

reduced fee. The Commission is seeking comment on this multi-contract designation application fee proposal.

### III. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires agencies, in proposing rules, to consider the impact of those rules on small businesses. The fees implemented in this release affect contract markets (also referred to as "exchanges") and a registered futures association. The Commission has previously determined that contract markets and registered futures associations are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). Therefore, the Chairperson, on behalf of the Commission, certifies, pursuant to 5 U.S.C. 605(b), that the fees proposed herein will not have a significant economic impact on a substantial number of small entities.

Issued in Washington, D.C. on April 15, 1999, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

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## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 200

[Release Nos. 34-41288; FOIA-190; and PA-27; File No. S7-14-99]

RIN 3235-AH71

### Amendments to the Commission's Freedom of Information Act, Privacy Act, and Confidential Treatment Rules

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission proposes to amend its Freedom of Information Act, Privacy Act, and confidential treatment rules because they are outdated in many respects. The proposed amendments would conform these rules to current statutory and case law and administrative practice.

**DATES:** Comments must be received by June 21, 1999.

**ADDRESSES:** You should send three copies of your comments to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Stop 0609, Washington, DC 20549-0609. You may also submit your comments electronically to the following electronic address: rule-

comments@sec.gov. All comments letters should refer to File

No. S7-14-99; you should also include this file number in the subject line if you use electronic mail. Comment letters will be available for public inspection and copying at our Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. We will post electronically-submitted comment letters on our Internet Web site (<http://www.sec.gov>).

**FOR FURTHER INFORMATION CONTACT:** Betty Lopez, FOIA/Privacy Act Officer (202) 942-4327; or Elizabeth T. Tsai, Staff Attorney, Office of Freedom of Information and Privacy Act Operations (202) 942-4326.

#### SUPPLEMENTARY INFORMATION:

#### I. Discussion of Rule Amendments

The Commission hereby proposes to amend its rules that allow persons to request records in its possession and request confidential treatment of records they submit to the Commission. The proposed amendments would make substantive and procedural changes to conform the rules to current statutory and case law and Commission practice. Other changes would correct clerical errors.

For example, under the proposed amendments, persons who voluntarily submit commercial or financial records to the Commission for which they are claiming confidentiality must stamp each page of the records "Voluntarily Submitted" in order to claim confidentiality under *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*.<sup>1</sup> Also, requests for confidential treatment and substantiations of such requests would be deemed confidential and effective for five years from the date of their last submission unless renewed by the requester.

Specifically, the Commission proposes to amend 17 CFR 200.80, 200.83, and 200.301 *et seq.* These rules lay down the procedures for requesting records under the Freedom of Information Act ("FOIA")<sup>2</sup> or the Privacy Act of 1974 ("Privacy Act")<sup>3</sup> and allow persons to request confidential treatment for records they submit to the Commission.<sup>4</sup>

#### A. Confidential Treatment Requests

##### 1. Background

The Commission has acquired, and will continue to acquire, a large number

of records from private parties. Some of these records are regarded as very sensitive by the persons providing them. Yet, members of the public often want access to those records in the Commission's possession. Under the FOIA, a request for agency records by any person must be honored unless they are exempt from disclosure.<sup>5</sup>

Thus, the Commission must carefully weigh competing interests in fulfilling its obligation to disclose non-exempt records to the public under the FOIA, while preserving the legitimate interest of the submitter in keeping sensitive records confidential. The Commission wants to assure submitters of records that it will preserve the confidentiality of such records to the extent permitted by law and consistent with the Commission's responsibilities.<sup>6</sup> The Commission believes that the submission of records will be encouraged if the Commission maintains procedures that promote the fair evaluation of claims of confidentiality and enable it to determine which records may be withheld from disclosure under the FOIA.

To that end, in 1980, the Commission adopted confidential treatment procedures which apply to documents for which there is no other specific procedure to obtain confidentiality and which, in the normal course of Commission business, would not be placed in a public file.<sup>7</sup> The Commission amended these rules in 1982 to provide that, by delegated authority from the Commission, the General Counsel would decide confidential treatment appeals.<sup>8</sup>

One of the proposed amendments would implement the opinion of the District of Columbia Circuit in *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*,<sup>9</sup> in which the Court held that commercial or financial information, which is voluntarily submitted to an agency and is of a kind that the submitter would not customarily disclose to the public, is deemed confidential and, thus, exempt from disclosure under Exemption 4 of

<sup>5</sup> See 5 U.S.C. 552(b) (FOIA exemptions).

<sup>6</sup> A grant of confidential treatment does not preclude appropriate disclosure of the information, such as to Congress or another governmental authority. Nor does it preclude disclosure under a court order or subpoena.

<sup>7</sup> See 45 FR 62418, Sept. 19, 1980. The rule requires persons wishing to make a request for confidential treatment to submit their request at the time the information is first provided to the Commission or as soon thereafter as possible.

<sup>8</sup> 47 FR 20287, May 12, 1982.

<sup>9</sup> 975 F.2d 871 (D.C. Cir. 1992) (*en banc*), *cert. denied*, 507 U.S. 984 (1993).

<sup>1</sup> 975 F.2d 871, 880 (D.C. Cir. 1992) (*en banc*), *cert. denied*, 507 U.S. 984 (1993).

<sup>2</sup> 5 U.S.C. 552.

<sup>3</sup> 5 U.S.C. 552a.

<sup>4</sup> 5 U.S.C. 552.

the FOIA.<sup>10</sup> As a result of *Critical Mass*, the Commission is proposing new procedures to ensure that records voluntarily submitted are properly identified as such.

