part 3007).

First, GCA sets forth what it thinks is the meaning of proposed rule 3004.30(d), which provides that Postal Service non-public filings may be requested under part 3007, and that FOIA requests for Postal Service records shall be referred to the Postal Service. GCA believes that if a FOIA request seeks non-public materials (defined in part 3007) that are Postal Service records, the FOIA request ''will be denied and the requester will be allowed to seek access to them under Part 3007.'' GCA Comments at 2. It further believes that any FOIA request for Postal Service records which are not non-public (as defined in part 3007) will be referred to the Postal Service. *Id.*

GCA's reading of proposed rule 3004.30(d) is not entirely correct. The Commission may not deny a FOIA request simply because the materials are non-public under part 3007. Proposed rule 3004.30 sets forth that part 3007 is an alternate means of accessing Postal Service records that are held by the Commission. Proposed rule 3004.30 also informs a requester that a FOIA request for a record that the Postal Service designates as non-public and files with the Commission shall be referred to the Postal Service. *See, e.g.*, *Sussman* v. *U.S. Marshals Serv.*, 494 F.3d 1106, 1118 (DC Cir. 2007) (refusing summary judgment and rejecting the argument that consultation is the only approved procedure under FOIA). The Commission shall continue its current practice of handling FOIA requests for records which are both Postal Service and Commission records insofar as it will consult, refer, or release as appropriate under the circumstances.

The Commission adopts rule 3004.30(d) as proposed with minor editorial revisions to clarify the procedures the Commission shall follow when it receives FOIA requests for records which are both Commission and Postal Service records. The rule gives guidance to the public that Postal Service records may be requested under part 3007, but a FOIA request for records which the Postal Service filed as non-public materials pursuant to part 3007 shall be referred to the Postal Service.

Second, GCA points out the tension between the standard in the Commission's confidentiality rules for general release (rule 3007.33) and exemption 4 under FOIA. GCA Comments at 4–5. Rule 3007.33 balances the interests of the parties under Federal Rule of Civil Procedure 26(c) when determining if a third-party non-public record shall be released. Exemption 4 applies to privileged or confidential trade secret and commercial or financial information. Because exemption 4 is narrower than the standard articulated in rule 3007.33, GCA expresses concern that a FOIA request may reopen the question of its non-public status for non-public materials submitted under part 3007. *Id.* at 5.

GCA raises valid concerns. The Commission adds new paragraph (e) to proposed rule 3004.30 entitled ''Requesting a third-party record submitted under seal.'' This paragraph explains that the Commission will endeavor to provide the same standard for release of third-party materials under FOIA as it provides third-party materials filed under seal pursuant to part 3007. The Commission adopts the statutory exemptions articulated in 39 U.S.C. 410(c) to allow full protection of Postal Service and third-party non-public materials and to afford consistency with the Commission's confidentiality rules. The Commission believes that, when deciding public release, balancing the interests of the parties, pursuant to rule 3007.33 will offer no less protection than applying exemption 4 and 39 U.S.C. 410(c) under FOIA.

Final rule 3004.30(e) follows the same structure as proposed rule 3004.30(d) and assures third-party non-public material submitters that their materials shall only be released under FOIA if applicable exemptions, including section 410(c) standards, do not apply.

The Commission adopts the section 410(c) standard in proposed rule 3004.11 for use when a third party designates materials as non-public and submits them to the Commission. 39 U.S.C. 504(e) sets forth that ''section 410 * * * of this title shall apply to the Commission, as appropriate.'' The Commission finds it appropriate to incorporate section 410(c) standards in its FOIA rules applicable to third-party non-public materials.

Third, GCA expresses concern that proposed rule 3004.30 does not protect third-party or Postal Service non-public materials with as broad a standard as part 3007. *Id.* at 2–3. GCA argues that if proposed rule 3004.70 requires the submitter to furnish ''a statement *in addition to* the grounds already given, and accepted, for non-public treatment under Part 3007, this provision would not be inappropriate.'' *Id.* at 3–4. (Emphasis in original.)

GCA's reading of the proposed rule is correct, with one caveat. GCA's statement that the rationale for non-public treatment was ''already given, and accepted'' is an incorrect reading of part 3007. Rules 3007.21 and 3007.22 set forth the requirements for Postal Service and third-party applications for non-public treatment. Once those requirements are met, the Commission shall preliminarily treat those materials as non-public materials as provided in rule 3007.23.

