

1—Materials, Chemicals, "microorganisms," and Toxins, ECCN 1A984 is revised and a new ECCN 1A985 is added to read as follows:

1A984 Chemical agents, including tear gas formulation containing 1 percent or less of orthochlorobenzalmalononitrile (CS), or 1 percent or less of chloroacetophenone (CN), except in individual containers with a net weight of 20 grams or less; smoke bombs; non-irritant smoke flares, canisters, grenades and charges; and other pyrotechnic articles having dual military and commercial use.

License Requirements

Reason for Control: CC

| <i>Control(s)</i> | <i>Country Chart</i> |
|-----------------------------|----------------------|
| CC applies to entire entry. | CC Column 1 |

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: \$ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

1A985 Fingerprinting powders, dyes, and inks.

License Requirements

Reason for Control: CC

| <i>Control(s)</i> | <i>Country Chart</i> |
|-----------------------------|----------------------|
| CC applies to entire entry. | CC Column 1 |

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: \$ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

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Dated: September 7, 2000.

R. Roger Majak,
Assistant Secretary for Export Administration.

[FR Doc. 00-23481 Filed 9-12-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 34-43239; FOIA-191; PA-30; File No. S7-14-99]

RIN 3235-AH71

Amendments to the Commission's Freedom of Information and Privacy Act Rules and Confidential Treatment Rule 83

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its procedures for requesting confidential treatment of records submitted to the Commission when no other procedures are applicable. It is also amending its procedures for requesting information under the Freedom of Information Act and for requesting, amending, or correcting records about individuals under the Privacy Act of 1974. These amendments, which conform the procedures to current statutory and case law and administrative practice and correct clerical errors, reflect staff and public comments on proposed amendments that were announced on April 14, 1999.

EFFECTIVE DATE: October 13, 2000.

FOR FURTHER INFORMATION CONTACT: Betty A. Lopez, Privacy Act Officer, (202) 942-4320, Office of Filings and Information Services, SEC, Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413.

SUPPLEMENTARY INFORMATION: Today, the Commission is adopting amendments that update Rule 80 (17 CFR 200.80) under the Freedom of Information Act (5 U.S.C. 552) (FOIA), Rule 83 (17 CFR 200.83) under the FOIA, and Rules 303, 306, 308, 310, and 312 (17 CFR 200.303, 200.306, 200.308, 200.310, and 200.312) under the Privacy Act of 1974 (5 U.S.C. 552a) (Privacy Act).

I. Background

On April 14, 1999, the Commission proposed to amend Rule 83, which sets forth the procedures for requesting confidential treatment of records submitted to the Commission when no other procedures apply.¹ It also proposed to amend Rule 80, which sets forth the procedures for requesting Commission records under the FOIA.² Moreover, it proposed to amend some of

its Privacy Act rules, which set forth the procedures for requesting, amending, or correcting Commission records about individuals.³ The 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.

The Commission received eight comment letters.⁴ Commenters generally supported the proposals, but opposed the five-year expiration period for confidential treatment requests as being unduly burdensome. Two suggested changing the period to 10 years.⁵ The Commission is adopting the proposed amendments with certain modifications of the proposed Rule 83 amendments that address some concerns of commenters.

II. Discussion

A. Confidential Treatment Rule 83

1. Scope of the Rule

The Commission has several rules laying down procedures for requesting confidential treatment of records submitted to it.⁶ The present amendments affect only Rule 83, which sets forth procedures for requesting confidential treatment of records submitted to the Commission where no other statute or Commission rule provides procedures for requesting confidential treatment for particular categories of information or where the Commission has not specified that an alternative procedure be used in connection with a particular study, report, investigation, or other matter.⁷ The scope of Rule 83 is expressly stated in the current version of the rule⁸ and that scope remains unchanged.

2. Identifying Number and Code

The current version of Rule 83 generally requires all records which

³ *Id.*

⁴ See letters to Jonathan K. Katz from Lehman Brothers; Morgan, Lewis & Bockius LLP ("MLB"); Securities Industry Association ("SIA"); Merrill Lynch; A.G. Edwards & Sons, Inc. ("Edwards"); New York Stock Exchange ("NYSE"); and The Chicago Board Options Exchange ("CBOE"); and letter to the Office of the Secretary from Dan Jamieson.

⁵ See Lehman Brothers and MLB letters.

⁶ See, for example, 17 CFR 230.406 for records submitted under the Securities Act of 1933 ("Securities Act"), 15 U.S.C. 77a *et seq.*, and 17 CFR 240.24b-2 for records submitted under the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78a *et seq.*

⁷ See 17 CFR 200.83(b), which further states that it shall not apply to any record which is contained in or is part of a personnel, medical or similar file relating to a Commission member or employee which would normally be exempt from disclosure under 5 U.S.C. 552(b)(6).