The proposed rule also addresses the confidentiality of requests for confidential treatment and substantiations submitted in support of such requests and requires that confidential treatment requesters renew their requests every five years. The Commission is also proposing certain other changes to conform the rule to current Commission practice. These rules are not intended to alter the substantive rights of any person to obtain or protect records under the FOIA or any other federal statute or regulation.

## 2. Significant Revisions in the Rule

### a. Voluntarily Submitted Information

In *Critical Mass*, the United States Court of Appeals for the District of Columbia Circuit held "that Exemption 4 protects any financial or commercial information provided to the Government on a voluntary basis if it is of a kind that the provider would not customarily release to the public."<sup>11</sup> Before *Critical Mass*, commercial or financial information was deemed confidential (and, thus, exempt) if it was likely that disclosure would "impair the government's ability to obtain necessary information in the future" or "cause substantial harm to the competitive position of the person" submitting the information. *National Parks & Conservation Ass'n v. Morton*.<sup>12</sup> Hence, *Critical Mass* applies to commercial or financial information submitted voluntarily to an agency, whereas *National Parks* remains applicable to such information required to be submitted to an agency.<sup>13</sup>

The Commission's proposed rule requires that submitters designate the records that they claim to be submitting voluntarily by clearly marking each page "Voluntarily Submitted." In addition, the submitter must describe the circumstances under which the records were submitted to the Commission in sufficient detail to support the claim that they were voluntarily submitted. No decision whether the records were, in fact, submitted voluntarily will be made

unless the Commission receives a FOIA request for those records.<sup>14</sup>

The Commission believes that this proposed rule comports with the present state of the law.<sup>15</sup> Moreover, it will facilitate prompt, efficient review by the FOIA Office and eliminate the need for the Commission to obtain after-the-fact information of the circumstances of voluntary submissions.<sup>16</sup> In short, the new rule should provide more accurate, reliable information in a manner that will facilitate timely responses by the FOIA Office to FOIA and confidential treatment requests.

### b. Confidentiality of Confidential Treatment Requests and Substantiations

The Commission proposes to deem all confidential treatment requests confidential, even though historically the Commission has viewed such requests as unprotected by the FOIA.<sup>17</sup> Frequently, submitters seek confidential treatment of their confidential treatment requests because the requests, themselves, contain confidential competitive information or describe in detail the information for which they seek confidentiality.

In addition, the FOIA Office has been unable to assure confidential treatment requesters that their substantiations would be kept confidential during and after the processing of their confidential treatment requests. The lack of such assurance has, on occasion, resulted in vague, generalized, or incomplete substantiations by those who feared that a thorough substantiation would reveal confidential information.

The Commission now proposes to amend its rules so that confidential treatment requests and substantiations of confidential treatment requests will also be deemed confidential. This amendment would encourage persons requesting confidential treatment to submit full, detailed substantiations to demonstrate that the records should be withheld under FOIA Exemption 4.<sup>18</sup>

<sup>14</sup> Indeed, the Commission resolves any request for confidential treatment only at such time as a FOIA request is made for the designated records.

<sup>15</sup> The Commission recognizes that the law relating to Exemption 4 of the FOIA is still developing and that the applicable standards may be further modified.

<sup>16</sup> The person requesting confidential treatment is responsible for substantiating his request, including any assertion that the provided confidential commercial or financial records are voluntarily submitted.

<sup>17</sup> See FOIA Rel. No. 65, May 5, 1983, 48 FR 21112.

<sup>18</sup> Nevertheless, if the FOIA requester or the confidential treatment requester files an action in Federal court, the confidential treatment request and its substantiation could become part of the court record.

### c. Expiration of Confidential Treatment Requests

The Commission often spends considerable time, effort, and expense in notifying persons requesting confidential treatment that it has received a FOIA request for the submitted records. Frequently, however, notifying requesters becomes impossible because counsel, company personnel, addresses, or telephone numbers have changed without notice to the FOIA Office.<sup>19</sup>

Moreover, it has been the Commission's experience that the need for confidential treatment often diminishes with the passage of time. Thus, the Commission believes that a rule designating an expiration date for confidential treatment requests five years after their receipt by the FOIA Office is appropriate.<sup>20</sup> To that end, the proposed amendment states that a confidential treatment request will expire five years after its receipt by the FOIA Office unless the person requesting confidentiality renews the request before its expiration date.

### 3. Other Procedural Provisions in the Confidential Treatment Rules

Under paragraph (c)(2) of the proposed rule, written requests for confidential treatment must refer to identifying numbers and codes placed on the records. While the current rule permits a submitter to attach a cover sheet rather than actually mark each page of the record, the FOIA Office has encountered difficulties determining which records are covered when this method is used. Therefore, the amended rule requires that all records covered by a confidential treatment request be marked "Confidential Treatment requested by (name)," accompanied by an identifying number and code on each page. Further, the confidential treatment request and any substantiation should specify by the identifying code the records they cover.

Finally, the FOIA Office will issue a preliminary decision to the person requesting confidential treatment under paragraph (e) of the proposed rule. The requester will then have ten calendar days after the preliminary decision to respond to the preliminary decision or to submit a supplemental substantiation if he or she desires. The Office of Freedom of Information and Privacy Act

<sup>19</sup> The Commission's existing confidential treatment rule requires notice of any change in address or telephone number of a confidential treatment requester. 17 CFR 200.83(c)(3). Persons requesting confidential treatment frequently fail, however, to comply with this requirement.

<sup>20</sup> See Executive Order No. 12,600, 3 CFR, 1987 Comp., p. 235, permits such time limits.

<sup>10</sup> 975 F.2d at 879. Exemption 4 protects "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4).

<sup>11</sup> 975 F.2d at 880.

<sup>12</sup> 498 F.2d 765, 770 (D.C. Cir. 1974).

