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FOR FURTHER INFORMATION CONTACT:

Rachel Berdansky, Deputy Director, rberdansky@cftc.gov, 202-418-5429; Swati Shah, Associate Director, sshah@cftc.gov, 202-418-5042; Caitlin Holzem, Special Counsel, cholzem@cftc.gov, 202-418-5557; Division of Market Oversight, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: On March 19, 2024, the Commission published proposed amendments² to Parts 37 and 38 that would: adopt the existing standards under the Guidance and Acceptable Practices for DCMs implementing Core Principle 15 and Core Principle 16; adopt rules implementing SEF Core Principle 12 rules that are consistent with existing standards under the Guidance and Acceptable Practices for DCM Core Principles 15 and 16; move certain existing conflicts of interest and governance requirements from Part 1 to Part 37 for SEFs and Part 38 for DCMs; adopt Part 38 rules more detailed standards concerning the DCM Chief Regulatory Officer; adopt as Parts 37 and 38 more detailed standards concerning the Regulatory Oversight Committee (“ROC”); amend Part 37 and 38 regulations regarding the notification of a transfer of equity interest in a SEF and DCM. The comment period for the NPRM closes on April 22, 2024.

In a March 24, 2024, Request Letter,³ commenters express concerns that the originally-allotted 60-day comment period is insufficient. The Commission is extending the comment period by an additional twenty-one days in order to allow interested persons additional time

² Requirements for Designated Contract Markets and Swap Execution Facilities Regarding Governance and the Mitigation of Conflicts of Interest Impacting Market Regulation Functions, 89 FR 19646 (Mar. 19, 2024).

³ See Letter from the Joint Compliance Committee (“JCC”), dated March 24, 2024. Available at <https://comments.cftc.gov/Handlers/PdfHandler.ashx?id=35300> (the “Extension Request Letter”). The requested extension comment period was through June 26, 2024.

to analyze the proposal and prepare their comments.

Issued in Washington, DC, on April 22, 2024 by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: the following appendix will not appear in the Code of Federal Regulations.

Appendix to Requirements for Designated Contract Markets and Swap Execution Facilities Regarding Governance and the Mitigation of Conflicts of Interest Impacting Market Regulation Functions—Commission Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, and Pham voted in the affirmative. Commissioner Mersinger voted to concur. No Commissioner voted in the negative.

[FR Doc. 2024-08872 Filed 4-24-24; 8:45 am]

BILLING CODE 6351-01-P

POSTAL REGULATORY COMMISSION

39 CFR Part 3006

[Docket No. RM2024-5; Order No. 7052]

RIN 3211-AA38

Freedom of Information Act

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Notice of Proposed Rulemaking seeks comment on a proposal to amend the Commission’s Freedom of Information Act (FOIA) regulations. The proposal is designed to improve readability by reorganizing and rephrasing existing content in a more accessible manner. Additionally, the proposal would better align the Commission’s existing FOIA regulations with the practices of other agencies subject to the FOIA, as necessarily adapted to the Commission’s size and area of regulatory oversight. Finally, the proposal includes amendments to clarify and amplify the information given to the public and improve the efficiency of the Commission’s FOIA administration. This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 23, 2024.

ADDRESSES: Submit comments electronically via the Commission’s Filing Online system at <https://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by

telephone for advice on filing alternatives. The Rule Summary can be found on the Commission’s Rule Summary Page at <https://www.prc.gov/rule-summary-page>.

FOR FURTHER INFORMATION CONTACT:

David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Basis of Proposed Rules
- III. Proposed Rules

I. Background

The Commission is an independent Federal agency that regulates the United States Postal Service (“Postal Service”). The Commission’s mission is to ensure transparency and accountability of the Postal Service and to foster a vital and efficient universal mail system. The Commission is subject to the FOIA. The Commission is also a micro agency with fewer than 100 employees. Year to year, the bulk of the FOIA requests received by the Commission are intended for the Postal Service and the requester is therefore directed to the Postal Service, as a best practice. The Commission’s existing FOIA regulations appear in existing 39 CFR part 3006.

II. Basis of the Proposed Rules

Based on experience with the existing FOIA regulations, the Commission proposes amendments that would improve readability, align the Commission’s existing FOIA regulations with the practices of other agencies subject to the FOIA (with appropriate adaptations for the Commission’s size and area of regulatory oversight), improve the efficiency of the Commission’s FOIA administration, and clarify and amplify the information provided to the public.

To improve readability, the Commission proposes to organize the material currently appearing in existing 39 CFR part 3006, by grouping related material (individual sections of the existing regulations) under three new subparts. The proposed order of the subparts seeks to provide the public with information in a more easily accessible manner. Sections and subparts are organized to provide the most general material first, which likely will be of interest to the widest audience.