However, no rationale for non-public treatment given in the application has been ''accepted'' unless the Commission makes a determination of non-public status (for Postal Service submissions) under rule 3007.32, or in response to a motion for early termination of non-public status (for any submissions) under rule 3007.31.

GCA also cites the example of 39 U.S.C. 410(c), the ''good business practice'' statutory exemption from

[4] *See* Docket No. RM2008–1, Final Rule Establishing Appropriate Confidentiality Procedures, June 19, 2009, for an overview of the types of materials the Commission must use to fulfill its duties and keep under seal for protection of the Postal Service or third parties.

FOIA, which is broader than the nine FOIA exemptions. *Id.* at 4. This point is well taken; however, because records designated as non-public by the Postal Service that are requested under FOIA shall be referred to the Postal Service (where the Postal Service can invoke its section 410(c) exemption), there is no conflict between 39 U.S.C. 410(c) and the FOIA exemptions. Because the Commission adopts section 410(c) standards, as discussed in the preceding paragraphs, the Commission is able to afford third parties the same protections the Postal Service affords itself through use of the section 410(c) ''good business practice'' exemption, and thus there is no conflict between the Postal Service's protection of third-party non-public materials, and the Commission's protection of those materials.

Fourth, GCA argues that the heading and paragraph (b) of proposed rule 3004.70 improperly use the term ''business information'' since the FOIA exemptions cover more than business information. *Id.* at 6.

The Commission agrees with GCA's assessment, and amends the heading of rule 3004.70 as originally proposed to ''Third-party submission of non-public materials.'' Likewise, the term ''business information'' in paragraph (b) is replaced with ''materials.''

IV. Section-by-Section Analysis of the Rules

Section 3004.1 Purpose. Rule 3004.1 sets forth the purpose of part 3004, and outlines the procedures under FOIA for requesting records from the Commission. Paragraph (b) identifies the location of required FOIA publications.

Section 3004.2 Presumption of openness. Rule 3004.2 explains the ''presumption of openness'' mandated by the President and further explained by the Attorney General and Department of Justice.

Section 3004.10 Public records. Rule 3004.10 describes examples of Commission records which do not implicate any exemption under 5 U.S.C. 552(b).

Section 3004.11 Use of exemptions. Rule 3004.11 sets forth the exemptions the Commission may use to protect records from disclosure, and identifies which exemptions are discretionary in nature. The rule also identifies the 39 U.S.C. 410(c) exemptions as examples of exemption 3 ''specifically exempted from disclosure by statute.''

Section 3004.12 Reading room. Rule 3004.12 indicates that the Commission maintains an electronic reading room on the Commission's Web site and a physical reading room at the Commission's offices. Paragraphs (b) and (c) describe the types of records available in the reading rooms.

Section 3004.13 Notice and publication of public information. Rule 3004.13 gives information about the availability of Commission orders, decisions, and reports, and the availability of the Commission's guiding principles.

Section 3004.20 Commission procedure when served a subpoena. This rule sets forth the procedure the Commission, its officers, or employees shall follow when served with a subpoena for materials which are not public files or records. It requires that service of the subpoena shall be reported to the Commission, along with a statement of relevant facts, and the Commission shall take the appropriate action to respond to the subpoena.

Section 3004.30 Relationship among the Freedom of Information Act, the Privacy Act, and the Commission's procedures for according appropriate confidentiality. This rule includes a reference to the Commission's rules governing the treatment of non-public materials, and the policy of referring a FOIA request for Postal Service records to the Postal Service. Paragraph (d) states that the Commission shall refer FOIA requests for Postal Service non-public materials filed pursuant to part 3007, and that part 3007 is an alternate avenue for seeking release of those records. Paragraph (e) is added to describe how the Commission shall handle FOIA requests for third-party non-public materials.

Section 3004.40 Hard copy requests for records and for expedited processing. This rule lists the requirements for hard copy requests for records under FOIA. Paragraphs (a)(1) through (a)(6) delineate the requirements for hard copy requests, including a new requirement that the requester identify the request category under rule 3004.51. Paragraphs (b)(1) through (b)(3) describe the requirements for a request for expedited processing.

Section 3004.41 Electronic requests for records and for expedited processing. Rule 3004.41 sets forth the requirements for electronically submitted requests for information made to the Commission under FOIA. The rule contains similar requirements to rule 3004.40, but requires that an electronic request utilize the form for FOIA requests on the Commission's Web site.

Section 3004.42 Tracking of requests. Rule 3004.42 states that the Commission shall assign a unique tracking number to each request within 3 days of receipt, and how a requester may use the number to check the status of a request.

