

approved hazardous waste management program. On October 31, 1986, EPA approved Indiana's program revision in accordance with 40 CFR 271.21(b). Final authorization of Indiana's program revision became effective on December 31, 1986. [51 FR 39752, October 31, 1986].

An extension of time in order to modify Indiana's hazardous waste program is warranted by the following two circumstances. First, official U.S. EPA guidance on section 3006(f) was not finalized until August 22, 1986.

In the absence of that finalized guidance and a comprehensive regulatory checklist for section 3006(f), the State and U.S. EPA exchanged eight letters and numerous telephone conversations on this subject. This dialogue started within a week after the Indiana Department of Environmental Management (IDEM) came into existence and culminated with agreement upon this schedule of compliance. Second, the establishment of an entirely new entity, the IDEM, which took over the responsibilities for the authorized hazardous waste program as of April 1, 1986, delayed the process of developing a schedule for implementing the RCRA Cluster I rules. Consequently, on July 24, 1986, the State requested a 6-month extension to adopt the rules. U.S. EPA granted Indiana's request on August 15, 1986.

Today EPA is publishing a compliance schedule for the State of Indiana to obtain the necessary authority for the following Federal program requirements: Section 3006(f)—Availability of Information.

The State has agreed to obtain the needed program revision according to the following schedule:

- Submit draft rule to U.S. EPA for review—June 1987
- Submit draft rule to Regulatory Board(s)—July 1987
- Public Hearing on proposed rule—October 1987
- Submit final rule to Regulatory Board(s) for adoption—December 1987
- Rule effective and application submitted—March 1988

The above schedule is contingent upon a determination by Indiana's Attorney General (A.G.) that no statutory change is needed to obtain authorization for section 3006(f) of HSWA. The IDEM has asked the Indiana A.G. to make a determination as to whether regulatory and/or statutory changes are required in this respect. A response from the Indiana A.G. is expected by April 1987. If it is determined that statutory changes are needed as a result of the A.G.'s review, then U.S. EPA and IDEM will

renegotiate the schedule, with U.S. EPA publishing it in the *Federal Register*.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(B).

Dated: April 9, 1987.

Robert Springer,

Acting Regional Administrator, Region V, U.S. EPA.

[FR Doc. 87-9295 Filed 4-23-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF LABOR

Veterans Employment and Training, Office of Assistant Secretary

41 CFR Ch. 61

Annual Report From Federal Contractors; Correction

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training (OASVET), Labor.

ACTION: Final rule; correction.

SUMMARY: This notice corrects an error in the definition of "Veteran of the Vietnam era" contained in the final rule published in the *Federal Register* on March 4, 1987 (52 FR 6674-6683).

EFFECTIVE DATE: April 24, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Carlon Johnson, Veterans' Employment and Training Service (OASVET), U.S. Department of Labor, S-1316, 200 Constitution Avenue NW., Washington, DC 20210, telephone: (202) 523-9110.

SUPPLEMENTARY INFORMATION: On March 4, 1987, the Department of Labor published a final rule which requires Federal contractors to report annually on, among other things, the numbers of special disabled and Vietnam era veterans in their workforce by job category and hiring location. In the definition of "Veteran of the Vietnam era" which appears at 50 FR 6678 and 6681, the phrase "for a period of more than 180 days" was inadvertently misplaced. It is corrected by this notice, as set forth below.

Dated: April 21, 1987.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

§ 61-250.1 [Corrected]

On page 6678, third column and on page 6681, second column, the definition of "Veteran of the Vietnam era" is revised to read:

"Veteran of the Vietnam era" means a veteran, any part of whose active military, naval or air service was during the period August 5, 1964, through May

7, 1975, who—(i) served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge, or (ii) was discharged or released from active duty because of a service connected disability. No veteran may be considered to be a veteran of the Vietnam era under this paragraph after December 31, 1991.

[FR Doc. 87-9350 Filed 4-23-87; 8:45 am]

BILLING CODE 4510-79-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 5 and 6

Implementation of Freedom of Information Reform Act; Changes to Freedom of Information Act and Privacy Act Fee Schedules

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is amending its Freedom of Information Act (FOIA) regulations to incorporate the recent changes to the FOIA regarding requests for agency enforcement records and regarding establishment of fees to be charged for search, review and duplication of records in response to FOIA requests. These rules implement the guidelines established by the Office of Management and Budget (OMB) and requirements of the Freedom of Information Reform Act of 1986, Pub. L. 99-570. In addition, FEMA is amending its Privacy Act regulations regarding fees to ensure consistency with appropriate changes to the FOIA fee regulations.

DATE: Effective May 26, 1987.

FOR FURTHER INFORMATION CONTACT: Linda M. Keener, FOIA/Privacy Specialist, (202) 646-3840.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (Reform Act) requires the Office of Management and Budget (OMB) to promulgate guidelines containing a uniform schedule of FOIA fees that are applicable to all agencies. On January 16, 1987, OMB published a notice of proposed guidance on the establishment of fees under the Freedom of Information Act (FOIA) in the *Federal Register*, 52 FR 1992. On March 27, 1987, OMB published a final publication of fee schedule and guidelines implementing certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L.

99-370). The final guidance incorporated changes deemed appropriate as a result of public comments received. On April 1, 1987, FEMA published a notice of proposed rulemaking to issue proposed implementing regulations in conformance with OMB's final guidance to fulfill the mandate of the Reform Act requiring that each agency's regulations must be issued in final form no later than April 25, 1987. FEMA received three comments pursuant to that notice. A sectional analysis of the comments is provided as follows:

Section-by-Section Analysis

Section 5.42(a)(1)—Definition of Commercial Use

The commenters objected to the definition of commercial use. One commenter suggested that this section should explicitly state that "authors, scholars and journalists writing books will not be considered commercial users." The commenter's reasoning was that as long as the primary benefit is to the public, FEMA should not concern itself that authors may derive some benefits from their publishing activity and also if someone engaging in First Amendment activities chooses to write a book instead of a newspaper article or a series of magazine articles, that person should not be considered a commercial user. One commenter also suggested that any definition of commercial use request should make it clear that "non-profit organizations, public interest groups, labor unions, libraries, and the news media are not commercial users." Another commenter suggested that a request can be deemed commercial only where the information is sought "solely for a private, profit-making purpose."

