Pursuant to 18 CFR 385.713 (1987), Coast Electric Power Association, *et al.*[1] filed a request for rehearing of the above-mentioned proceeding. In order to review more fully the arguments raised, the Commission grants rehearing of the order solely for the purpose of further consideration. This order is effective on the date of issuance. This action does not constitute a grant or denial of the request on its merits in whole or in part.

Pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure (18 CFR 713(d) (1987)), no answers to the requests for rehearing will be entertained by the Commission.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18742 Filed 8-14-87; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Parts 353 and 355

[Docket No. 60958-7145]

Antidumping and Countervailing Duties; De Minimis Dumping Margins and De Minimis Subsidies

AGENCY: International Trade Administration; Department of Commerce.

ACTION: Final rule.

SUMMARY: The International Trade Administration is amending the regulations on antidumping duties (19 CFR Part 353) and countervailing duties (19 CFR Part 355) to disregard any weighted-average dumping margin and any net subsidy that is *de minimis*. For this purpose, the rule defines *de minimis* as less than 0.5% *ad valorem* or the equivalent specific rate.

EFFECTIVE DATE: September 16, 1987.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Acting Deputy Chief Counsel for Import Administration 202/377-1411.

SUPPLEMENTARY INFORMATION: In 1980, the International Trade Administration (ITA) promulgated final rules concerning antidumping and countervailing duties (19 CFR Parts 353 and 355, respectively). At that time, ITA did not include a provision for disregarding *de minimis* net subsidies or dumping margins. In practice, however, ITA considered weighted-average dumping margins and aggregate net subsidies of less than 0.5% *ad valorem* as *de minimis* and disregarded them.

In *Carlisle Tire and Rubber Co.* v. *United States*, —— CIT ——, Slip Op. 86-45 (April 29, 1986), the Court of International Trade held that ITA must either promulgate a rule in accordance with the notice and comment procedures of the Administrative Procedure Act establishing 0.5% as the *de minimis* standard for its determinations, or it must explain the basis for each determination in which it decided that a weighted-average net subsidy or dumping margin below 0.5% was *de minimis*.

Accordingly, on October 6, 1986 (51 FR 35529), the Department published a proposed *de minimis* rule, pursuant to which net aggregate subsidies and *ad valorem* dumping margins of less than 0.5% would be disregarded for purposes of publishing or revoking orders, setting deposit rates, or assessing countervailing duties.

Description

This final rule, which is the same as the proposed rule with one clarifying change, adds new § 353.24 to the antidumping regulations (19 CFR Part 353) and new § 355.8 to the countervailing duty regulations (19 CFR Part 355). These additions are described below.

1. *Section 353.24.* The rule adds new § 353.24 consisting of three paragraphs.

Paragraph (a) states that the Secretary will disregard any weighted-average dumping margin that is less than 0.5% *ad valorem* or the equivalent specific rate. This is the *de minimis* standard which ITA has consistently applied since 1980.

Paragraph (b)(1) defines "dumping margin" as the amount by which the fair value or foreign market value exceeds the United States price of the merchandise, as these amounts are determined by the Secretary under the Tariff Act of 1930, as amended (the "Act") 19 U.S.C. 1673. This margin is the amount of dumping duty that the Secretary instructs the Customs Service to assess on the merchandise under section 751 of the Act, 19 U.S.C. 1675.

Paragraph (b)(2) defines "weighted-average dumping margin" (also called the "*ad valorem* dumping margin") as the percentage which the sum of all dumping margins comprises of the total U.S. price for all entries of the merchandise into the United States during the period investigated or reviewed. In fair value investigations, ITA calculates a weighted-average dumping margin for each company investigated and an additional weighted-average margin for all companies not specifically investigated. In administrative reviews, ITA calculates a weighted-average dumping margin for each company reviewed, which ITA uses solely to set the cash deposit rate for each company. For any new shipper not previously investigated or reviewed, ITA generally sets the deposit rate at the highest weighted-average dumping margin for a reviewed firm which made a shipment of the subject merchandise during the review period.

Paragraph (c) states that the Secretary will not disregard *de minimis* margins for the purpose of actually assessing dumping duties. Therefore, paragraph (a) does not apply to references to the assessment of duties that are found in 19 CFR 353.48, 353.50, and 353.53. Paragraph (c) is intended to clarify that paragraph (a) applies to the following determinations: preliminary determinations and applications of provisional measures described in 19 CFR 353.39; final determinations and deposit requirements described in 19 CFR 353.44; exclusions under 19 CFR 353.45; deposit requirements under 19 CFR 353.48; administrative determinations (other than assessment determinations) and deposit requirements under § 353.53; and revocation determinations under 19 CFR 353.54.