Section 3004.43 Response to requests. Rule 3004.43 explains the Commission's actions upon receiving a request. It describes that the Commission may grant a request, in whole or in part, deny a request, or grant or deny expedited processing.

Section 3004.44 Appeals. Rule 3004.44 describes the process of administrative appeals to the Commission after the Secretary or Assistant Secretary makes an initial determination on the request.

Section 3004.45 Extension of response time limit. This rule describes the procedures the Commission must follow to extend the time limit for responding to a request.

Section 3004.50 Fees—definitions as used in this part. Rule 3004.50 sets forth definitions used to determine the request category and fee structure.

Section 3004.51 Fees—request category. This rule describes that the fees the Commission charges for processing FOIA requests are determined by the category of the requester—commercial, educational and scientific institution, representative of the news media, and all other requesters.

Section 3004.52 Fees—general provisions. This rule describes when the Commission may charge fees, and how the fees are to be calculated for various activities. The proposed rule was modified to remove the ambiguous ''other sensitive records'' language and replace it with a reference to the exemptions.

Section 3004.53 Fee schedule. Rule 3004.53 describes the fees charged for various activities the Commission may complete to respond to a request. The duplication fees described in proposed rule 3004.53(a)(4) are reduced from 15 cents to 10 cents per page.

Section 3004.54 Procedure for assessing and collecting fees. Rule 3004.54 explains the Commission's assessment of interest and the circumstances under which the Commission requires advance payment of fees.

Section 3004.60 Chief Freedom of Information Act Officer. Rule 3004.60 designates the Secretary of the Commission as the Chief FOIA Officer. The Chief FOIA Officer is responsible for administration of and reporting on the Commission's FOIA program.

Section 3004.61 Freedom of Information Act Public Liaison. Rule 3004.61 designates the Director of the Office of Public Affairs and Government Relations as the FOIA Public Liaison. The FOIA Public Liaison provides an

avenue for the public to informally resolve FOIA disputes with the Commission.

Section 3004.70 Third-party submission of non-public materials. Rule 3004.70 describes how the Commission will respond to requests for confidential third-party materials, and how the FOIA standard overlaps with part 3007.

V. Ordering Paragraphs

It is ordered:

1. The Commission hereby adopts the set of final rules governing the Freedom of Information Act that follow the Secretary's signature as part of 39 CFR part 3004.

2. It is also making a conforming change to eliminate 39 CFR 3001.42.

3. These rules shall take effect 30 days after publication in the **Federal Register**.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

List of Subjects

39 CFR Part 3001

Administrative practice and procedure, Confidential business information, Postal Service.

39 CFR Part 3004

Administrative practice and procedure, Archives and records, Freedom of information, Organization, Privacy, Reporting and recordkeeping requirements.

By the Commission.

Shoshana M. Grove,

Secretary.

■ For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(d); 503, 3661.

§ 3001.42 [Removed]

■ 2. Remove § 3001.42.

■ 3. Part 3004 is revised to read as follows:

PART 3004—PUBLIC RECORDS AND FREEDOM OF INFORMATION ACT

Sec.

3004.1 Purpose.
3004.2 Presumption of openness.
3004.10 Public records.
3004.11 Use of exemptions.
3004.12 Reading room.
3004.13 Notice and publication of public information.
3004.20 Commission procedure when served a subpoena.
3004.30 Relationship among the Freedom of Information Act, the Privacy Act, and the Commission's procedures for according appropriate confidentiality.
3004.40 Hard copy requests for records and for expedited processing.
3004.41 Electronic requests for records and for expedited processing.
3004.42 Tracking of requests.
3004.43 Response to requests.
3004.44 Appeals.
3004.45 Extension of response time limit.
3004.50 Fees—definitions as used in this part.
3004.51 Fees—request category.
3004.52 Fees—general provisions.
3004.53 Fee schedule.
3004.54 Procedure for assessing and collecting fees.
3004.60 Chief Freedom of Information Act Officer.
3004.61 Freedom of Information Act Public Liaison.
3004.70 Third-party submission of non-public materials.

Authority: 5 U.S.C. 552; 39 U.S.C. 503.

§ 3004.1 Purpose.

(a) This part implements the Freedom of Information Act (FOIA), 5 U.S.C. 552, and describes the procedures by which a person may request copies of Commission records pursuant to FOIA. It contains the rules that the Commission follows in handling requests, such as the amount of time it has to make a determination regarding release of records and what fees to charge. It also describes how a submitter of trade secrets or confidential business information can identify information that the submitter believes to be exempt from disclosure under 5 U.S.C. 552(b).

