



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

This document has been electronically
approved and signed.

DATE: September 21, 2018

BALLOT VOTE SHEET

TO: The Commission
Alberta E. Mills, Secretary

THROUGH: Patricia M. Hanz, General Counsel
Mary T. Boyle, Acting Executive Director

FROM: Abioye E. Mosheim, Assistant General Counsel

SUBJECT: Fees for Production of Records; Technical Amendments

BALLOT VOTE DUE: Thursday, September 27, 2018

The Office of the General Counsel is providing for Commission consideration, the attached draft proposed rule to revise the Commission's FOIA regulations, 16 CFR part 1015. On June 30, 2016, the President signed into law the 2016 FOIA, Public Law No. 114-185 (2016). The 2016 FOIA amends the Freedom of Information Act, 5 U.S.C. 552, requiring, *inter alia*, the Chief FOIA Officer of every agency to review its FOIA fee regulations annually. *See* 5 U.S.C. 552(j)(3)(C). The CPSC's FOIA fee regulations have not been reviewed since 1997. This notice of proposed rulemaking amends the Commission's FOIA regulations accordingly. The proposed amendments conform to the March 27, 1987 Office of Management and Budget's *The Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines* (OMB Fee Guidelines), which provides federal agencies with guidance on reviewing and assessing FOIA fees. 59 FR 10012 (Mar. 27, 1987). Following OMB's issuance of its Fee Guidelines in March 1987, the Commission proposed amendments to its FOIA fee regulations. 52 Fed. Reg. 17767 (May 12, 1987). The Commission finalized its amendments on fees to reflect the Commission's direct costs and the amendments became effective on September 4, 1987, 52 Fed. Reg. 28977 (Aug. 5, 1987). In 1997, the Commission updated one portion of the fees with respect to computerized records and interest to be charged on fees owed. For the reasons explained in the *Federal Register* notice, the staff is proposing amendments to collect fees that reflect actual current costs. The amendments cover four main subject areas: fees; structural changes to the CPSC FOIA office; clarification on appeals; and broadening the scope of possible FOIA exemptions to accident and investigation reports.

Please indicate your vote on the following options:

I. Approve publication of the attached document in the *Federal Register*, as drafted.

(Signature)

(Date)

II. Approve publication of the attached document in the *Federal Register*, with changes as specified.

(Signature)

(Date)

III. Do not approve publication of the attached document in the *Federal Register*.

(Signature)

(Date)

IV. Take other action specified below.

(Signature)

(Date)

Attachment: Draft *Federal Register* Notice: *Fees for Production of Records; Technical Amendments*

DRAFT

Billing Code #####-##-6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1015

[Docket No. CPSC-#####]

Fees for Production of Records; Technical Amendments

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rulemaking.

SUMMARY: When members of the public are provided documents under the Freedom of Information Act (FOIA), the Consumer Product Safety Commission (CPSC) may impose fees for such services as duplication and searching. The CPSC is proposing amendments to its regulations under the FOIA to allow the CPSC to collect fees that reflect its actual current costs, as well as to add provisions required by the Office of Budget and Management's *Uniform Freedom of Information Act Fee Schedule and Guidelines*. The CPSC is also proposing to amend other sections of its FOIA regulations to reflect structural changes in its FOIA office; to omit the fee category for the production of records on microfiche, an obsolete format; to codify the existing practice of the General Counsel remanding cases to the Chief FOIA Officer; and to allow for any relevant FOIA exemptions to be applied under § 1015.20.

DATES: Submit comments by [INSERT 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments, identified by Docket No. CPSC- XXXX, may be submitted electronically or in writing:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments. CPSC

does not accept comments submitted by electronic mail (e-mail), except through www.regulations.gov. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions in the following way: Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions) to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Do not submit electronically any confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to provide such information, please submit it in writing.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and insert the docket number, CPSC- XXXX, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Abioye Ella Mosheim, Chief FOIA Officer, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; email amosheim@cpsc.gov; telephone (301) 504-7454.

