



1500 Wilson Blvd., 5th Fl., Arlington, VA 22209

July 25, 2017

**VIA ONLINE SUBMISSION**

Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street NW.  
Washington, DC 20581

Dear Mr. Kirkpatrick:

Please accept these comments from America Rising in response to the amendments proposed by the Commodity Futures Trading Commission (CFTC) to its Freedom of Information Act (FOIA) regulations. *See* 82 Fed. Reg. 28001 (June 20, 2017).

America Rising is a political research and communications firm with headquarters in Arlington, Virginia. Since its establishment in 2013, America Rising has submitted more than 3400 public records requests to federal, state, and local government agencies. America Rising also has regularly submitted comments to federal agencies that have proposed revisions to their FOIA regulations since 2015.

America Rising generally views the CFTC's proposed amendments favorably. It respectfully suggests, however, that the agency reconsider the matters identified in the regulatory sections below.

**§ 140.5 Definitions.**

The definition of a "record" in subsection (d) should include any information that is maintained for the agency by an entity under government contract, for the purposes of records management. *See* 5 U.S.C. § 552(f)(2)(B) (defining a "record"). Conversely, the definition should not imply that all "appointment calendars and handwritten notes" are excluded as "personal convenience materials," because such material could, in fact, fall within the agency's control.

**§ 145.7 Requests for Commission records and copies thereof.**

Subsection (h) identifies six circumstances that qualify as "unusual circumstances." The statute, however, expressly limits the meaning of "unusual circumstances" to three circumstances. *See* 5 U.S.C. § 552(a)(6)(B)(iii).

Subsection (j) should state that a request “will” -- not “may” -- be given expedited processing if the requester demonstrates a compelling need.

### **§ 145.9 Petition for confidential treatment submitted to the Commission.**

CFTC should not require or permit administrative appeals from the agency’s determinations regarding submitter objections to disclosure. *See* 17 C.F.R. 145.9(f), (g). Executive Order 12600, upon which CFTC’s regulations must be based, does not contemplate an administrative appeals process. Accordingly, the vast majority of agencies, including the Department of Justice, have not promulgated appeal schemes. Indeed, DOJ routinely advises agencies to limit the administrative record to one round of arguments and to extend submitter deadlines sparingly, if ever. CFTC should follow DOJ’s lead in this respect instead of prolonging a process that invariably fails to produce a timely decision for the requester.

### **Appendix B to Part 145 - Schedule of Fees**

The definitions of an “educational institution” and a “representative of the news media” in subsection (c) should be revised to reflect recent case law. *See, e.g.*, 28 C.F.R. § 16.10(b) (DOJ regulation).

Further, the appendix should incorporate the fee restrictions imposed by the FOIA Improvement Act of 2016 for untimely agency responses. *See* FOIA Post, *Prohibition on Assessing Certain Fees When the FOIA’s Time Limits Are Not Met*, Oct. 19, 2016, <https://www.justice.gov/oip/blog/guidance-new-restrictions-assessing-certain-fees>.

Thank you for considering America Rising’s comments.

Sincerely,

/s/

Allan Blutstein  
Vice President, FOIA Operations