(b) Information required to be published or made available pursuant to 5 U.S.C. 552(a)(1) and (a)(2) may be found in 39 CFR part 3002, and on the Commission's Web site at *http://www.prc.gov*. The Commission's guide to FOIA, all required FOIA indexes, and recent annual FOIA reports are also available on the Web site.

(c) Section 3004.10 identifies records that the Commission has determined to be public.

§ 3004.2 Presumption of openness.

(a) The Commission shall be proactive, and systematically, in a timely manner, post public records online in advance of any public request.

(b) It is the stated policy of the Commission that FOIA requests shall be administered with a clear presumption of openness.

§ 3004.10 Public records.

(a) Except as provided in § 3004.11 and in § 3007.10 of this chapter, the public records of the Commission include all submissions and filings as follows:

(1) Requests of the Postal Service for decisions or advisory opinions, notices, public reports, complaints (both formal and informal), and other papers seeking Commission action;

(2) Financial, statistical and other reports to the Commission, and other filings and submittals to the Commission in compliance with the requirements of any statute, executive order, or Commission rule, regulation or order;

(3) All answers, replies, responses, objections, protests, motions, stipulations, exceptions, other pleadings, notices, depositions, certificates, proofs of service, transcripts and briefs in any matter or proceeding;

(4) Exhibits, attachments and appendices to, amendments and corrections of, supplements to, or transmittals or withdrawals of any of the foregoing; and

(5) Commission correspondence related to the foregoing.

(b) All other parts of the formal record in any matter or proceeding before the Commission and correspondence related thereto, including:

(1) Notices or Commission orders initiating the matter or proceeding;

(2) Designation of the presiding officer;

(3) Transcript of hearings;

(4) Offers of proof, motions and stipulations made during a hearing;

(5) Exhibits received in evidence during a hearing;

(6) Certifications to the Commission; and

(7) Anything else upon which action of a presiding officer or the Commission may be based.

(c) Proposed testimony or exhibits filed with the Commission but not yet offered or received in evidence.

(d) Presiding officer actions and all presiding officer correspondence and memoranda to or from anyone other than staff assigned to provide assistance to the presiding officer.

(e) Commission decisions, reports, opinions, orders, notices, findings, determinations and other actions in any matter or proceeding and all Commission minutes which have been approved.

(f) Commission correspondence relating to any data or information request directed to the Postal Service.

(g) Commission correspondence with respect to the furnishing of data, information, comments, or

recommendations to or by another branch, department, or agency of the Government where furnished to satisfy a specific requirement of a statute or where made public by that branch, department, or agency.

(h) Commission correspondence and reports on legislative matters under consideration by the Office of Management and Budget or Congress, but only if and after authorized for release or publication by that office, the Commission, or the Member of Congress involved.

(i) Commission correspondence on the interpretation or applicability of any statute, rule, regulation, decision, advisory opinion, or public report issued by the Commission and letters of opinion on that subject signed by the General Counsel and sent to persons other than the Commission, a Commissioner, or any of the staff.

(j) Copies of all filings by the Commission, and all orders, judgments, decrees, and mandates directed to the Commission in court proceedings involving Commission action and all correspondence with the courts, or clerks of court.

(k) The Commission's administrative and operating manuals as issued.

§ 3004.11 Use of exemptions.

(a) Under FOIA, there are nine exemptions which may be used to protect information from disclosure. The Commission has paraphrased the exemptions in paragraphs (b) through (j) of this section. These paraphrases are not intended to be interpretations of the exemptions.

(b) National security information concerning national defense or foreign policy, provided that such information has been properly classified, in accordance with an Executive Order.

(c) Information related solely to the internal personnel rules and practices of an agency.

(d) Information specifically exempted from disclosure by statute, for example, 39 U.S.C. 410(c):

(1) The name or address, past or present, of any postal patron;

(2) Information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed;

(3) Information prepared for use in connection with the negotiation of collective bargaining agreements under 39 U.S.C. chapter 12, or minutes of, or notes kept during negotiating sessions conducted under such chapter;

(4) Information prepared for use in connection with proceedings under 39 U.S.C. chapter 36; and

(5) The reports and memoranda of consultants or independent contractors except to the extent that they would be required to be disclosed if prepared within the agency.

(e) Trade secrets and commercial or financial information which is obtained from a person and is privileged or confidential.