One commenter further argued that FEMA does not have authority to not process a FOIA request or not meet the FOIA time limits for processing because a requester does not explain his purpose or we deem that purpose "insufficient." The commenter feared that permitting our employees to deem a request "insufficient" without any definition or standards of "insufficient" may lead to arbitrary and possibly discriminatory handling of requests.

The "commercial use" request issue was addressed under OMB's final publication of fee schedule and guidelines implementing certain provisions of the Reform Act. The Reform Act required OMB to promulgate guidelines containing a uniform schedule of FOIA fees that is applicable to all agencies. We agree with OMB that although the legislative history is in conflict on the precise meaning of a "commercial use" request, it seems clear

that the Congress intended to distinguish between requesters whose use of the information was for a use that further business interests, as opposed to a use that in some way benefited the public. The amendment shifts some of the burden of paying for the FOIA to the former group and lessens it for the latter.

As opposed to the other fee categories created by the amendment, inclusion in this one is determined not by the identity of the requester, but the use to which he or she will put the information obtained. Because "use" is the exclusive determining criterion, it is possible to envision a commercial enterprise making a request that is not for a commercial use. It is also possible that a non-profit organization could make a request that is for a commercial use. Moreover, because use, not identity, controls, FEMA believes that it would be inappropriate and contrary to the intent of the Reform Act to specify particular requesters as fitting or not fitting within this category. We have also deleted the words, "nor waiver or reduction of fees based on an assertion that disclosure would be in the public interest." Although we do not believe that it is appropriate to specify particular organizations/requesters in this section, we have revised the section relating to "representatives of the news media" to specifically state that "A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use."

We have revised the portion of this section relating to the "insufficient" standard to clarify that where a requester does not explain his/her use (rather than purpose), or where his/her explanation (rather than purpose) is insufficient to permit a determination of the nature of the use, FEMA shall require the requester to provide information regarding the use to be made of the information and if the request does not include an agreement to pay all appropriate fees, FEMA will process such request only up to the \$30.00 threshold which is the estimated cost to FEMA to collect fees which we are prohibited from charging by law. This section is revised to omit the requirement that the requester must submit information on the use to be made of the information prior to FEMA accepting the request for processing or beginning the time limits for response. In addition, we are deleting the words, "and which identifies the specific category of the requester" from the sentence under Section 5.42(a) which reads, "The time limits for processing requests shall only begin upon receipt of

a proper request which reasonably identifies records being sought and which identifies the specific category of the requester."

Section 5.42(a)(2)—Definition of Representatives of the News Media

The commenters expressed concern that FEMA, following OMB's guidelines, proposes to define representatives of the news media as "any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term 'news' means information that is about current events or that would be of current interest to the public."

The Congress could easily have drafted the section to read "representatives of the media" rather than "news media," but it did not; therefore, FEMA agrees with OMB's guidelines that it is reasonable to give some weight to the term "news" when constructing a definition. *The American Heritage Dictionary* (Second College Edition, 1982) defines the word "news" as "Recent events and happenings, esp. those that are unusual or notable * * *. Information about recent events of general interest, esp. as reported by newspapers, periodicals, radio or television * * *. A presentation or broadcast of such information: newscast * * *. Newsworthy material." Thus, "news media" is further limited to purveyors of information that is current or would be of current interest.

The phrase "publish or broadcast news" is included so that it implies something more than merely "make information available." The news media perform an active rather than passive role in dissemination. Thus, they can be distinguished, for example, from an entity such as a library which stores information and makes it available on demand.

The provision for freelance eligibility, especially the term "solid basis for expecting publication" also drew comments. One commenter expressed concern that freelance journalists frequently have no "solid basis" for expecting publication since that is a determination for the editor and publisher to make ultimately and may be considered excluded from this category. Another commenter suggested that "a freelance journalist should be considered a 'representative of the news media' even with respect to requests that may be precursors to a particular article or that may never lead to a publishable story." FEMA's intent was to incorporate legitimate freelance representatives of the news media into

the categorical definition without opening the door to anyone merely calling himself or herself a freelance journalist. It was not FEMA's intention to reflect in any regard that we would only accept a publication contract as evidence of a solid basis for expecting publication. In fact, FEMA included that "A publication contract *would be the clearest proof* (emphasis added), but FEMA *may also look to the past publication record* (emphasis added) of a requester in making this determination." For clarification purposes, we are revising the sentence to read as follows: "For example, a publication contract would be the clearest proof, but FEMA may also look to the past publication record, press accreditation, guild membership, business registration, Federal Communications Commission licensing, or similar credentials of a requester in making this determination."

This section has also been revised to reflect that "A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use."

Section 5.42(a)(3)—Definition of Educational Institution

One commenter recommended the definition of educational institute would be one that includes but is not limited to all entities recognized by the Internal Revenue Service as "organized and operated exclusively for * * * educational purposes" pursuant to 26 U.S.C. Sec. 501(c)(3). That statute merely provides that "Corporations, and any community chest, fund, or foundation, organized and operated exclusively for * * * educational purposes * * *," qualify for exemption from taxation. This same issue was addressed in OMB's final publication and FEMA agrees with OMB that it is not appropriate to tie eligibility for inclusion in the "educational institution" fee category to an IRS interpretation of the institution's eligibility for tax exempt status. The IRS regulations interpreting this somewhat vague statutory provision are themselves too general to be useful in determining an institution's eligibility under the FOIA fee schedule.