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

On June 30, 2016, the President signed into law the 2016 FOIA, Public Law 114-185 (2016). The 2016 FOIA amends the Freedom of Information Act, 5 U.S.C. 552, requiring, *inter alia*, the

Chief FOIA Officer of every agency to review its FOIA fee regulations annually. *See* 5 U.S.C. 552(j)(3)(C). The CPSC's FOIA fee regulations have not been reviewed since 1997. The proposed amendments conform to the March 27, 1987 Office of Management and Budget's *The Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines* (OMB Fee Guidelines), which provides federal agencies with guidance on reviewing and assessing FOIA fees. 59 FR 10012 (Mar. 27, 1987). Following OMB's issuance of its Fee Guidelines in March 1987, the Commission proposed amendments to its FOIA fee regulations. 52 Fed. Reg. 17767 (May 12, 1987). The Commission finalized its amendments on fees to reflect the Commission's direct costs and the amendments became effective on September 4, 1987, 52 Fed. Reg. 28977 (August 5, 1987). In 1997, the Commission updated one portion of the fees with respect to computerized records and interest to be charged on fees owed. The staff is proposing amendments to collect fees that reflect actual current costs. The amendments are summarized in four categories below.

II. Proposed Amendments Concerning Fees for Production of Records.

When reviewing and assessing the current direct costs to the CPSC of providing records under the FOIA, the CPSC also examined whether there were any discrepancies between the OMB Fee Guidelines and CPSC's existing regulations.

Current Direct Costs. The FOIA authorizes agencies to charge, *inter alia*, for search, review, and duplication of records pursuant to FOIA requests. *See* 5 U.S.C. 552(a)(4)(A)(i)-(ii). To update its search and review fees under this NPR, the CPSC looked at the current salaries of clerical and non-clerical full-time staff only; in addition, the CPSC reviewed the direct cost of using the agency's FOIA electronic processing system, FOIAXpress. To update its duplication fees, the CPSC looked at the current direct cost of producing records to the public.

Search, Review, and Production Fees. Proposed §§ 1015.9(f)(1), (f)(2), (f)(3), (f)(4), (f)(5), (f)(7) amend the current regulations on fees the agency charges for the production of documents to reflect current Commission practices. Current 16 CFR § 1015.9(e)(1) sets forth the amount charged for reproducing documents on a standard photocopying machine. The proposed § 1015.9(e)(1) amends the regulation to specify a charge of \$1.00 per page for manual photocopies, \$1.00 per page for computerized printouts, and \$.50 per page for PDF copies.

Current 16 CFR § 1015.9(e)(2) sets forth the amount charged per quarter hour of search by clerical personnel. The proposed § 1015.9(e)(2) amends the regulation to distinguish between manual and computer searches, and to specify a charge of \$16.00 per quarter hour of manual search by clerical personnel; \$16.00 per quarter hour of manual search by non-clerical and managerial staff, and \$21.00 per quarter hour for computer searches.

The proposed §1015.9(e)(3) would allow the CPSC to charge fees to commercial requesters for the review of records at \$16.00 per quarter hour of review.

Fee Waivers. The OMB Fee Guidelines, pursuant to the FOIA, require agencies to provide a fee waiver for search and duplication in increments of the first 100 pages of duplication and the first 2 hours of search, rather than in dollar amounts. 59 FR 10012,10016,10019 (Mar. 27, 1994). This proposed rulemaking incorporates those changes into proposed § 1015.9.

Currently, paragraph (f) of 16 CFR § 1015.9 sets out the conditions for providing fee waivers. The NPR proposes to redesignate existing paragraph (f) to be paragraph (g). Existing § 1015.9(f)(2) sets forth in dollar amounts the duplication cost waived for educational institutions, non-commercial scientific institutions, and representatives of the news media. Proposed § 1015.9(g)(2) specifies the first 100 pages of duplication as the amount waived for

educational institutions, non-commercial scientific institutions, and representatives of the news media, consistent with the OMB Fee Guidelines.