⁸ 17 CFR 200.83(b).

¹ Securities Exchange Act Release No. 41288 (April 14, 1999), 64 FR 19732 (April 22, 1999).

² *Id.*

contain information for which a request for confidential treatment is made or the appropriate segregable portion thereof to be "marked by the person submitting the records with a prominent stamp, typed legend, or other suitable form of notice on each page or segregable portion of each page, stating 'Confidential Treatment Requested by (name)'.⁹ It further provides that, if such marking is impractical under the circumstances, a cover sheet prominently marked "Confidential Treatment Requested by (name)" should be securely attached to each group of records submitted for which confidential treatment is requested and that each of the records submitted in this manner should be individually marked with an identifying number and code so that they are separately identifiable.¹⁰ The revised rule, as proposed, requires a person who submits a record to the Commission for which he or she seeks confidential treatment to mark each page or segregable portion of each page with the words "Confidential Treatment Requested by (name)" and an identifying number and code, without regard to the manner in which the records were submitted. The adopted amendment would state, as an example, that a Bates-stamped identifying number or code may be used for this purpose.

3. Voluntarily Submitted Records

A proposed amendment of Rule 83 would have added that a person, who submits a record to the Commission voluntarily and requests its confidential treatment, must mark each page "Voluntarily Submitted" and explain the circumstances under which the record was voluntarily submitted. Several commenters objected to these additional requirements as being unduly burdensome.¹¹ They said that voluntary submissions could include hundreds or thousands of pages and the Commission frequently asks for voluntary submission of records. They pointed out that only a small fraction of voluntarily submitted records are ever requested under the FOIA. Upon reconsideration, the Commission has decided not to require that the submitter both mark the record "Voluntarily Submitted" and explain the circumstances under which the record was voluntarily submitted. Rather, although not specified by the rule, an explanation of the circumstances of voluntary submission should continue to be part of a

substantiation that the confidential treatment requester furnishes after receiving notice of a FOIA request for the records.

4. Five-year Expiration Date

Currently, Rule 83 does not provide an expiration date for confidential treatment requests. A proposed amendment would have stated that a confidential treatment request would expire five years after its receipt by the Commission's FOIA Office unless the person requesting confidentiality renews the request before it expires. Several commenters¹² noted the difficulty and expense of tracking the contents and expiration date of confidential treatment requests, in light of the frequency with which the Commission asks for voluntary submission of records. Two commenters¹³ suggested a 10-year expiration period as in a similar rule of the U.S. Department of Justice.¹⁴ The Commission accepts this suggestion. Accordingly, the adopted amendment sets 10 years as the expiration date of confidential treatment requests under Rule 83. The Commission does not plan to notify the confidential treatment requester when the 10 years is about to expire. Moreover, providing an expiration date for such requests does not affect the duration of a grant of confidentiality or the Commission's right to review a grant in light of subsequent events.

5. Substantiation to Remain Nonpublic

A proposed amendment would have stated that a confidential treatment request and a substantiation for it shall be confidential, but if an action is filed in a Federal court by the FOIA or confidential treatment requester, both may become part of the court record. After further consideration, the Commission has decided that both the confidential treatment request and substantiation shall be *nonpublic* but, if an action is filed in a Federal court under the FOIA, the confidential treatment request or substantiation, or both, may become part of the court record.

¹² See Lehman Brothers, MLB, SIA, Merrill Lynch, Edwards, NYSE, and CBOE letters.

¹³ See Lehman Brothers and MLB letters.

¹⁴ In 28 CFR 16.8(c), the Department of Justice states:

Designation of business information. A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

B. Rule 80 and Privacy Act Rules

The Commission received no unfavorable comments on its proposed amendments to Rule 80 or the rules under the Privacy Act.

III. Effects On Competition

Section 23(a)(2) of the Exchange Act¹⁵ requires the Commission, in adopting rules under the Exchange Act, to consider their anticompetitive effect, if any, and to balance any impact they may have against the regulatory benefits furthering the purposes of the Exchange Act. The Commission believes that the amendments will have a neutral effect on competition since they would merely conform the rules to current law, clarify procedures for submitting records, and assure voluntary submitters of confidential commercial or financial records that their records will be protected consistent with statutory and case law.

IV. Statutory Basis Of Rule Amendments

The Commission is adopting the amendments 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, 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.

V. Final Regulatory Flexibility Analysis

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

A. Reasons for Action

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

B. Objectives and Legal Basis

These amendments will implement recent amendments to the FOIA, conform Commission rules to current case law and administrative practice, enhance public access to non-privileged, non-confidential Commission records, and protect personal privacy. The amendments are authorized by 5 U.S.C. 552, 5 U.S.C. 552a, and Executive Order 12,600.

¹⁵ 15 U.S.C. 78w(a)(2).