Rather than using the IRS definition, FEMA is adopting OMB's definition of "educational institution" which was adapted from the Department of Education definition found in 20 U.S.C. 1681(c). This definition reads " 'educational institution' refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher

education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research."

As a practical matter, it is unlikely that a preschool or elementary or secondary school would be able to qualify for treatment as an "educational" institution since few preschools, for example, could be said to conduct programs of scholarly research. But, FEMA will evaluate requests on an individual basis when requesters can demonstrate that the request is from an institution that is within the category, that the institution has a program of scholarly research, and that the documents sought are in furtherance of the institution's program of scholarly research and not for a commercial use.

FEMA will review the request to ensure that it is apparent from the nature of the request that it serves a scholarly research goal of the institution, rather than an individual goal. The institutional versus individual test will apply to student requests as well. A student who makes a request in furtherance of the completion of a course of instruction is carrying out an individual research goal and the request would not qualify, although the student in this case would certainly have the opportunity to apply for a reduction or waiver of fees.

One commenter suggested that FEMA should read the phrase "scholarly or scientific research" conjunctively in association with the term "educational institution" so that a request from an educational institution in furtherance of either scholarly or scientific research would qualify. This same issue was addressed by OMB's final publication and FEMA likewise rejected this suggestion. The statute and the legislative history recite the formula "educational or scientific institution/ scholarly or scientific research," and it seems clear that the phrase was meant to be read disjunctively so that scholarly applies to educational institution and scientific applies to non-commercial institution.

Section 5.43(b)—Waiver or Reduction of Fees

One commenter suggested that for a requester to qualify for a fee waiver, he/she should not have to show more than that the requested information will contribute significantly to the operations or activities of the government, his/her expertise (ability to do research and writing), and his/her ability to disseminate information. The commenter challenged that the amount

of information which a journalist would have to provide to FEMA would be in violation of his/her right to privacy. FEMA finds these comments to be unfounded and believes that the information is adequate to make a determination to get an extra benefit.

One commenter suggested that agencies should establish presumptions that certain categories of requesters—public interest organizations, scholars, and journalists—are entitled to fee waivers. The commenter submitted detailed arguments as to why agencies should reject the Department of Justice's guidance on fee waivers. Since FEMA issued its proposed rule on April 1, 1987, and the Department of Justice (DOJ) guidance was not even dated until April 2, 1987, and was not received by the agencies until after that date, it is clear that FEMA's proposed changes were made without the benefit of DOJ's guidance. Even so, FEMA believes that the information described in this section is consistent with both DOJ's guidance and is necessary to adequately satisfy FEMA's need to ensure that disclosure of the information requested is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester when making determinations regarding fee waiver requests. FEMA has determined that no changes are necessary to this section.

Section 5.44(c)—Prepayment of Fees over \$250

Section 6.83(c)—Prepayment of Fees over \$250

One commenter suggested that Congress has never given FEMA or OMB the authority to make exceptions to the time limit requirements under these sections. The Amendments clearly permit agencies to charge and collect advance payments in two specific circumstances: (1) When fees will exceed \$250; or (2) when a requester has previously failed to pay fees in a timely fashion. FEMA presumes that Congress probably did not intend agencies to have to use the prepayment provision too frequently but that in the two specified instances authorizing its use, FEMA believes that by including the phrase "to charge and collect advance payments" Congress did intend that agencies would not begin processing requests until such time as they had collected advance payments. Therefore, the time limits would not begin until the request was accepted by the agency for processing. FEMA issued this section in

conformance with the OMB's final publication on fee guidelines and believes that the only changes necessary are the deleting of the words "over \$250" in these sections since prepayment applies to two specific circumstances and may be unclear with only one criteria identified in the title. FEMA has revised these sections accordingly.

Section 5.46(b)—Computer Searches for Records

One commenter argued that there is no basis in the Reform Act or its legislative history for construing the automatic waiver of fees for the first two hours of search time to mean something less than that for computer searches. FEMA rejects this suggestion; Congress made it clear that each agency develop regulations based on OMB's guidelines for uniform schedule of fees. FEMA's regulations are in conformance with OMB's guidelines on this section and therefore considered not only appropriate but also consistent with the requirements of the Reform Act.

Section 6.85(b)—"Administrative Change to Citation"

FEMA has made an editorial change in § 6.85(b) to change a citation from "U.S.C.A." to "U.S.C."

FEMA has determined that this document is not a major rule under E.O. 12291 since it has no significant economic effect upon the economy, nor does it affect prices of economic competition. This document has no significant impact on the environment and preparation of an environmental impact statement is not necessary.

This final rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

The publication of this notice is made in accordance with the requirements of 5 U.S.C. 553 of the Administrative Procedure Act.

List of Subjects in 44 CFR Parts 5 and 6

Freedom of Information Act, Production or disclosure of information, Privacy Act.

Accordingly, for reasons set out in the preamble, 44 CFR Chapter I, Subchapter A, is amended as follows:

PART 5—[AMENDED]

1. The authority citation for Part 5 is revised to read as follows:

Authority: 5 U.S.C. 552 as amended by Sections 1801–1304 of the Omnibus Anti-Drug Abuse Act of 1986 which contains the Freedom of Information Reform Act of 1986

(Pub. L. 99–570); Reorganization Plan No. 3 of 1978; and E.O. 12127.

2. Section 5.42 is revised to read as follows:

§ 5.42 Fees to be charged—categories of requesters.