Existing § 1015.9(f)(3) sets forth the amount waived for duplication costs and search costs in all other requests in dollars. Proposed § 1015.9(g)(3) specifies the first 2 hours of search time as the amount waived for search costs for educational institutions, non-commercial scientific institutions, and representatives of the news media only. It also deletes a waiver of the duplication costs in all other requests, consistent with the FOIA, 5 U.S.C. 552(a)(4)(A)(ii)(I), and consistent with the OMB Fee Guidelines, 59 FR. 10012,10018 (Mar. 27, 1987).

Notice of Anticipated Fees. The OMB Fee Guidelines require federal agencies to include in their regulations procedures for notifying requesters when fees are estimated or determined to exceed \$25.¹ The CPSC's fee regulations lacked notice of anticipated fees guidance. This NPR proposes to redesignate paragraph (e) of 16 CFR §1015.9 as paragraph (f). The new paragraph (e) provides for notice of anticipated fees greater than \$25.00.

Advance Payment of Fees. The NPR proposes to add paragraph (i), which sets forth provisions for charging fees before production of records. The OMB Fee Guidelines instruct agencies to require advance payment “of an amount up [to] the full estimated charges in the case of requesters with no history of payment” and when it “estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250”; 59 FR 10012,10020 (Mar. 27, 1987). Paragraph (g)(3) of the existing regulations states: “Before the Commission begins processing a request or discloses any information, it will require advance payment if charges are estimated to exceed \$250.00 and the requester has no history of payment and cannot provide satisfactory assurance that payment will be made; or a requester failed to pay the

¹ 59 FR 10016,10018 (Mar. 27, 1987).

Commission for a previous Freedom of Information Act request within 30 days of the billing date.” The proposed amendments to that section seek to conform with the OMB Fee Guidelines by removing the phrase “and cannot provide satisfactory assurance that payment will be made” because the OMB Fee Guidelines do not make that additional requirement on a requester with no payment history. 59 FR10012,10020 (Mar. 27, 1987).

Obsolete Formats. The CPSC now produces records in one of three formats only: (1) computer printout if under 250 pages; (2) CD if more than 250 pages; and (3) portable document format (PDF). Thus, proposed § 1015.9(e)(7) deletes the reference to the cost of producing records on microfiche.

III. Proposed Amendments to Reflect Structural Changes at CPSC.

FOIA Office. The structure of the CPSC’s FOIA office has changed since the FOIA regulations were last amended in 2017. *See* 82 FR 37010 (Aug. 8, 2017). The CPSC’s FOIA Office is now housed in the Office of the General Counsel, rather than the Office of the Secretary, and the Commission’s Assistant General Counsel for the Office of the General Counsel, Division of the Secretariat, holds the position of Chief FOIA Officer, rather than the Secretary of the Commission. The NPR proposes to amend §§ 1015.1, 1015.2, 1015.3, 1015.4, 1015.5, 1015.6, 1015.7, and 1015.9 to replace the “Secretary of the Commission,” “Secretary,” or “Secretariat” with “Chief FOIA Officer,” and “Office of the Secretary” with “Office of the General Counsel, Division of the Secretariat” or “Division of the Secretariat.”

IV. Proposed Amendment Concerning Appeals.

Delegation of Authority. The regulations were inconsistent regarding the delegation of authority to review and respond to appeals. This NPR proposes changes in §§ 1015.1(d), 1015.4 and 1015.7(e) to clarify that the Chairman delegates to the CPSC’s General Counsel the

responsibility of reviewing and responding to FOIA appeals. The Commission had previously issued this delegation by Final Rule in 1985 (50 FR 7753 (February 26, 1985)), but did not codify the change in other relevant FOIA provisions.

Remands. The proposed § 1015.7(c) codifies the existing practice of the General Counsel remanding cases to the Chief FOIA Officer and the Chief FOIA Officer carrying out the General Counsel's guidance upon remand.