<sup>13</sup> 975 F.2d at 880.

Operations may issue the final decision ten business days after the preliminary decision if that Office receives no supplemental substantiation within the time allowed. This change is intended to conform the rule to the Commission's current practice.

### B. Amendments to Rules Regarding Commission Records and Information and the Privacy of Individuals

#### 1. Commission Records and Information

The proposed amendments are designed to (1) implement the Electronic Freedom of Information Act Amendments of 1996 ("EFOIA")<sup>21</sup> and the FOIA Reform Act of 1986 ("FOIA Reform Act"),<sup>22</sup> (2) clarify the methods used by the Commission to respond to FOIA requests, and (3) correct outdated information and certain typographical errors in the present regulations.

A number of the proposed amendments would conform 17 CFR 200.80 to the EFOIA. For example, in addition to (1) final opinions and orders, (2) statements of policy and interpretations adopted by the agency but not published in the **Federal Register**, and (3) staff manuals and instructions which must be available for inspection and copying in the public reference room,<sup>23</sup> EFOIA requires that each agency make available, (4) records processed and disclosed in response to a FOIA request when the agency determines that those records have become or are likely to become the subject of subsequent requests; and (5) a general index of such previously released records.<sup>24</sup> Moreover, as the EFOIA permits an agency to respond to a FOIA request within 20 business days of receipt of the request (rather than 10 days as previously mandated), the proposed amendments reflect the longer response time permitted by law.<sup>25</sup> Lastly, the EFOIA requires each agency to adopt rules for expedited processing of certain requests.<sup>26</sup>

As amended by the FOIA Reform Act, the FOIA authorizes agencies to recover review costs from commercial-use requesters.<sup>27</sup> Review costs are the direct costs incurred during the initial examination of a record to determine whether the record must be disclosed and whether to withhold any portion as exempt from disclosure.<sup>28</sup> The proposed amendment would add review fees to

search and duplication fees now authorized under 17 CFR 200.80(e) and would codify the practice of charging review fees to commercial requesters.

The FOIA Reform Act also requires each agency to promulgate procedures and guidelines for determining when search, review, and duplication fees should be waived or reduced.<sup>29</sup> The proposed amendment provides that such fees will be waived or reduced if disclosure is in the public interest because it will likely contribute significantly to public understanding of government activities and is not primarily in the commercial interest of the requester. Moreover, the FOIA Reform Act extends the protection of Exemption 7 to all records or information that are compiled for law enforcement purposes, not merely investigatory records. As a result, the proposed amendment deletes the definition of "investigatory records" found in 17 CFR 200.80(b)(7)(ii).

Finally, because the Commission has rescinded certain rules mentioned in 17 CFR 200.80(b)(4)(ii), the proposed amendments would delete references to those rules.<sup>30</sup>

#### 2. The Privacy of Individuals and Systems of Records

The proposed amendments would conform this rule to the current organization of the Commission and the systems of records it currently maintains. For example, certain systems of records deemed exempt from the Privacy Act<sup>31</sup> are no longer maintained by the Commission or have been merged into other systems. Consequently, the Commission proposes to amend § 200.313(a) to reflect these changes. In addition, the proposed amendments would conform the Commission's rules to a recent change in the case law regarding requests for information under the Privacy Act. In *Summers v. Dep't of Justice*,<sup>32</sup> the court held that a verification of an individual's identity for purposes of obtaining access to Privacy Act records need not be sworn or notarized if the unsworn statement complies with 28 U.S.C. 1746.<sup>33</sup> The

<sup>29</sup> Freedom of Information Reform Act of 1986, Pub. L. 99-570, sec. 1803, 100 Stat. 3207-1, 49 (1986) (amending 5 U.S.C. 552(a)(4)(A)).

<sup>30</sup> The Commission has rescinded two of the rules referred to in 17 CFR 200.80(b)(4)(ii):

17 CFR 240.17a-9 (See Rel. 34-18108, Sept. 21, 1981, 46 FR 49114); and

17 CFR 240.17a-16 (See Rel. 34-20121, Aug. 26, 1983, 48 FR 39604).

<sup>31</sup> See 17 CFR 200.313(a).

<sup>32</sup> 999 F.2d 570 (D.C. Cir. 1993).

<sup>33</sup> Section 1746 permits an unsworn statement when subscribed as true under penalty of perjury if written in the particular format set forth in the statute.

proposed amendment would permit such an unsworn statement to verify an individual's identity.

## II. Effects on Competition

Section 23(a)(2) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>34</sup> requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits furthering the purposes of the Exchange Act. The Commission has considered these proposed amendments to 17 CFR 200.80, 200.83, and 200.301 *et seq.*, in light of the standards cited in section 23(a)(2), and believes that the amendments will not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act. The proposed amendments would merely conform the rules to current law, clarify document submission procedures, and help assure voluntary submitters of confidential commercial or financial information that the information they submit will not be readily available to competitors.

## III. Statutory Basis of Rule

These amendments are proposed under the authority of the FOIA, 5 U.S.C. 552; the Privacy Act, 5 U.S.C. 552a; the Administrative Procedure Act, 5 U.S.C. 553; section 19 of the Securities Act of 1933, 15 U.S.C. 77s; sections 23 and 24 of the Exchange Act, 15 U.S.C. 78w, 78x; section 20 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79t; section 319 of the Trust Indenture Act of 1939, 15 U.S.C. 77sss; section 38 of the Investment Company Act of 1940, 15 U.S.C. 80a-37; and section 211 of the Investment Advisers Act of 1940, 15 U.S.C. 80b-11.

## IV. Initial Regulatory Flexibility Analysis

The Commission has prepared this initial regulatory flexibility analysis in accordance with 5 U.S.C. 603.