(f) Inter-agency or intra-agency memoranda or letters, which would not be available by law to a party other than an agency in litigation with the agency.

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

(h) Records or information compiled for law enforcement purposes, the release of which:

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

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

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

(4) Could reasonably be expected to disclose the identity of a confidential source and investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

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

(i) Information contained in or related to examination, operating, or condition reports, prepared by, or on behalf of, or for the use of an agency responsible for regulating or supervising financial institutions.

(j) Geological and geophysical information and data, including maps, concerning wells.

(k) It is Commission policy to make records publicly available upon request, unless the record qualifies for exemption under one or more of the nine exemptions. It is Commission policy to make discretionary releases; however, a discretionary release is not normally appropriate for records exempt under exemptions identified in paragraphs (b), (d), (e), (g), (h)(3) and (h)(5) of this section. The remainder of the exemptions are discretionary.

(l) The following are examples of information that is not part of the public records of the Commission:

(1) Written communications between or among the Commission, members of the Commission, the Secretary, and expressly designated staff members while particularly assigned, in accordance with all applicable legal requirements, to aid the Commission in the drafting of any decision, notice, order, advisory opinion, or public report and findings, with or without opinion, or report in any matter or proceeding;

(2) Reports and records compiled or created by the Inspector General of the Commission designated as confidential; and

(3) Unaccepted offers of settlement in any matter or proceeding unless or until made public by act of the offeror.

§ 3004.12 Reading room.

(a) The Commission maintains a public reading room at its offices (901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001) and an electronic reading room at *http://www.prc.gov*. The public reading room at its offices is open during business hours.

(b) The records available for public inspection and printing include, for example, decisions; reports; opinions; orders; notices; findings; determinations; statements of policy; copies of selected records released under FOIA; indexes required to be maintained under FOIA; and records described in § 3004.10 relating to any matter or proceeding before the Commission.

(c) The Commission shall make available, in the electronic and physical reading rooms, records previously released under FOIA and which the Commission determines are or are likely to become of significant public interest.

§ 3004.13 Notice and publication of public information.

(a) Decisions, advisory opinions, orders, and public reports will be made available to the public by posting on the Commission's Web site at *http://www.prc.gov*.

(b) Descriptions of the Commission's organization, its methods of operation, statements of policy and interpretations, and procedural and substantive rules, are published in the **Federal Register** publication system, and are available on the Commission's Web site, *http://www.prc.gov*.

§ 3004.20 Commission procedure when served a subpoena.

If an officer or employee of the Commission is served with a subpoena duces tecum, material that is not part of the public files and records of the Commission shall be produced only as authorized by the Commission. Service of such a subpoena shall immediately be reported to the Commission with a statement of all relevant facts. The Commission will thereupon enter such

order or give such instructions as it deems advisable.

§ 3004.30 Relationship among the Freedom of Information Act, the Privacy Act, and the Commission's procedures for according appropriate confidentiality.

(a) *Coverage.* FOIA applies to all Commission records and provides the public with access to government records.

(b) *Requesting records subject to the Privacy Act.* A request by an individual for his or her own records contained in a system of records is governed by the Privacy Act. Release will first be considered under the Privacy Act pursuant to part 3003 of this chapter. However, if there is any record that the Commission need not release under the Privacy Act, the Commission will also consider the request under FOIA, and will release the record if FOIA requires it.

(c) *Requesting another individual's record.* Request for records of individuals which may not be granted under the Privacy Act shall be considered under FOIA.

(1) If the Commission makes a disclosure in response to a request and the disclosure is permitted by the Privacy Act's disclosure provision, 5 U.S.C. 552a(b), the Commission will rely on the Privacy Act to govern the disclosure.

(2) In some circumstances, the Privacy Act may prohibit the Commission's ability to release records which may be released under FOIA.

(d) *Requesting a Postal Service record.* The Commission maintains custody of records that are both Commission and Postal Service records.

(1) A request made pursuant to FOIA for records designated as non-public by the Postal Service shall be referred to the Postal Service; and

(2) A request made pursuant to part 3007 of this chapter for records designated as non-public by the Postal Service shall be considered under the applicable standards set forth in that part.

(e) *Requesting a third-party record submitted under seal.* The Commission maintains records of a confidential nature submitted by third parties as non-public materials.

(1) A request made pursuant to FOIA for records designated as non-public by a third party shall be considered in light of all applicable exemptions; and

(2) A request made pursuant to part 3007 of this chapter for records designated as non-public by a third party shall be considered under the applicable standards set forth in that part.