V. Broadening the Scope of FOIA Exemptions Under 16 CFR §1015.20.

Currently, 16 CFR § 1015.20 only allows for the application of investigatory FOIA exemptions, and redaction of the names of injured persons and the persons who treated the injured pursuant to CPSA Section 25(c). Current practice, however, is to redact all personally identifiable information, including names of injured persons and the persons who treated them, as well as the names of other persons incidental to a consumer complaint, pursuant to FOIA exemption (b)(6). *See* 5 U.S.C. 552(b)(b). Rather than limiting the applicable FOIA exemptions to only the investigatory exemptions, this NPR proposes to amend § 1015.20 to codify the existing practice of applying FOIA exemption (b)(6) to any personally identifiable information (PII) not covered under CPSA Section 25 (c), as well as to allow for any other applicable FOIA exemptions.

VI. Environmental Considerations

The Commission's regulations address whether the Commission is required to prepare an environmental assessment or an environmental impact statement. 16 CFR part 1021. These regulations provide a categorical exclusion for certain CPSC actions that normally have "little or no potential for affecting the human environment." 16 CFR §1021.5(c)(1). This proposed rule falls within the categorical exclusion.

VII. Regulatory Flexibility Act

Under section 603 of the Regulatory Flexibility Act (RFA), when the Administrative Procedure Act (APA) or another law requires an agency to publish a general notice of proposed rulemaking, the agency must prepare an initial regulatory flexibility analysis (IFRA), assessing the economic impact of the proposed rule on small entities or certify that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603(a), 605. The Commission chooses to provide notice and comment for this rulemaking. However, because this is a “rule of agency organization, procedure, or practice,” the APA does not require a notice of proposed rulemaking. 5 U.S.C. 553.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) establishes certain requirements when an agency conducts or sponsors a “collection of information.” 44 U.S.C. 3501-3520. The proposed rule would amend the Commission’s rule to conform to the 2016 FOIA and to update Commission procedures and make other technical changes and corrections. The proposed rule would not impose any information collection requirements. The existing rule and the proposed revisions do not require or request information from firms, but rather, explain the Commission’s FOIA procedures. Thus, the PRA is not implicated in this proposed rulemaking.

IX. Executive Order 12988 (Preemption)

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. Section 26 of the CPSA explains the preemptive effect of consumer product safety standards issued under the CPSA. 15 U.S.C. 2075. The proposed rule is not a consumer product safety standard, but rather, would revise a rule of

agency practice and procedure by implementing the FOIA of 2016 and making technical revisions or corrections. Therefore, section 26 of the CPSA would not apply to this rulemaking.

X. Effective Date

In accordance with the APA's general requirement that the effective date of a rule be at least 30 days after publication of the final rule, the Commission proposes that the effective date be 30 days after the date of publication of a final rule in the **Federal Register**. 5 U.S.C. 553(d).

XI. Request for Comments

The Commission requests comments on all aspects of the proposed rule. Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this document. Written comments must be received by [INSERT DATE - 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

List of Subjects in 16 CFR 1015

Administrative practice and procedure, Consumer protection, Disclosure of information, Freedom of information.

In accordance with the provisions of 5 U.S.C. 553 and under the authority of the Consumer Product Safety Act, 15 U.S.C. 2051 et seq., the Commission proposes to amend Part 1015 of Title 16, Chapter II, of the Code of Federal Regulations as follows:

PART 1015—PROCEDURES FOR DISCLOSURE OR PRODUCTION OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

1. The authority citation for part 1015 continues to read as follows:

Authority: 15 U.S.C. 2051-2084; 15 U.S.C. 1261-1278; 15 U.S.C. 1471-1475; 15 U.S.C. 1211-1214; 15 U.S.C. 1191-1204; 5 U.S.C. 552.

§ 1015.1 [Amended]

2. Amend § 1015.1 by:

a. Revising paragraph (c) to remove the words “Secretariat of the Commission” and add in their place, “Assistant General Counsel of the Office of the General Counsel, Division of the Secretariat.”

b. Adding paragraph (d) to read as follows:

§ 1051.1 Purpose and scope.

* * * * *

(d) The General Counsel is the designated head of the Commission’s FOIA Appeals Office who, subject to the authority of the Chairman, is responsible for reviewing and responding to appeals from denials or partial denials of requests for records under this chapter.

§ 1015.2 [Amended]

3. Revise § 1015.2 to read as follows:

§ 1015.2 Public Inspection.