(a) There are four categories of FOIA requesters: Commercial use requesters; representatives of news media; educational and noncommercial scientific institutions; and all other requesters. The time limits for processing requests shall only begin upon receipt of a proper request which reasonably identifies records being sought. The Freedom of Information Reform Act of 1986 prescribes specific levels of fees for each of these categories:

(1) When records are being requested for commercial use, the fee policy of FEMA is to levy full allowable direct cost of searching for, reviewing for release, and duplicating the records sought. Commercial users are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. The full allowable direct cost of searching for and reviewing records will be charged even if there is ultimately no disclosure of records. Commercial use is defined as a use that furthers the commercial, trade or profit interests of the requester or person on whose behalf the request is made. In determining whether a requester falls within the commercial use category, FEMA will look to the use to which a requester will put the documents requested. Where a requester does not explain his/her use, or where his/her explanation is insufficient to permit a determination of the nature of the use, FEMA shall require the requester to provide information regarding the use to be made of the information and if the request does not include an agreement to pay all appropriate fees, FEMA will process such request only up to the \$30.00 threshold which is the estimated cost to FEMA to collect fees which we are prohibited from charging by law. Requesters must reasonably describe the records sought.

(2) When records are being requested by representatives of the news media, the fee policy of FEMA is to levy reproduction charges only, excluding charges for the first 100 pages. Representatives of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio

stations broadcasting to the public at large, and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (i.e., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. For example, a publication contract would be the clearest proof, but FEMA may also look to the past publication record, press accreditation, guild membership, business registration, Federal Communications Commission licensing, or similar credentials of a requester in making this determination. To be eligible for inclusion in this category, requesters must meet the criteria specified in this section and his or her request must not be made for a commercial use basis as that term is defined under paragraph (a)(1) of this section. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought.

(3) When records are being requested by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, the fee policy of FEMA is to levy reproduction charges only, excluding charges for the first 100 pages. Educational institution refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research. Noncommercial scientific institution refers to an institution that is not operated on a commercial basis as that term is defined under paragraph (a)(1) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a

commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research. Requesters must reasonably describe the records sought.

(4) For any other request which does not meet the criteria contained in paragraphs (a)(1) through (3) of this section, the fee policy of FEMA is to levy full reasonable direct cost of searching for and duplicating the records sought, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. The first two hours of computer search time is based on the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the computer search, including the operator time and the cost of operating the computer to process the request, equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, FEMA shall begin assessing charges for computer search. Requests from individuals requesting records about themselves filed in FEMA's systems of records shall continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

(b) Except for requests that are for a commercial use, FEMA may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When FEMA believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, FEMA may aggregate any such requests and charge accordingly. For example, it would be reasonable to presume that multiple requests of this type made within a 30-day period had been made to avoid fees. For requests made over a longer period, however, FEMA must have a solid basis for determining that aggregation is warranted in such cases. Before aggregating requests from more than one requester, FEMA must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may FEMA aggregate multiple requests on unrelated subjects from one requester.

(c) In accordance with the prohibition of section (4)(A)(iv) of the Freedom of Information Act, as amended, FEMA shall not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(1) For commercial use requesters, if the direct cost of searching for, reviewing for release, and duplicating the records sought would not exceed \$30.00, FEMA shall not charge the requester any costs.

(2) For requests from representatives of news media or educational and noncommercial scientific institutions, excluding the first 100 pages which are provided at no charge, if the duplication cost would not exceed \$30.00, FEMA shall not charge the requester any costs.

(3) For all other requests not falling within the category of commercial use requests, representatives of news media, or educational and noncommercial scientific institutions, if the direct cost of searching for and duplicating the records sought, excluding the first two hours of search time and first 100 pages which are free of charge, would not exceed \$30.00, FEMA shall not charge the requester any costs.

3. Section 5.43 is revised as follows:

§ 5.43 Waiver or reduction of fees.

(a) FEMA may waive all fees or levy a reduced fee when disclosure of the information requested is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester.

(b) A fee waiver request shall indicate how the information will be used, to whom it will be provided, whether the requester intends to use the information for resale at a fee above actual cost, any personal or commercial benefits that the requester reasonably expects to receive by the disclosure, provide justification to support how release would benefit the general public, the requester's and/or intended user's identity and qualifications, expertise in the subject area and ability and intention to disseminate the information to the public.

4. Section 5.44 is revised as follows:

§ 5.44 Prepayment of fees.

(a) When FEMA estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250.00, FEMA may require a requester to make an advance payment of the entire fee before continuing to process the request.

(b) When a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), FEMA may require the requester to pay the full amount owed plus any applicable interest as provided in § 5.46(d), and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(c) When FEMA acts under paragraphs (a) or (b) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from the receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after FEMA has received fee payments described under paragraphs (a) or (b) of this section.

5. Section 5.46 is revised as follows:

§ 5.46 Fee schedule.

(a) *Manual searches for records.* FEMA will charge at the salary rate(s), (i.e., basic pay plus 16.1 percent) of the employee(s) conducting the search. FEMA may assess charges for time spent searching, even if the agency fails to locate the records or if records located are determined to be exempt from disclosure. FEMA may assess charges for time spent searching, even if FEMA fails to locate the records or if records located are determined to be exempt from disclosure.

(b) *Computer searches for records.* FEMA will charge the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search. FEMA may assess charges for time spent searching, even if FEMA fails to locate the records or if records located are determined to be exempt from disclosure.

(c) *Duplication costs.* (1) For copies of documents reproduced on a standard office copying machine in sizes up to 8½ x 14 inches, the charge will be \$.15 per page.