The Commission also proposes amendments that would better align content with the practices of other agencies subject to the FOIA (as necessarily adapted to the Commission’s size and area of regulatory oversight), improve the efficiency of the Commission’s FOIA administration, and amplify the usefulness of the information provided to the public.

Accordingly, much of the proposed content is modeled upon the sample language appearing in the U.S. Department of Justice, Office of Information Policy's Template for Agency FOIA Regulations.

III. Proposed Rules

List of Subjects in 39 CFR Part 3006

Administrative practice and procedure, Freedom of information, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons stated in the preamble, the Commission proposes to amend 39 CFR part 3006 as follows:

PART 3006—PUBLIC RECORDS AND FREEDOM OF INFORMATION ACT

■ 1. The authority citation for part 3006 continues to read as follows:

Authority: 5 U.S.C. 552; 39 U.S.C. 407, 503, 504.

■ 2. Revise part 3006 to read as follows:

PART 3006—PUBLIC RECORDS AND FREEDOM OF INFORMATION ACT

Subpart A—General Provisions

- Sec.
- 3006.100 Applicability and scope.
 - 3006.101 Commission policy.
 - 3006.102 Proactive disclosures.
 - 3006.103 Reading room.
 - 3006.104 Chief Freedom of Information Act Officer.
 - 3006.105 Freedom of Information Act Public Liaison.
 - 3006.106 Commission procedure when served a subpoena.

Subpart B—Procedures for Freedom of Information Act Requests

- Sec.
- 3006.200 Procedures for submitting requests.
 - 3006.201 Timing of responses to requests.
 - 3006.202 Responses to requests.
 - 3006.203 Appeals.
 - 3006.204 Relationship among the Freedom of Information Act, the Privacy Act, and the Commission's procedures for according appropriate confidentiality.
 - 3006.205 Consultations, referrals, and coordinations.
 - 3006.206 Submission of non-public materials by a person other than the Postal Service.

Subpart C—Fees for Freedom of Information Act Requests

- Sec.
- 3006.300 Definitions applicable to this subpart.
 - 3006.301 Request category.
 - 3006.302 General provisions.
 - 3006.303 Fee schedule.
 - 3006.304 Procedure for assessing and collecting fees.

Subpart A—General Provisions

§ 3006.100 Applicability and scope.

(a) The rules in this part apply to requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. These rules should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget (OMB Guidelines).

(b) Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed in accordance with the Commission's Privacy Act regulations appearing in part 3005 of this chapter and § 3006.204.

§ 3006.101 Commission policy.

(a) The Commission shall be proactive and timely in identifying and posting public records and other frequently requested records to its website.

(b) It is the stated policy of the Commission that FOIA requests shall be administered with a clear presumption of openness. The Commission will only withhold information if it reasonably foresees that disclosure would harm an interest protected by a FOIA exemption, such as information specifically exempted from disclosure by statute (for example 39 U.S.C. 410(c)), or disclosure is otherwise prohibited by law.

(c) This Commission policy does not create any right enforceable in court.

§ 3006.102 Proactive disclosures.

(a) Except as provided in § 3006.101(b) and in part 3011 of this chapter, Commission records, required by the FOIA to be made available, will be made available on the Commission's website, <http://www.prc.gov>.

(b) Descriptions of the Commission's organization, its methods of operation, statements of policy and interpretations, and procedural and substantive rules, are published in the **Federal Register** publication system, and are available on the Commission's website, <http://www.prc.gov>.

§ 3006.103 Reading room.

(a) The Commission maintains an electronic reading room at <http://www.prc.gov>.

(b) The records available for public inspection include, for example, decisions; reports; opinions; orders; notices; findings; determinations; statements of policy; copies of selected records released under FOIA; indexes required to be maintained under FOIA; and records relating to any matter or proceeding before the Commission.

(c) The Commission shall make available, in an electronic form, records previously released under FOIA and which the Commission determines are or are likely to become of significant public interest.

(d) Commission records that have been requested three or more times will be made available on the Commission's website, <http://www.prc.gov>.

§ 3006.104 Chief Freedom of Information Act Officer.

The Commission designates the General Counsel of the Commission as the Chief FOIA Officer. The Chief FOIA Officer shall be responsible for the administration of and reporting on the Commission's Freedom of Information Act program. The Chief FOIA Officer (and any individual(s) designated by the Chief FOIA Officer to communicate with FOIA requesters) may be contacted via email at FOIA@prc.gov or telephone at 202-789-6800.

§ 3006.105 Freedom of Information Act Public Liaison.

The Commission designates the Director of the Office of Public Affairs and Government Relations as the FOIA Public Liaison who shall assist in the resolution of any dispute between a requester and the Commission. The FOIA Public Liaison may be contacted via email at PRC-PAGR@prc.gov or telephone at 202-789-6800.