(a) The Consumer Product Safety Commission will maintain in a public reference room or area the materials relating to the Consumer Product Safety Commission that are required by 5 U.S.C. 552(a)(2) and 552(a)(5) to be made available for public inspection in an electronic format. The principal location will be in the Office of the General Counsel, Division of the Secretariat. The address of this office is: Office of the General Counsel, Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814.

(b) The Consumer Product Safety Commission will maintain an electronic reading room on the Internet at: <https://www.cpsc.gov> for records that are required by 5 U.S.C. 552(a)(2) to be available by computer telecommunications. Records that the FOIA requires the Commission to make available for public inspection in an electronic format may be accessed through the Commission's FOIA webpage, which is accessible by visiting: <https://www.cpsc.gov>.

(c) Subject to the requirements of Section 6 of the CPSA, the Commission will make available for public inspection in an electronic format copies of all records, regardless of form or format, that:

- (1) Have been released to any person under 5 U.S.C. 552(a)(3); and
- (2) Because of the nature of their subject matter, the Commission determines have become or are likely to become the subject of subsequent requests for substantially the same records or that have been requested three or more times.

* * * * *

§ 1015.3 [Amended]

4. Amend § 1015.3 by:

a. Removing the word "Secretariat" from paragraph (a), and adding in its place, the words, "Chief FOIA Officer."

d. Removing the word "Secretariat" from paragraph (d), and adding in its place, the words, "Chief FOIA Officer."

e. Removing the word "Secretariat" from paragraph (e), and adding in its place, the words, "Chief FOIA Officer."

§ 1015.4 [Amended]

5. Revising § 1015.4 to read as follows:

§1015.4 Responses to requests for records; responsibility.

The ultimate responsibility for responding to requests for records is vested in the Chief FOIA Officer of the Consumer Product Safety Commission. The Chief FOIA Officer, or delegate of the Chief FOIA Officer, may respond directly, or forward the request to any other office of the Commission for response. The Commission response shall be in the form set forth in §1015.7(d) for action on appeal. If no response is made by the Commission within 20 working days, or any extension of the 20-day period, the requester and the Commission may take the action specified in §1015.7(e).

* * * * *

§ 1015.5 [Amended]

6. Revise § 1015.5 to read as follows:

§1015.5 Time limitation on responses to requests for records and requests for expedited processing.

(a) The Chief FOIA Officer, or delegate of the Chief FOIA Officer, shall respond to all written requests for records within twenty (20) working days (excepting Saturdays, Sundays, and legal public holidays). The time limitations on responses to requests for records submitted by mail shall begin to run at the time a request for records is received and date-stamped by the Office of the General Counsel, Division of the Secretariat. The Office of the General Counsel, Division of the Secretariat shall date-stamp the request the same day that it receives the request. The time limitations on responses to requests for records submitted electronically during working hours (8 a.m. to 4:30 p.m. EST) shall begin to run at the time the request was electronically

received, and the time limitations on responses to requests for records submitted electronically during non-working hours will begin to run when working hours resume.

(b) The time for responding to requests for records may be extended by the Chief FOIA Officer at the initial stage, or by the General Counsel of the Commission, at the appellate stage, up to an additional ten (10) working days under the following unusual circumstances:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Office of the General Counsel, Division of the Secretariat;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request;

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Commission having substantial subject matter interest;

(c) Any extension of time must be accompanied by written notice to the person making the request setting forth the reason(s) for such extension and the time within which a response is expected to be made.

(d) If the Chief FOIA Officer at the initial stage, or the General Counsel at the appellate stage, determines that an extension of time greater than ten (10) working days is necessary to respond to a request satisfying the “unusual circumstances” specified in paragraph (b) of this section, the Chief FOIA Officer, or the General Counsel, shall notify the requester and give the requester the opportunity to:

(1) Limit the scope of the request so that it may be processed within the time limit prescribed in paragraph (b); or

(2) Arrange with the Chief FOIA Officer, or the General Counsel, an alternative time frame for processing the request or a modified request.

