



8421-03

NATIONAL COUNCIL ON DISABILITY

5 CFR Chapter C

RIN 3480-AA00

Freedom of Information Act, Privacy Act, and Government in the Sunshine Act

Procedures

AGENCY: National Council on Disability.

ACTION: Final rule

SUMMARY: The National Council on Disability is finalizing regulations which implement the Freedom of Information Act, the Privacy Act of 1974, and the Government in the Sunshine Act. This rule describes the procedures for members of the public to request access to records. In addition, this document also describes procedures for the Council's responses to these requests, including the timeframe for response and applicable fees. These rules should be read in conjunction with the text of the Freedom of Information Act, the Privacy Act of 1974, the Government in the Sunshine Act, and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget.

DATES: Effective [insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Joan Durocher, General Counsel, National Council on Disability, at 202-272-2004 or jdurocher@ncd.gov. To ensure proper handling, please include the docket number on your correspondence.

SUPPLEMENTARY INFORMATION: These regulations in a proposed rule were published for public comment in the Federal Register on June 11, 2015 (80 FR 33199), the comment period ended on August 10, 2015, and one commenter provided input. He is a private citizen and submitted his comments by mail.

I. Background

The commenter provided various comments on the proposed Freedom of Information Act procedures at part 10000. First, the commenter recommended that § 10000.6(b) should state that responses to a FOIA request should include the case number and the date of the original request. Reasoning that the absence of this information can cause confusion and wasted effort should an administrative appeal be necessary. We agree with the suggestion and § 10000.6(b) has been modified to reflect that correspondence responding to FOIA requests should include the case number and date of the original request.

In addition, the commenter had several comments about the proposed § 10000.10 concerning fees. The commenter stated that a page duplication fee of \$.10 per page should be identified. The commenter states that the fee is supposed to be a proxy based on actual duplication costs. The commenter states actual duplication costs are substantially less than \$.10 per page, but the standard rate for most agencies is \$.10. FOIA regulation 5 U.S.C. 552(a)(4)(A)(ii) states fees shall be limited to reasonable standard charges for document search, duplication, and review. No specific fee scale was applied in the regulation, the Council does not intend to cite a specific cost for duplication. Not having specific rates listed in the regulation allows the Council to adjust costs accordingly when a price fluctuation exists which allows the Council flexibility to adjust rates without first necessitating a change in the regulation.

In addition, the commenter states in § 10000.10(c) the reference to the operating costs for a central processing unit is obsolete as well as the reference to the salary of the operators performing the search. FOIA regulation 28 CFR 16.10(a)(2) defines direct costs as expenses that an agency incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (i.e., the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. The Council did not find it necessary to make changes to the section, the Council will adhere to all applicable statutes when assessing direct costs.

The commenter states in § 100000.10(d) the rules are ambiguous and should clearly state unambiguously that noncommercial requesters are not charged review fees. The commenter added that OMB guidance is quite clear that noncommercial requesters are not charged. The commenter also stated charging review fees following the results of an appeal in which the written initial determination was reversed or remanded is procedurally unfair and could impose needless hurdles. Council maintains there is sufficient clarity in the current language “review fees shall be charged for requesters who make commercial use requests”. As to the assessment of review fees post an appeal, Council followed OMB guidelines when proposing review fees be assessed. We appreciate the commenter’s perspective, the Council has decided to retain the language which mirrors the FOIA statute. Such fees are allowable under the FOIA regulations and therefore current language will remain unchanged.

Additionally, in § 10000.10 (e) the commenter suggests changing the wording of “statutory entitlements of 100 pages of duplication...” To “statutory entitlements of 100 pages of duplication or equivalent”, so that other types of duplicated media can be accommodated. With the ever-changing nature in which data is collected the Council agrees with the commenter and will add specific language to the final rule indicating that duplication costs equivalent of 100 pages in print or equivalent will be processed at no charge.

II. Regulatory Analysis and Notices

Executive Order 12866

This final rule is not a “significant regulatory action” within the meaning of Executive Order 12866. The economic impact of these regulations should be minimal, therefore, further economic evaluation is not necessary.

Regulatory Flexibility Act, as Amended

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 601 et seq.), generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions. The Council considered the effects on this final rule on small entities and certifies that these final rules will not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, requires each agency to assess the effects of its regulatory actions on state, local, and tribal governments, and the private sector. Agencies must prepare a written statement of economic and regulatory alternatives anytime a proposed or final rule imposes a new or additional enforceable duty on any state, local, or tribal government or the private sector that causes those entities to spend, in aggregate, \$100 million or more (adjusted for inflation) in any one year (defined in UMRA as a “federal mandate”). The Council determined that such a written statement is not required in connection with these final rules because they will not impose a federal mandate, as defined in UMRA.

National Environmental Policy Act

The Council analyzed this action for purposes of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., and determined that it would not significantly affect the environment; therefore, an environmental impact statement is not required.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. This final rule does not include an information collection for purposes of the PRA.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the Council determined that it does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

List of Subjects

5 CFR Part 10000

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

5 CFR Part 10001

Administrative practice and procedure, Privacy.

5 CFR Part 10002

Administrative practice and procedure, Public availability of information, Meetings.

In consideration of the foregoing, the Council amends title 5, Code of Federal Regulations, by establishing chapter C, consisting of parts 10000-10049, to read as follows:

Chapter C – National Council On Disability

PART 10000 – PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

PART 10001 – IMPLEMENTATION OF THE PRIVACY ACT OF 1974

PART 10002—IMPLEMENTATION OF THE GOVERNMENT IN THE SUNSHINE ACT

PARTS 10003–10049 [RESERVED]

PART 10000 – PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

Sec.

- 10000.1 Purpose and scope.
- 10000.2 Definitions.
- 10000.3 Availability of records.
- 10000.4 Categories of exemptions.
- 10000.5 Requests for records.
- 10000.6 Responsibility for responding to requests.
- 10000.7 Administrative appeals.

10000.8 Timeframe for Council's response to a FOIA request or administrative appeal.
10000.9 Business information.
10000.10 Fees.

Authority: 5 U.S.C. 552, as amended; E.O. 12600, 52 FR 23781, 3 CFR 1987, 1987
Comp., p. 235; 3 CFR 235.

§ 10000.1 Purpose and scope.

The regulations in this part implement the provisions of the FOIA.

§ 10000.2 Definitions.

The following definitions apply to this part:

Chairperson means the Chairperson of the Council, as appointed by the President, or any person to whom the Council has delegated authority for the matter concerned.

Chief FOIA Officer means the senior official to whom the Council delegated responsibility for efficient and appropriate compliance with the FOIA, currently delegated to the General Counsel.

Commercial use request means a FOIA request from or on behalf of a requester that seeks information for a use or purpose that furthers their commercial, trade, or profit interests, including pursuit of those interests through litigation.

Confidential business information means trade secrets or confidential or privileged commercial or financial information submitted to the Council by a person that may be protected from disclosure under Exemption 4 of the FOIA.

Council means the National Council on Disability, established by the Rehabilitation Act of 1973 (29 U.S.C. 780 et seq.), as amended, and amended by the Workforce Innovation and Opportunity Act (Pub. L. 113-128) in 2014.

Direct costs are those expenses that an agency incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (i.e., the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research. A requester in this fee category must show that the request is authorized by, and is made under the auspices of, an educational institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research. To fall within this fee category, the request must serve the scholarly research goals of the institution rather than an individual research goal.

(1) Example 1. A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

(2) Example 2. A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

(3) Example 3. A student who makes a request in furtherance of the completion of a course of instruction would be presumed to be carrying out an individual research goal, rather than a scholarly research goal of the institution and would not qualify as part of this fee category.

Fee waiver means the waiver or reduction of fees if a requester can demonstrate meeting the statutory standard that the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

FOIA means the Freedom of Information Act, 5 U.S.C. 552, as amended. The FOIA applies to requests for agency records.

FOIA Officer means the individual to whom the Council has delegated authority to carry out the Council's day-to-day FOIA administration, currently delegated to the Council's Attorney Advisor.

FOIA Public Liaison means the individual designated by the Chairperson to assist FOIA requesters with concerns about the Council's processing of their FOIA request, including assistance in resolving disputes, currently delegated to the Council's Attorney Advisor.

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

Person includes an individual, partnership, corporation, association, or public or private organization other than an agency.

Record means any writing, drawing, map, recording, diskette, DVD, CD-ROM, tape, film, photograph, or other documentary material, regardless of medium, by which information is preserved, including documentary material stored electronically.

Redact means delete or mark over.

Representative of the news media is any person or entity organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast “news” to the public at large and publishers of periodicals that disseminate “news” and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the Internet. A request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use. “Freelance” journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, components shall also consider a requester’s past publication record in making this determination.

Requester category means one of the three categories defined by the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (OMB Fee Guidelines) in which requesters will be placed for the purpose of

determining what if any fees for search, review, or duplication may be assessed. They are:

- (1) Commercial requestors;
- (2) Non-commercial scientific or educational institutions or representatives of the news media; and
- (3) All other requestors.

Submitter means any person or entity from whom the Council obtains confidential or privileged business information, directly or indirectly.

Unusual circumstances exist when:

- (1) The need to search for and collect the requested records from physically separate facilities;
- (2) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or
- (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.

§ 10000.3 Availability of records.

Records that are required by the FOIA to be made available for public inspection and copying may be accessed through the Agency's website at www.ncd.gov. The Council is responsible for determining which of its records are required to be made publicly available, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. The Council shall ensure that its website of posted records and indices is reviewed and updated on an

ongoing basis. The Council's FOIA Public Liaison can assist individuals in locating records particular to a component.

§ 10000.4 Categories of exemptions.

(a) The FOIA does not require disclosure of matters that are:

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

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

(3) Specifically exempted from disclosure by statute (other than the Government in the Sunshine Act, 5 U.S.C. 552b, as amended), provided that such statute:

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

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

(ii) If enacted after October 28, 2009, specifically cites to Exemption 3 of the FOIA, 5 U.S.C. 552(b)(3);

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

(5) Inter-agency or intra-agency memoranda or letters, which would not be available at law to a party other than an agency in litigation with the Council;

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

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

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

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

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

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

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

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

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

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

§ 10000.5 Request for records.

(a) You may request copies of records under this part by email to FOIA@ncd.gov or in writing addressed to FOIA Officer, National Council on Disability, 1331 F Street, NW, Suite 850, Washington, DC 20004.

(b) Your request shall reasonably describe the records sought with sufficient specificity, and when possible, include names, dates, and subject matter, in order to permit the FOIA Officer to locate the records with a reasonable amount of effort. If the FOIA Officer cannot locate responsive records based on your written description, you will be notified and advised that further identifying information is necessary before the request can be fulfilled. Although requests are considered either FOIA or Privacy Act requests, the Council processes requests for records in accordance with both laws so as to provide the greatest degree of lawful access while safeguarding an individual's personal privacy.

(c) Your request should specify your preferred form or format (including electronic formats) for the records you seek. We will accommodate your request if the record is readily available in that form or format. When you do not specify the form or format of the response, we will provide responsive records in the form or format most convenient to us.

§ 10000.6 Responsibility for responding to requests.

(a) In general. The Council delegates authority to grant or deny FOIA requests in whole or in part to the Chief FOIA Officer. When conducting a search for responsive records, the FOIA Officer generally will search for records in existence on the date of the search. If another date is used, the FOIA Officer shall inform the requester of the date used.

(b) Responses. The Chief FOIA Officer will notify you of his or her determination to grant or deny your FOIA request in the time frame stated in § 10000.8. The Council will

release reasonably segregable non-exempt information. For any adverse determination, including those regarding any disputed fee matter; a denial of a request for a fee waiver; or a determination to withhold a record, in whole or in part, that a record does not exist or cannot be located; or to deny a request for expedited processing; the notice shall include the following information:

- (1) FOIA case number and date of the original request;
- (2) The name(s) of any person responsible for the determination to deny the request in whole or in part;
- (3) A brief statement of the reason(s) for the denial, including any FOIA exemption applied in denying the request. The FOIA Officer will indicate, if technically feasible, the amount of information deleted and the exemption under which a deletion is made on the released portion of the record, unless including that indication would harm an interest protected by the exemption;
- (4) An estimate of the volume of information withheld, if applicable. This estimate does not need to be provided if it is ascertainable based on redactions in partially disclosed records or if the disclosure of the estimate would harm an interest protected by an applicable FOIA exemption; and
- (5) A statement that the adverse determination may be appealed and a description of the requirements for an appeal under § 10000.7.

(c) Consultation, referral, and coordination. When reviewing records located by the Council in response to a request, the Council shall determine whether another agency of the Federal Government is better able to determine whether the record is exempt from

disclosure under the FOIA and, if so, whether it should be released as a matter of discretion. As to any such record, the Council shall proceed in one of the following ways:

(1) Consultation. When records originated with the Council, but contain within them information of interest to another agency, the Council should typically consult with that other agency prior to making a release determination.

(2) Referral. (i) When the Council believes that a different agency is best able to determine whether to disclose the record, the Council typically should refer the responsibility for responding to the request regarding that record, as long as the referral is to an agency that is subject to the FOIA. Ordinarily, the agency that originated the record will be presumed to be best able to make the disclosure determination. However, if the Council and the originating agency jointly agree that the former is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever the Council refers any part of the responsibility for responding to a request to another agency, it shall document the referral, maintain a copy of the record that it refers, and notify the requester of the referral and inform the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA contact information.

(3) Coordination. The standard referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if the Council responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third

party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if the Council locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the Council should coordinate with the originating agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination should then be conveyed to the requester by the Council.

§ 10000.7 Administrative appeals.

(a) You may appeal an adverse determination related to your FOIA request, or the Council's failure to respond to your FOIA request within the prescribed time limits, to the Executive Director, National Council on Disability, 1331 F Street, NW, Suite 850, Washington, DC 20004.

(b) Your appeal must be in writing and must be postmarked or electronically received by the Executive Director within 60 days of the date of the letter denying your request, in whole or in part. For the most expeditious handling, your appeal letter and envelope should be marked "Freedom of Information Act Appeal" and reference the request number.

(c) The Executive Director shall respond to all administrative appeals in writing and within the time frame stated in § 10000.8(d). If the decision affirms, in whole or in part, the Chief FOIA Officer's determination, the letter shall contain a statement of the reasons

for the affirmance, including any FOIA exemption(s) applied, and will inform you of the FOIA's provisions for court review. If the Executive Director reverses or modifies the Chief FOIA Officer's determination, in whole or in part, you will be notified in writing and your request will be reprocessed in accordance with that decision. The Council may work with Office of Government Information Services (OGIS) to resolve disputes between FOIA requestors and the Council. A requester may also contact OGIS in the following ways: Via mail to OGIS, National Archives and Records Administration, 8601 Adelphi Road—OGIS, College Park, MD 20740 (ogis.archives.gov), via email at ogis@nara.gov, or via the telephone at 202-741-5770 or 877-684-6448. Facsimile is also available at 202-741-5769.

§ 10000.8 Timeframe for Council's response to a FOIA request or administrative appeal.

(a) In general. The Council ordinarily shall respond to requests according to their order of receipt.

(b) Multi-track processing. (1) The Council may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, including through limits based on the number of pages involved. If the Council does so, it shall advise requesters in its slower track(s) of the limits of its faster track(s).

(2) Using multitrack processing, the Council may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the Council's faster track(s). In doing so, the

Council will contact the requester by telephone, letter, or e-mail, whichever is more efficient in each case.

(c) Initial decisions. The Council shall determine whether to comply with a FOIA request within 20 working days after our receipt of the request, unless the time frame for response is extended due to unusual circumstances as further described in paragraph (f) of this section. A request is received by the Council, for purposes of commencing the 20-day timeframe for its response, on the day it is properly received by the FOIA Officer. The request must meet all requirements described by these regulations and the FOIA before the 20-day timeframe commences.

(d) Administrative appeals. The Executive Director shall determine whether to affirm or overturn a decision subject to administrative appeal within 20 working days after receipt of the appeal, unless the time frame for response is extended in accordance with paragraph (e) of this section.

(e) Tolling timelines. We may toll the 20-day timeframe set forth in paragraph (c) or (d) of this section:

(1) One time to await information that we reasonably requested from you, as permitted by 5 U.S.C. 552(a)(6)(A)(iii)(I);

(2) As necessary to clarify with you any fee-related issue.

(3) If we toll the time frame for response under paragraphs (e)(1) or (2) of this section, the tolling period ends upon our receipt of your response.

(f) Unusual circumstances. In the event of unusual circumstances, we may extend the time frame for response provided in paragraph (c) or (d) of this section by providing you with written notice of the unusual circumstances and the date on which a determination is

expected to be made. Where the extension is for more than ten working days, we will provide you with an opportunity either to modify your request so that it may be processed within the statutorily-prescribed time limits or to arrange an alternative time period for processing your request or modified request.

(g) Aggregating requests. When we reasonably believe that multiple requests submitted by a requester, or by a group of requesters acting in concert, involving clearly related matters, can be viewed as a single request that involves unusual circumstances, we may aggregate the requests for the purposes of fees and processing activities.

(h) Expedited processing. You may request that the Council expedite processing of your FOIA request. To receive expedited processing, you must demonstrate a compelling need for such processing.

(1) For requests for expedited processing, a “compelling need” involves:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) A request made by a person primarily engaged in disseminating information, with a time urgency to inform the public of actual or alleged federal government activity.

(2) Your request for expedited processing must be in writing and may be made at the time of the initial FOIA request or at any later time.

(3) Your request for expedited processing must include a statement, certified to be true and correct to the best of your knowledge and belief, explaining in detail the basis for requesting expedited processing. If you are a person primarily engaged in disseminating information, you must establish a particular urgency to inform the public about the federal government activity involved in the request.

(4) The FOIA Officer will decide whether to grant or deny your request for expedited processing and notify the requester within ten calendar days of receipt. You will be notified in writing of the determination. Appeals of adverse decisions regarding expedited processing shall be processed expeditiously.

§ 10000.9 Business information.

(a) Designation of confidential business information. In the event a FOIA request is made for confidential business information previously submitted to the Government by a commercial entity or on behalf of it (hereinafter “submitter”), the regulations in this section apply. When submitting confidential business information, you must use a good-faith effort to designate, by use of appropriate markings, at the time of submission or at a reasonable time thereafter, any portions of your submission that you consider to be exempt from disclosure under FOIA Exemption 4, 5 U.S.C. 552(b)(4). Your designation will expire ten years after the date of submission unless you request, and provide justification for, a longer designation period.

(b) Notice to submitters. (1) Whenever you designate confidential business information as provided in paragraph (a) of this section, or the Council has reason to believe that your submission may contain confidential business information, we will provide you with prompt written notice of a FOIA request that seeks your business information. The notice shall:

(i) Give you an opportunity to object to disclosure of your information, in whole or in part;

(ii) Describe the business information requested or include copies of the requested records or record portions containing the information; and

(iii) Inform you of the time frame in which you must respond to the notice.

(2) In cases involving a voluminous number of submitters, notice may be made by posting or publishing the notice in a place or manner reasonably likely to accomplish it.

(c) Opportunity to object to disclosure. The Council shall allow you a reasonable time to respond to the notice described in paragraph (b) of this section. If you object to the disclosure of your information, in whole or in part, you must provide us with a detailed written statement of your objection. The statement must specify all grounds for withholding any portion of the information under any FOIA exemption and, when relying on FOIA Exemption 4, it must explain why the information is a trade secret or commercial or financial information that is privileged and confidential. If you fail to respond within the time frame specified in the notice, the Council will conclude that you have no objection to disclosure of your information. The Council will only consider information that we receive within the time frame specified in the notice.

(d) Notice of intent to disclose. The Council will consider your objection and specific grounds for non-disclosure in deciding whether to disclose business information.

Whenever the Council decides to disclose business information over your objection, we will provide you with written notice that includes:

(1) A statement of the reasons why each of your bases for withholding were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time after the notice.

(e) Exceptions to the notice requirement. The notice requirements of paragraphs (c) and (d) of this section shall not apply if:

- (1) The Council determines that the information is exempt under the FOIA;
 - (2) The information lawfully has been published or has been officially made available to the public;
 - (3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600;
 - (4) The designation made by the submitter under paragraph (a) of this section appears obviously frivolous, except that, in such a case, the Council shall, within a reasonable time prior to the date the disclosure will be made, give the submitter written notice of the final decision to disclose the information.
- (f) Requester notification. The Council shall notify a requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

§ 10000.10 Fees.

- (a) We will charge fees that recoup the full allowable direct costs we incur in processing your FOIA request. Fees may be charged for search, review or duplication. We will use the most efficient and least costly methods to comply with your request.
- (b) With regard to manual searches for records, we will charge the salary rate(s) (calculated as the basic rate of pay plus 16 percent of that basic rate to cover benefits) of the employee(s) performing the search.
- (c) In calculating charges for computer searches for records, we will charge at the actual direct cost of providing the service, including the cost of operating the central processing

unit directly attributable to searching for records potentially responsive to your FOIA request and the portion of the salary of the operators/programmers performing the search.

(d) Review fees shall be charged for requesters who make commercial use requests.

Review fees shall be assessed only for the initial review—that is the review undertaken the first time we analyze the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. We may assess the costs for such subsequent review. Review fees are charged at the same rates as those charged for a search.

(e) Notice of anticipated fees in excess of \$25.00:

(1) When the Council determines or estimates that the fees to be assessed in accordance with this section will exceed \$25.00, the Council 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 Council shall advise the requester accordingly. If the requester is a noncommercial use requester, the notice shall specify that the requester is entitled to the statutory entitlements of 100 pages of duplication or equivalent at no charge. For example, 100 pages burned to a single CD would be considered equivalent to 100 pages of duplication. And, if the requester is charged search fees, two hours of search time at no charge, and shall advise the requester whether those entitlements have been provided.

(2) In cases in which a requester has been notified that the actual or estimated fees are 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, or designates some amount of fees the requester is willing to pay, or in the case of a noncommercial use requester who has not yet been provided with the requester's statutory entitlements, designates that the requester seeks only that which can be provided by the statutory entitlements. The requester must provide the commitment or designation in writing, and must, when applicable, designate an exact dollar amount the requester is willing to pay. The Council is not required to accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the Council estimates that the total fee will exceed that amount, the Council shall toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The Council 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 Council shall make available its FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(f) We will charge you the full costs of providing you with the following services:

(1) Certifying that records are true copies; or

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

(g) We may assess interest charges on an unpaid bill starting on the 31st calendar day following the day on which the billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing.

(h) We will not charge a search fee for requests by educational institutions, non-commercial scientific institutions, or representatives of the news media. A search fee will be charged for a commercial use requests.

(i) Except for a commercial use request, we will not charge you for the first 100 pages of duplication and the first two hours of search.

(j) If the Council fails to comply with the time limits in which to respond to a request, and if no unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, it may not charge search fees, or, in the instances of requests from requesters requests by educational institutions (unless the records are sought for a commercial use), noncommercial scientific institutions, or representatives of the news media, may not charge duplication fees.

(k) After processing, actual fees must be equal to or exceed \$25, for the Council to require payment of fees.

(l) You may not file multiple requests, each seeking portions of a document or documents, solely for the purpose of avoiding payment of fees. When the Council reasonably believes that a requester, or a group of requesters acting in concert, has submitted requests that constitute a single request involving clearly related matters, we may aggregate those requests and charge accordingly.

(m) We may not require you to make payment before we begin work to satisfy the request or to continue work on a request, unless:

(1) We estimate or determine that the allowable charges that you may be required to pay are likely to exceed \$250; or

(2) You have previously failed to pay a fee charged within 30 days of the date of billing.

(n) Upon written request, we may waive or reduce fees that are otherwise chargeable under this part. If you request a waiver or reduction in fees, you must demonstrate that a waiver or reduction in fees is in the public interest because disclosure of the requested records is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in your commercial interest.

(1) In deciding whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government, the Council shall consider all four of the following factors:

(i) The subject of the request must concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested records must be meaningfully informative about government operations or activities in order to be “likely to contribute” to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not contribute to such understanding where nothing new would be added to the public’s understanding.

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester’s expertise in the subject area as well as the requester’s ability and

intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The public's understanding of the subject in question must be enhanced by the disclosure to a significant extent. However, components shall not make value judgments about whether the information at issue is "important" enough to be made public.

(2) To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, the Council shall consider the following factors:

(i) The Council shall identify any commercial interest of the requester, as defined in § 10000.2, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) A waiver or reduction of fees is justified where the public interest is greater than any identified commercial interest in disclosure. The Council ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(3) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(4) Requests for a waiver or reduction of fees should be made when the request is first submitted to the component and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees

subsequently asks for a waiver of those fees and that waiver is denied, the requester shall be required to pay any costs incurred up to the date the fee waiver request was received.

PART 10001 – IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.

- 10001.1 Purpose and scope.
- 10001.2 Definitions.
- 10001.3 Privacy Act requests.
- 10001.4 Responses to Privacy Act requests.
- 10001.5 Administrative appeals.
- 10001.6 Fees.
- 10001.7 Penalties.

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

§ 10001.1 Purpose and scope.

The regulations in this part implement the provisions of the Privacy Act.

§ 10001.2 Definitions.

The following terms used in this part are defined in the Privacy Act: Individual, maintain, record, routine use, statistical record, system of records. The following definitions also apply in this part:

Chairperson means the Chairperson of the Council, as appointed by the President, or any person to whom the Council has delegated authority for the matter concerned.

Council means the National Council on Disability, established by the Rehabilitation Act of 1973 (29 U.S.C. 780 et seq.), as amended, and amended by the Workforce Innovation and Opportunity Act (Pub. L. 113-128) in 2014.

General Counsel means the Council's principal legal advisor, or his or her designee.

Privacy Act means the Privacy Act of 1974, 5 U.S.C. 552a, as amended.

Privacy Act Officer means the person designated by the Council to be responsible for the day-to-day administration of the Privacy Act, currently delegated to the Council's Management Analyst.

§ 10001.3 Privacy Act requests.

(a) Requests to determine if you are the subject of a record. You may request that the Council inform you if we maintain a system of records that contains records about you. Your request must follow the procedures described in paragraph (b) of this section.

(b) Requests for access. You may request access to a Council record about you in writing or by appearing in person. You should direct your request to the Privacy Act Officer. Written requests may be sent to: Privacy Act Officer, National Council on Disability, 1331 F Street, NW, Suite 850, Washington, DC 20004. Your request should include the following information:

(1) Your name, address, and telephone number;

(2) The system(s) of records in which the requested information is contained; and

(3) At your option, authorization for copying expenses.

(4) Written requests. In addition to the information described in paragraphs (b)(1) through (3) of this section, written requests must include a statement affirming your identity, signed by you and witnessed by two persons (including witnesses' addresses) or notarized.

(i) Witnessed. If your statement is witnessed, it must include a sentence above the witnesses' signatures attesting that they personally know you or that you have provided satisfactory proof of your identity.

(ii) Notarized. If your statement is notarized, you must provide the notary with adequate proof of your identity in the form of a drivers' license, passport, or other identification acceptable to the notary.

(iii) The Council, in its discretion, may require additional proof of identification depending on the nature and sensitivity of the records in the system of records(iv) For the quickest possible handling, your letter and envelope should be marked "Privacy Act Request."

(5) In person requests. In addition to the information described in paragraphs (b)(1) through (3) of this section, if you make your request in person, you must provide adequate proof of identification at the time of your request. Adequate proof of identification includes a valid drivers' license, valid passport, or other current identification that includes your address and photograph.

(c) Requests for amendment or correction of records. You may request an amendment to or correction of a record about you in person or by writing to the Privacy Act Officer following the procedures described in paragraph (b) of this section. Your request for amendment or correction should identify each particular record at issue, state the amendment or correction sought, and describe why the record is not accurate, relevant, timely, or complete.

(d) Requests for an accounting of disclosures. Except for those disclosures for which the Privacy Act does not require an accounting, you may request an accounting of any disclosure by the Council of a record about you. Your request for an accounting of disclosures must be made in writing following the procedures described in paragraph (b) of this section.

(e) Requests for access on behalf of someone else. (1) If you are making a request on behalf of someone else, your request must include a statement from that individual verifying his or her identity, as provided in paragraph (b)(4) of this section. Your request also must include a statement certifying that individual's agreement that records about him or her may be released to you.

(2) If you are the parent or guardian of the individual to whom the requested record pertains, or the individual to whom the record pertains has been deemed incompetent by a court, your request for access to records about that individual must include:

(i) The identity of the individual who is the subject of the record, including his or her name, current address, and date and place of birth;

(ii) Verification of your identity in accordance with paragraph (b)(4) of this section;

(iii) Verification that you are the subject's parent or guardian, which may be established by a copy of the subject's birth certificate identifying you as his or her parent, or a court order establishing you as guardian; and

(iv) A statement certifying that you are making the request on the subject's behalf.

§ 10001.4 Responses to Privacy Act requests.

(a) Acknowledgement. The Privacy Act Officer shall provide you with a written acknowledgment of your written request under section 3 within ten business days of our receipt of your request.

(b) Grants of requests. If you make your request in person, the Privacy Act Officer shall respond to your request directly, either by granting you access to the requested records, upon payment of any applicable fee and with a written record of the grant of your request and receipt of the records, or by informing you when a response may be expected. If you

are accompanied by another person, you must authorize in writing any discussion of the records in the presence of the third person. If your request is in writing, the Privacy Act Officer shall provide you with written notice of the Council's decision to grant your request and the amount of any applicable fee. The Privacy Act Officer shall disclose the records to you promptly, upon payment of any applicable fee.

(c) Denials of requests in whole or in part. The Privacy Act Officer shall notify you in writing of his or her determination to deny, in whole or in part, your request. This writing shall include the following information:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason for the denial(s), including any applicable Privacy Act exemption;

(3) A statement that you may appeal the denial and a brief description of the requirements for appeal under § 10001.5.

(d) Request for records not covered by the Privacy Act or subject to Privacy Act exemption. If the Privacy Act Officer determines that a requested record is not subject to the Privacy Act or the records are subject to Privacy Act exemption, your request will be processed in accordance with the Council's Freedom of Information Act procedures at 5 CFR part 10000.

§ 10001.5 Administrative appeals.

(a) Appeal procedures. (1) You may appeal any decision by the Council to deny, in whole or in part, your request under § 10001.3 no later than 60 days after the decision is rendered.

(2) Your appeal must be in writing, sent to the General Counsel at the address specified in § 10001.3(b) and contain the following information:

- (i) Your name;
- (ii) Description of the record(s) at issue;
- (iii) The system of records in which the record(s) is contained;
- (iv) A statement of why your request should be granted.

(3) The General Counsel shall determine whether to uphold or reverse the initial determination within 30 working days of our receipt of your appeal. The General Counsel shall notify you of his or her decision, including a brief statement of the reasons for the decision, in writing. The General Counsel's decision will be the final action of the Council.

(b) Statement of disagreement. If your appeal of our determination related to your request for amendment or correction is denied in whole or in part, you may file a Statement of Disagreement that states the basis for your disagreement with the denial. Statements of Disagreement must be concise and must clearly identify each part of any record that is disputed. The Privacy Act Officer will place your Statement of Disagreement in the system of records in which the disputed record is maintained and shall mark the disputed record to indicate that a Statement of Disagreement has been filed and where it may be found.

(c) Notification of amendment, correction, or disagreement. Within 30 working days of the amendment or correction of a record, the Privacy Act Officer shall notify all persons, organizations, or agencies to which the Council previously disclosed the record, if an accounting of that disclosure was made, that the record has been corrected or amended. If

you filed a Statement of Disagreement, the Privacy Act Officer shall append a copy of it to the disputed record whenever it is disclosed and also may append a concise statement of its reason(s) for denying the request to amend or correct the record.

§ 10001.6 Fees.

We will not charge a fee for search or review of records requested under this part, or for the correction of records. If you request copies of records, we may charge a fee of \$.10 per page.

§ 10001.7 Penalties.

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

**PART 10002—IMPLEMENTATION OF THE GOVERNMENT IN THE
SUNSHINE ACT**

Sec.

10002.1 Purpose and scope.

10002.2 Definitions.

10002.3 Open meetings.

10002.4 Procedures for public announcement of meetings.

10002.5 Grounds on which meetings may be closed or information withheld.

10002.6 Procedures for closing meetings or withholding information, and requests by affected persons to close a meeting.

10002.7 Changes following public announcement.

10002.8 Transcripts, recordings, or minutes of closed meetings.

10002.9 Public availability and retention of transcripts, recordings, and minutes, and applicable fees.

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

§ 10002.1 Purpose and scope.

(a) The regulations in this part implement the provisions of the Sunshine Act.

(b) Requests for all records other than those described in § 10002.9, shall be governed by the Council's Freedom of Information Act procedures at 5 CFR part 10001.

§ 10002.2 Definitions.

The following definitions apply in this part:

Chairperson means the Chairperson of the Council, as appointed by the President, or any person to whom the Council has delegated authority for the matter concerned.

Council means the National Council on Disability, established by the Rehabilitation Act of 1973 (29 U.S.C. 780 et seq.), as amended, and amended by the Workforce Innovation and Opportunity Act (Pub. L. 113-128) in 2014.

General Counsel means the Council's principal legal advisor, or his or her designee.

Meeting means the deliberations of five or more Council members that determine or result in the joint conduct or disposition of official Council business. A meeting does not include:

(1) Notational voting or similar consideration of business for the purpose of recording votes, whether by circulation of material to members' individually in writing or by a polling of the members individually by phone or email.

(2) Action by five or more members to:

(i) Open or close a meeting or to release or withhold information pursuant to § 10002.6;

(ii) Set an agenda for a proposed meeting;

(iii) Call a meeting on less than seven days' notice, as permitted by § 10002.4; or

(iv) Change the subject matter or the determination to open or to close a publicly announced meeting under § 10002.7.

(3) A session attended by five or more members for the purpose of having the Council's staff or expert consultants, another federal agency, or other persons or organizations brief or otherwise provide information to the Council concerning any matters within the purview of the Council, provided that the members do not engage in deliberations that determine or result in the joint conduct or disposition of official business on such matters.

(4) A gathering of members for the purpose of holding informal, preliminary discussions or exchanges of views which do not effectively predetermine official action.

Member means an individual duly appointed and confirmed to the Council.

Public observation means attendance by the public at a meeting of the Council, but does not include public participation.

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

Sunshine Act means the Government in the Sunshine Act, 5 U.S.C. 552b.

§ 10002.3 Open meetings.

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

(b) Council meetings, or portions thereof, shall be open to public participation when an announcement to that effect is published under § 10002.4. Public participation shall be conducted in an orderly, non-disruptive manner and in accordance with any procedures the Chairperson may establish. Public participation may be terminated for good cause as determined by the Council upon the advice of the General Counsel based on unanticipated developments.

§ 10002.4 Procedures for public announcement of meetings.

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

- (1) The time and place of the meeting;
- (2) The subject matter of the meeting;
- (3) Whether the meeting is to be open, closed, or portions of a meeting will be closed;
- (4) Whether public participation will be allowed;
- (5) The name and telephone number of the person who will respond to requests for information about the meeting;

(b) The seven-day prior notice required by paragraph (a) of this section may be reduced only if:

- (1) A majority of all members determine by recorded vote that Council business requires that such meeting be scheduled in less than seven days; and
- (2) The public announcement required by this section is made at the earliest practicable time.

(c) If public notice is provided by means other than publication in the Federal Register, notice will be promptly submitted to the Federal Register for publication.

§ 10002.5 Grounds on which meetings may be closed or information withheld.

A meeting, or portion thereof, may be closed and information pertinent to such meeting withheld if the Council determines that the meeting or release of information is likely to disclose matters that are:

(a) Specifically authorized under criteria established by an executive order to be kept secret in the interests of national defense or foreign policy; and, in fact, are properly classified pursuant to such executive order. In making the determination that this exemption applies, the Council shall rely on the classification assigned to the document or assigned to the information from the federal agency from which the document was received.

(b) Related solely to the internal personnel rules and practices of the Council;

(c) Specifically exempt from disclosure by statute (other than 5 U.S.C. 552), provided that such statute:

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

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

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involved with accusing any person of a crime or formally censuring any person;

(f) Of a personal nature, if disclosure would constitute a clearly unwarranted invasion of personal privacy;

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

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to either a fair trial or an impartial adjudication;

- (3) Constitute an unwarranted invasion of personal privacy;
- (4) Disclose the identity of a confidential source or sources and, in the case of a record compiled either by a criminal law enforcement authority or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source(s);
- (5) Disclose investigative techniques and procedures; or
- (6) Endanger the life or physical safety of law enforcement personnel;
- (h) Contained in or relating to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;
- (i) If prematurely disclosed, likely to significantly frustrate implementation of a proposed action of the Council, except that this subsection shall not apply in any instance where the Council has already disclosed to the public the content or nature of its proposed action or is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; and
- (j) Specifically concerned with the Council's issuance of a subpoena, or its participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Council of a particular case or formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

§ 10002.6 Procedures for closing meetings or withholding information, and requests by affected persons to close a meeting.

(a) A meeting or portion of a meeting may be closed and information pertaining to a meeting withheld under § 10002.5 only by vote of a majority of members.

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

(c) A person whose interests may be directly affected by a portion of a meeting may request in writing that the Council close that portion for any of the reasons referred to in § 10002.5(e) through (g). Upon the request of a member, a recorded vote shall be taken whether to close such meeting or portion thereof.

(d) For every meeting closed, the General Counsel shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant basis for closing the meeting. If the General Counsel invokes the bases set forth in § 10002.5(a) or (c), he or she shall rely upon the classification or designation assigned to the information by the originating agency. A copy of such certification, together with a statement by the presiding officer setting forth the time and place of the meeting and the persons present, shall be retained by the Council as part of the transcript, recording, or minutes required by § 10002.8.

§ 10002.7 Changes following public announcement.

(a) The time or place of a meeting may be changed following the public announcement described in § 10002.4. The Council must publicly announce such change at the earliest practicable time.

(b) The subject matter of a meeting or the determination of the Council to open or close a meeting, or a portion thereof, to the public may be changed following public announcement only if:

(1) A majority of all members determine by recorded vote that Council business so requires and that no earlier announcement of the change was possible; and

(2) The Council publicly announces such change and the vote of each member thereon at the earliest practicable time.

§ 10002.8 Transcripts, recordings, or minutes of closed meetings.

Along with the General Counsel's certification and presiding officer's statement referred to in § 10002.6(d), the Council shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or a portion thereof, closed to the public. Alternatively, for any meeting closed pursuant to § 10002.5(h) or (j), the Council may maintain a set of minutes adequate to record fully the proceedings, including a description of each of the views expressed on any item and the record of any roll call vote.

§ 10002.9 Public availability and retention of transcripts, recordings, and minutes, and applicable fees.

(a) The Council shall make available, in a place easily accessible, such as *www.ncd.gov*, to the public the transcript, electronic recording, or minutes of a meeting, except for items

of discussion or testimony related to matters the Council determines may be withheld under § 10002.6.

(b) Copies of the nonexempt portions of the transcripts or minutes shall be provided upon receipt of the actual costs of the transcription or duplication.

(c) The Council shall maintain meeting transcripts, recordings, or minutes of each meeting closed to the public for a period ending at the later of two years following the date of the meeting, or one year after the conclusion of any Council proceeding with respect to the closed meeting.

PARTS 10003–10049 [RESERVED]

Dated: August 11, 2015.

Rebecca Cokley,

Executive Director.

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