### A. Reasons for Action

To update its regulations, the Commission is proposing to amend its rules to conform them to present Commission organization and practice and current statutory and case law.

### B. Objectives and Legal Basis

These proposed amendments are designed to conform the Commission's rules to statutory changes in the FOIA, enhance public access to nonpublic records in the Commission's possession which do not contain confidential

<sup>34</sup> 15 U.S.C. 78w(a)(2).

<sup>21</sup> Pub. L. 104-231, 110 Stat. 3048 (1996).

<sup>22</sup> Pub. L. 99-570, 100 Stat. 3207 (1986).

<sup>23</sup> See 5 U.S.C. 552(a)(2).

<sup>24</sup> See 5 U.S.C. 552(a)(2)(D) and (E).

<sup>25</sup> 5 U.S.C. 552(a)(6)(A)(i).

<sup>26</sup> 5 U.S.C. 552(a)(6)(E).

<sup>27</sup> 5 U.S.C. 552(a)(4)(A)(ii)(I).

<sup>28</sup> 5 U.S.C. 552(a)(4)(A)(iv).

commercial or financial information, and improve statutory safeguards to protect individuals from an invasion of their personal privacy. This action is authorized by 5 U.S.C. 552, 5 U.S.C. 552a, and Executive Order 12,600.

#### C. Small Entities Affected

The proposed changes will affect all small entities requesting Commission records under the FOIA or requesting confidential treatment for information that they submit to the Commission. The Commission believes that the burden imposed on small entities as a result of these proposed amendments will be negligible. There is no reasonable method for estimating the number of entities involved.

#### D. Compliance Requirements

There will be no additional reporting, recordkeeping, or other compliance requirements.

#### E. Duplicative, Overlapping, or Conflicting Rules

The Commission believes that there are no duplicative, overlapping, or conflicting federal rules.

#### F. Significant Alternatives

There are no significant alternatives to the proposed amendments that would accomplish the stated objectives of applicable statutes and executive order.

#### G. Solicitation of Comments

You may submit written comments on this Initial Regulatory Flexibility Analysis by sending three copies of your submission to: Office of the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

You may also e-mail your comments to rule-comments@sec.gov. Please note on the first page of your submission that it relates to File No. S7-14-99. Your comments will be available for public inspection and copying at the Commission's Public Reference Room at 450 Fifth Street, NW, Washington, DC 20549. We will consider your comments when we prepare the Final Regulatory Flexibility Analysis in connection with the adoption of the final rules.

#### List of Subjects in 17 CFR Part 200

Administrative practice and procedures; Classified information; Freedom of information; Privacy.

#### Text of Amendments to 17 CFR Part 200

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

### PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

#### Subpart D—Information and Requests

1. The authority citation for part 200, subpart D is revised to read as follows:

**Authority:** 5 U.S.C. 552, as amended, 15 U.S.C. 77f(d), 77s, 77ggg(a), 78m(F), 78w, 79t, 79v(a), 77sss, 80a-37, 80a-44(a), 80a-44(b), 80b-10(a), and 80b-11.

§ 200.80 also issued under 5 U.S.C. 552b; 15 U.S.C. 78d-1, 78d-2; 78a *et seq.*; 11 U.S.C. 901, 1109(a).

§ 200.80a also issued under 5 U.S.C. 552b.

§§ 200.80b and 200.80c also issued under 11 U.S.C. 901, 1109(a).

§ 200.82 also issued under 15 U.S.C. 78n.

§ 200.83 also issued under Exec. Order 12,600, 3 CFR, 1987 Comp., p. 235.

#### § 200.80 [Amended]

2. Amend § 200.80 by adding "Northeast and Midwest" before the phrase "Regional Offices" in the introductory text of paragraph (a)(2), removing the word "and" at the end of paragraph (a)(2)(iv), removing the period at the end of paragraph (a)(2)(v) and adding in its place "; and"; adding paragraph (a)(2)(vi) and republishing paragraph (a)(2) to read as follows:

#### § 200.80 Commission records and information.

(a)(1) \* \* \*

(2) *Records available for public inspection and copying; documents published and indexed.* \* \* \*

(vi) Copies and a general index of all records which have been released to any person under the Freedom of Information Act and which, because of the nature of their subject matter, the Commission determines have become or are likely to become the subject matter of subsequent requests for substantially the same records.

\* \* \* \* \*

3. Amend § 200.80 by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5), correcting "secton" to read "section" in the first sentence of newly redesignated paragraph (a)(4), and adding new paragraph (a)(3) to read as follows:

#### § 200.80 Commission records and information.

(a)(1) \* \* \*

(3) Records created on or after November 1, 1996, which are required to be available for public inspection and copying under paragraph (a)(2) of this section, shall be made available on the Internet.

\* \* \* \* \*

4. Amend § 200.80, paragraph (b)(4)(ii), by correcting "pursant" to read

"pursuant"; by revising the phrase "15c3-1(c)(7)(G)" to read "15c3-1d(c)(6)(i)"; by revising the phrase "17 CFR 240.15c-1(c)(7)(vii)" to read "17 CFR 240.15c3-1d(c)(6)(i)"; by revising the phrase "Rules 17a-9, 17a-10, 17a-12 and 17a-16" to read "Rules 17a-10 and 17a-12"; and by revising the phrase "17 CFR 240.17a-9, 240.17a-10, 240.17a-12, and 240.17a-16" to read "17 CFR 240.17a-10 and 240.17a-12".