2. *Section 355.8.* The rule adds new § 355.8 to 19 CFR Part 355, stating that the Secretary will disregard any aggregate net subsidy, as defined in section 771(6) of the Act (19 U.S.C. 1677(6)), which is less than 0.5% *ad valorem* or the equivalent specific rate. This is the *de minimis* standard which ITA has consistently applied since 1980.

Section 355.8 applies to the assessment of countervailing duties as well as to all determinations of aggregate net subsidies under 19 CFR 355.28, 355.31, 355.33, 355.38, 355.41, and 355.42.

Executive Order 12291

ITA has determined that these revisions of the antidumping and countervailing duty regulations are not major rules as defined in section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981) because they will not: (1) Have a major monetary effect on the economy; (2) Result in a major increase in costs or prices; or (3) Have a

[1] Coast Electric Power Association, Connecticut Municipal Electric and Gas Association, East Mississippi Electric Power Association, Kansas Electric Power Cooperative, Inc., MAP-PAL, Inc., Municipal Electric Systems of Oklahoma, National Rural Electric Cooperative Association, North Carolina Electric Membership Corporation, Northeast Texas Electric Cooperative, Inc., Oglethorpe Power Corporation, Sam Rayburn G&T, Inc., Seminole Electric Cooperative, Inc., Singing River Electric Power Association, South Mississippi Electric Power Association.

significant adverse effect on competition (domestic or foreign), employment, investment, productivity, or innovation.

Regulatory Flexibility Act

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small business entities because it does not change existing practices. As a result, an initial Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This rule does not contain a provision for collection of information that is subject to the requirements of the Paperwork Reduction Act.

Eight firms submitted comments on the proposed regulation. These comments, and the Department's reactions to them, are summarized below.

1. Adoption of a De Minimis Test

Several parties suggested that the Department not adopt 0.5%, or any other number, as an automatic *de minimis* threshold. They argued that any such designation would be arbitrary, unnecessary, and inconsistent with the past practice of both the Departments of the Treasury and Commerce, which on occasion treated *ad valorem* margins smaller than 0.5% as significant for comparable purposes. One comment endorsed an absolute, bright-line standard on the basis that it would promote certainty and avoid needless litigation.

The doctrine of *de minimis non curat lex*, that the law does not concern itself with trifles, is a basic tenet of Anglo-American jurisprudence, inherent in all U.S. laws. With respect to the antidumping and countervailing duty laws, the Department has concluded that the potential benefits to domestic petitioners from orders on dumping margins or net subsidies below 0.5% are outweighed by the gains in productivity and efficiency provided by a *de minimis* rule. Even in price-sensitive markets, the effect of requiring a deposit or assessment of duty based on a rate of 0.5% *ad valorem* would be negligible. No party submitting comments has provided any information to support a different conclusion. Accordingly, it would be unreasonable for the Department and the U.S. Customs Service to squander their scarce resources administering orders for which the dumping margins and net subsidies are below 0.5%. The fact that the Departments of the Treasury and Commerce may not always have applied a uniform *de minimis* standard in the past is an additional reason supporting the adoption of a fixed standard which can be applied consistently in the future.

2. Bright-Line Test

Two parties suggested that, rather than automatically disregarding margins below 0.5%, a *de minimis* rule should only provide respondents with the opportunity to make an affirmative showing that dumping margins or net subsidies below 0.5% are *de minimis* in particular circumstances. Conversely, two parties suggested that margins below 0.5% should be disregarded automatically, and that respondents also should be given an opportunity to demonstrate that margins greater than 0.5% are *de minimis* in particular cases. Three specific circumstances in which it was suggested that margins greater than 0.5% could be treated as *de minimis* were: (1) Where a margin is caused by sales (such as accommodation sales) not made in the ordinary course of trade; (2) where a margin would not be found taking the price of all sales, including those priced above foreign market value ("FMV"), into account; and (3) where a margin is caused by currency fluctuation.