§ 3006.106 Commission procedure when served a subpoena.

If an officer or employee of the Commission is served with a subpoena duces tecum, material that is not part of the public files and records of the Commission shall be produced only as authorized by the General Counsel. Service of such a subpoena shall immediately be reported to the General Counsel with a statement of all relevant facts. The General Counsel will thereupon enter such order or give such instructions as it deems advisable.

Subpart B—Procedures for Freedom of Information Act Requests

§ 3006.200 Procedures for submitting requests.

(a) *Electronic submission requirements.* A request will receive the quickest possible response if it is submitted electronically. An electronic request may be submitted via the Commission's online FOIA request form that is accessible through the Commission's website (<http://www.prc.gov>), emailing FOIA@prc.gov, or the web portal at <http://www.prc.gov>.

www.foia.gov/. Each electronic request must:

- (1) Reasonably describe the records sought,
- (2) Identify the request category under § 3006.301, and
- (3) Include the requester's name, daytime telephone number, and a valid email or mailing address to receive records and written communications from the Commission regarding the request.

(b) *Hard copy submission requirements.* A requester may also submit a request for records via hard copy. Each hard copy request must:

- (1) Be in writing,
- (2) Be clearly identified as "Freedom of Information Act Request" both in the text of the request and on the envelope,
- (3) Be submitted to the Commission's office (901 New York Avenue NW, Suite 200, Washington, DC 20268-0001),
- (4) Reasonably describe the records sought, and
- (5) Include the requester's name, daytime telephone number, and a valid email or mailing address to receive records and written communications from the Commission regarding the request.

(c) *Content of request.* Each request must describe the records sought in sufficient detail to enable Commission personnel to locate them with a reasonable amount of effort. Whenever possible, the request should include specific information about each record sought that might assist the Commission in responding to the request, such as the type of record (e.g., contract, report, memorandum, etc.); the title or docket number of a specific document or report; the topic or subject matter; the name of the office and/or employees most likely to possess the record; the date or general timeframe of the record's creation; and any details related to the purpose of the record. Requests for email records should specify the likely senders and recipients, keywords, and a range of dates. Before submitting requests, a requester may contact the Chief FOIA Officer (or the individual's designee) or the FOIA Public Liaison to discuss the records sought and to receive assistance in describing the records. The request may also specify the requester's preferred method of communication (telephone, email, or mailing address) and the preferred form or format (including electronic formats) of the requested records.

(d) *Improper requests.* A request that does not reasonably describe the records sought or does not comply with the published rules regarding the procedures to be followed for submitting a request will be deemed to

be an improper FOIA request. If the Commission does not receive the additional information needed that reasonably describes the records to enable their location by the Commission with a reasonable amount of effort, then the Commission will administratively close the file.

(1) If after receiving a request, the Commission determines that it is improper, the Chief FOIA Officer or the individual's designee will provide one written notification to the requester using the contact information included in the request. The notification will inform the requester of all the following:

- (i) The reason(s) why the request is improper;
- (ii) The additional information needed from the requester that would reasonably describe the records to enable their location by the Commission with a reasonable amount of effort;
- (iii) The Commission will not be able to comply with the request unless the Commission receives such additional information in writing within the specified timeframe and if the Commission does not receive a written response containing the additional information needed within the specified timeframe, then it will presume that the requester is no longer interested in the records and will administratively close the file on the request;
- (iv) The preferred method for the requester to provide the additional information is by emailing FOIA@prc.gov;
- (v) The requester may also provide the additional information by mailing or by hand delivery during regular business hours (which are from 8 a.m. to 4:30 p.m. Eastern Time, except for Saturdays, Sundays, and Federal holidays) to the Office of Secretary and Administration, Postal Regulatory Commission, 901 New York Avenue NW, Suite 200, Washington, DC 20268-0001; and
- (vi) The contact information for the Chief FOIA Officer (or the individual's designee) and the FOIA Public Liaison, each of whom is available to assist the requester in reasonably describing the records sought.

(2) If the requester provides the additional information needed that reasonably describes the records to enable their location by the Commission with a reasonable amount of effort by the timeframe specified in the notification, then the Commission will confirm receipt of the information and process the request.

(3) After administrative closure, if the Commission receives the additional information needed that reasonably describes the records to enable their location by the Commission with a

reasonable amount of effort, then the Commission will notify the requester that the request will be processed as a new request.