⁹ 17 CFR 200.83(c)(2).

¹⁰ *Id.*

¹¹ See Lehman Brothers, MLB, SIA, Merrill Lynch, and Edwards letters.

C. Small Entities Affected

The amendments will affect all small entities that request Commission records under the FOIA or confidential treatment for records they submit to the Commission under Rule 83. While it cannot reasonably estimate the number of small entities that could be affected, the Commission believes that any burden that the amendments might place on small entities will be negligible.

D. Compliance Requirements

The amendments will not impose any 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 amendments that would accomplish the stated objectives of applicable statutes and executive order.

VI. Cost-Benefit Analysis

The Commission is sensitive to the costs imposed by its rules and regulations, such as its rules under the Freedom of Information Act and the Privacy Act. Most of the rule amendments adopted today merely conform FOIA and Privacy Act regulations to current law and practice (for example, by specifying what types of information we will post on our web site under the Electronic Freedom of Information Act Amendments of 1996).

A number of the rule amendments, however, will impose some costs on persons subject to them. One amendment requires persons seeking confidential treatment for records submitted to the Commission to mark each page with the phrase "Confidential Treatment Requested by [name]" and an identifying number or code. In general, however, the cost of marking each page should be small. Moreover, the cost will be justified by significant benefits from the resulting ease and accuracy of determining which records requested under the FOIA are subject to confidential treatment requests and by whom. Such positive identification will avoid potentially costly, inadvertent mistakes when the records are separated from the confidential treatment request covering them.

Another amendment states that a confidential treatment request will expire 10 years from the date of its receipt by the FOIA Office, unless the request is renewed before its expiration

date. In effect, this amendment requires a confidential treatment requester, who wants to renew the request, to ask for such renewal before the initial request expires. The need to protect most commercial or financial records submitted to the Commission generally diminishes over time. Therefore, the Commission anticipates that only a few confidential treatment requesters will renew their requests after 10 years. The Commission believes that the cost of renewing a request will be minimal and will be justified by the assurance that the requester will be notified and given an opportunity to substantiate the confidential treatment request before the records are released under the FOIA.

Finally, an amendment expressly lists review fees among the FOIA fees. Although inadvertently omitted in the introductory text of 17 CFR 200.80(e) and the first sentence of 17 CFR 200.80(e)(1) and (3), the Commission has authorized review fees since 1987. See 17 CFR 200.80(e)(9)(ii), 17 CFR 200.80(e)(10)(ii), and 17 CFR 200.80f. Therefore, this amendment will not impose any additional cost.

List of Subjects in 17 CFR Part 200

Administrative practice and procedures, Confidential business information, Freedom of information, and Privacy.

VII. Text of Amendments

For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is 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)(3), 78w, 79t, 79v(a), 77sss, 80a–37, 80a–44(a), 80a–44(b), 80b–10(a), 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.

2. Amend § 200.80 by:

a. adding "Northeast and Midwest" before the phrase "Regional Offices" in the introductory text of paragraph (a)(2);

b. removing the word "and" at the end of paragraph (a)(2)(iv);

c. removing the period at the end of paragraph (a)(2)(v) and adding in its place "; and"; and

d. adding paragraph (a)(2)(vi) and republishing the paragraph heading for (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:

a. Redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5);

b. Correcting "section" to read "section" in the first sentence of newly redesignated paragraph (a)(4); and

c. 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:

a. Correcting "pursant" to read "pursuant";

b. Revising the phrase "15c3–1(c)(7)(G)" to read "15c3–1d(c)(6)(i)";

c. Revising the phrase "17 CFR 240.15c–1(c)(7)(vii)" to read "17 CFR 240.15c3–1d(c)(6)(i)";

d. Revising the phrase "Rules 17a–9, 17a–10, 17a–12 and 17a–16" to read "Rules 17a–10 and 17a–12"; and

e. 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:

a. Removing paragraph (b)(7)(ii);

b. 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);

c. Revising the word "State" to read "state" in newly redesignated paragraph (b)(7)(iv); and

d. 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 “8½×14” to read “8½×11” 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 phrase “regional offices in New York or Chicago” to read “Northeast and Midwest Regional Offices”; and

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 a.m. to 5:30 p.m.”

7. Amend § 200.80(c)(2) as follows:

a. In the first sentence, by revising the phrase “or by telephone” to read “or in writing”;

b. In the second sentence, by removing the phrase “and telephone numbers”; and

c. In the third sentence, by removing the phrase “, or to a particular regional office”.

8. Amend § 200.80(d)(1) as follows:

a. In the first sentence, by adding the word “the” after the phrase “by mail directed to”;

b. In the second sentence, by adding the word “the” after the phrase “not available in”;

c. 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

d. At the end of paragraph (d)(1), by adding a sentence 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.