5. Amend § 200.80 by removing paragraph (b)(7)(ii); by redesignating the introductory text of paragraph (b)(7)(i) as paragraph (b)(7) and paragraphs (b)(7)(i)(A) through (F) as paragraphs (b)(7)(i) through (b)(7)(vi); by revising the word "State" to read "state" in newly redesignated paragraph (b)(7)(iv); and by adding a comma after the word "examination" in paragraph (b)(8).

6. Amend § 200.80(c)(1) as follows:

a. In paragraph (c)(1) introductory text, first sentence, remove the numbers "(202-272-3100)" and revise the phrase "New York and Chicago regional offices" to read "Northeast and Midwest Regional Offices"; and, in the second sentence, revise the phrase "8½ x 14" to read "8½ x 11" and the phrase "New York and Chicago offices" to read "Northeast and Midwest Regional Offices";

b. In paragraph (c)(1)(i), second sentence, revise the phrases "regional offices in New York or Chicago" to read "Northeast and Midwest Regional Offices";

c. In paragraph (c)(1)(iii), first sentence, revise the phrase "New York and Chicago regional offices" to read "Northeast and Midwest Regional Offices"; and, in the second sentence, revise the term "suite" to read "Suite" each time it appears in the list of Commission offices and, for the Southeast Regional Office, revise the phrase "8:30 a.m. to 5 p.m." to read "9:00 a.m. to 5:30 p.m.".

7. Amend § 200.80(c)(2), first sentence, by revising the phrase "or by telephone" to read "or in writing"; in the second sentence, by removing the phrase "and telephone numbers"; and, in the third sentence, by revising the phrase "a particular regional office" to read "the Northeast or Midwest Regional Office".

8. Amend § 200.80(d)(1), first sentence, by adding the word "the" after the phrase "by mail directed to"; in the second sentence, by adding the word "the" after the phrase "not available in"; in the third sentence, by revising the phrase "Securities and Exchange Commission, Washington, DC 20549" to read "SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413"; and by adding a sentence

at the end of paragraph (d)(1) to read as follows:

§ 200.80 Commission records and information.

(d) \* \* \*—(1) \* \* \* The request may also be made by facsimile (703-914-1149) or by Internet (foia/pa@sec.gov).

9. Revise § 200.80(d)(5) to read as follows:

§ 200.80 Commission records and information.

(5) Initial determination; multi-track processing, and denials.—(i) Time within which to respond. When a request complies with the procedures in this section for requesting records under the Freedom of Information Act, a response shall be sent within 20 business days from the date the Office of Freedom of Information and Privacy Act Operations receives the request, except as described in paragraphs (d)(5)(ii) and (d)(5)(iii) of this section. If that Office has identified the requested records, the response shall state that the records are being withheld, in whole or in part, under a specific exemption or are being released.

(ii) Voluminous records. When the requested records are so voluminous that they cannot be reviewed within 20 business days, as prescribed in paragraph (d)(5)(i) of this section, the Office of Freedom of Information and Privacy Act Operations shall inform the requester of their approximate volume, give the requester the choice of having the records included in the Commission's first-in, first-out (FIFO) system for reviewing voluminous records, and state the approximate time when the review will start. A requester may modify or limit his or her request to qualify for review within 20 business days.

(iii) Expedited processing. The Office of Freedom of Information and Privacy Act Operations shall grant a request for expedited processing if the requester demonstrates a compelling need for the records. "Compelling need" means that a failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to an individual's life or physical safety or, if the requester is primarily engaged in disseminating information, an urgency to inform the public of actual or alleged Federal government activity. A compelling need shall be demonstrated by a statement, certified to be true and correct to the best of the requester's knowledge and belief. The

Office of Freedom of Information and Privacy Act Operations shall notify the requester of the decision to grant or deny the request for expedited treatment within 10 days of the date of the request. A request for records that has been granted expedited processing shall be processed as soon as practicable.

(iv) Notice of denial. Any notification of denial of any request for records shall state the name and title or position of the person responsible for the denial of the request, the reason for the decision, and the right of the requester to appeal to the General Counsel. The decision shall estimate the volume of records that are being withheld in their entirety, unless giving such an estimate would harm an interest protected by the applicable exemption. The amount of information redacted shall be indicated on the released portion of the record and, if technically feasible, at the place where the redaction is made.

(v) Form of releasable records. Releasable records shall be made available in any form or format requested if they are readily reproducible in that form or format.

10. Revise the introductory text of § 200.80(d)(6) to read as follows:

§ 200.80 Commission records and information.

(6) Administrative review. Any person who has received no response to a request within the period prescribed in paragraph (d)(5) of this section or within an extended period permitted under paragraph (d)(7) of this section, or whose request has been denied under paragraph (d)(5) of this section, may appeal the adverse decision or failure to respond to the General Counsel.

11. Revise § 200.80(d)(6)(ii) to read as follows:

§ 200.80 Commission records and information.

(ii) The appeal must be mailed to the Office of Freedom of Information and Privacy Act Operations, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413 or delivered to Room 1418 at that address, and a copy of it must be mailed to the General Counsel, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549 or delivered to Room 1012-B at that address.

12. Amend § 200.80, paragraph (d)(7), introductory text, first sentence, by

revising the word "reasons" to read "unusual circumstances"; second sentence, by revising the phrase "working days" to read "business days, except as provided in paragraph (d)(8) of this section".

13. Revise § 200.80(d)(8), introductory text, to read as follows:

§ 200.80 Commission records and information.

(8) Inability to meet time limits. If a request for records cannot be processed within the time prescribed under paragraph (d)(7) of this section, the Commission shall so notify and give the requester an opportunity to modify the request so that it may be processed within that time or to arrange an alternative time for processing the request or a modified request. An unreasonable refusal to modify a request or arrange an alternative time for processing the request shall be a factor in determining whether unusual circumstances exist under paragraph (d)(7) of this section.