The efficacy of a bright-line *de minimis* threshold in reducing the administrative burden on the Department depends precisely on its elimination of the need to exercise administrative discretion in certain cases. By incorporating the very discretionary judgments which a *de minimis* rule is designed to avoid, a flexible standard would be self-defeating. Rather than defining a class of cases which the Department could disregard as insignificant, a flexible standard would force the Department to make additional determinations in those very cases.

Since the *de minimis* threshold is a weighted average, at least one of the factors listed by the comments is accounted for in the proposed rule. A small number of promotional or employee discount sales would not themselves necessarily produce a weighted average margin above 0.5%.

Finally, whether "negative margins" (on sales above foreign market value) or currency fluctuations should be taken into account in calculating dumping margins are separate issues, beyond the scope of this rulemaking. Although the Department recognizes that the treatment accorded these two variables may determine whether a weighted-average margin or subsidy rate in a particular case is *de minimis*, that is also true of *every* adjustment provided for by the Act. The Department could not entertain such suggestions without permitting this rulemaking to become a forum for commenting on other aspects of the Department's practice which, in particular cases, could result in weighted-average margins above or below *de minimis*. The instant rule has therefore been limited to setting a *de minimis* threshold where the dumping margin or net subsidy is assumed to have been calculated correctly. See the answers to Comments 6 and 7.

3. Threshold Level

Several parties suggested that the *de minimis* threshold be set at 1%, on the basis that 1% represents a level of benefit not worth the expense of an investigation or annual reviews.

After many years of applying a 0.5% *de minimis* threshold, the Department has developed no basis to conclude that 1% represents a level of benefit not worth the expense of investigations or annual reviews. No party offered specific information to support the suggestion. Accordingly, the Department does not think it appropriate to adopt 1% as the *de minimis* threshold.

4. Sale Quantities

One party commented that quantities of dumped sales constituting less than 0.5% of all sales should also be disregarded as *de minimis*, at least where the dumped sales were not made in the ordinary course of trade.

The Department believes that a parallel threshold for small quantities is not appropriate. Based on the total value of each entry, the duties on small numbers of dumped sales can be very large, as, for example, where expensive items such as transformers or other heavy equipment are involved. The antidumping duties on such sales should be collected. If the number of dumped sales is small, there is unlikely to be a weighted-average margin above *de minimis*, unless the dumped sales are of above-average value. Therefore, the rule addresses the issue raised by this comment to some extent.

5. "Or the Equivalent"

One party commented that the words ". . . or the equivalent" in paragraph (a) of the proposed § 353.24 be dropped, on the basis that they were undefined, vague, and suggested that margins above 0.5% would be treated as *de minimis* in some circumstances.

We agree that the words ". . . or the equivalent" in paragraph (a) of the proposed regulation were ambiguous, and we have changed the final text to read "or the equivalent specific rate."

This language means simply that a dumping margin expressed in dollars, rather than as a percentage, is *de minimis* where the dollar amount is less than 0.5% of the U.S. price. For example, a dumping margin of $1.00 is *de minimis* where the U.S. price of the product in question is $200.01 or more. Similarly, a subsidy expressed as $5.00 per pound is *de minimis* where the U.S. price of the product in question is $1000.01 per pound or more.

6. Weighted-Average Margins

One party suggested that the term "weighted-average margin" in § 353.24(b)(2) be defined to include so-called "negative margins" on sales priced above FMV. As the Department currently calculates weighted-average margins, sales above FMV are treated as sales at FMV, effectively eliminating the negative margins. The comment argued that including negative margins in the calculation of weighted-average margins would more accurately and fairly reflect respondent's pricing practices.

This proposal, that ITA fundamentally alter its method of calculating dumping margins, is beyond the scope of the *de minimis* rule, which is concerned only with how certain quantities are treated once they have been calculated under ITA's current methodology. See the response to Comment 2.

7. Deposit Rates

One party suggested that the Department add language to the rule stating that it would not use weighted-average dumping margins, as defined in § 353.24(b)(2), for the purpose of setting deposit rates, but that it would set deposit rates at the percentage which the sum of the dumping margins constituted of the total entered value of all entries investigated or reviewed. The comment argues that calculating deposit rates as a percentage of the total U.S. price, but then applying that percentage to the total entered value, understates the estimated duty, because the total U.S. price is invariably higher than the total entered value.

In suggesting that the Department revise the manner in which it sets deposit rates and append that new procedure to its *de minimis* rule, this comment also goes beyond the scope of this rulemaking, as explained in the response to Comment 2.