(e) ***

(f) The Chief FOIA Officer, or delegate of the Chief FOIA Officer, may aggregate and process as a single request, requests by the same requester, or a group of requesters acting in concert, if the Chief FOIA Officer or delegate reasonably believes that the requests actually constitute a single request that would otherwise satisfy the unusual circumstances specified in paragraph (b) of this section, and the requests involve clearly related matters.

(g) The Chief FOIA Officer or delegate of the Chief FOIA Officer will provide expedited processing of requests in cases where the requester demonstrates a compelling need for such processing.

(1) The term “compelling need” means:

(i) ***

(3) The Chief FOIA Officer or delegate of the Chief FOIA Officer will determine whether to grant a request for expedited processing and will notify the requester of such determination within ten (10) calendar days of receipt of the request.

(4) Denials of requests for expedited processing may be appealed to the Office of the General Counsel, as set forth in §1015.7 of this part. The General Counsel will expeditiously determine any such appeal.

(5) The Chief FOIA Officer or delegate of the Chief FOIA Officer will process, as soon as is practicable, the documents responsive to a request for which expedited processing is granted.

(h) The Chief FOIA Officer may be unable to comply with the time limits set forth in this §1015.5 when disclosure of documents responsive to a request under this part is subject to the

requirements of section 6(b) of the Consumer Product Safety Act, 15 U.S.C. 2055(b), and the regulations implementing that section, 16 CFR part 1101. The Chief FOIA Officer, or delegate of the Chief FOIA Officer, will notify requesters whose requests will be delayed for this reason.

* * * * *

§ 1015.6 [Amended]

7. Amend § 1015.6 by:

a. Removing the word “Secretariat,” and adding, in its place, the words, “Chief FOIA Officer,” in paragraphs (a), (b) introductory text, and (c); and

b. Revising paragraph (b)(4) to read as follows:

§ 1015.6 Responses: Form and content.

* * * * *

(b) * * *

(4) A statement that the denial may be appealed to the General Counsel, as specified in section 1015.1(d) of this chapter. Any such appeal must be made within 90 calendar days after the date of the Chief FOIA Officer or delegate of the Chief FOIA Officer’s denial or partial denial.

* * * * *

§ 1015.7 [Amended]

8. Amend § 1015.7 to read as follows:

§ 1015.7 Appeals from initial denials.

(a) When the Chief FOIA Officer or delegate of the Chief FOIA Officer has denied a request for records in whole or in part, the requester may, within 90 calendar days after the date of the denial or partial denial, appeal the denial to the Office of the General Counsel of the

Consumer Product Safety Commission, attention of the Division of the Secretariat. Appeals may be submitted through any of the following methods: the e-FOIA Public Access Link at <https://www.cpsc.gov>; email to cpsc-foia@cpsc.gov; U.S. mail to 4330 East West Highway, Room 820, Bethesda, MD 20814; or facsimile to 301-504-0127. To facilitate handling, the requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, "Freedom of Information Act Appeal."

(b) The General Counsel will act upon an appeal within 20 working days of its receipt. The time limitations on an appeal submitted by mail shall begin to run at the time an appeal is received and date stamped by the Division of the Secretariat. The Division of the Secretariat will date stamp the appeal the same day that it receives the appeal. The time limitations on an appeal submitted electronically during working hours (8 a.m. to 4:30 p.m. EST) shall begin to run at the time the appeal was electronically received, and the time limitations on appeals submitted electronically during non-working hours will begin to run when working hours resume.

(c) After reviewing the appeal, the General Counsel will issue a decision to either uphold the denial, or reverse the decision to deny the request, in whole or in part. If the General Counsel decides to release any or all of the information requested on appeal, an appeal as to the information released will be considered moot; and the General Counsel will so inform the requester and submitter of the information, in accordance with §§ 1015.6(a) and 1015.18(b). The Chief FOIA Officer will then provide the records in accordance with the General Counsel's decision. If the General Counsel decides to affirm the initial denial, in whole or in part, the General Counsel will decide the appeal within the 20-day time limit, or any extension thereof, in accordance with § 1015.5.