§ 3004.40 Hard copy requests for records and for expedited processing.

(a) A hard copy request for records must:

(1) Be in writing;

(2) Include the name and address of the requester;

(3) Reasonably describe the records sought;

(4) Include a daytime telephone number;

(5) Be clearly identified as ''Freedom of Information Act Request'' both in the text of the request and on the envelope;

(6) Identify the request category under § 3004.51; and

(7) Be submitted to the Secretary of the Commission at the offices of the Commission (901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001).

(b) *Expedited processing.* A person demonstrating a compelling need as defined in 5 U.S.C. 552(a)(6)(E)(v) may request expedited processing at the time of an initial request (or appeal) or at a later time. In addition to the requirements in paragraph (a) of this section, an expedited request for records must:

(1) Demonstrate a compelling need as defined in 5 U.S.C. 552(a)(6)(E)(v);

(2) Be clearly identified as ''Expedited Freedom of Information Act Request'' both in the text of the request and on the envelope; and

(3) Certify the statement of compelling need to be true and correct to the best of the requester's knowledge and belief. At its discretion, the Commission may waive the requirement for certification.

§ 3004.41 Electronic requests for records and for expedited processing.

(a) An electronic request for records must:

(1) Be submitted using the Commission's online FOIA request form at *http://www.prc.gov*;

(2) Reasonably describe the records sought;

(3) Include a daytime telephone number and valid e-mail address; and

(4) Identify the request category under § 3004.51.

(b) *Expedited processing.* A person satisfying the requirements of paragraph (a) of this section may request expedited processing at the time of the initial request or at a later time by:

(1) Demonstrating a compelling need as defined in 5 U.S.C. 552(a)(6)(E)(v);

(2) Clearly identifying the request as an ''Expedited Freedom of Information Act Request'' in the body of the submission; and

(3) Certifying the statement of compelling need to be true and correct to the best of the requester's knowledge and belief. At its discretion, the Commission may waive the requirement for certification.

§ 3004.42 Tracking of requests.

(a) Upon receipt of a request, the Commission shall assign a unique tracking number to the request and within 3 days (excluding Saturdays, Sundays and legal holidays) provide that number to the person making the request.

(b) Any person with a tracking number may call or e-mail the Commission's Office of Public Affairs and Government Relations (PAGR) to check the status of a request. PAGR may be e-mailed at *PRC–PAGR@prc.gov* or called at 202–789–6800.

§ 3004.43 Response to requests.

(a) Within 20 days (excluding Saturdays, Sundays and legal holidays) after receipt of a request for a Commission record, the Secretary or Assistant Secretary will notify the requester of its determination to grant or deny the request.

(b) *Granting request.* If granting the request, the Secretary, or Assistant Secretary will notify the requester of any fees that must be paid.

(c) *Partial granting of request.* If the Commission is unable to grant the request in its entirety, any reasonably segregable portion of the request shall be provided, with deleted portions treated as specified in paragraph (d) of this section, and the Secretary or Assistant Secretary will notify the requester of any fees that must be paid.

(d) *Denying request.* If denying the request, in whole or in part, the Secretary or Assistant Secretary will inform the requester in writing of:

(1) The reason for the denial, including each exemption used as a basis for withholding of the records sought and, if applicable, the harm to an interest protected by a statutory exemption;

(2) An estimate of the volume of requested matter that was denied:

(i) If disclosure of a record has been partially denied, the amount of information deleted will be indicated on the released portion if technically feasible; and

(ii) If revealing the amount or location of a denied record will harm an interest protected by an exemption, then the description of the amount or location of deleted information shall be withheld.

(3) The right to appeal the denial to the Commission within 1 year.

(e) *Expedited processing.* Within 10 days (excluding Saturdays, Sundays and legal holidays) after receipt of a request for expedited processing, the Secretary or Assistant Secretary will:

(1) Grant the request for expedited processing and process the request for records as soon as practicable; or

(2) Deny the request for expedited processing by informing the individual of:

(i) The denial in writing;

(ii) The right to appeal the denial to the Commission in writing; and

(iii) The procedures for appealing the denial.

(3) Any request for records that has been denied expedited processing will be processed in the same manner as a request that did not seek expedited processing.

(f) Where a compelling need is not shown in an expedited request as specified in § 3004.41(b)(1), the Commission may grant requests for expedited processing at its discretion.

§ 3004.44 Appeals.

(a) The Commission may review any decision of the Secretary or Assistant Secretary on its own initiative.

(b) A requester who seeks to appeal any denial must file an appeal with the Commission.

