

an interest in these issues may request an opportunity to make an oral presentation. Such persons may hand-deliver requests to speak, along with a computer diskette or CD in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format to Ms. Brenda Edwards at the address shown in the **ADDRESSES** section at the beginning of this notice between 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays. Requests may also be sent by mail to the address shown in the **ADDRESSES** section or email to [brenda.edwards@doe.gov](mailto:brenda.edwards@doe.gov).

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to be heard to submit an advance copy of their statements at least two weeks before the public meeting. At its discretion, DOE may permit any person who cannot supply an advance copy of their statement to participate, if that person has made advance alternative arrangements with the Building Technologies Program. The request to give an oral presentation should ask for such alternative arrangements.

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DOE will designate a DOE official to preside at the public meeting and may also employ a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA. (42 U.S.C. 6306) A court reporter will record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal conference style. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a prepared general statement (within DOE-determined time limits) prior to the discussion of specific topics. DOE will permit other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others.

Participants should be prepared to answer questions from DOE and other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be posted on the DOE Web site and will also be included in the docket, which can be viewed as described in the Docket section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D.

DOE will accept comments, data, and other information regarding this rulemaking before or after the public meeting, but no later than the date provided at the beginning of this notice. Please submit comments, data, and other information as provided in the **ADDRESSES** section. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format and avoid the use of special characters or any form of encryption. Comments in electronic format should be identified by the Docket Number EERE-2010-BT-STD-0043 and/or RIN 1904-AC36 and, wherever possible, carry the electronic signature of the author. No telefacsimiles (faxes) will be accepted.

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to

the submitting person which would result from public disclosure; (6) a date upon which such information might lose its confidential nature due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

#### V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of public meeting.

Issued in Washington, DC, on February 20, 2013.

**Kathleen B. Hogan,**

*(Signature)*

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#### FEDERAL TRADE COMMISSION

##### 16 CFR Part 4

##### Freedom of Information Act

**AGENCY:** Federal Trade Commission (FTC).

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Trade Commission is proposing to

NW., Washington, DC 20580, (202) 326-3355.

**SUPPLEMENTARY INFORMATION:** The Commission has determined that it is necessary to update its fee schedule for

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<sup>1</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. 16 CFR 4.9(c).

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<sup>2</sup> Office of Management and Budget: The Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012 (March 27, 1987).

entitled to receive under the OMB Guidelines.

In Rule 4.8(a)(3), 16 CFR 4.8(a)(3), the Commission proposes to add that review costs are recoverable even if a record ultimately is not disclosed.

In Rule 4.8(a)(4), 16 CFR 4.8(a)(4), the Commission proposes to expand the definition of “direct costs” to incorporate pre-existing guidance from the OMB Fee Guidelines.

In Rule 4.8(b), 16 CFR 4.8(b), the Commission proposes to clarify that the fee charges set out in this section apply unless the requester establishes the applicability of a public interest fee waiver pursuant to § 4.8(e). The Commission also includes a chart summarizing the types of charges that apply to requester categories set out later in paragraphs (b)(1)–(b)(3).

In Rule 4.8(b)(2), 16 CFR 4.8(b)(2), the Commission proposes to amend the definitions for “representative of the news media” to implement the definition codified at 5 U.S.C. 552(a)(4)(A)(ii) by the 2007 FOIA Amendments. The Commission also proposes amending the definition of “educational institution” to more closely comport with Section 6(h) of the

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<sup>3</sup> See 31 CFR 285.12(c)(4), which reads as follows:

Agencies are not required to transfer to FMS debts which are less than \$25 (including interest, penalties, and administrative costs), or such other amount as FMS may determine. Agencies may transfer debts less than \$25 to FMS if the creditor agency, in consultation with FMS, determines that transfer is important to ensure compliance with the agency’s policies or programs. Agencies may combine individual debts of less than \$25 owed by the same debtor for purposes of meeting the \$25 threshold.

10 days from the date of the notification, the request will be closed.

Lastly, the Commission proposes to revise Rule 4.8(k), 16 CFR 4.8(k), to reflect amendments made by the Debt Collection Improvements Act of 1996 (Pub. L. 104-134), which require agencies under the Federal Claims Collection Standards cited earlier to attempt to collect administratively established debts, such as FOIA fees, when bills are more than 30 days and up to 180 days past due. Also, the FCSS does not limit the agency's ability to pursue other authorized remedies such as alternative dispute resolutions and arbitration, and the Commission is including provisions for such remedial procedures. As previously noted, the Debt Collection Improvement Act of 1996 requires the Commission to forward all such debts, with certain exceptions, that are still unpaid after 180 days to the Department of Treasury for further debt collection efforts.

#### **Proposed Change to Fee Section in Rule 4.11**

There is a proposed new insert for Rule 4.11(a)(3)(i)(A)(3), which provides the explicit right to appeal fee waiver determinations and includes a clear deadline for filing the appeal.