8. Duty Assessment

Two parties suggested that, where administrative reviews determine *de minimis* margins or net subsidy amounts, Customs should not assess antidumping or countervailing duties against the entries covered by that review. The comments assert that: (1) No purpose is served by assessing duties which have been administratively determined to be legally and commercially insignificant; and (2) ITA's practice is contrary to the antidumping and countervailing duty laws, which are not revenue raising in nature.

Since antidumping duties are assessed on an entry-by-entry basis, the margin on any particular entry is not known until it is actually calculated. In instances where the calculation yields a large dumping margin, even though the rate for the entry is less than *de minimis*, we see no reason why that duty should not be assessed. Where the amount of duty on a particular entry is very small, the determination whether that duty is not worth the cost of collection is properly within the province of the Customs Service.

Unlike antidumping duties, countervailing duties are assessed on all entries at the same weighted-average country-wide or company-specific rate. In no instance would the *ad valorem* countervailing duty on a particular entry differ from the country-wide or company-specific rate. Therefore, where the country-wide or company-specific rate is *de minimis*, Customs liquidates all entries without respect to countervailing duties.

Dated: June 23, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

List of Subjects in 19 CFR Parts 353 and 355

Business and industry, Foreign trade, Imports, Trade practices.

For the reasons stated in the preamble, we amend 19 CFR Parts 353 and 355 as follows:

PART 353—[AMENDED]

1. The authority citation for 19 CFR Part 353 continues to read as follows:

Authority: 5 U.S.C. 301, and subtitle IV, parts II, III, and IV of the Tariff Act of 1930, 19 U.S.C. 1301, *et seq.*, as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96–39, 93 Stat. 150, and section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98–573, 98 Stat. 2948.

2. A new § 353.24 is added to 19 CFR Part 353, Subpart A, to read as follows:

§ 353.24 De minimis weighted-average dumping margins.

(a) Disregarding *de minimis* weighted-average dumping margin. For purposes of this part, the Secretary will disregard any weighted-average dumping margin, as defined in paragraph (b) of this section, that is less than 0.5% *ad valorem*, or the equivalent specific rate.

(b) Dumping margin and weighted-average dumping margin defined. (1) The term "dumping margin" means the amount by which the fair value or foreign market value, as applicable, exceeds the United States price, as determined by the Secretary under this part.

(2) The "weighted-average dumping margin" is the result of dividing the sum of the dumping margins determined in an investigation or an administrative review under this part by the sum of the United States prices calculated in the same investigation or review.

(c) Assessment of *de minimis* margins. For purposes of assessment of a dumping duty, the Secretary will not disregard any *de minimis* dumping margin.

PART 355—[AMENDED]

3. The authority citation for 19 CFR Part 355 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1303; 19 U.S.C. 2501 note; subtitle IV, parts I, III, and IV of the Tariff Act of 1930, 19 U.S.C. 1301, *et seq.*, as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96–39, 93 Stat. 150, and section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98–573, 98 Stat. 2948.

4. A new § 355.8 is added to 19 CFR Part 355 to read as follows:

§ 355.8 De minimis net subsidies disregarded.

For purposes of this part, the Secretary will disregard any aggregate net subsidy that the Secretary determines is less than 0.5% *ad valorem*, or the equivalent specific rate.

[FR Doc. 87–18733 Filed 8–14–87; 8:45am]

BILLING CODE 3510-DS-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2603

Freedom of Information; Examination and Copying of Pension Benefit Guaranty Corporation Records

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation implementing the Freedom of Information Act to conform to the law enforcement provisions and the fee and fee waiver provisions of the Freedom of Information Reform Act of 1986 and the

Uniform Freedom of Information Act Fee Schedule and Guidelines promulgated by the Office of Management and Budget. This action is necessary to comply with the statutory requirements and those guidelines. The effect of this amendment is to conform the law enforcement and fee waiver provisions to the law, to establish fee schedules in accordance with the standards established by the OMB guidelines, and to notify the public of those provisions.