(2) The fee for reproducing copies of records over 8½ x 14 inches or whose physical characteristics do not permit reproduction by routine electrostatic copying shall be the direct cost of reproducing the records through government or commercial sources. If FEMA estimates that the allowable duplication charges are likely to exceed \$25, it shall notify the requester of the

estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(3) For copies prepared by computer, such as tapes or printouts, FEMA shall charge the actual cost, including operator time, of production of the tape or printout. If FEMA estimates that the allowable duplication charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(4) For other methods of reproduction or duplication, FEMA shall charge the actual direct costs of producing the document(s). If FEMA estimates that the allowable duplication charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(d) Interest may be charged to those requesters who fail to pay fees charged. FEMA may begin assessing interest charges on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(e) FEMA shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. FEMA may choose to contract with private sector services to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as but not limited to the Government Printing Office or the National Technical Information Service, FEMA will inform requesters of the steps necessary to obtain records from those sources.

6. Section 5.71 is amended by revising paragraph (g) and adding a new paragraph (j) to read as follows:

§ 5.71 Categories of records exempt from disclosure under 5 U.S.C. 552.

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

(j) Whenever a request is made which involves access to records described in paragraph (g)(1) of this section and the investigation or proceeding involves a possible violation of criminal law; and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, FEMA may, during only such time as that circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

PART 6—[AMENDED]

1. The authority citation for Part 6 continues to read as follows:

Authority: 5 U.S.C. 552a; Reorganization Plan No. 3 of 1978; and E.O. 12127.

§ 6.82 [Amended]

2. In § 6.82, remove "50" and add "300" in place thereof.

3. Section § 6.83 is revised as follows:

§ 6.83 Prepayment of fees.

(a) When FEMA estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250.00, FEMA may require a requester to make an advance payment of the entire fee before continuing to process the request.

(b) When a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), FEMA may require the requester to pay the full amount owed plus any applicable interest as provided in § 6.85(d), and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(c) When FEMA acts under § 5.44 (a) or (b), the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from the receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after FEMA has received fee payments described under § 5.44 (a) or (b).

4. Section 6.85 is revised as follows:

§ 6.85 Reproduction fees.

(a) *Duplication costs.* (1) For copies of documents reproduced on a standard office copying machine in sizes up to 8½ x 14 inches, the charge will be \$.15 per page.

(2) The fee for reproducing copies of records over 8½ x 14 inches or whose physical characteristics do not permit reproduction by routine electrostatic copying shall be the direct cost of reproducing the records through Government or commercial sources. If FEMA estimates that the allowable duplication charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(3) For other methods of reproduction or duplication, FEMA shall charge the actual direct costs of producing the document(s). If FEMA estimates that the allowable duplication charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of

reformulating the request to meet his/her needs at a lower cost.

(b) Interest may be charge to those requesters who fail to pay fees charged. FEMA may begin assessing interest charges on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.

Dated: April 20, 1987.

Julius W. Becton, Jr.,

Director.

[FR Doc. 87-9244 Filed 4-23-87; 8:45 am]

BILLING CODE 6716-01-M

FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

45 CFR Part 503

The Freedom of Information Reform Act of 1986; Revised Fee Schedule and Guidelines

AGENCY: Foreign Claims Settlement
Commission of the United States.

ACTION: Final rule.

SUMMARY: This rule implements certain provisions of the Freedom of Information Reform Act of 1986, which require the Foreign Claims Settlement Commission, as a Federal agency, to promulgate a revised fee schedule and guidelines applicable to the processing of requests for records under the Freedom of Information Act.

EFFECTIVE DATE: May 26, 1987.

SUPPLEMENTARY INFORMATION: Under the terms of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570) ("FOIRA"), Foreign Claims Settlement Commission of the United States ("the Commission") was required to promulgate for public notice and comment a proposed new schedule of fees to be charged and guidelines to be followed in its processing of requests for records under the Freedom of Information Act. As required by the legislation, the Commission developed these regulations pursuant to, and in conformity with, the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget on pages 10012-10019 of the *Federal Register* on March 27, 1987. The Commission published its proposed fee schedule and guidelines in the *Federal Register* on pages 11712-11713 on April 10, 1987, and subsequently added a correction thereto which was published on page 12040 of the *Federal Register* on April 14, 1987. The final deadline for receiving comments was April 21, 1987. No

comments were received. However, following a review of the schedule and guidelines in their proposed form, one addition has been determined necessary. This added provision, relating to waiver or reduction of fees (subparagraph (j)), states that no charges will be assessed in connection with the processing of a request for records under the Freedom of Information Act where the amount of the applicable fees is \$8.00 or less. According to information obtained from the Department of Justice, which furnishes the Commission's administrative support services, this \$8.00 figure reflects the Department's costs for "routine collection and processing" of a payment of fees in connection with a request for records under the Act. Inclusion of this figure is required in order to conform to the Commission's regulations to the FOIRA, which provides that "No fee may be charged by any agency under this section—(1) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee." (5 U.S.C. 552(a)(4)(iv)).

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities, as those terms are used in the Act. The rule will not affect or involve any appreciable percentage of the community which small entities comprise.

FOR FURTHER INFORMATION CONTACT:

David E. Bradley 202-653-5883.

SUPPLEMENTARY INFORMATION:

For the reasons set out in the preamble, § 503.14 of Chapter V of Title 45 of the *Code of Federal Regulations* is revised as follows.

List of Subjects in 45 CFR Part 503

Freedom of Information.

PART 503—[AMENDED]

1. The authority citation for 45 CFR Part 503 is revised to read as follows:

Authority: 5 U.S.C. 552

2. Section 503.14 of 45 CFR Part 503 is redesignated as § 503.13 and is revised as follows:

§ 503.13 Fees for services.

The following provisions shall apply in the assessment and collection of fees for services rendering in processing requests for disclosure of Commission records under this part.

(a) *Fee for duplication of records.* \$0.15 per page.

