

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34- 59150 ; File No. S7-33-08]

Proposed Amendment to Existing Regulation Concerning Records Services, Fee Schedule

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (“Commission”) is soliciting comments on a proposed amendment to its regulation governing the fees for records services. The Commission’s schedule of fees for records services will be updated using a formula for the calculation of fees under the Freedom of Information Act (“FOIA”) and language that directs FOIA requesters to the Commission’s Web site. Using a formula, instead of set rates, will allow the Commission to charge fees that reflect its allowable direct costs.

DATES: Comments should be received on or before January 30, 2009 .

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/proposed.shtml>);
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-33-08 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F

Street, N.E., Washington, DC 20549-1090.

All submissions should refer to File Number S7-33-08. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, N.E., Washington, DC 20549 on official business days between the hours of 10:00 am and 3:00 pm. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Melinda Hardy, Assistant General Counsel, Office of the General Counsel, (202)551-5149; Securities and Exchange Commission, 100 F Street N.E., Washington, DC 20549-9612.

SUPPLEMENTARY INFORMATION

I. Discussion

The fees the Commission charges for searching, reviewing, and duplicating records pursuant to FOIA requests are set forth in 17 CFR 200.80e [Schedule of fees for records services]. The Commission believes it is appropriate to update its fee schedule for searching and reviewing records to comply with guidelines promulgated by the Office of Management and Budget, Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10,012, 10,018 (Mar. 27, 1987) (“OMB Guidance”), which instructs agencies to charge fees that recoup the full allowable direct costs that they incur. The OMB Guidance states that agencies may

charge the average basic pay rate of employees routinely performing these services plus 16% to cover associated benefits. Id. Also, “agencies may establish an average rate for the range of grades typically involved.” Id.

The current regulation contains set rates for FOIA request search and review activities: \$16/hour for grade 11 and below; and \$28/hour for grade 12 and above. The Commission is proposing to revise the regulation to provide the formula contained in the OMB Guidance rather than a set price. Moreover, the proposed regulation provides that the Commission will establish an average rate for each of the three different groups of grades typically involved: personnel in grades SK 8 or below; personnel in grades SK 9 to 13; and personnel in grades SK 14 or above.¹ The Commission’s website will contain current rates for search and review fees for each class. The rates will be updated when salaries change and will be determined by using the formula in the regulation and averaging the hourly rate of the different groups of grades of staff who routinely perform these duties. For the current calendar year, the fees would be assessed as follows: SK 8 or below: \$26/hour; SK 9 to 13: \$40/ hour; and SK 14 or above: \$70/hour. The cost of the average fee collection activity is \$20; therefore, no fee will be charged of \$20 or less. See 5 U.S.C. 552(a)(4)(A)(iv) (providing that no fee may be charged if fee exceeds costs of collecting and processing fee).

II. Statutory Basis

The Commission is proposing amendments to 17 CFR Part 200 pursuant to 5 U.S.C. 552 and 15 U.S.C. 78d-1.

¹ Fees for searches of computerized records will continue to be based on the actual cost to the Commission which includes machine and operator time. 17 C.F.R. 200.80(e)(9)(i).

List of Subjects in 17 CFR Part 200:

Administrative practice and procedure, Freedom of information, Organization and functions.

III. Text of Proposed Amendments

For the reasons set forth in the preamble, Title 17 Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 200 - ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart D - Information and Requests

1. The general authority citation for Part 200, subpart D, is revised to read as follows:

AUTHORITY: 5 U.S.C. 552, as amended, 15 U.S.C. 77f(d), 77s, 77ggg(a), 77sss, 78m(F)(3), 78w, 80a-37, 80a-44(a), 80a-44(b), 80b-10(a), 80b-11.

2. Section 200.80e, first paragraph, is revised to read as follows:

§ 200.80e Appendix E – Schedule of fees for records services.

Search and review services: The average salary rates (i.e., basic pay plus 16%) of employees performing these services. The hourly rates are listed on the Commission's Web site at <http://www.sec.gov/foia/feesche.htm>.

By the Commission

Florence E. Harmon
Acting Secretary

Date: December 23, 2008