(d) The General Counsel shall have the authority to grant or deny all appeals and, as an exercise of discretion, to disclose records exempt from mandatory disclosure under 5 U.S.C. 552(b). In unusual or difficult cases the General Counsel may, in his/her discretion, refer an appeal to the Chairman for determination.

(e) The General Counsel's action on appeal shall be in writing, shall be signed by the General Counsel, and shall constitute final agency action. A denial in whole or in part of a request on appeal shall set forth the exemption relied upon; a brief explanation, consistent with the purpose of the exemption, of how the exemption applies to the records withheld; and the reasons for asserting it. The decision will inform the requester of the right to seek dispute resolution services from the Commission's FOIA Liaison or the Office of Government Information Services. A denial in whole or in part shall also inform the requester of his/her right to seek judicial review of the General Counsel's final determination in a United States district court, as specified in 5 U.S.C. 552(a)(4)(B).

(f) * * *

(g) Copies of all appeals and copies of all actions on appeal shall be furnished to and maintained in a public file by the Division of the Secretariat.

* * * * *

§ 1015.9 [Amended]

9. Amend § 1015.9 by:

a. Removing the word "Secretariat" in paragraph (a), and adding, in its place, the words, "Chief FOIA Officer or the delegate of the Chief FOIA Officer";

b. Revising paragraphs (e) through (g); and

c. Adding paragraphs (h) and (i).

The revisions and additions read as follows:

§ 1015.9 Fees for production of records.

(a) The Commission will provide, at no charge, certain routine information. For other Commission responses to information requests, the Chief FOIA Officer or the delegate of the Chief FOIA Officer shall determine and levy fees for duplication, search, review, and other services, in accordance with this section.

(b) ***

(e) The following fee schedule will apply:

(1) *Photocopies.* (i) Copies of documents reproduced on a standard photocopying machine: \$1.00 per page. When paper documents must be scanned to comply with a requester's preference to receive records in an electronic format, the requester must also pay the direct costs associated with scanning those materials.

(ii) Computerized records: \$1.00 per page of computer printouts, or for PDF copies, \$0.50 per page; and for compact discs, DVDs, or other similar media duplications, the direct cost of producing records onto the media.

(2) *Searches.* (i) Manual file searches conducted by clerical personnel: \$4.00 for each one-quarter hour (a fraction thereof to be counted as one-quarter hour).

(ii) Manual file searches conducted by non-clerical or professional or managerial personnel: \$16.00 for each one-quarter hour (a fraction thereof to be counted as one-quarter hour).

(iii) Computer searches: \$ 21 for each one-quarter hour (a fraction thereof to be counted as one-quarter hour).

(3) *Review.* \$16 for each one-quarter hour (a fraction thereof to be counted as one-quarter hour). The cost for reviewing records will only be applied to commercial requesters.

(4) *Postage.* If the requester wants special handling or if the volume or dimensions of the materials requires special handling, the Commission will charge a direct cost basis for mailing such requested materials.

(5) *Other charges.* (i) For materials requiring special reproducing or handling, such as photographs, slides, blueprints, video and audio tape recordings, or other similar media: direct-cost basis. (ii) Any other service: An appropriate fee established by the Chief FOIA Officer, based on direct costs.

(f) *Notice of anticipated fees in excess of \$25.00.*

(1) When the Commission determines or estimates that the fees to be assessed will exceed \$25.00, the Commission shall notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the Commission will advise the requester accordingly. If the request is a noncommercial use requester, the notice shall include the services provided without charge indicated in paragraph (d)(3) of this section, and shall advise the requester whether those entitlements have been provided.

(2) When a requester has been provided notice of anticipated fees in excess of \$25.00, the request shall not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, to designate which fees the requester is willing to pay, or, for noncommercial requests, to indicate that the requester seeks only the services that can be provided in paragraphs (g)(2) and (g)(3) of this section without charge. The Commission is not required to accept payment in installments.

(3) When the requester has committed to pay some designated amount of fees, but the Commission estimates that the total fee will exceed that amount, the Commission shall toll processing of the request when it notifies the requester of the estimated fees in excess of the requester's commitment. The Commission shall inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) The Commission shall make available the FOIA Public Liaison to assist the requester in reformulating a request to meet the requester's needs at a lower cost.