(e) *Expedited processing.* At any time, a requester that has satisfied all applicable requirements of paragraphs (a) through (c) of this section may seek expedited processing of a request or an administrative appeal. To seek expedited processing, the requester must:

(1) Include "Expedited Freedom of Information Act Request" or "Expedited Freedom of Information Act Appeal" in the body of the submission;

(2) For any hard copy submission, include "Expedited Freedom of Information Act Request" or "Expedited Freedom of Information Act Appeal" on the envelope;

(3) Demonstrate a compelling need as defined in 5 U.S.C. 552(a)(6)(E)(v); and

(4) Certify the statement of compelling need to be true and correct to the best of the requester's knowledge and belief. The Commission has discretion to waive the certification requirement.

§ 3006.201 Timing of responses to requests.

(a) *In general.* Requests will ordinarily be responded to according to their order of receipt.

(b) *Multitrack processing.* (1) Unless expedited processing has been granted, the Commission places each request in simple or complex tracks based on the amount of work and time involved in processing the request. Factors considered in assigning a request into the complex track may include one or more of the following:

(i) The request involves voluminous documents;

(ii) The complexity of the material;

(iii) The request involves record searches at multiple facilities or locations;

(iv) The request requires consultation among the Commission or other agencies; or

(v) The number of open requests submitted by the same requester.

(2) Within each track, the Commission processes requests in the order in which they are received. When appropriate, the Chief FOIA Officer or the individual's designee will notify the requester of placing a request in the "Complex" track and provide the requester with an opportunity to limit the scope of the request. If the requester limits the scope of the request, it may result in faster processing.

(c) *Expedited processing.* (1) Requests and appeals shall be processed on an expedited basis whenever it is determined that they involve the following:

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

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information.

(2) Within 10 calendar days of the receipt of a request for expedited processing, the Chief FOIA Officer or the individual's designee will notify the requester of the decision whether to grant or deny expedited processing. If expedited processing is granted, the request shall be given priority, placed in the processing track for expedited requests, and shall be processed as soon as practicable. If a request for expedited processing is denied, the Chief FOIA Officer or the individual's designee will inform the requester of the denial in writing, the right to appeal the denial to the Commission in writing, and the procedures for appealing the denial. Any request for records that has been denied expedited processing will be processed in the same manner as a request that did not seek expedited processing.

(3) Where a compelling need is not shown in an expedited request as specified in § 3006.200(e), the Commission may grant the request for expedited processing at its discretion.

(d) *Unusual circumstances.* Whenever the statutory time limit for processing a request cannot be met because of "unusual circumstances", as defined in 5 U.S.C. 552(a)(6)(B)(iii), and the Commission extends the time limit on that basis, the Commission shall, before the expiration of the 20 business day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed. If an extension will exceed 10 business days, the Commission will:

(1) Provide the requester with an opportunity to modify the request or arrange an alternative timeframe for processing; and

(2) Make its FOIA Public Liaison available to the requester and apprise the requester of their right to seek dispute resolution services from the Office of Government Information Services.

(e) *Aggregating requests.* For the purposes of satisfying unusual circumstances under the FOIA, the Commission may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a single requester or by a group of

requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. Multiple requests that involve unrelated matters shall not be aggregated.

§ 3006.202 Responses to requests.

(a) *In general.* To the extent practicable and unless the request indicates a different preferred method of communication, the Commission will communicate with the requester electronically (such as via email). In determining which records are responsive to a request, the Commission will include only records in its possession and control on the date that it begins its search. If any other date is used, the Commission shall inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c) is not considered responsive to the request.

(b) *Acknowledgments of requests.* The Commission shall acknowledge the request and assign it an individualized tracking number if it will take longer than 10 days (excluding Saturdays, Sundays, and legal holidays) to process. The acknowledgment must include a brief description of the records sought to allow requesters to keep track of their requests more easily.

(c) *Grants of requests.* Once the Commission makes a determination to grant a request in full or in part, the Chief FOIA Officer or the individual's designee shall notify the requester in writing. The Commission also shall inform the requester of any fees charged and shall disclose the requested records to the requester promptly upon payment of any applicable fees. The Commission must inform the requester of the availability of the FOIA Public Liaison to offer assistance.

(d) *Adverse determinations of requests.* If the Commission makes an adverse determination denying a request in any respect, then the Chief FOIA Officer or the individual's designee shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(e) *Content of denials.* The denial shall be signed by the Chief FOIA Officer or the individual's designee and shall include:

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

(2) A brief statement of the reasons for the denial, including any FOIA exemption applied by the Commission in denying the request;

(3) An estimate of the volume of any records or information withheld, such as the number of pages or some other reasonable form of estimation, although such an estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption;

(4) A statement that the denial may be appealed under § 3006.203, and a description of the requirements; and

(5) A statement notifying the requester of the assistance available from the Commission's FOIA Public Liaison and the dispute resolution services offered by the Office of Government Information Services.

(f) *Markings on released documents.* Markings on released documents must be clearly visible to the requester. Records disclosed in part shall be marked to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the record, if technically feasible.