(c)(1) The Commission will grant or deny the appeal in writing within 20 days (excluding Saturdays, Sundays and legal holidays) of the date the appeal is received. If on appeal the denial of the request for records is upheld, the Commission will notify the requester of the provisions for judicial review of that determination pursuant to 5 U.S.C. 552(c).

(2) The Commission will expeditiously consider an appeal of a denial of expedited processing.

§ 3004.45 Extension of response time limit.

(a) The Commission may extend the time limit for a response at the request stage and at the appeal stage up to 10 working days due to unusual circumstances as specified in 5 U.S.C. 552(a)(6)(B)(iii).

(b) The Commission will:

(1) Notify the requester of any extension and the reason for the extension in writing; and

(2) Provide the requester with an opportunity to limit the scope of the request or to arrange an alternative timeframe for processing the request or a modified request. The applicable time limits are not tolled while the Commission waits for a response from the requester under this subsection.

§ 3004.50 Fees—definitions as used in this part.

Commercial use means a request from or on behalf of a person seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or person on whose behalf the request is made. In determining the applicability of this term, the use to which a requester will put the document is considered first; where reasonable doubt exists as to the use, the Commission may seek clarification before assigning the request to a category.

Direct costs means the expenditures the Commission incurs in searching for, duplicating, and, where applicable, reviewing documents to respond to a request. They include (without limitation) the salary of the employee(s) performing work (the basic pay rate of such employee(s) plus 16 percent to cover benefits).

Duplication means copying the documents necessary to respond to a request. Such copies may be paper, microform, audiovisual, or machine-readable.

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

Noncommercial scientific institution means an institution, not operated on a commercial basis (as referenced above), which is operated solely for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

Representative of the news media means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of ''news'') who make their products available for purchase or by subscription or by free distribution to the general public. These examples are not all inclusive and may include alternate media to disseminate news. A freelance journalist shall be regarded as working for a news media entity if the journalist can demonstrate a solid basis for expecting publication through that entity (*e.g.*, by a publication contract or prior publication record), whether or not the journalist is actually employed by the entity.

Review means examining documents located in response to a request to determine whether any portion is exempt from disclosure, and processing or preparing documents for release, but not determination of general legal or policy issues regarding application of exemptions.

Search includes all time spent looking for material responsive to a request, including identification of pages or lines within documents. The term covers both manual and computerized searching.

§ 3004.51 Fees—request category.

(a) The level of fee charged depends on the request category.

(1) *Commercial use.* A request appearing to be for commercial use will be charged the full direct costs of searching for, reviewing, and duplicating the records sought.

(2) *Educational and noncommercial scientific institutions.* A request from an educational or noncommercial scientific institution will be charged for the cost of duplication only (excluding charges for the first 100 pages). To be eligible for this category, a requester must show that the request is made under the auspices of a qualifying institution and that the records are not sought for commercial use but are in furtherance of scholarly (in the case of educational institutions) or scientific (in the case of noncommercial scientific institutions) research.

(3) *News media.* A request from a representative of the news media will be charged the cost of duplication only (excluding charges for the first 100 pages).

(4) *Other requesters.* A request from any other person will be charged the full direct cost of searching for, reviewing, and duplicating records responsive to the request, except that the first 100 pages of duplication and the first 2 hours of search/review will be furnished without charge.

(b) *Privacy Act.* A request by an individual for his or her own records in a system of records will be charged fees as provided under the Commission's Privacy Act regulations in part 3003 of this chapter.

§ 3004.52 Fees—general provisions.

(a) The Commission may charge search fees even if no records are found or if the records found are exempt from disclosure.

(b) Except in the case of commercial use requesters, the first 100 pages of duplication and the first 2 hours of search time are provided without charge.

(1) A page for these purposes is a letter- or legal-size sheet, or the equivalent amount of information in a medium other than paper copy.

(2) Search time for these purposes refers to manual searching; if the search is performed by computer, the 2 hours provided without charge will be equal to 2 hours' salary of the person performing the search.

(c) No requester will be charged a fee when the Commission determines that the cost of collecting the fee would equal or exceed the fee itself. In determining whether cost of collection would equal or exceed the fee, the allowance for 2 hours' search or 100 pages of duplication will be made before comparing the remaining fee and the cost of collection.

(d) Records will be provided without charge or at a reduced charge if disclosure of the 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.