(5) If the issue is not resolved within 20 working days from the date of the notification letter, the request shall be closed without further notification.

(g) *Fees waivers:* (1) No automatic fee waiver shall apply to commercial use requests.

(2) The first 100 pages of duplication shall be waived for requests from educational institutions, non-commercial scientific institutions, and representatives of the news media.

(3) The first 2 hours of search time shall be waived for requests from educational institutions, non-commercial scientific institutions, and representatives of the news media.

(4) The Chief FOIA Officer or a designee of the Chief FOIA Officer shall waive or reduce fees whenever disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and disclosure of the requested information is not primarily in the commercial interest of the requester.

(5) In making a determination under paragraph (g)(4) of this section, the Chief FOIA Officer or designee of the Chief FOIA Officer shall consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government.

(ii) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities.

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(v) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(vi) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(6) Search fees shall be waived for all requests and duplication fees shall be waived for requests from educational institutions, non-commercial scientific institutions, and representatives of the news media if the Commission fails to comply with any time limit under §§ 1015.5(a), (g)(3), 1015.7(b), and 5 U.S.C. 552(a)(6) other than those exceptions stated in 5 U.S.C. 552(a)(4)(A)(viii)(II). Those exceptions include:

(i) If the Commission has determined that unusual circumstances, as defined in § 1015.5(b) apply, and the Commission provided timely written notice to the requester, as required by § 1015.5(c) or §1015.7(f), then failure to comply with the time limit in §§ 1015.5(a), (g)(3), 1015.7(b), and 5 U.S.C. 552(a)(6) is excused for 10 additional working days; or

(ii) If the Commission has determined that unusual circumstances as defined in § 1015.5(b) apply and more than 5,000 pages are necessary to respond to the request, and the Commission has provided timely written notice in accordance with § 1015.5(c) and (e) and the Commission has discussed with the requester via written mail, email, or telephone (or made not less than three good-faith efforts to do so) how the requester could effectively limit the scope of the request; or

(iii) If a court has determined that exceptional circumstances exist as defined in 5 U.S.C. 552(a)(6)(C), then failure to comply with §§ 1015.5(a), (g)(3), 1015.7(b), and 5 U.S.C. 552(a)(6) shall be excused for the length of time provided by the court order.

(7) No fee will be charged when the total fee, after deducting the first 100 pages (or its cost equivalent) and the first two hours of search, is equal to or less than \$25.00.

(8) Any determination made by the Chief FOIA Officer or the designee of the Chief FOIA Officer concerning fee waivers may be appealed by the requester to the Commission's General Counsel in the manner described at § 1015.7.

(h) *Collection of fees.* Collection of fees shall be in accordance with the following:

(1) Interest will be charged on amounts billed, starting on the 31st day following the day on which the requester received the bill. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(2) Search fees will be imposed (on requesters charged for search time) even if no responsive documents are located or if the search leads to responsive documents that are withheld under an exemption to the Freedom of Information Act. Such fees shall not exceed \$25.00, unless the requester has authorized a higher amount.

(3) The Commission will aggregate requests, for the purposes of billing, whenever it reasonably believes that a requester or group of requesters is attempting to separate a request into more than one request for the purpose of evading fees.

(i) *Advance payment of fees.* Before the Commission begins processing a request or discloses any information, it will require advance payment:

(1) up to the full estimated charges where charges are estimated or determined to exceed \$250.00 and the requester has no history of payment; or

(2) the full amount owed where the requester failed to pay the Commission for a previous Freedom of Information Act request within 30 days of the billing date; and

(3) the amount owed in arrears, plus interest, unless the requester demonstrates that he or she has, in fact, paid the outstanding fee.

* * * * *

§ 1015.20 [Amended]

10. Amend § 1015.20 by removing the phrase “the investigatory file exemption” in paragraph (a) and adding, in its place, the word “exemptions”.

Dated: _____

Alberta E. Mills
Secretary, Consumer Product Safety Commission