(g) *Use of record exclusions.* (1) If the Commission identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the Commission must confer with the Department of Justice, Office of Information Policy (OIP), to obtain approval to apply the exclusion.

(2) Upon invoking an exclusion, the Commission must maintain an administrative record of the process of invocation and approval of exclusion by OIP.

§ 3006.203 Appeals.

(a) *Discretionary review.* The Commission (on its own initiative) may review any decision of the Chief FOIA Officer or the individual's designee within 90 calendar days.

(b) *Requirements for making an appeal.* A requester may appeal an adverse decision on their FOIA request rendered by the Commission by submitting a hard copy to the Commission's office (901 New York Avenue NW, Suite 200, Washington, DC

20268–0001) or by emailing *FOIA@prc.gov*. The requester must make the appeal in writing and to be considered timely it must be postmarked, or in the case of electronic submissions, transmitted, within 90 calendar days after the date of the Commission's response. To facilitate handling, the requester must mark both the appeal letter and envelope or the subject line of the electronic transmission "Freedom of Information Act Appeal." The appeal must include, as applicable:

(1) A copy of the request, of any notification of denial or other action, and of any other related correspondence;

(2) The FOIA tracking number assigned to the request;

(3) A description of the action (or failure to act) which is being challenged;

(4) If challenging specific redactions made to responsive records, a statement identifying the specific redactions being challenged;

(5) A statement of the relief sought; and

(6) A statement of the reasons why the requester believes the action or failure to act is erroneous.

(c) *Adjudication of appeals.* (1) The decision of the Commission constitutes the final decision on the issue being appealed. The Commission will give prompt consideration to an appeal for expedited processing of a request. All other decisions normally will be made within 20 days (excluding Saturdays, Sundays, and legal holidays) from the time of the receipt by the Commission. The 20-business day response period may be extended by the Commission for a period not to exceed an additional 10 business days when reasonably necessary to permit the proper consideration of an appeal, under one or more of the "unusual circumstances", as defined in 5 U.S.C. 552(a)(6)(B)(iii). The aggregate number of additional business days used, however, may not exceed 10 business days.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(3) On receipt of any appeal involving classified information, the Commission must take appropriate action to ensure compliance with applicable classification rules.

(d) *Decisions on appeals.* A decision on an appeal must be made in writing. A decision that upholds the adverse determination in whole or in part will contain a statement that identifies the reasons for the affirmation, including any FOIA exemptions applied. The decision will provide the requester with notification of the statutory right to file

a lawsuit and will inform the requester of the mediation services offered by the Office of Government Information Services of the National Archives and Records Administration as a non-exclusive alternative to litigation. If the adverse determination is remanded or modified on appeal, the requester will be notified in writing and the Chief FOIA Officer or the individual's designee will further process the request in accordance with that appellate decision and respond directly to the requester. If not prohibited by or under law, the Commission may direct the disclosure of a record even though its disclosure is not required by law or regulation.

(e) *Engaging in dispute resolution services provided by OGIS.* Dispute resolution is a voluntary process. If the Commission agrees to participate in the dispute resolution services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

(f) *When an appeal is required.* Before seeking judicial review of an adverse determination rendered by the Commission on a FOIA request, a requester generally must first submit a timely administrative appeal.

§ 3006.204 Relationship among the Freedom of Information Act, the Privacy Act, and the Commission's procedures for according appropriate confidentiality.

(a) *Coverage.* FOIA applies to all Commission records and provides the public with access to government records.

(b) *Requesting records subject to the Privacy Act.* A request by an individual for the individual's own records contained in a system of records is governed by the Privacy Act. Release will first be considered under the Privacy Act pursuant to part 3005 of this chapter. However, if there is any record that the Commission need not release under the Privacy Act, the Commission will also consider the request under FOIA, and will release the record if FOIA requires it.

(c) *Requesting another individual's record.* Request for records of individuals which may not be granted under the Privacy Act shall be considered under FOIA.

(1) If the Commission makes a disclosure in response to a request and the disclosure is permitted by the Privacy Act's disclosure provision, 5 U.S.C. 552a(b), the Commission will rely on the Privacy Act to govern the disclosure.

(2) In some circumstances, the Privacy Act may prohibit the Commission's

ability to release records which may be released under FOIA.

(d) *Requesting a Postal Service record.* The Commission maintains custody of records that are both Commission and Postal Service records. Except when the Postal Service submits materials to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A), in all other instances that the Postal Service submits materials to the Commission that the Postal Service reasonably believes to be exempt from public disclosure, the Postal Service shall follow the procedures described in part 3011, subpart B of this chapter.

(1) A request made pursuant to FOIA for Postal Service records shall be referred to the Postal Service; and

(2) A request made pursuant to part 3011 of this chapter for records designated as non-public by the Postal Service shall be considered under the applicable standards set forth in that part.