14. Amend § 200.80(d)(9) by removing the heading "Oral requests; misdirected written requests"; removing paragraph (d)(9)(i); and redesignating paragraph (d)(9)(ii) as paragraph (d)(9).

15. Amend § 200.80(e), introductory text, first sentence, by adding after the word "locating" the word "reviewing".

16. Amend § 200.80(e)(1), first sentence, by adding the words "and reviewing" immediately after the words "searching for".

17. Amend § 200.80(e)(3), first sentence, by adding the phrase "reviewing" immediately after the word "locating"; and third sentence, by revising the figure "\$25" to read "\$28" and the word "advised" to read "informed".

18. Amend § 200.80, by revising paragraph (e)(4) to read as follows:

§ 200.80 Commission records and information.

(4) Waiver or reduction of fees. (i) The Office of Freedom of Information and Privacy Act Operations may waive or reduce search, review, and duplication fees if:

- (A) Disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and
- (B) Disclosure is not primarily in the commercial interest of the requester.

(ii) The Office of Freedom of Information and Privacy Act Operations will determine whether disclosure is likely to contribute significantly to public understanding of the operations or activities of the government based upon four factors:

(A) Whether the subject of the requested records concerns the operations and activities of the Federal government;

(B) Whether the requested records are meaningfully informative on those operations or activities so that their disclosure would likely contribute to increased public understanding of specific operations or activities of the government;

(C) Whether disclosure will contribute to the understanding of the public at large, rather than the understanding of the requester or a narrow segment of interested persons; and

(D) Whether disclosure would contribute significantly to public understanding of the governmental operations or activities.

(iii) The Office of Freedom of Information and Privacy Act Operations will determine whether disclosure of the requested records is not primarily in the commercial interest of the requester based upon two factors:

(A) Whether disclosure would further any commercial interests of the requester, and

(B) Whether the public interest in disclosure is greater than the requester's commercial interest.

(iv) If only a portion of the requested records satisfies both the requirements for a waiver or reduction of fees, a waiver or reduction of fees will be granted for only that portion.

(v) A request for a waiver or reduction of fees may be a part of a request for records. Such requests should address all the factors identified in paragraphs (e)(4)(ii) and (e)(4)(iii) of this section.

(vi) Denials of requests for a waiver or reduction of fees may be appealed to the General Counsel in accordance with the procedure set forth in paragraph (d)(6) of this section.

\* \* \* \* \*

19. Amend § 200.80, paragraph (e)(7)(i), first sentence, by revising the phrase "New York, or Chicago" to read "Northeast, or Midwest" and by removing the word "Branch"; and paragraph (e)(7)(ii), last sentence, by removing "or calling this facility at 202-272-3100".

20. Amend § 200.80, paragraph (e)(8)(iii), second sentence, by adding "U.S." before "Government Printing Office".

21. Amend § 200.83, by revising paragraphs (c)(2) through paragraphs

(c)(6) and adding paragraphs (c)(7), (c)(8), and (c)(9) to read as follows:

**§ 200.83 Confidential treatment procedures under the Freedom of Information Act.**

\* \* \* \* \*

(c) *Written request for confidential treatment to be submitted with information.* (1) \* \* \*

(2) A person who submits a record to the Commission for which he or she seeks confidential treatment must clearly mark each page or segregable portion of each page with the words "Confidential Treatment Requested by [name]" and an identifying number and code. In his or her written confidential treatment request, the person must refer to the record by identifying number and code.

(3) A person who submits a record to the Commission voluntarily and requests confidential treatment of it, must comply with paragraph (c)(2) of this section and mark each page clearly with the words "Voluntarily Submitted." In the written confidential treatment request, the person must explain the circumstances under which the record was voluntarily submitted to the Commission. The burden is on the person requesting confidential treatment to show that the record was submitted voluntarily.

(4) In addition to giving a copy of any written request for confidential treatment to the Commission employee receiving the record in question, the person requesting confidential treatment must send a copy of the request (but not the record) by mail to the Office of Freedom of Information and Privacy Act Operations, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413. The legend "FOIA Confidential Treatment Request" must clearly and prominently appear on the top of the first page of the written request, and the written request must contain the name, address, and telephone number of the person requesting confidential treatment. The person requesting confidential treatment is responsible for informing the Office of Freedom of Information and Privacy Act Operations promptly of any changes in address, telephone number, or representation.

(5) In some circumstances, such as when a person is testifying in the course of a Commission investigation or providing a record requested in the course of a Commission examination or inspection, it may be impracticable to submit a written request for confidential treatment at the time the record is first given to the Commission. In no circumstances can the need to comply

with the requirements of this section justify or excuse any delay in submitting any record to the Commission. The person testifying or otherwise submitting the record must inform the Commission employee receiving it, at the time the record is submitted or as soon thereafter as possible, that he or she is requesting confidential treatment. The person must then submit a written confidential treatment request within 30 days from the date of the testimony or the submission of the record. Any confidential treatment request submitted under this paragraph must also comply with paragraph (c)(4) of this section.

(6) Where confidential treatment is requested by the submitter on behalf of another person, the request must identify that person and provide the telephone number and address of that person or the person's responsible representative if the submitter would be unable to provide prompt substantiation of the request at the appropriate time.

(7) No determination on a request for confidential treatment will be made until the Office of Freedom of Information and Privacy Act Operations receives a request for disclosure of the record.

(8) A confidential treatment request will expire five years from the date the Office of Freedom of Information and Privacy Act Operations receives it, unless that Office receives a renewal request before the confidential treatment request expires. The renewal request must be sent by mail to the Office of Freedom of Information and Privacy Act Operations, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413, and must clearly identify the record for which confidential treatment is sought. A renewal request will likewise expire five years from the date that Office receives it, unless that Office receives another timely renewal request which complies with the requirements of this paragraph.

