



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

This document has been electronically approved and signed.

DATE: December 9, 2020

BALLOT VOTE SHEET

TO: The Commission
 Alberta E. Mills, Secretary

THROUGH: John G. Mullan, General Counsel
 Mary T. Boyle, Executive Director

FROM: Abioye E. Mosheim, Assistant General Counsel

SUBJECT: Final Rule Amending 16 CFR Part 1015, Fees for Production of Records and Technical Amendments

BALLOT VOTE DUE: Tuesday, December 15, 2020

Attached is a draft final rule amending 16 C.F.R. part 1015 (part 1015), the Commission’s rule on Procedures for Disclosure or Production of Information Under the Freedom of Information Act (FOIA Rules). On April 16, 2020, the Commission issued a notice of proposed rulemaking (NPR) to amend its FOIA fee regulations codified in part 1015, to reflect more accurately the Commission’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 NPR also proposed amendments to the FOIA Rules to reflect organizational changes in the FOIA Office; to codify the existing practice of the General Counsel remanding cases to the Chief FOIA Officer; and to allow for application of any relevant FOIA exemptions. After addressing two comments on the NPR, the Office of the General Counsel provides this draft final rule to finalize these amendments for Commission consideration.

Please indicate your vote on the following options:

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

 (Signature)

 (Date)

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

(Signature)

(Date)

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

(Signature)

(Date)

IV. Take other action specified below.

(Signature)

(Date)

Attachment: Draft *Federal Register* Notice: Final Rule for Fees for Production of Records; Other Amendments to Procedures for Disclosure of Information Under the Freedom of Information Act.

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: Final rule.

SUMMARY: On April 16, 2020, the Consumer Product Safety Commission (CPSC) issued a notice of proposed rulemaking (NPR) 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 proposed amendments to 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 application of any relevant FOIA exemptions. The CPSC is now finalizing these amendments.

DATES: The rule will be effective on **[INSERT 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Abioye Ella Mosheim, Chief FOIA Officer and Assistant General Counsel, email: amosheim@cpsc.gov; telephone: (301) 504-7454; or Matthew S. Osei-Bonsu, Attorney-Advisor, email: moseibonsu@cpsc.gov; telephone: (301) 504-

7071; U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814.

SUPPLEMENTARY INFORMATION:

A. Background and Statutory Authority

On June 30, 2016, the President signed into law the FOIA Improvement Act of 2016, Public Law No. 114-185 (2016)(2016 Act). The 2016 Act 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, the CPSC proposed amendments to its FOIA fee regulations, codified at 16 CFR part 1015 (part 1015). 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, the 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).

On April 16, 2020, the Commission issued an NPR to make the following changes to part 1015:

- amendments concerning FOIA fees;

- amendments reflecting recent organizational changes within the CPSC, and the CPSC’s FOIA Office, more specifically;
- amendments addressing the FOIA appeals process;
- amendments concerning the scope of FOIA Exemptions under 16 CFR § 1015.20; and
- other miscellaneous conforming amendments, all of which will be incorporated into the final rule and are summarized in greater detail below.

85 FR 21118-01. CPSC received two comments on the NPR. After reviewing the comments, the CPSC is finalizing this rule with modifications.

B. Response to Comments

The CPSC received two comments regarding the NPR. The National Archives and Records Administration (NARA) suggested that subsections (f) and (g) of § 1015.9 should be clarified to further distinguish between the terms “fee categories” and “fee waivers,” by removing language that could unintentionally lead to the mistaken inference that agencies have the discretion to waive fees based on requester categories. The CPSC agrees, and therefore, incorporated those comments into §§ 1015.9 (f) and (g), by distinguishing between fee waivers and references to free services. The consumer advocacy group, Kids in Danger, in relevant part, recommended that the CPSC should not charge duplication fees for pages redacted in full. The CPSC agrees, and therefore, incorporated those comments into § 1015.9 (e)(1)(iv), by noting that CPSC will not charge a duplication fee for pages redacted in full. Other Kids in Danger comments included a request for CPSC to provide more digital delivery methods, and to provide a faster turnaround for final responses; these comments were not incorporated. Digital delivery and response

turnaround times are outside the scope of this rule; although it should be noted that CPSC already has a digital delivery service that every requester can opt into.

C. Description of the Final Rule

A. Amendments Regarding 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; establish procedures and guidelines for determining when such fees should be waived or reduced; and 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. The final rule at § 1015.9(e)(1) will amend the current regulations on fees that the agency charges for reproducing 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. The final rule at § 1015.9(e) will 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. We calculated the fee for manual photocopies and computer printouts 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 we 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 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.