(b) *Search and review fees.* (1) Searches for records by clerical personnel—\$2.00 per quarter hour, including time spent searching for and copying any record.

(2) Search for and review of records by professional and supervisory personnel—\$5.50 per quarter hour spent searching for any record or reviewing a record to determine whether it may be disclosed, including time spent in copying any record.

(c) *Certification and validation fee.* \$1.00 for each certification, validation or authentication of a copy of any record.

(d) *Imposition of fees.* (1) Commercial use requests—Where a request appears to seek disclosure of records for a commercial use, the requester shall be charged for the time spent by Commission personnel in searching for the requested record and in revealing the record to determine whether it should be disclosed, and for the cost of each page of duplication. "Commercial use" is defined as a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. The request also must reasonably identify the records sought.

(2) Requests from representatives of news media—Where a request seeks disclosure of records to a representative of the news media, the requester shall be charged only for the actual duplication cost of the records and only to the extent that the number of duplications exceeds 100 pages; provided, however, that the request must reasonably describe the records sought, and it must appear that the records are for use by the requester in such person's capacity as a news media representative. "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. A "freelance" journalist not actually employed by a news organization shall be eligible for inclusion under this category if such person can demonstrate a solid basis for expecting publication by a news organization.

(3) Requests from educational and non-commercial scientific institutions—Where a request seeks disclosure of records to an educational or non-commercial scientific institution, the requester shall be charged only for the actual duplication cost of the records and only to the extent that the number of duplications exceeds 100 pages;

provided, however, that the request must reasonably describe the records sought and it must appear that the records are to be used by the requester in furtherance of its educational or non-commercial scientific research programs. "Educational institution" refers to a preschool, a public or private elementary or secondary school, or an institution of undergraduate, graduate, professional or vocational education, which operates a program or programs of scholarly research. "Non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis, within the meaning of paragraph (d)(1) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular products or industry.

(4) All other requests—Where a request seeks disclosure of records to a person or entity other than one coming within paragraphs (d)(1), (d)(2) and (d)(3) of this section, the requester shall be charged the full cost of search and duplication. However, the first two hours of search time and the first 100 pages of duplication shall be furnished without charge.

(e) *Aggregating of requests.* If there exists a solid basis for concluding that a requester or group of requesters has submitted a series of partial requests for disclosure of records in an attempt to evade assessment of fees, the requests may be aggregated so as to constitute a single request, with fees charged accordingly.

(f) *Unsuccessful searches.* Except as provided in paragraph (d) of this section, the cost of searching for a requested record shall be charged even if the search fails to locate such record or it is determined that the record is exempt from disclosure.

(g) *Interest.* In the event a requester fails to remit payment of fees charged for processing a request under this Part within 30 days from the date such fees were billed, interest on such fees may be assessed beginning on the 31st day after the billing date, to be calculated at the rate prescribed in section 3717 of Title 31, United States Code.

(h) *Advance payments.* (1) If, but only if, it is estimated or determined that processing of a request for disclosure of records will result in a charge of fees of more than \$250.00, the requester may be required to pay the fees in advance in order to obtain completion of such processing.

(2) If a requester has previously failed to make timely payment (i.e., within 30 days of billing date) of fees charged under this Part, the requester may be

required to pay such fees and interest accrued thereon, and to make an advance payment of the full amount of estimated fees chargeable in connection with any pending or new request, in order to obtain processing of such pending or new request.

(3) With regard to any request coming within paragraphs (h)(1) and (h)(2) of this section 3, the administrative time limits set forth in §§ 503.10 and 503.11 above will begin to run only after the requisite fee payments have been received.

(i) *Non-payment.* In the event of non-payment of billed charges for disclosure of records, the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365), including disclosure to consumer credit reporting agencies and referral to collection agencies, may be utilized to obtain payment.

(j) *Waiver or reduction of charges.* Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where—

(1) It is determined that disclosure 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; or

(2) It is determined that the cost of collection would be equal to or exceed the amount of such fees. No charges shall be assessed if such fees amount to \$8.00 or less.

Bohdan A. Futey,
Chairman.

[FR Doc. 87-9388 Filed 4-23-87; 8:45 am]
BILLING CODE 4410-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 503

[Docket No. 87-5]

Implementation of Freedom of Information Reform Act

April 21, 1987.

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends its Public Information regulations to incorporate the recent changes to the Freedom of Information Act regarding requests for agency enforcement records and regarding establishment and waiver of fees to be charged for search, review and duplication of records in response to FOIA requests. The rules follow the guidelines established by the Office of Management and Budget on

establishment of fees and Department of Justice on fee waivers.

EFFECTIVE DATE: May 26, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW Washington, DC 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: On October 27, 1986, President Ronald Reagan signed into law the Anti-Drug Abuse Act of 1986, an omnibus piece of legislation which includes as sections 1801-04 of the law, the Freedom of Information Reform Act of 1986 (Reform Act). This legislation expands the law enforcement protections of the Freedom of Information Act (FOIA) and also modifies its fee and fee-waiver provisions. The new law enforcement provisions were effective immediately. The fee provisions will become effective on April 25, 1987. This 180-day delay was designed to permit the Office of Management and Budget (OMB) and affected agencies time to issue new guidelines and regulations governing them. OMB published proposed guidelines on January 16, 1987 (52 FR 1992).

The Commission on March 19, 1987 (52 FR 8628) published a notice of proposed rulemaking designed to implement the above-mentioned changes mandated by the Reform Act. The proposed rules closely followed the OMB guidelines. The Federal Register published a correction to this notice on March 26, 1987 (52 FR 9756). No comments were submitted in response to the notice of proposed rulemaking. Subsequent to the proposed rule publication, OMB issued its final guidelines for implementation of the Reform Act (52 FR 10012; March 27, 1987). The Department of Justice, Office of Information and Privacy (DOJ), issued new fee waiver policy guidance on April 2, 1987, also designed to assist agencies in establishing rules implementing the Reform Act.