(e) *Requesting a record submitted by a person other than the Postal Service.* The Commission maintains records of a confidential nature submitted by persons other than the Postal Service as non-public materials.

(1) A request made pursuant to FOIA for records submitted by a person other than the Postal Service shall adhere to the applicable procedures of § 3006.205. If such a FOIA request is not referred to a different Federal agency pursuant to § 3006.205(b), the Commission shall consider it in light of all applicable exemptions and in accordance with the following procedures:

(i) If such materials are designated as non-public, the Commission shall follow the procedures appearing in § 3006.206(b) through (d) in determining the FOIA request; or

(ii) In all other instances, the Commission shall determine the FOIA request after notifying the person of the FOIA request and providing the person with an opportunity to respond within 7 days of the date of the notice under the following circumstances:

(A) The records sought contain confidential commercial information that may be protected from disclosure under 5 U.S.C. 552(b)(4); and

(B) The Commission determines that it may be required to disclose the records, provided that at least one of the following applies:

(1) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under 5 U.S.C. 552(b)(4); or

(2) The Commission has a reason to believe that the requested information may be protected from disclosure under

5 U.S.C. 552(b)(4), but has not yet determined whether the information is protected from disclosure.

(2) A request made pursuant to part 3011 of this chapter for records designated as non-public by a person other than the Postal Service shall be considered under the applicable standards set forth in that part.

§ 3006.205 Consultations, referrals, and coordinations.

(a) *Consultations.* If records originated with the Commission but contain within them information of significance to another Federal agency or office, the Commission will typically consult with that other entity prior to making a release determination.

(b) *Referrals.* In addition to referring all requests made pursuant to FOIA for Postal Service records to the Postal Service as specified by § 3006.204(d)(1), if the Commission believes that a different Federal agency is best able to determine whether to disclose the record, the Commission will typically refer responsibility for responding to the request regarding that record to that agency. Ordinarily, the agency that originated the record is presumed to be the best agency to make the disclosure determination. Whenever the Commission refers any part of the responsibility for responding to a request to another agency, the Commission will notify the requester of the referral, including the name of the agency and that agency's FOIA contact information.

(c) *Coordinations.* The standard referral procedure is not appropriate where disclosure of the identity of the Federal agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement agency responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if the Commission locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an

interest protected by an applicable exemption, the Commission will coordinate with the originating agency to seek its views on disclosure of the record. The Commission then will notify the requester of the release determination for the record that is the subject of the coordination.

(d) *Classified information.* On receipt of any request involving classified information, the Commission will determine whether the information is currently and properly classified in accordance with applicable classification rules. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another agency under any applicable executive order concerning the classification of records, the Commission must refer the responsibility for responding to the request regarding that information to the agency that classified the information, or that should consider the information for classification. Whenever an agency's record contains information that has been derivatively classified (for example, when it contains information classified by another agency), the Commission must refer the responsibility for responding to that portion of the request to the agency that classified the underlying information.

(e) *Timing of responses to consultations and referrals.* All consultations and referrals received by the Commission will be handled according to the date that the first agency received the perfected FOIA request.

(f) *Agreements regarding consultations and referrals.* The Commission may establish agreements with other agencies to eliminate the need for consultations or referrals with respect to particular types of records.

§ 3006.206 Submission of non-public materials by a person other than the Postal Service.

(a) *Overlap with treatment of non-public materials.* Any person who submits materials to the Commission (submitter) that the submitter reasonably believes to be exempt from public disclosure shall follow the procedures described in part 3011, subpart B of this chapter, except when the submitter submits materials to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A).

(b) *Notice of request.* Except as provided in § 3006.204(d), if a FOIA request seeks materials designated as non-public materials, the Commission will provide the submitter with notice of the request. The Commission may

also provide notice when it has reason to believe that materials submitted by a person other than the Postal Service are possibly exempt from disclosure and may fall within the scope of any FOIA request.

(c) *Objections to disclosure.* A submitter may file written objections to the request specifying all grounds for withholding the information under FOIA within 7 days of the date of the notice. If the submitter fails to respond to the notice, the submitter will be considered to have no objection, beyond those objections articulated in its application for non-public treatment pursuant to § 3011.201 of this chapter, to the disclosure of the information.

(d) *Notice of decision.* If, after considering the submitter's objections to disclosure the Commission decides to disclose the information, it will give the submitter written notice of the decision and a brief explanation of the reasons for not sustaining the submitter's objections. The actual disclosure will not be made before 3 days after publication of the Commission's decision.

Subpart C—Fees for Freedom of Information Act Requests

§ 3006.300 Definitions applicable to this subpart.