The final rule § 1015.9(e) clarifies that CPSC will not charge a duplication fee for producing records provided to requesters in electronic format, because converting an electronic file, such as a file in portable document format (PDF), and sending it 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 final rule also clarifies how the fees for duplication costs will be assessed when 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. The final rule at § 1015.9(e)(2) amends the current regulations on fees that 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 can 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.

The final rule at § 1015.9(e)(2) removes the set dollar figures for search fees enumerated in the regulation, and in their place, states that search fees are based on the average grade and step of certain employees who charged hours in this category. CPSC staff concludes that this revision eliminates the need to update continuously the CPSC's published FOIA fee regulations in accord with General Schedule pay adjustments. This approach is similar to the FOIA fee regulations at

several other agencies, such as the Federal Communications Commission, and the Securities and Exchange Commission.

Additionally, due to organizational changes in the CPSC's FOIA Office, and how requests are processed, clerical staff members rarely perform searches. Therefore, the final rule eliminates the category of clerical search fees. Consistent with this recommendation, and consistent with the OMB Fee Guidelines, the final rule distinguishes between manual and computer-based searches.

CPSC will charge manual search fees on a per-quarter-hour basis, and annually calculate and publish on the FOIA webpage the exact rate, 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.

CPSC will charge computer search fees on a per-quarter-hour basis, and annually calculate and publish the exact rate, 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. The Commission determined that the average grade and step of staff who charged hours for FOIA projects represents a reasonable agency-wide rate for operator costs in this category. The final rule computer search fee does 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. The final rule at § 1015.9(e)(3) amends the current regulations on fees that 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. The final rule removes the set dollar figure review fee enumerated in the regulation. Instead, CPSC will charge the review fee on a per-quarter-hour basis, and annually calculate and publish the exact rate, using the basic hourly pay rate of the average grade and step of GCOS staff who charged hours for FOIA review (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 final rule clarifies that requesters may request records in paper, CD, or electronic format. The final rule also will remove the fee for producing records on microfiche, because this format is obsolete and not routinely produced by the CPSC.

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

Fee Waivers and Fee Categories. The FOIA requires agencies to provide free 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). The final rule incorporates more clearly this statutory requirement into § 1015.9(g), consistent with the OMB Fee Guidelines. 52 FR 10016. Section 1015.9(g)(2) specifies that CPSC will provide for free the first 100 pages of duplication for all non-commercial requesters, consistent with the FOIA and the OMB Fee Guidelines.

The final rule at § 1015.9(g)(3) specifies that CPSC will provide at no cost, the first 2 hours of search time 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. The final rule at § 1015.9(f) provides for notice of anticipated fees greater than \$25, along with the opportunity to confer with staff on costs. The final rule also provides that requesters must commit in writing to pay the actual or estimated fees, or must 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 final rule deletes § 1015.9(g)(5), and adds § 1015.9(g)(7), which provides that no fee will be charged when the total fee is equal to or less than \$25.

Advance Payment of Fees. The final rule adds § 1015.9(i), which sets forth provisions for requiring advance payment in certain cases before the production of records. The OMB Fee Guidelines instruct agencies that they cannot 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, the agency 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 final rule reflects the language used in the OMB Fee Guidelines. *See* 59 FR 10020. The final rule also codifies 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.

B. Amendments to Reflect Organizational Changes at CPSC

FOIA Office. CPSC changed the organizational structure of the FOIA Office 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 within 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 final rule amends 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 the final rule also replaces “Office of the Secretary” with “Office of the General Counsel, Division of the Secretariat,” or “Division of the Secretariat.”

C. Amendment Concerning Appeals

Delegation of Authority. The current regulations are inconsistent regarding the delegation of authority to review and respond to FOIA appeals. The final rule changes §§ 1015.4, and 1015.7(e), to clarify that the CPSC’s General Counsel has responsibility for reviewing and responding to FOIA appeals, and adds § 1015.1(d). The Commission delegated this authority to the General Counsel in 1985, 50 FR 7753 (February 26, 1985); however, this authority was not codified in other relevant FOIA provisions.

Remands. Section 1015.7(c) codifies the existing practice regarding FOIA appeals. If the General Counsel grants, in whole or in part, a FOIA appeal, the General Counsel remands the matter to the Chief FOIA Officer for processing and providing the records to the requester, in accordance with the General Counsel’s decision.

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

Currently, § 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 § 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 final rule amends § 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 the phrase, “section 6 of the Consumer Product Safety Act, 15 U.S.C. 2055.”

Additionally, current § 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 section 25(c) of the CPSA. Current CPSC practice, however, is to redact all personally identifiable information, including not only the names of injured persons and the persons who treated them, but also 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, the final rule amends § 1015.20(a) to clarify that accident and investigation reports are subject to all applicable FOIA exemptions.

E. 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 final rule updates §§ 1015.3(a) and 1015.7(a) to specify the proper email addresses to submit new FOIA requests and appeals.