(9) A confidential treatment request shall be confidential. If an action is filed in a Federal court, however, by either the Freedom of Information Act requester (under 5 U.S.C. 552(a)(4) and § 200.80(d)(6)) or by the confidential treatment requester (under paragraph (e)(5) of this section), the confidential treatment request may become part of the court record.

\* \* \* \* \*

22. Amend § 200.83, paragraph (d)(1), by revising the phrase "telegram or express" to read "facsimile or certified" and by adding a sentence to read as follows:

**§ 200.83 Confidential treatment procedures under the Freedom of Information Act.**

\* \* \* \* \*

(d) *Substantiation of request for confidential treatment.* (1) \* \* \* Failure to submit a written substantiation within ten calendar days from the time of notification, or any extension thereof, may be deemed a waiver of the confidential treatment request and the confidential treatment requester's right to appeal an initial decision denying confidential treatment to the Commission's General Counsel as permitted by paragraph (e) of this section.

\* \* \* \* \*

23. Revise § 200.83, paragraph (e)(1), to read as follows:

**§ 200.83 Confidential treatment procedures under the Freedom of Information Act.**

\* \* \* \* \*

(e) *Appeal from initial determination that confidential treatment is not warranted.* (1) The Office of Freedom of Information and Privacy Act Operations will issue a preliminary decision that will inform the confidential treatment requester whether that Office is of the view that confidential treatment is warranted with respect to all or part of the records in question. The preliminary decision may ask the confidential treatment requester to submit a supplemental substantiation within ten calendar days from the date of notice of the preliminary decision. The confidential treatment requester may respond to the preliminary decision within ten business days of receipt. The Office of Freedom of Information and Privacy Act Operations may issue a final decision no sooner than ten business days after giving notice of the preliminary decision. It shall inform, by mail or facsimile, the person seeking the record under the Freedom of Information Act and the person requesting confidential treatment of the final decision and of their right to appeal the decision to the Commission's General Counsel within ten calendar days from the date of the final decision. Records which the Office of Freedom of Information and Privacy Act Operations determines are not entitled to confidential treatment may be released under the Freedom of Information Act no sooner than ten calendar days after the date of the final decision unless, within those ten calendar days, it receives an appeal from the confidential treatment requester. In such a case, the person seeking the information under the Freedom of Information Act will be informed of the pending appeal and that

no disclosure of the records will be made until the appeal is resolved.

\* \* \* \* \*

24. Amend § 200.83, paragraph(e)(2), by revising the second sentence and adding a third sentence to read as follows:

**§ 200.83 Confidential treatment procedures under the Freedom of Information Act.**

\* \* \* \* \*

(e) *Appeal from initial determination that confidential treatment is not warranted.* (1) \* \* \*

(2) \* \* \* The appeal must be sent by mail to the Office of Freedom of Information and Privacy Act Operations, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413, or by facsimile (703-914-1149). A copy of the appeal must be mailed to the General Counsel, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0606.

\* \* \*

25. Amend § 200.83, paragraph(e)(4), first sentence, by revising the phrase "telegram or express" to read "facsimile or certified".

26. Amend § 200.83, paragraph (e)(5), last sentence, by revising the phrase "telegram or express" to read "facsimile or certified".

27. Amend § 200.83 by redesignating paragraphs (g), (h), and (i) as paragraphs (h), (i), and (j); by revising the phrase "(c)(4)" in newly redesignated paragraph (h)(1) to read "(c)(5)"; by revising the phrase "(g)(1)" in the first sentence of newly redesignated paragraph (h)(2) to read "(h)(1)"; by removing the commas after "extended" and "Officer" in newly redesignated paragraph (i), and adding new paragraphs (g) and (k) to read as follows:

**§ 200.83 Confidential treatment procedures under the Freedom of Information Act.**

\* \* \* \* \*

(g) *Confidentiality of substantiations.* Confidential treatment requests and substantiations of requests for confidential treatment shall be confidential. If an action is filed in a Federal court, however, by either the Freedom of Information Act requester (under 5 U.S.C. 552(a)(4) and § 200.80(d)(6)) or by the person requesting confidential treatment (under paragraph(e)(5) of this section), the substantiations may become part of the court record.

\* \* \* \* \*

(k) In their discretion, the Commission, the Commission's General Counsel, and the Freedom of Information Act Officer may use

alternative procedures for considering requests for confidential treatment.

**Subpart H—Regulations Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Commission**

28. The authority citation for Part 200, Subpart H continues to read in part as follows:

**Authority:** 5 U.S.C. 552a(f), unless otherwise noted.

\* \* \* \* \*

**§ 200.303 Amended**

29. Amend § 200.303, paragraph (a), introductory text, by revising the clause "by the individual in person during normal business hours at the Commission's Public Reference Room which is located at 450 Fifth Street, NW., Room 1024, Washington, DC, or by mail addressed to the Privacy Act Officer, Securities and Exchange Commission, Washington, DC 20549" to read "by mail to the Privacy Act Officer, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413, or by facsimile (703-914-1149)".

30. Amend § 200.303, paragraph(a)(2), second sentence, by revising the phrase "Commission's Public Reference Room located at 450 Fifth Street, NW., Room 1024, Washington, DC," to read "Office of Freedom of Information and Privacy Act Operations, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413,"; revising "suite" to read "Suite" each time it appears in the list of Commission offices; for the Southeast Regional Office, revising the phrase "8:30 a.m. to 5 p.m." to read "9:00 a.m. to 5:30 p.m."; for the Central Regional Office, revising the acronym "C.S.T." to read "M.S.T."; and, in the last sentence of the concluding paragraph, adding immediately after "New Year's Day," the phrase "Martin Luther King, Jr.'s Birthday,".