Commercial use means a request from or on behalf of a person seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or person on whose behalf the request is made. In determining the applicability of this term, the use to which a requester will put the document is considered first; where reasonable doubt exists as to the use, the Commission may seek clarification before assigning the request to a category.

Direct costs means the expenditures the Commission incurs in searching for, duplicating, and, where applicable, reviewing documents to respond to a request. They include (without limitation) the salary of the employee(s) performing work (the basic pay rate of such employee(s) plus 16 percent to cover benefits).

Duplication means copying the documents necessary to respond to a request. Such copies may be paper, microform, audiovisual, or machine-readable.

Educational institution means a preschool, a public or private elementary or secondary school, an institution of graduate or undergraduate higher education, an institution of professional education, and an institution of vocational education,

which operates a program or programs of scholarly research.

Noncommercial scientific institution means an institution, not operated on a commercial basis (as referenced above), which is operated solely for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

Representative of the news media means 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 an audience. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of “news”) who make their products available for purchase or by subscription or by free distribution to the general public. These examples are not all inclusive and may include alternate media to disseminate news. 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 (e.g., by a publication contract or prior publication record), whether or not the journalist is actually employed by the entity.

Review means examining documents located in response to a request to determine whether any portion is exempt from disclosure, and processing or preparing documents for release, but not determination of general legal or policy issues regarding application of exemptions.

Search includes all time spent looking for material responsive to a request, including identification of pages or lines within documents. The term covers both manual and computerized searching.

§ 3006.301 Request category.

(a) *Fees.* The level of fee charged depends on the request category.

(1) *Commercial use.* A request appearing to be for commercial use will be charged the full direct costs of searching for, reviewing, and duplicating the records sought.

(2) *Educational and noncommercial scientific institutions.* A request from an educational or noncommercial scientific institution will be charged for the cost of duplication only (excluding charges for the first 100 pages). To be eligible for this category, a requester must show that the request is made under the auspices of a qualifying institution and that the records are not sought for

commercial use but are in furtherance of scholarly (in the case of educational institutions) or scientific (in the case of noncommercial scientific institutions) research.

(3) *News media.* A request from a representative of the news media will be charged the cost of duplication only (excluding charges for the first 100 pages).

(4) *Other requesters.* A request from any other person will be charged the full direct cost of searching for, reviewing, and duplicating records responsive to the request, except that the first 100 pages of duplication and the first 2 hours of search/review will be furnished without charge.

(b) *Privacy Act.* A request by an individual for the individual’s own records in a system of records will be charged fees as provided under the Commission’s Privacy Act regulations in part 3005 of this chapter.

§ 3006.302 General provisions.

(a) The Commission may charge search fees even if no records are found or if the records found are exempt from disclosure.

(b) Except in the case of commercial use requesters, the first 100 pages of duplication and the first 2 hours of search time are provided without charge.

(1) A page for these purposes is a letter- or legal-size sheet, or the equivalent amount of information in a medium other than paper copy.

(2) Search time for these purposes refers to manual searching; if the search is performed by computer, the 2 hours provided without charge will be equal to 2 hours’ salary of the person performing the search.

(c) No requester will be charged a fee when the Commission determines that the cost of collecting the fee would equal or exceed the fee itself. In determining whether cost of collection would equal or exceed the fee, the allowance for 2 hours’ search or 100 pages of duplication will be made before comparing the remaining fee and the cost of collection.

(d) Records will be provided without charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(e) No requester will be charged a fee after any search or response which occurs after the applicable time limits as described in §§ 3006.202 and 3006.203, unless:

(1) The Commission extends the time limit for its response due to unusual circumstances, pursuant to § 3006.201(d), and the Commission completes its response within the extension of time provided under that section; or

(2) The Commission extends the time limit for its response due to unusual circumstances and more than 5,000 pages are necessary to respond to the request and the Commission has discussed with the requester how they could effectively limit the scope of the request or made at least three good faith attempts to do so; or

(3) A court has determined that exceptional circumstances exist and excused the Commission from responding by court order.

(f) The Commission may, however, charge fees for review, and in some cases duplication, for a partial grant of a request while it reviews records that may be exempt and may be responsive to the request, so long as the partial grant is made within the applicable time limits.

§ 3006.303 Fee schedule.

(a) Fees will be calculated as follows:

(1) *Manual search.* At the salary rate (basic pay plus 16 percent) of the employee(s) making the search. Search time may be charged for even if the Commission fails to locate records or if records located are exempt from disclosure.

(2) *Computer search.* At the direct cost of providing the search, including computer search time directly attributable to searching for records responsive to the request runs and employee salary apportionable to the search.

(3) *Review (commercial use).* At the salary rate (basic pay plus 16 percent) of the employee(s) conducting the review. Charges are imposed only for the review necessary at the initial administrative level to determine the applicability of any exemption, and not for review at the administrative appeal level of an exemption already applied.