(d) * * *

(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.* The amount of separate and distinct records which are demanded in a single request or the amount of time or work (or both) involved may be such that the review of the records cannot be completed within 20 business days, as prescribed in paragraph (d)(5)(i) of this section. In such a case, the Office of Freedom of Information and Privacy Act Operations shall inform the requester of the approximate volume of the records and give him or her the option of limiting the scope of the request to qualify for 20-day processing or placing the request in the Commission’s first-in, first-out (FIFO) system for reviewing voluminous records. In the latter case, the Office will inform the requester of the approximate time when the review will start. The FIFO system allows the Commission to serve all those requesting voluminous records on a first-come, first-served basis, such that all releasable records sought will be released at one time, unless the requester specifically requests that releasable records be released piecemeal as they are processed.

(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 ten business 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.

* * * * *

(d) * * *

(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.

* * * * *

(d) * * *

(6) * * *

(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”; and 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.

* * * * *

(d) * * *

(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.

* * * * *

14. Amend § 200.80(d)(9) by:

- a. Removing the heading “*Oral requests; misdirected written requests*”;
- b. Removing paragraph (d)(9)(i); and
- c. 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 word “, 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.

* * * * *

(e) * * *

(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) and (c)(8) 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, such as a Bates-stamped number. In his or her written confidential treatment request, the person must refer to the record by identifying number and code.

(3) 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.

(4) 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)(3) of this section.

(5) 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.

(6) 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.

(7) A confidential treatment request will expire ten 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 ten years from the date that Office receives it, unless that Office receives another timely renewal request which complies with the requirements of this paragraph.

(8) A confidential treatment request shall be nonpublic. If an action is filed in a Federal court, however, by either the Freedom of Information 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(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) In a preliminary decision, which shall be sent by mail or facsimile, or both, the Office of Freedom of Information and Privacy Act Operations will inform the confidential treatment requester whether it intends to grant confidentiality in whole or in part and give the requester ten calendar days from the date of the preliminary decision to submit supplemental arguments if the requester disagrees with the preliminary decision. A final decision, which shall also be sent by mail or facsimile, or both, no sooner than ten calendar days from the date of the preliminary decision, shall inform the Freedom of Information Act requester and the confidential treatment requester of his or her right to appeal an adverse decision to the Commission's General Counsel within ten calendar days from the date of the final decision. Records, which the Freedom of Information and Privacy Act Officer determines to be releasable, may be released to the Freedom of Information Act requester ten calendar days after the date of the final decision. However, if within those ten calendar days, the Freedom of Information and Privacy Act Officer receives an appeal from the confidential treatment requester, he or she shall inform the Freedom of Information Act requester that an appeal is pending and that the records will not be released until the appeal is resolved.

* * * * *

24. Amend § 200.83, paragraph (e)(2), by revising the second sentence and adding a sentence after the second 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. * * *

* * * * *

25. Amend § 200.83, paragraph (e)(3), third sentence by removing the clause

"in accordance with the provisions of § 201.28 of this chapter".

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

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

28. Amend § 200.83 by:

a. Redesignating paragraphs (g), (h), and (i) as paragraphs (h), (i), and (j);

b. Revising the phrase "(c)(4)" in newly redesignated paragraph (h)(1) to read "(c)(5)";

c. Revising the phrase "(g)(1)" in the first sentence of newly redesignated paragraph (h)(2) to read "(h)(1)";

d. Removing the commas after "extended" and "Officer" in newly redesignated paragraph (i); and

e. Adding new paragraphs (g) and (k) to read as follows:

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

* * * * *

(g) *Confidential treatment request and substantiation as nonpublic.* Any confidential treatment request and substantiation of it shall be nonpublic. 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), both request and substantiation may become part of the public 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

29. 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.

* * * * *

30. 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)".

31. Amend § 200.303, paragraph(a)(2) as follows:

a. In the 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,";

b. In the list of Commission offices, by revising "suite" to read "Suite" each time it appears; 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."; and for the Central Regional Office, revising the acronym "C.S.T." to read "M.S.T."; and

c. In the last sentence of the concluding paragraph, adding immediately after "New Year's Day," the phrase "Martin Luther King, Jr.'s Birthday,".

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

33. 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 to verify his or her identity, he or she must submit, along with the request for information or access, a statement attesting to his or her identity. Where access is being sought, the statement shall include a representation that the requested records 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 signed by him or her 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)

34. 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".

35. 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).

* * * * *

36. 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".

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

38. Revise § 200.308(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).

* * * * *

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

40. 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, D.C. 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),".

41. 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.

42. 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".

43. Amend § 200.312 by removing paragraphs (a)(1) through (a)(8) and adding paragraphs (a)(1) through (a)(6) 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.

September 1, 2000.

Margaret H. McFarland,
Deputy Secretary.

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