31. Amend § 200.303(a)(3), first sentence, by revising the phrase "For the purpose of verifying his identity, an" to read "An".

32. Revise § 200.303(a)(4) to read as follows:

**§ 200.303 Times, places, and requirements for requests pertaining to individual records in a record system and for the identification of individuals making requests for access to the records pertaining to them.**

(a) \* \* \*

(4) *Method for verifying identity by mail.* Where an individual cannot appear at one of the Commission's Offices for the purpose of verifying his identity, he must submit along with the request for information or access, a statement attesting to his identity.

Where access is being sought, the statement shall include a representation that the records being sought pertain to the individual and a statement that the individual is aware that knowingly and willfully requesting or obtaining records pertaining to an individual from the Commission under false pretenses is a criminal offense. This statement shall be a sworn statement, or in lieu of a sworn statement, an individual may submit an unsworn statement to the same effect if it is subscribed by him as true under penalty of perjury, dated, and in substantially the following form:

(i) If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct."

Executed on (date)

(Signature)

(ii) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct."

Executed on (date)

(Signature)

33. Amend § 200.303, paragraph (b)(2), first sentence, by revising the phrase "Commission's Public Reference Room in Washington DC" to read "Office of Information and Privacy Act Operations, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413".

34. Revise § 200.306(a), introductory text, to read as follows:

**§ 200.306 Requests for amendment or correction of records.**

(a) *Place to make requests.* A written request by an individual to amend or correct records pertaining to him or her may be hand delivered during normal business hours to the SEC Operations Center, Room 1418, 6432 General Green Way, Alexandria, VA 22312-2414, or be sent by mail to the Office of Information and Privacy Act Operations, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413, or by facsimile (703-914-1149).

35. Amend § 200.308, paragraph (a), introductory text, by revising the phrase "Commission's staff" to read "Office of Information and Privacy Act Operations" and revising the phrase "by applying for an order of the General Counsel determining and directing that access to the record be granted or that the record be amended or corrected in accordance with his request" to read "to the General Counsel".

36. Amend § 200.308, paragraph (a)(1), by revising the word "application" to read "appeal".

37. Revise § 200.308, paragraph (a)(2), to read as follows:

**§ 200.308 Appeal of initial adverse agency determination as to access or as to amendment or correction.**

(a) \* \* \*

(2) The appeal shall be delivered or sent by mail to the Office of Information and Privacy Act Operations, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413, or by facsimile (703-914-1149).

\* \* \* \* \*

38. Amend § 200.308, paragraph (a)(9)(ii) by adding the phrase "or her" immediately after the word "His".

39. Amend § 200.308, paragraph (b)(1), first sentence, by revising the phrase "to the Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street NW., Room 1024, Washington, DC 20549, or mailed to the Privacy Act Officer, Securities and Exchange Commission, Washington, DC 20549," to read "or sent by mail to the Office of Freedom of Information and Privacy Act Operations, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413, or by facsimile (703-914-1149)."

**§ 200.310 [Amended]**

40. Amend § 200.310, paragraph(a), first sentence, by revising the phrase "made in person during normal business hours at the Public Reference Room at 450 Fifth Street, NW., Room 1024, Washington, DC, or by mail addressed to the Privacy Act Officer, Securities and Exchange Commission, Washington, DC 20549" to read "sent by mail to the Office of Freedom of Information and Privacy Act Operations, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413, or by facsimile (703-914-1149)"; and by removing the last sentence.

41. Amend § 200.310, paragraph (b), by revising the phrase "the Director of the Office of Consumer Affairs and Information Services" to read "the Privacy Act Officer" and adding the phrase "or she" immediately after the word "he".

42. Amend § 200.312 by revising paragraphs (a)(1) through (a)(8) to read as follows:

**§ 200.312 Specific exemptions.**

\* \* \* \* \*

(a) \* \* \*

- (1) Enforcement Files;
- (2) Office of General Counsel Working Files;
- (3) Office of the Chief Accountant Working Files;

- (4) Name-Relationship Index System;
- (5) Rule 102(e) of the Commission's Rules of Practice—Appearing or Practicing Before the Commission; and
- (6) Agency Correspondence Tracking System.

\* \* \* \* \*

By the Commission.

Dated: April 14, 1999.

**Jonathan G. Katz,**

*Secretary.*

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**DEPARTMENT OF THE INTERIOR**

**Minerals Management Service**

**30 CFR Part 204**

**RIN 1010-AC30**

**Accounting Relief for Marginal Properties**

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Proposed rule; notice of extension of public comment period.

**SUMMARY:** The Minerals Management Service hereby gives notice that it is extending the public comment period on a notice of proposed rule, which was published in the **Federal Register** on January 21, 1999, (64 FR 3360). The proposed rule would implement legislation for Federal oil and gas leases. The new regulations would explain to lessees and their designees how to obtain accounting and auditing relief for Federal marginal properties. In response to requests for additional time, MMS will extend the comment period for 15 days.

**DATES:** Comments must be submitted on or before May 6, 1999.

**ADDRESSES:** Written comments, suggestions, or objections regarding this proposed amendment should be sent to the following addresses: E-mail address is: RMP.comments@mms.gov.

For comments sent via the U.S. Postal Service use: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225-0165.

For comments via courier or overnight delivery service use: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, MS 3021, Building 85, Denver Federal Center, Room A-212, Denver, Colorado 80225-0165.

**FOR FURTHER INFORMATION CONTACT:** David S. Guzy, Chief, Rules and Publications Staff, phone (303) 231-