(e) No requester will be charged a fee after any search or response which occurs after the applicable time limits as described in §§ 3004.43 and 3004.44, so long as there are no unusual or exceptional circumstances, such as those used to justify an extension of the time limit as described in § 3004.45. The Commission may, however, charge fees for a partial grant of a request while it reviews records that may be exempt and may be responsive to the request, if it is made within the applicable time limits.

§ 3004.53 Fee schedule.

(a) Fees will be calculated as follows:

(1) *Manual search.* At the salary rate (basic pay plus 16 percent) of the employee(s) making the search. Search time may be charged for even if the Commission fails to locate records or if records located are exempt from disclosure.

(2) *Computer search.* At the direct cost of providing the search, including computer search time directly attributable to searching for records responsive to the request runs and employee salary apportionable to the search.

(3) *Review (commercial use).* At the salary rate (basic pay plus 16 percent) of the employee(s) conducting the review. Charges are imposed only for the review necessary at the initial administrative level to determine the applicability of any exemption, and not for review at the administrative appeal level of an exemption already applied.

(4) *Duplication.* At 10 cents per page for paper copy, which the Commission has found to be the reasonable direct cost thereof. For copies of records prepared by computer the direct cost of production, including employee time, will be charged.

(5) *Additional services.* Postage, insurance, and other additional services that may be arranged for by the requester will be charged at actually incurred cost.

(b) In addition to the fee waiver provisions of § 3004.52(d), fees may be waived at the discretion of the Commission.

§ 3004.54 Procedure for assessing and collecting fees.

(a) Advance payment may be required if the requester failed to pay previous bills in a timely fashion or when the fees are likely to exceed $250.

(1) Where the requester has previously failed to pay within 30 days of the billing date, the Commission may require the requester to pay an advance payment of the estimated fee together with either the past due fees (plus applicable interest) or proof that the past fees were paid.

(2) When advance payment is required, the administrative time limits prescribed in 5 U.S.C. 552(a)(6) (§ 3004.43) begin only after such payment has been received.

(b) Interest at the rate published by the Secretary of the Treasury as prescribed in 31 U.S.C. 3717 will be charged on unpaid fee bills starting on the 31st day after the bill was sent. Receipt of a fee by the Commission, whether processed or not, will stay the accrual of interest.

§ 3004.60 Chief Freedom of Information Act Officer.

The Commission designates the Secretary of the Commission as the Chief FOIA Officer. The Chief FOIA Officer shall be responsible for the administration of and reporting on the Commission's Freedom of Information Act program.

§ 3004.61 Freedom of Information Act Public Liaison.

The Commission designates the Director of the Office of Public Affairs and Government Relations or his or her designee as the FOIA Public Liaison who shall assist in the resolution of any dispute between a requester and the Commission. The FOIA Public Liaison may be contacted via e-mail at *PRC-PAGR@prc.gov* or telephone at 202–789–6800.

§ 3004.70 Third-party submission of non-public materials.

(a) *Overlap with treatment of non-public materials.* Any person who submits materials to the Commission (submitter) that the submitter reasonably believes to be exempt from public disclosure may submit materials under seal and lodge an application for nonpublic treatment as described in § 3007.10 of this chapter.

(b) *Notice of request.* Except as provided in § 3004.30(d), if a FOIA request seeks materials designated as nonpublic materials, the Commission will provide the submitter with notice of the request. The Commission may also provide notice when it has reason to believe that third-party materials possibly exempt from disclosure may fall within the scope of any FOIA request.

(c) *Objections to disclosure.* A submitter may file written objections to the request specifying all grounds for withholding the information under FOIA within 7 days of the date of the notice. If the submitter fails to respond to the notice, the submitter will be considered to have no objection, beyond those objections articulated in its application for nonpublic treatment pursuant to § 3007.10 of this chapter, to the disclosure of the information.

(d) *Notice of decision.* If, after considering the submitter's objections to disclosure the Commission decides to disclose the information, it will give the submitter written notice of the decision and a brief explanation of the reasons for not sustaining the submitter's objections. The actual disclosure will not be made before 3 days after publication of the Commission's decision.

[FR Doc. E9–26144 Filed 11–4–09; 8:45 am]

BILLING CODE 7710–FW–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 07–294, 06–121, 02–277, 04–228; MM Docket Nos. 01–235, 01–317, 00–244; FCC 09–92]

Promoting Diversification of Ownership in Broadcast Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission is correcting a document that appeared in the Federal Register at 74 FR 56135, October 30, 2009. The date's section contained an incorrect Federal Register citation and date which should reflect the correct citation of a previously published document.

DATES: Effective October 30, 2009.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact