



Billing Code 6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1015

[Docket No. CPSC-2020-0011]

Fees for Production of Records; Other Amendments to Procedures for Disclosure of Information Under the Freedom of Information Act

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Under the Freedom of Information Act (FOIA), the Consumer Product Safety Commission (CPSC) may charge certain fees to recover the direct costs of providing specific FOIA services, such as duplication and searching for responsive records. The CPSC is proposing to amend its FOIA fee regulations to reflect more accurately the CPSC's direct costs of providing FOIA services, as well as to conform to the Office of Management and Budget's (OMB's) *Uniform Freedom of Information Act Fee Schedule and Guidelines* and to omit the fee category for the production of records on microfiche, an obsolete format. The CPSC also is proposing to amend other sections of its FOIA regulations to reflect organizational changes in the agency's FOIA Office; to codify the existing practice of the General Counsel remanding cases to the Chief FOIA Officer; and to allow for any relevant FOIA exemptions to be applied.

DATES: Submit comments by **[INSERT 75 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments, identified by Docket No. CPSC-2020-0011, may be submitted electronically or in writing:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments. CPSC does not accept comments submitted by electronic mail (e-mail), except through www.regulations.gov. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, described above.

Written Submissions: Submit written submissions by Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions) to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (800) 638-2772.

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

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and insert the docket number, CPSC-2020-0011, into the “Search” box, and follow the prompts.

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

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority.

On June 30, 2016, the President signed into law the FOIA Improvement Act of 2016, Public Law 114-185 (2016). The FOIA Improvement Act of 2016 amends the Freedom of Information Act, 5 U.S.C. 552, requiring, *inter alia*, the Chief FOIA Officer of every agency to review its FOIA fee regulations annually. *See* 5 U.S.C. 552(j)(3)(C).

OMB's *Uniform Freedom of Information Act Fee Schedule and Guidelines* (OMB Fee Guidelines) provides federal agencies with guidance on reviewing and assessing FOIA fees. 52 FR 10012 (Mar. 27, 1987). Following OMB's issuance of its Fee Guidelines in March 1987, CPSC proposed amendments to its FOIA fee regulations. 52 FR 17767 (May 12, 1987). The CPSC finalized its amendments on fees to reflect the agency's direct costs, and the amendments became effective on September 4, 1987. 52 FR 28979 (Aug. 5, 1987). In 1997, CPSC updated one portion of its FOIA fee regulations regarding computerized records and interest to be charged on fees owed. 62 FR 46198 (Sept. 2, 1997). In 2017, CPSC also updated portions of its FOIA fee regulations to revise the definition of "representative of the news media" and to make other clarifications and corrections. 82 FR 37004 (Aug. 8, 2017).

The CPSC is proposing additional amendments to its FOIA fee regulations to ensure that the agency's fees accurately reflect its direct costs of providing FOIA services, consistent with the OMB Fee Guidelines. CPSC staff estimated the CPSC's direct costs of providing FOIA services by reviewing and assessing certain known costs of providing records under the FOIA in Fiscal Year 2019, as described in detail below. CPSC staff also examined whether there were any discrepancies between the OMB Fee Guidelines and CPSC's existing regulations, as well as between CPSC's general FOIA regulations and existing practices. The proposed amendments are summarized in five categories below.

II. Proposed Amendments Concerning Fees.

Direct Costs. The FOIA authorizes agencies to charge certain fees to recover the direct costs of providing FOIA services. 5 U.S.C. 552(a)(4)(A). Fee schedules must provide for the recovery of only the direct costs of search, duplication, or review. 5 U.S.C. 552(a)(4)(A)(iv). Under the FOIA, agencies must promulgate regulations, pursuant to notice and public comment, specifying the schedule of fees applicable to processing FOIA requests; must establish procedures and guidelines for determining when such fees should be waived or reduced; and must conform their fee schedules to the OMB Fee Guidelines. 5 U.S.C. 552(a)(4)(A)(i). Pursuant to the OMB Fee Guidelines, agencies should charge fees that “recoup the full allowable direct costs they incur” and “shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA.” 52 FR 10018.

Duplication Fees. Proposed § 1015.9(e)(1) would amend the current regulations on fees the agency charges for the reproduction of documents to reflect CPSC staff’s review and the assessment of certain known costs of producing FOIA records for Fiscal Year 2019 and based on current CPSC practices. The OMB Fee Guidelines require agencies to “establish an average agency-wide, per-page charge for paper copy reproduction of documents,” which “shall represent the reasonable direct costs of making such copies, taking into account the salary of the operator as well as the cost of the reproduction machinery.” 52 FR 10018. For copies prepared by computer, the OMB Fee Guidelines require agencies to charge the actual cost, including operator time, of production of the printout. *Id.* For other methods of duplication, the OMB Fee Guidelines require agencies to charge the actual direct costs of producing the documents. *Id.*

Current 16 CFR 1015.9(e)(1) sets forth the amount charged for reproducing documents on a standard photocopying machine at \$0.10 per page. Proposed § 1015.9(e) would change the

regulation to specify a charge of \$0.15 per page for manual photocopies and for computer printouts that are sent from a computer to a printer or photocopier machine. The proposed fee for manual photocopies and computer printouts was calculated using the 2019 basic hourly pay rate of the average grade and step of staff members from the Office of the General Counsel, Division of the Secretariat (GCOS), who charged hours for FOIA projects in Fiscal Year 2019 (GS 12/4, or \$33.52/staff hour), plus 16 percent for the allowable OMB benefit rate; multiplying that amount by the total staff hours within the GCOS that are estimated to be attributable to FOIA duplication in Fiscal Year 2019 (486.45 staff hours); adding the estimated cost of paper and toner used by the GCOS staff for computer printouts in Fiscal Year 2019 (\$9,826); and dividing that number by the corresponding number of pages printed (196,820 pages). CPSC staff estimated the total hours spent by GCOS staff attributable to FOIA duplication in Fiscal Year 2019, by taking a poll of the FOIA specialists, whose most common response was that they spent 5 percent of their time on duplication.

Proposed § 1015.9(e) also would clarify that there is no duplication fee for producing records provided to requesters in electronic format. Because converting and sending an electronic file, such as a file in portable document format (PDF), to requesters via electronic mail or the FOIA online portal requires minimal operator time and computer and software costs, the agency's actual costs of duplicating these records are *de minimis*. The proposed rule also clarifies how the fees for costs will be assessed where records are available only in paper format and must be scanned to comply with a requester's preference to receive records in an electronic format.

Search Fees. Proposed § 1015.9(e)(2) would amend the current regulations on fees the agency charges for searches. Pursuant to the OMB Fee Guidelines, for manual searches, whenever feasible, agencies should charge at the salary rate of the employee making the search,

consisting of basic pay, plus 16 percent for the allowable OMB benefit rate; however, where a “homogenous class of personnel” is used exclusively, agencies may establish an average rate for the range of grades typically involved in searching for records. 52 FR 10018. For computer searches, agencies should charge the actual direct cost of providing the service, plus central processing unit (CPU) time that is directly attributable to searching for responsive records to a FOIA request. Alternatively, if agencies can do so, they may establish a reasonable agency-wide rate for operator, programmer, and CPU costs involved in FOIA searches and charge accordingly. *Id.*

Current §§ 1015.9(e)(2)-(3) divide searches into two categories: (1) searches conducted by clerical staff; and (2) searches conducted by non-clerical, professional, or managerial staff. The current regulations charge \$3.00 per quarter hour for clerical searches, and \$4.90 per quarter hour for non-clerical searches.

Proposed § 1015.9(e)(2) would remove the set dollar figures for search fees enumerated within the regulation itself, and in their place, state that search fees are based on the average grade and step of certain employees who charged hours in this category. CPSC staff believes that this avoids the need continuously to update the CPSC’s FOIA fee regulations to be consistent with General Schedule pay adjustments. This approach is similar to the FOIA fee regulations at several other agencies.

Additionally, due to organizational changes in the CPSC’s FOIA Office and how requests are processed, clerical staff rarely performs searches. Therefore, CPSC proposes to eliminate the category of clerical search fees. Consistent with this recommendation, and consistent with the OMB Fee Guidelines, the proposed regulations would distinguish between manual and computer-based searches.

The proposed manual search fee would be charged on a per-quarter-hour basis, and the exact rate would be calculated and published annually, using the basic hourly pay rate of the average grade and step of CPSC program staff who worked outside of the FOIA Office and who charged hours for FOIA projects in Fiscal Year 2019 (GS 14/7), plus 16 percent for the allowable OMB benefit rate.

The proposed computer search fee would be charged on a per-quarter-hour basis, and the exact rate would be calculated and published annually, using the basic hourly pay rate of the average grade and step of GCOS staff who charged hours for FOIA projects in Fiscal Year 2019 (GS 12/4), plus 16 percent for the allowable OMB benefit rate. CPSC program staff who work outside of the FOIA Office often conduct FOIA computer searches. However, CPSC staff has determined that the average grade and step of GCOS staff who charged hours for FOIA projects represents a reasonable agency-wide rate for operator costs in this category. The proposed computer search fee would not include CPU costs because any agency software or hardware costs directly attributable to searching for responsive records would be difficult to quantify and likely would be *de minimis*.

Review Fees. Proposed § 1015.9(e)(3) would amend the current regulations on fees the agency charges for the initial review of documents to determine whether any portion of any document may be withheld. The OMB Fee Guidelines permit agencies to establish a reasonable agency-wide average for such costs, where a single class of reviewers is typically involved in the review process. 52 FR 10018.

Current § 1015.9(4) sets forth the amount charged for review at \$4.90 per quarter hour. Similar to the proposed search fees, the proposed regulation would remove the set dollar figure review fee enumerated within the regulation itself. Instead, the review fee would be charged on

a per-quarter-hour basis, and the exact rate would be calculated and published annually, using the basic hourly pay rate of the average grade and step of GCOS staff who charged hours for FOIA review in Fiscal Year 2019 (GS 12/9), plus 16 percent for the allowable OMB benefit rate.

Obsolete Formats. The FOIA requires agencies to provide records in any format requested, if the record is readily reproducible by the agency in that form or format. 5 U.S.C. 552(a)(3)(B). Currently, CPSC routinely produces records in one of three formats: (1) computer printout, if under 250 pages; (2) compact disc (CD), if more than 250 pages; and (3) electronic files, such as PDF. The proposed amendments would clarify that requesters may request records in paper, CD, or electronic format. The proposed amendments also would remove the fee for producing records on microfiche because this format is obsolete and not routinely produced by the CPSC.

Annual Publication of Fees. Under the proposed regulations, the exact per-quarter-hour rates for searching and reviewing records would be calculated and published annually, using the most recent General Schedule table published by the Office of Personnel Management (OPM). In addition, the actual cost of CDs, DVDs, and other similar media would be calculated and published annually. These exact rates and costs would be made available to the public on the CPSC's FOIA webpage and would be available by request from GCOS. The CPSC also would annually publish on its FOIA webpage the salaries of CPSC employees associated with FOIA searches and reviews, consistent with the FOIA fee-posting practice observed at several other agencies.

Fee Waivers. The FOIA requires agencies to provide a fee waiver for search and duplication fees for certain categories of requesters in increments of the first 100 pages of duplication and the first 2 hours of search, rather than in dollar amounts. 5 U.S.C. 552(a)(4)(A)(iv). This proposed rulemaking would incorporate more clearly this statutory requirement into proposed §

1015.9(g), consistent with the OMB Fee Guidelines. 52 FR 10016. Proposed § 1015.9(g)(2) would specify that the first 100 pages of duplication will be waived for all non-commercial requesters, consistent with the FOIA and the OMB Fee Guidelines.

Proposed § 1015.9(g)(3) would specify that the first 2 hours of search time will be waived for all requesters to whom search fees apply, except commercial requesters.

Notice of Anticipated Fees. The OMB Fee Guidelines require agencies to implement procedures for notifying requesters when fees are estimated or determined to exceed \$25 and provide those requesters an opportunity to confer with agency staff with the objective of reformulating their request to meet their needs at a lower cost. 52 FR 10018. The CPSC's current FOIA fee regulations lack procedures for providing requesters with notice of anticipated fees in excess of \$25 and an opportunity to confer with agency staff. Proposed § 1015.9(f) would provide for notice of anticipated fees greater than \$25 and the opportunity to confer with staff on costs. The proposed regulations also would provide that requesters must commit in writing to pay the actual or estimated fees or designate in writing the amount of fees the requester is willing to pay before the FOIA Office will do further work on a FOIA request.

Restrictions on Assessing Fees. The FOIA and the OMB Fee Guidelines prohibit agencies from charging a fee if the costs of collecting and processing that fee are likely to equal or exceed the fee. 5 U.S.C. 552(a)(4)(A)(iv); 52 FR 10018-19. Current § 1015.9(g)(5) states that the CPSC will not request payment if the requester's total bill is less than \$9.00. CPSC staff estimates that the current cost to the agency of collecting and processing a fee is \$25. Accordingly, the proposed amendments would delete § 1015.9(g)(5), and add proposed § 1015.9(g)(7), which would provide that no fee will be charged when the total fee is equal to or less than \$25.

Advance Payment of Fees. The NPR proposes to add § 1015.9(i), which would set forth provisions for requiring advance payment before the production of records in certain cases. The OMB Fee Guidelines instruct agencies that they may not require a requester to make an advance payment unless: (1) the agency estimates that the allowable charges the requester may be required to pay are likely to exceed \$250, in which case they should notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require payment “of an amount up [to] the full estimated charges in the case of requesters with no history of payment”; or (2) a requester has previously failed to pay a fee charged in a timely fashion, in which case the agency may require the requester to pay the full amount owed, plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new or pending request. 59 FR 10020. Current § 1015.9(g)(3) states: “Before the Commission begins processing a request or discloses any information, it will require advance payment if charges are estimated to exceed \$250.00 and the requester has no history of payment and cannot provide satisfactory assurance that payment will be made; or a requester failed to pay the Commission for a previous Freedom of Information Act request within 30 days of the billing date.” The proposed amendments would reflect the language used in the OMB Fee Guidelines. *See* 59 FR 10020. The proposed amendments also would codify the CPSC’s current practices of tolling the processing of the request while notifying the requester that advance payment is due, 5 U.S.C. 552(a)(6)(A)(ii)(II), and closing the request if, after 30 days of receipt, the requester does not respond to the fee notice.

III. Proposed Amendments to Reflect Organizational Changes at CPSC.

FOIA Office. The organizational structure of the CPSC’s FOIA Office has changed since the FOIA regulations were last amended in 2017. *See* 82 FR 37010. The CPSC’s FOIA Office is now housed within the Office of the General Counsel, rather than the Office of the Secretary, and the Commission’s Assistant General Counsel for the Office of the General Counsel, Division of the Secretariat, holds the position of Chief FOIA Officer, rather than the Secretary of the Commission. The NPR proposes to amend 16 CFR 1015.1, 1015.2, 1015.3, 1015.4, 1015.5, 1015.6, 1015.7, and 1015.9 to replace the designations “Secretary of the Commission,” “Secretary,” or “Secretariat,” with the title, “Chief FOIA Officer,” and replace “Office of the Secretary” with “Office of the General Counsel, Division of the Secretariat” or “Division of the Secretariat.”

IV. Proposed Amendment Concerning Appeals.

Delegation of Authority. The current regulations are inconsistent regarding the delegation of authority to review and respond to FOIA appeals. This NPR proposes changes to §§ 1015.1(d), 1015.4, and 1015.7(e), to clarify that the Chairman delegates to the CPSC’s General Counsel the responsibility of reviewing and responding to FOIA appeals. Previously, the Commission issued this delegation by final rule in 1985, 50 FR 7753 (February 26, 1985), but did not codify the change in other relevant FOIA provisions.

Remands. Proposed § 1015.7(c) codifies the existing practice of the General Counsel remanding FOIA appeals to the Chief FOIA Officer, if the General Counsel decides to grant the appeal in whole or in part, and upon remand, the existing practice of the Chief FOIA Officer providing the records to the requester in accordance with the General Counsel’s decision.

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

Currently, 16 CFR 1015.5(h) states that the CPSC “may be unable to comply with the time limits set forth in § 1015.5 when disclosure of documents responsive to a request under this part is subject to the requirements of section 6(b) of the Consumer Product Safety Act.” However, the regulation does not take into account that, due to statutory obligations, the CPSC also may be unable to comply with the time limits set forth in 16 CFR 1015.5, when disclosure of documents responsive to a request is subject to section 6(a) of the Consumer Product Safety Act. As such, the CPSC proposes to amend 16 CFR 1015.5(h) to conform to the statute, by replacing the phrase, “section 6(b) of the Consumer Product Safety Act, 15 U.S.C. 2055(b),” with “section 6 of the Consumer Product Safety Act, 15 U.S.C. 2055.”

Additionally, current 16 CFR 1015.20, which addresses the release of accident or investigation reports, only allows for the application of the investigatory file FOIA exemption, and the redaction of the names of injured persons and the persons who treated the injured, pursuant to CPSA Section 25(c). Current CPSC practice, however, is to redact all personally identifiable information, including the names of injured persons and the persons who treated them, as well as the names of other persons incidental to a consumer complaint, pursuant to FOIA exemption (b)(6). *See* 5 U.S.C. 552(b)(b)(6). Rather than limit the applicable FOIA exemptions to the investigatory file exemption only, this NPR proposes to amend § 1015.20(a) to clarify that accident and investigation reports are subject to all applicable FOIA exemptions.

VI. Miscellaneous Amendments.

To ensure proper routing of new FOIA requests and appeals, CPSC’s FOIA Office created a separate email address for the submission of new FOIA requests and appeals. That address is cpscfoiarequests@cpsc.gov. Accordingly, the proposed rule would update §§ 1015.3(a) and 1015.7(a) to specify the proper email addresses to submit new requests and appeals.

VII. Environmental Considerations.

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

VIII. Regulatory Flexibility Act.

Under section 603 of the Regulatory Flexibility Act (RFA), when the Administrative Procedure Act (APA) or another law requires an agency to publish a general notice of proposed rulemaking, the agency must prepare an initial regulatory flexibility analysis (IFRA), assessing the economic impact of the proposed rule on small entities, or certify that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603(a), 605. The APA does not require a general notice of proposed rulemaking in this case because the proposed rule is "a rule of agency organization, procedure or practice." 5 U.S.C. 553. Nor does CPSC believe that a general notice of proposed rulemaking is required by the FOIA statute in this case. The 1976 FOIA statute originally required each agency to "promulgate regulations, pursuant to notice and receipt of comment, specifying the schedule of fees applicable to the processing of requests under [FOIA] and establishing procedures and guidelines for determining when such fees should be waived or reduced." 5 U.S.C. 552(a)(4)(A)(i). However, the FOIA statute does not require that subsequent amendments to the fee schedules or waiver rules be issued pursuant to notice and comment. Therefore, the RFA does not appear to be triggered, either under the APA or the FOIA law, even though CPSC is voluntarily following notice-and-comment procedures in this instance. Nevertheless, CPSC staff reviewed the potential impact of the

proposed changes in this rule on small entities. Staff’s analysis compared the number of fiscal year (FY) 2018 FOIA requesters to the number of small entities in the relevant North American Industrial Classification System (NAICS) sectors, and staff found there is unlikely to be a substantial number of small entities impacted by the proposed rule. Moreover, the impact on noncommercial entities would remain essentially unchanged, unless noncommercial requesters opt to receive their documents in paper format, rather than electronically. The costs for commercial firms has increased more than for other entities. However, requesters would be alerted if costs were expected to be greater than \$25, and commercial firms would be expected to proceed with the request (in whole or in part), only if the perceived benefit at least balanced the cost. Additionally, requesting firms can avoid duplication costs by electing to receive the requested documents electronically. CPSC solicits comments on any economic impact of the proposed rule and any possible regulatory alternatives to reduce the economic impact, if any, while fully implementing the FOIA and the CPSC’s statutory mandate. The CPSC will consider any such comments before promulgating the proposed rule in final form.

IX. Paperwork Reduction Act.

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

X. Executive Order 12988 (Preemption).

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. Section 26 of the CPSA explains the preemptive effect of consumer product safety standards issued under the CPSA. 15 U.S.C. 2075. The proposed rule is not a consumer product safety standard, but rather, the proposed rule would revise a rule of agency practice and procedure by making revisions and corrections to the agency's FOIA fee regulations. Therefore, section 26 of the CPSA would not apply to this rulemaking.

XI. Effective Date.

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

XII. Request for Comments.

The Commission requests comments on all aspects of the proposed rule. The Commission specifically solicits comments on the following questions:

- How would the proposed rule improve or impede the agency's efficiency and transparency in providing information to the public?
- How can the agency improve its FOIA fee practices and procedures, consistent with the FOIA and the OMB Fee Guidelines?
- Is the CPSC using the most efficient and least costly methods to comply with requests for documents made under the FOIA?

- Are there more accurate methods for calculating the CPSC’s direct costs of providing FOIA services, consistent with the FOIA and the OMB Fee Guidelines? If so, what are they?
- Does the proposed rule, including the proposed fee structure, provide sufficient transparency to the public to understand the procedures and costs associated with making FOIA requests?
- Does the proposed rule sufficiently address the process that will be used to determine, document, and notify a requester of a waiver or reduction of fees, including, but not limited to, the public interest waiver in §§ 1015.9(g)(4)-(5)?
- Is the proposed rule, including the proposed fee structure, compliant with the FOIA, the OMB Fee Guidelines, and all other applicable laws and regulations?

Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this document. Written comments must be received by **[INSERT DATE - 75 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

List of Subjects in 16 CFR 1015

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

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

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

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

Authority: 15 U.S.C. 2051-2084; 15 U.S.C. 1261-1278; 15 U.S.C. 1471-1476; 15 U.S.C. 1211-1214; 15 U.S.C. 1191-1204; 15 U.S.C. 8001-8008; Pub. L. 110-278, 122 Stat. 2602; 5 U.S.C. 552.

2. Amend § 1015.1 by:

a. Removing the words “Secretariat of the Commission” and adding in their place “Assistant General Counsel, Office of the General Counsel, Division of the Secretariat” in paragraph (c); and

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

§ 1051.1 Purpose and scope.

* * * * *

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

3. Revise § 1015.2 to read as follows:

§ 1015.2 Public inspection.

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

(b) The CPSC will maintain an electronic reading room on the Internet at <https://www.cpsc.gov> for records that are required by 5 U.S.C. 552(a)(2) to be available by

computer telecommunications. Records that the FOIA requires CPSC to make available for public inspection in an electronic format may be accessed through the CPSC’s FOIA webpage, which is accessible by visiting: <https://www.cpsc.gov>.

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

(1) Have been released to any person under 5 U.S.C. 552(a)(3);

(2) Because of the nature of their subject matter, the FOIA Office determines have become or are likely to become the subject of subsequent requests for substantially the same records; or

(3) That have been requested three or more times.

§ 1015.3 [Amended]

4. Amend § 1015.3 by:

a. Removing the word “Secretariat” and adding in its place the words “Chief FOIA Officer” in paragraph (a);

b. Removing the designation “cpsc-foia@cpsc.gov” and adding in its place the designation “cpscfoiarequests@cpsc.gov” in paragraph (a) ; and

c. Removing the word “Secretariat” and adding in its place the words “Chief FOIA Officer” in paragraphs (d) and (e).

5. Revise § 1015.4 to read as follows:

§ 1015.4 Responses to requests for records; responsibility.

The ultimate responsibility for responding to requests for records is vested in the Chief FOIA Officer of the Consumer Product Safety Commission. The Chief FOIA Officer, or

delegate of the Chief FOIA Officer, may respond directly, or forward the request to any other office of the CPSC for response. The Chief FOIA Officer's response shall be in the form set forth in § 1015.7(d), for action on appeal. If no response is made by the FOIA Office within 20 working days, or any extension of the 20-day period, the requester and the General Counsel or delegate of the General Counsel may take the action specified in § 1015.7(e).

6. Amend § 1015.5 by revising paragraphs (a) through (d), (f), (g) introductory text, (g)(1) introductory text, (g) (3) through (5), and (h) to read as follows:

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

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

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

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

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

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

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

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

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

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

* * * * *

(f) The Chief FOIA Officer, or delegate of the Chief FOIA Officer, may aggregate and process as a single request, requests by the same requester, or a group of requesters acting in

concert, if the Chief FOIA Officer, or delegate, reasonably believes that the requests actually constitute a single request that would otherwise satisfy the “unusual circumstances” specified in paragraph (b) of this section, and the requests involve clearly related matters.

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

(1) The term “compelling need” means:

* * * * *

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

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

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

(h) The Chief FOIA Officer may be unable to comply with the time limits set forth in paragraphs (a) through (d) of this section when disclosure of documents responsive to a request under this part is subject to the requirements of section 6 of the Consumer Product Safety Act, 15 U.S.C. 2055, and the regulations implementing that section, 16 CFR part 1101. The Chief FOIA Officer, or delegate of the Chief FOIA Officer, will notify requesters whose requests will be delayed for this reason.

7. Amend § 1015.6 by:

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

b. Revising paragraph (b)(4); and

c. Removing the word “Secretariat” and adding in its place the words “Chief FOIA Officer” in paragraph (c).

The revision reads as follows:

§ 1015.6 Responses: Form and content.

* * * * *

(b) * * *

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

* * * * *

8. Amend § 1015.7 by revising the section heading, and paragraphs (a) through (e) and (g), to read as follows:

§ 1015.7 Appeals from initial denials.

(a) When the Chief FOIA Officer, or delegate of the Chief FOIA Officer, has denied a request for records in whole or in part, the requester may, within 90 calendar days after the date of the denial or partial denial, appeal the denial to the Office of the General Counsel of the Consumer Product Safety Commission, attention: Division of the Secretariat. Appeals may be submitted through any of the following methods: the e-FOIA Public Access Link at <https://www.cpsc.gov>; email to cpscfoiarequests@cpsc.gov; U.S. mail to 4330 East West Highway, Room 820, Bethesda, MD 20814; or by facsimile to 301-504-0127. To facilitate

handling, the requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, "Freedom of Information Act Appeal."

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

(c) After reviewing the appeal, the General Counsel will issue a decision to either grant or deny the appeal, in whole or in part. If the General Counsel decides to grant the appeal in whole or in part, the General Counsel will inform the requester and submitter of the information, in accordance with §§ 1015.6(a) and 1015.18(b). Thereafter, the Chief FOIA Officer will provide the records in accordance with the General Counsel's decision.

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

(e) The General Counsel's action on appeal shall be in writing, shall be signed by the General Counsel, and shall constitute final agency action. A denial in whole or in part of a request on appeal shall set forth the exemption relied upon; a brief explanation, consistent with the purpose of the exemption, of how the exemption applies to the records withheld; and the reasons for asserting it. The decision will inform the requester of the right to seek dispute

resolution services from CPSC's FOIA Liaison or the Office of Government Information Services. A denial in whole or in part shall also inform the requester of his/her right to seek judicial review of the General Counsel's final determination in a United States district court, as specified in 5 U.S.C. 552(a)(4)(B).

(f) * * *

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

9. Amend § 1015.9 by:

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

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

The revisions and additions read as follows:

§ 1015.9 Fees for production of records.

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

* * * * *

(e) The following fee schedule will apply:

(1) *Duplication.* (i) Manual photocopies: \$0.15 per page.

(ii) Computer printouts that are sent from a computer to a printer or photocopier machine: \$0.15 per page.

(iii) Compact discs, DVDs, or other similar media duplications: direct-cost basis. The exact fees for duplication of records on these forms of media will be calculated and published annually

and are available to the public on the CPSC's FOIA webpage at <https://www.cpsc.gov> and from the Office of the General Counsel, Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814.

(iv) There is no duplication fee for producing records provided to requesters in electronic format.

(v) Requesters may request and be provided records in any format that is readily reproducible by the agency, including electronic format.

(vi) When records available only in paper format must be scanned to comply with a requester's preference to receive records in an electronic format, the requester must pay the direct costs of scanning those materials. The exact fees for scanning these materials will be assessed on a quarter-hour basis, be calculated and published annually, and are available to the public on the CPSC's FOIA webpage at <https://www.cpsc.gov> and from the Office of the General Counsel, Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814.

(2) *Searches.* Fees for searches are assessed on a quarter-hour basis. The exact fees for searches are calculated and published annually and are available to the public on the CPSC's FOIA webpage at <https://www.cpsc.gov> and from the Office of the General Counsel, Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814.

(i) Manual file searches: Manual search fees are calculated using the basic hourly pay rate of the average grade and step of employees who charged hours in this category (GS 14/7), plus 16 percent to account for the cost of benefits.

(ii) Computer searches. Computer search fees are calculated using the basic hourly pay rate of the average grade and step of employees who charged hours in this category (GS 12/4), plus 16 percent to account for the cost of benefits,.

(3) *Review*. Fees for review are assessed on a quarter-hour basis. The exact fee for review is calculated and published annually and is available to the public on the CPSC's FOIA webpage at <https://www.cpsc.gov> and from the Office of the General Counsel, Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814. The review fee is calculated using the basic hourly pay rate of the average grade and step of employees who charged hours in this category (GS 12/9), plus 16 percent to account for the cost of benefits. Fees for reviewing records will only be charged to commercial requesters.

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

(5) *Other charges*. (i) Materials requiring special reproducing or handling, such as photographs, slides, blueprints, video and audio tape recordings, or other similar media: direct-cost basis.

(ii) Any other service: direct-cost basis.

(f) *Notice of anticipated fees in excess of \$25*. (1) When the FOIA Office determines or estimates that the fees to be assessed will exceed \$25, the FOIA Office shall promptly notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review, and duplication, if applicable, and any applicable fee waivers that would apply to the request, unless the requester has indicated a willingness to pay fees as high as those anticipated. The notice shall specify that the requester may confer with agency staff with the

objective of reformulating the request to meet the requester's needs at a lower cost. If only a portion of the fee can be estimated readily, the FOIA Office will advise the requester accordingly. If the request is not from a commercial use requester, the notice shall specify that the requester is entitled to the statutory waivers of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge.

(2) When a requester has been provided notice of anticipated fees in excess of \$25, the FOIA Office shall toll processing of the request and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates the amount of fees the requester is willing to pay. In the case of a requester who is not a commercial requester, the requester may designate that the requester seeks only those services that can be provided in paragraphs (g)(2) and (3) of this section, without charge. The CPSC is not required to accept payment in installments.

(3) If the requester has committed to pay a designated amount of fees, but the FOIA Office determines or estimates that the total fee will exceed that amount, the FOIA Office shall toll processing of the request and notify the requester of the actual or estimated fees in excess of the requester's commitment. The FOIA Office 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 administrative time limits in § 1015.5 will resume.

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

(5) If a requester does not commit in writing to pay the actual or estimated total fee or designate in writing the amount of fees the requester is willing to pay within 30 working days

from the date of the notification letter, the request shall be closed. The FOIA Office shall notify the requester that the request has been closed.

(6) Any adverse determination made by the Chief FOIA Officer, or the designee of the Chief FOIA Officer, concerning a dispute over actual or estimated fees may be appealed by the requester to the General Counsel, in the manner described at § 1015.7.

(g) *Fee waivers*: There are three categories of requesters: Commercial; educational institutions, noncommercial scientific institutions, and representatives of the news media; and all other requesters, including members of the general public.

Requester Category	Search	Review	Duplication
Commercial (including law firms)	Fee	Fee	Fee
Educational, noncommercial scientific institutions, or news media	No Fee	No Fee	Fee after first 100 pages
All other requesters (including members of the general public)	Fee After First 2 Hours	No Fee	Fee after first 100 pages

Fees shall be waived as follows:

(1) No automatic fee waiver shall apply to commercial-use requests.

(2) The first 100 pages of duplication shall be waived for requests from the categories of educational institutions, noncommercial scientific institutions, representatives of the news media, and all other requesters (including members of the general public).

(3) The first 2 hours of search time shall be waived for the category of all other requesters (including members of the general public).

(4) The Chief FOIA Officer, or a designee of the Chief FOIA Officer, shall waive or reduce fees whenever disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the

government, and disclosure of the requested information is not primarily in the commercial interest of the requester.

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

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

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

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

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

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

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

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

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

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

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

(7) No fee will be charged when the total fee is equal to or less than \$25.

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

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

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

(2) Search fees may be charged, even if no responsive documents are located, or if the search leads to responsive documents that are withheld under an exemption to the Freedom of Information Act.

(3) The FOIA Office may aggregate requests, for the purposes of billing, whenever it reasonably believes that a requester, or, on rare occasions, a group of requesters, is attempting to separate a request into more than one request to evade fees. The FOIA Office shall not aggregate multiple requests on unrelated subjects from one requester.

(i) *Advance payment of fees.* (1) For requests other than those described in paragraphs (i)(2) and (3) of this section, the FOIA Office shall not require a requester to make advance payment (*i.e.*, payment made before the FOIA Office commences or continues work on a request). Payment owed for work already completed (*i.e.*, payment before copies are sent to a requester) does not constitute an advance payment for purposes of this rule.

(2) When the FOIA Office determines or estimates that a total fee to be charged under this section will exceed \$250, and the requester has no history of payment, the FOIA Office shall notify the requester of the actual or estimated fee and may require the requester to make an advance payment of the entire anticipated fee before beginning to process the request. A notice under this paragraph shall offer the requester an opportunity to discuss the matter with FOIA Office staff to modify the request to meet the requester's needs at a lower cost.

(3) When a requester has previously failed to pay a properly charged FOIA fee to the CPSC within 30 calendar days of the date of billing, the FOIA Office may notify the requester that the requester is required to pay the full amount owed, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the FOIA Office begins to process a new request or continues processing a pending request from that requester.

(4) When the CPSC FOIA Office requires advance payment, the FOIA Office will not further process the request until the required payment is made. The FOIA Office will toll the processing of the request while it notifies the requester of the advanced payment due, and the administrative time limits in § 1015.5 will begin only after the agency has received the advance payments. If the requester does not pay the advance payment within 30 calendar days from the date of the FOIA Office's fee notice, the FOIA Office will presume that the requester is no longer interested in the records and notify the requester that the request has been closed.

§ 1015.20 [Amended]

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

Alberta E. Mills
Secretary, Consumer Product Safety Commission

[FR Doc. 2020-07558 Filed: 4/15/2020 8:45 am; Publication Date: 4/16/2020]