The final rules adopted herein closely follow the proposed rules. The only changes are the result of incorporation of the final OMB guidelines on fees and the DOJ guidelines on fee waivers. The final rules contain appropriate amendments to the Commission's current Public Information rules appearing in 46 CFR Part 503. The following is a section by section discussion of the rules.

1. *Section 503.35 Exceptions to availability of records.* Paragraph (a)(7) of this section currently describes the circumstances under which "investigatory" records may be withheld by the Commission when responding to

an FOIA request. Paragraph (a)(7) is being revised to recite verbatim the revised standard promulgated by the Reform Act. The general thrust of the revised standard is to clarify and broaden the scope of the exemptions on law enforcement records or information.

A new paragraph (c) is also being added to this section implementing subsection (c)(1) of the Reform Act, to provide the agency the option of excluding from the requirements of the FOIA, law enforcement records involving a possible violation of criminal law, when there is reason to believe that the subject of the investigation is not aware of its pendency and disclosure of the existence of records could reasonably be expected to interfere with enforcement proceedings. The upshot of this provision is that the agency can, under the appropriate circumstances, withhold acknowledgment even of the existence of an investigation.

2. Section 503.41 Policy and services available.

This section is amended to incorporate a reference to the Reform Act and to conform the description of services available to the terminology used in the Reform Act and defined elsewhere in this rule. Clarification is also included regarding the nonapplicability of fees to requests for certain materials.

3. Section 503.43 Fees for services.

Paragraphs (a) through (c) of this section are revised to incorporate the new fee requirements of the Reform Act. The rules closely follow the final guidelines of OMB.

Paragraph (a) sets forth the definitions of terms used in the Reform Act and these rules. They follow almost verbatim the OMB guidelines.

Paragraph (b) sets forth general guidelines regarding collection of fees for search, duplication and review. It acknowledges that, to the extent fees are assessable, they reflect full direct costs as required by the Reform Act. This paragraph also describes the types of fees to be assessed according to the identity of the requester and sets forth restrictions and limitations for assessment of fees as required by the Reform Act. Paragraph (b)(2)(vi) contains summary guidelines for waiver or reduction of fees and are patterned after the DOJ guidelines. The application of these guidelines will also be governed by the more detailed guidance provided by DOJ.

Paragraph (c) sets forth the actual schedule of fees and charges for search, review, and duplication. As indicated above, these charges reflect full direct costs as required by the Reform Act and

as defined by OMB guidelines. The fees for certification are merely restated from the current schedule and are not affected by the Reform Act.

The following information sets forth the basis upon which the charges for search, duplication and review of records are established. Direct labor costs were separated into two groups, (a) clerical/administrative, and (b) professional/executive. An average rate per hour was developed for each group plus 16 percent of that rate to cover benefits. The computations for search and duplication services exclude salaries of Commissioners and members of the Senior Executive Service. Review of records to determine whether they are exempt from disclosure under section 503.35 is performed by the Secretary of the Commission in his/her capacity as the Commission's FOIA Officer. Accordingly, the full direct costs associated with that position are recovered.

The Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193 (February 27, 1981).

The Chairman of the Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., that this rule will not have a significant economic impact on a substantial number of small business entities.

List of Subjects in 46 CFR Part 503

Freedom of information.

PART 503—[AMENDED]

Therefore, for the reasons set forth above, Part 503 of Title 46 CFR is amended as follows:

1. The authority citation for Part 503 continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, 553; E.O. 12356, 47 FR 14874, 15557, 3 CFR 1982 Comp., p. 167.

2. Section 503.35 is amended by revising paragraph (a)(7) and by adding a new paragraph (c) to read as follows:

§ 503.35 Exceptions to availability of records.

(a) * * *

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

- (i) Could reasonably be expected to interfere with enforcement proceedings;
- (ii) Would deprive a person of a right to a fair trial or an impartial adjudication;
- (iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

* * * * *

(c) Whenever a request is made which involves access to records described in paragraph (a)(7)(i) of this section and the investigation or proceeding involves a possible violation of criminal law; and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Commission may, during only such time as that circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

3. Section 503.41 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 503.41 Policy and services available.

Pursuant to policies established by the Congress, the Government's costs for special services furnished to individuals or firms who request such services are to be recovered by the payment of fees (Act of August 31, 1951, 5 U.S.C. 140 and Freedom of Information Reform Act of 1986, October 27, 1986, 5 U.S.C. 552).

(a) Upon request, the following services are available upon the payment of the fees hereinafter prescribed; except that no fees shall be assessed for search, duplication or review in connection with requests for single copies of materials described in §§ 503.11 and 503.21:

- (1) Records/documents search.
- (2) Duplication of records/documents.
- (3) Review of records/documents.
- (4) Certification of copies of records/documents.

* * * * *

4. Section 503.43 is amended by revising paragraphs (a) through (c) to read as follows:

§ 503.43 Fees for services.

(a) *Definitions.* The following definitions apply to the terms when used in this subpart:

(1) "Search" means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Search for material will be done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. Search is distinguished, moreover, from "review" of material in order to determine whether the material is exempt from disclosure. Searches may be done manually or by computer using existing programming.

(2) "Duplication" means the process of making a copy of a document necessary to respond to a Freedom of Information Act or other request. Such copies can take the form of paper or machine readable documentation (e.g., magnetic tape or disk), among others.

(3) "Review" means the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(4) "Commercial use request" means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the agency must determine the use to which a requester will put the documents requested. Where the agency has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the agency will seek additional clarification before assigning the request to a specific category.

(5) "Educational institution" means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(6) "Non-commercial scientific institution" means an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (a)(4) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(7) "Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. "Freelance" journalists, may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the agency may also look to the past publication record of a requester in making this determination.

(8) "Direct costs" means those expenditures which the agency actually incurs in searching for and duplicating (and in the case of commercial requester, reviewing) documents to respond to a Freedom of Information Act request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(b) *General.* (1) The basic fees set forth in paragraph (c) of this section provide for documents to be mailed with postage prepaid. If copy is to be transmitted by registered, certified, air, or special delivery mail, postage therefor will be added to the basic fee. Also, if special handling or packaging is required, costs thereof will be added to the basic fee.

(2) The fees for search, duplication and review set forth in paragraph (c) of

this section reflect the full allowable direct costs expected to be incurred by the agency for the service. Costs of search and review may be assessed even if it is determined that disclosure of the records is to be withheld. Cost of search may be assessed even if the agency fails to locate the records. Requesters must reasonably describe the records sought. The following restrictions, limitations and guidelines apply to the assessment of such fees:

(i) For commercial use requesters, charges recovering full direct costs for search, review and duplication of records will be assessed.

(ii) For educational and non-commercial scientific institution requesters, no charge will be assessed for search or review of records. Charges recovering full direct costs for duplication of records will be assessed, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(iii) For representative of the news media requesters, no charge will be assessed for search or review of records. Charges recovering full direct costs for duplication of records will be assessed, excluding charges for the first 100 pages.

(iv) For all other requesters, no charge will be assessed for review of records. Charges recovering full direct costs for search and duplication of records will be assessed excluding charges for the first 100 pages of duplication and the first two hours of search time. Requests from individuals for records about themselves, filed in a Commission system of records, will be treated under the fee provisions of the Privacy Act of 1984 which permit fees only for duplication.

(v) No fee may be charged for search, review or duplication if the costs of routine collection and processing of the fee are likely to exceed the amount of the fee.

(vi) Documents shall be furnished without any 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. In determining whether a waiver or reduction of charges is

appropriate the following factors will be taken into consideration.

(A) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(B) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(C) 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;

(D) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(E) 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

(F) 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.

(vii) Whenever it is anticipated that fees chargeable under this section will exceed \$25.00 and the requester has not indicated in advance a willingness to pay fees as high as anticipated, the requester will be notified of the amount of the anticipated fee. In such cases the requester will be given an opportunity to confer with Commission personnel with the object of reformulating the request to meet the needs of the requester at a lower cost.

(viii) Interest may be charged record requesters who fail to pay fees assessed. Assessment of interest may begin on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31, United States Code and will accrue from the date of the billings. Receipt of payment by the agency will stay the accrual of interest.

(ix) Whenever it reasonably appears that a requester of records or a group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, such requests will be aggregated and fees assessed accordingly. Multiple requests on unrelated subjects will not be aggregated.

(x) The agency may require a requester to make advance payment only when:

(A) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), in which case the requester will be required to pay the full amount owed plus any applicable interest as provided above, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester; or

(B) The agency estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250, in which case, the agency will 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 will require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(xi) Unless applicable fees are paid, the agency may use the authorities of the Debt Collection Act (Pub. L. 97-365), including disclosure to consumer reporting agencies and use of collection agencies where appropriate to encourage payment.

(xii) Whenever action is taken under paragraphs (b)(2)(viii) and (b)(2)(ix) of this section, the administrative time limits prescribed in subsection (a)(6) of 5 U.S.C. 552 (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits will begin only after the Commission has received fee payments described above.

(c) *Charges for search, review, duplication and certification.* (1) Records search will be performed by Commission personnel at the following rates:

(i) Search will be performed by clerical/administrative personnel at a rate of \$11.00 per hour and by professional/executive personnel at a rate of \$23.00 per hour.

(ii) Minimum charge for record search is \$11.00.

(2) Charges for review of records to determine whether they are exempt from disclosure under § 503.35 shall be assessed to recover full direct costs at the rate of \$38.00 per hour. Charges for review will be assessed only for initial review to determine the applicability of a specific exemption to a particular record. No charge will be assessed for review at the administrative appeal level.

(3) Charges for duplication of records and documents will be assessed as

follows, limited to size 8½" x 14" or smaller:

(i) If performed by requesting party, at the rate of five cents per page (one side).

(ii) By Commission personnel, at the rate of five cents per page (one side) plus \$11.00 per hour.

(iii) Minimum charge for copying is \$3.50.

(4) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at \$5.00 for each certification.

By the Commission.
Joseph C. Polking,
Secretary.

[FR Doc. 87-9258 Filed 4-23-87; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

Common Carrier Services; Interpretation Letter

AGENCY: Federal Communications Commission.

ACTION: Interpretation letter.

SUMMARY: Under delegated authority the Common Carrier Bureau, in response to a request by Tallon, Cheeseman & Associates, Inc., has provided an interpretation of Part 67 of the FCC Rules and Regulations. The issue concerns the proper method to be used by companies having an annual separations study period to phase customer premises equipment out of the rate base over a five-year period. The interpretation is intended to clarify the separations procedures in § 67.153(b).

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Charles Needy, Accounting and Audits Division, Common Carrier Bureau, (202) 632-7500.

April 17, 1987.

Mr. Larry Van Ruler,

Tallon, Cheeseman & Associates, Inc., 3617 Betty Drive, Suite I, Colorado Springs, CO 80907

Dear Mr. Van Ruler: This letter is in response to your letter of March 23, 1987, in which you requested a clarification of the Commission's rules set forth in Part 67, Section 67.153(b). Specifically, you asked which of two methods should be used by companies having an annual separations study period to phase Customer Premises Equipment (CPE) out of the rate base over a five-year period.