F. 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 final rule falls within the categorical exclusion.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires that agencies review a proposed rule and a final rule for the rule's potential economic impact on small entities, including small businesses. Section 604 of the RFA generally requires that agencies prepare a final regulatory flexibility analysis (FRFA) when promulgating final rules, unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. In this case, we noted in the NPR that neither the APA, nor the FOIA statute, required CPSC to issue an NPR, but CPSC voluntarily chose to follow notice-and-comment rulemaking.

For the NPR, CPSC staff reviewed the potential impact of the changes proposed in the NPR 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. Based on this analysis, staff concluded it was unlikely that a substantial number of small entities would be impacted by the proposed rule. Staff also concluded that the impact on noncommercial entities would remain essentially unchanged, unless

noncommercial requesters opt to receive their documents in paper format, rather than electronically. Staff found that the costs for commercial firms 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. Finally, staff noted that requesting firms can avoid duplication costs by electing to receive the requested documents electronically.

The Commission sought comment on staff's regulatory analysis in the NPR, and it received none. Because we have no information that would change staff's analysis, the Commission concludes that the final rule will not have a significant impact on a substantial number of small entities.

V. 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 final rule amends CPSC's regulations to conform to the 2016 Act, update certain CPSC's procedures by codifying them, and make other technical changes and corrections. The final rule does not impose any information-collection requirements. Thus, the PRA is not implicated by this final rule.

VI. 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 final rule is not a consumer product safety standard, but rather, the final rule revises 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 does not apply to this rule.

VII. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801-808) states that, before a rule can take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a “major rule.” Pursuant to the CRA, OIRA designated this rule as not a “major rule,” as defined in 5 U.S.C. 804(2). To comply with the CRA, the Office of the General Counsel will submit the required information to each House of Congress and the Comptroller General.

VIII. 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 NPR proposed a 30-day effective date for the final rule. The Commission received no comment on the effective date. Accordingly, the effective date is 30 days after the date of publication of this final rule in the **Federal Register**. 5 U.S.C. 553(d).

List of Subjects in 16 CFR 1015

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

For the reasons discussed above, 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 amends 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 as follows:

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

b. Add paragraph (d), to read as follows:

§ 1051.1 Purpose and scope.

* * * * *

(d) The General Counsel is the designated authority for the Commission’s FOIA Appeals and 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 can 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) have been requested three or more times.

§ 1015.3 [Amended]

4. Amend § 1015.3, as follows:

a. In paragraph (a), remove the word, "Secretariat." and add in its place, the words, "Chief FOIA Officer," and remove the designation, "cpsc-foia@cpsc.gov," and add in its place, the designation, "cpscfoiarequests@cpsc.gov"; and

b. In paragraphs (d) and (e), remove the word, "Secretariat," and add in its place, the words, "Chief FOIA Officer."

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 the delegate of the Chief FOIA Officer, can 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 the delegate of the General Counsel can 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 the 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 can 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 the 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 the 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 the 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 determine expeditiously any such appeal.

(5) The Chief FOIA Officer, or the 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 the delegate of the Chief FOIA Officer, will notify requesters whose requests will be delayed for this reason.

7. Amend § 1015.6, as follows:

a. In paragraphs (a) and (b) introductory text, remove the word “Secretariat,” and add in its place, the words “Chief FOIA Officer”;

b. Revise paragraph (b)(4), as follows:

§ 1015.6 Responses: Form and content.

* * * * *

(b) * * *

(4) A statement that the denial can 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 denial or partial denial from the Chief FOIA Officer, or the delegate of the Chief FOIA Officer.

* * * * *

c. In paragraph (c), remove the word “Secretariat,” and add in its place the words, “Chief FOIA Officer.”

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 the delegate of the Chief FOIA Officer, has denied a request for records, in whole or in part, the requester can, within 90 calendar days after the date of the denial or partial denial, appeal the denial to 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 either to 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 can, in his/her discretion, refer an appeal to the Chairman for determination.

(e) The General Counsel's decision 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, as follows:

a. Revise paragraphs (a) and (e) through (g); and

b. Add 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, or for pages redacted in full in any format.

(v) Requesters can 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, 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.

(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 100 pages of duplication at no charge, and if the requester is charged search fees, 2 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 wishes to 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 can be appealed by the requester to the General Counsel, in the manner described at § 1015.7.

(g) *Fee waivers and fee categories:* 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 assessed as follows:

- (1) Full fees shall apply to commercial-use requests.
- (2) The first 100 pages of duplication shall be free 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 free for the category of all other requesters (including members of the general public).

(4) The Chief FOIA Officer, or the 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 the 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 not be charged for all requests and duplication fees shall not be charged 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 has 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 reductions or 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