The Commission believes that the proposed Rule amendments do not require an initial regulatory analysis under the Regulatory Flexibility Act because the amendments will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). Most requests for access to FTC records are filed by individuals, who are not "small entities" within the meaning of that Act, 5 U.S.C. 601(6), and, in any event, the economic impact of the rule changes on all requesters is expected to be minimal, if any. Moreover, these proposed rule amendments are matters of agency practice and procedure that are exempt from notice-and-comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b), which also exempts the proposed amendments from the analysis requirements of the Regulatory

Flexibility Act. Likewise, the proposed amendments do not contain information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501-520. The

(i) An individual is a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further the scholarly research of the institution and are not sought for a commercial or an individual use or goal.

(ii) An individual is an institution that is not operated on a nonprofit basis as that term is referenced in paragraph (b)(1) of this section, and that is operated solely to conduct scientific research the results of which are not intended to promote any particular product or industry.

(iii) An individual is any person or entity that 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 the public. 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 broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of news) who make their products available for purchase by or subscription by the general public or free distribution to the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would provide a

solid basis for such an expectation, but the past publication record of a requester may also be considered in making such a determination.

(3) Other requesters not described in paragraphs (b)(1) or (2) will be charged for the direct costs to search for and duplicate documents, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge.

(4) Notwithstanding the provisions of paragraphs (b)(1), (2), and (3) of this section, charges will be waived if the total chargeable fees for a request are under \$25.00.

(5) These provisions do not apply to recent Commission decisions and other public materials that may be made available to all requesters without charge while supplies last.

(6) The following uniform schedule of fees applies to records held by all constituent units of the Commission:

Duplication:	
Paper to paper copy (up to 8.5" x 14") .....	\$0.14 per page.
Converting paper into electronic format (scanning) .....	Quarterly hour rate of operator (Clerical, Other Professional, Attorney/Economist).
Electronic Services:	
Preparing electronic records and media .....	\$10.00 per qtr. hour.
Compact disc (CD) .....	\$3.00 per disc.
DVD .....	\$3.00 per disc.
Videotape cassette .....	\$2.00 per cassette.
Microfilm Services:	
Conversion of existing fiche/film to paper .....	\$0.14 per page.
Other Fees:	
Certification .....	\$25.00 each.
Express Mail .....	U.S. Postal Service Market Rates.
Records maintained at Iron Mountain or Washington National Records Center facilities (records retrieval, refiling, et cetera).	Contract Rates.
Other Services as they arise .....	Market Rates.

**Note to paragraph (b)(6):** Agency staff is divided into three categories: clerical, attorney/economist, and other professional. Fees for search and review purposes, as well the costs of operating duplication machinery such as converting paper to electronic format (scanning), are assessed on a quarter-hourly basis, and are determined by identifying the category into which the staff member(s) conducting the search or review or duplication procedure belong(s), determining the average quarter-hourly wages of all staff members within that category, and adding 16 percent to reflect the cost of additional benefits accorded to government employees. The exact fees are calculated and announced periodically and are available from the Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580; (202) 326-2222.

(7) Search fees will not be assessed for responses that fail to comply with the time limits in which to respond to a Freedom of Information Act request, provided at 5 U.S.C. 552(a)(4)(A)(viii) and § 4.11(a)(1)(ii), and if there are no unusual or exceptional circumstances, as those terms are defined by 5 U.S.C. 552(a)(6) and § 4.11(a)(1)(ii). Duplication fees will not be assessed for an untimely response, where there are no unusual or exceptional circumstances, made to a requester qualifying for one of the fee categories set forth in paragraph (b)(2) of this section.

(c) Each request for records shall set forth whether the request is made for non-

commercial purposes or whether the requester is an educational institution, a noncommercial scientific institution, or a representative of the news media. The deciding official (as designated by the General Counsel) will use this information, any additional information provided by the requester, and any other relevant information to determine the appropriate fee category in which to place the requester. § 4.11(a)(3)(i)(A)(3) of this chapter for procedures on appealing fee category and fee waiver determinations.

(d) (1) Each request that does not contain an application for a fee waiver as set forth in § paragraph (e) of this section shall specifically indicate that the requester will either:

(i) Pay, in accordance with paragraph (b) of this section, whatever fees may be charged for processing the request; or

(ii) Pay such fees up to a specified amount, whereby the processing of the request would cease once the specified amount has been reached.

(2) Each request that contains an application for a fee waiver shall specifically indicate whether the requester, in the case that the fee waiver is not granted, will:

(i) Pay, in accordance with paragraph (b) of this section, whatever fees may be charged for processing the request;

(ii) Pay fees up to a specified amount, whereby the processing of the request would cease once the specified amount has been reached; or

(iii) Not pay fees, whereby the processing of the request will cease at the point fees are to be incurred in accordance with paragraph (b) of this section.

(3) If the agreement required by this section is absent, and if the estimated fees exceed \$25.00, the requester will be advised of the estimated fees and the request will not be processed until the requester agrees to pay such fees. If the requester does not respond to the notification that the estimated fees exceed \$25.00 within 10 calendar days from the date of the notification, the request will be closed.

(e) *P* . . . . (1)  
*P* . . . . A requester may apply for a waiver of fees. The requester shall explain why a waiver is appropriate under the standards set forth in this paragraph. The application shall also include a statement, as provided by paragraph (d) of this section, of whether the requester agrees to pay costs if the waiver is denied. The deciding official ie applic requester5the din

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