(4) *Duplication.* At 10 cents per page for paper copy, which the Commission has found to be the reasonable direct cost thereof. For copies of records prepared by computer the direct cost of production, including employee time, will be charged.

(5) *Additional services.* Postage, insurance, and other additional services that may be arranged for by the requester will be charged at actually incurred cost.

(b) In addition to the fee waiver provisions of § 3006.302(d), fees may be

waived at the discretion of the Commission.

§ 3006.304 Procedure for assessing and collecting fees.

(a) Advance payment may be required if the requester failed to pay previous bills in a timely fashion or when the fees are likely to exceed \$250.

(1) Where the requester has previously failed to pay within 30 days of the billing date, the Commission may require the requester to pay an advance payment of the estimated fee together with either the past due fees (plus applicable interest) or proof that the past fees were paid.

(2) When advance payment is required, the administrative time limits prescribed in 5 U.S.C. 552(a)(6) (§ 3006.201) begin only after such payment has been received.

(b) Interest at the rate published by the Secretary of the Treasury as prescribed in 31 U.S.C. 3717 will be charged on unpaid fee bills starting on the 31st day after the bill was sent. Receipt of a fee by the Commission, whether processed or not, will stay the accrual of interest.

By the Commission.

Erica A. Barker,
Secretary.

[FR Doc. 2024-08715 Filed 4-24-24; 8:45 am]

BILLING CODE 7710-FW-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2022-0295; FRL-10162-06-R5]

Air Plan Approval; Michigan; Revisions to Part 1 and 2 Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to Michigan Air Pollution Control rules Part 2 Air Use Approval for inclusion in the Michigan State Implementation Plan (SIP).

DATES: Comments must be received on or before May 28, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2022-0295 at <https://www.regulations.gov>, or via email to damico.genevieve@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed

from [Regulations.gov](https://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Constantine Blathras, Air Permit Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0671, blathras.constantine@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

I. Background

Section 110(a)(2)(C) of the Clean Air Act (CAA) requires that the SIP include a program to provide for the “regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that National Ambient Air Quality Standards (NAAQs) are achieved.” This includes a program for permitting construction and modification of both major and minor sources that the state deems necessary to protect air quality. The State of Michigan’s minor source permit to install rules are contained in Part 2, Air Use Approval, R. 336.1201 to R. 336.1299 of the Michigan Administrative Code. Changes to the Part 2 rules were submitted on November 12, 1993; May 16, 1996; April 3, 1998; September 2, 2003; March 24, 2009; February 28, 2017; and March 8, 2022. EPA approved changes to the Part

2 rules most recently in a final approval dated April 27, 2023 (88 FR 25498).

On September 27, 2022 (87 FR 58471), EPA proposed approval, via a direct final rule, of the Michigan SIP revisions submitted on March 8, 2022. During the public comment period, EPA received an adverse comment on the Michigan rule revisions to R 336.1285 “Permit to install exemptions; miscellaneous” and R 336.1291, “Permit to install exemptions; emission units with ‘de minimis’ emissions”. On November 14, 2022 (87 FR 68634), EPA withdrew the direct final rule. EPA approved the revisions to the Michigan rule revision which did not receive adverse comment (88 FR 25498, April 27, 2023). As explained in that action, we did not consider the comments received to be germane or relevant to EPA’s proposal to approve portions of Michigan’s Part 1 and Part 2 rules beyond the permit exemption rules, and therefore not adverse to approving them into the Michigan SIP.

EPA is now proposing to approve Michigan’s rules R 336.1285(2)(oo) and R 336.1291 into the Michigan SIP. On November 14, 2023, Michigan submitted a supplement to the original March 8, 2022, submittal by supplying additional information regarding the approval of Michigan rules R 336.1285(2)(oo) and R 336.1291 in response to comments we received on the rulemaking. These rules exempt certain processes and/or equipment from Michigan’s minor New Source Review permitting program. The November 14, 2023, Michigan supplemental submittal as well as the original March 8, 2022, submittal are available with the docket for this rulemaking action.

Michigan Rule R 336.1285(2)(oo)

Michigan rule R 336.1285(2)(oo) exempts vapor intrusion mitigation systems. Specifically, this exemption applies to equipment or systems, or both, used exclusively to mitigate vapor intrusion of an indoor space that is not on the property where the release of the hazardous substance occurred, and which has an exhaust that meets all of the following requirements:

- i. Unobstructed vertically upward.
- ii. At least 12 inches above the nearest eave of the roof or at least 12 inches above the surface of the roof at the point of penetration.
- iii. More than 10 feet above the ground.
- iv. More than 2 feet above or more than 10 feet away from windows, doors, other buildings, and other air intakes.