EFFECTIVE DATE: September 16, 1987.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Freedom of Information Act (FOIA), 5 U.S.C. 552, provides, *inter alia,* for public access to information from records of Government corporations such as the Pension Benefit Guaranty Corporation (PBGC). On June 3, 1975, the PBGC promulgated its regulation entitled Examination and Copying of Pension Benefit Guaranty Corporation Records, 29 CFR Part 2603, establishing the basic policies and procedures that it uses to process requests for information under the FOIA. The Freedom of Information Reform Act of 1986 (Reform Act), Pub. L. 99–570, modified the FOIA's fee and fee waiver provisions and also expanded its law enforcement protections. The Reform Act directed that each agency subject to the FOIA "promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under [FOIA] and establishing procedures and guidelines for determining when such fees should be waived or reduced." The Reform Act also directed the Office of Management and Budget (OMB) to promulgate guidelines providing for a uniform schedule of the FOIA fees for all such agencies.

On January 16, 1987, the OMB published a notice and request for public comment on its Proposed Fee Schedule and Administrative Guidelines (52 FR 1992). On March 27, 1987, the OMB published its Uniform Freedom of Information Act Fee Schedule and Guidelines in final form, incorporating changes considered appropriate as a result of comments received from the public (52 FR 10012). On April 23, 1987, the PBGC published a proposed amendment to its FOIA regulation to incorporate therein the Reform Act's law enforcement and fee waiver provisions, and to conform its fee schedule to that promulgated by the OMB. Two written comments were received on the proposed amendment, one relating to both the fee schedule and the waiver provisions and the other relating solely to the fee waiver provisions.

The written comment relating to the fee schedule contended that the guidelines issued by the OMB are not binding on agencies to the extent that they are inconsistent with the legislative intent of Congress in enacting the Reform Act. Specifically, the writer contended that the guidelines' definitions of "commercial use request", "educational institution", and "representative of the news media" do not properly reflect Congressional intent and suggested numerous changes. The writer also contended that the OMB's equating of the term "search time" to "manual search time" in the event of computer searches is unwarranted.

Favorable consideration of these comments and suggestions would be inconsistent with the OMB guidelines which the PBGC is required to follow. Furthermore, the OMB guidelines were promulgated in final form after the receipt and consideration of 80 comments. Each of the suggestions submitted by this commenter were fully considered by the OMB, and its reasons for rejecting them are fully explained in the Supplementary Information accompanying the OMB's final guidelines. For these reasons, the PBGC declines to incorporate the suggested changes. The PBGC, however, has clarified the rule with respect to searches in § 2603.51(b)(4) and made other changes for clarification purposes.

In § 2603.55(a) of its proposed amendment, the PBGC followed the statutory provisions relating to fee waivers, almost verbatim, primarily because of the statutory deadline for issuing regulations under the Reform Act. Although the two comments directed to this fee waiver provision both suggested that the PBGC's regulation include specific procedures and standards to be used in making fee waiver determinations, they suggested diametrically oppposite provisions. At issue is the fee waiver policy guidance issued by the Department of Justice in a memorandum from Assistant Attorney General Stephen J. Markman on April 2, 1987. The PBGC is studying the Department of Justice guidance, which was issued in furtherance of its statutory responsibility to encourage compliance with the FOIA, and will issue its procedures and standards for fee waivers in proposed form for public comment at a later date.

E.O. 12291 and The Regulatory Flexibility Act

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291 of February 17, 1981 (46 FR 13193) because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers, individual industries or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Any increase in fees due to inclusion of review time for commercial use requesters is likely to be offset by the decrease in fees due to the limits on search and duplication time that may be charged to other requesters. Accordingly, the PBGC certifies pursuant to section 605 of the Regulatory Flexibility Act that this regulation will not have a significant economic impact on a substantial number of small entities. In light of this certification, compliance with sections 603 and 604 is waived.

List of Subjects in 29 CFR Part 2603

Freedom of information.

In consideration of the foregoing, the Pension Benefit Guaranty Corporation hereby amends Part 2603 of Subchapter A of Chapter XXVI, Title 29, Code of Federal Regulations, as follows:

PART 2603—EXAMINATION AND COPYING OF PENSION BENEFIT GUARANTY CORPORATION RECORDS

1. The authority for Part 2603 continues to read as follows:

Authority: 5 U.S.C. 552, as amended by secs. 1801–1804, Pub. L. 99–570, 100 Stat. 3207–3248; 29 U.S.C. 1302 (b)(3).

§ 2603.2 [Amended]

2. Section 2603.2 is amended by removing from paragraph (c) the phrase "Office of the Executive Director of the" and inserting, in its place, "Communications and Public Affairs Department".

§ 2603.8 [Amended]

3. Section 2603.8 is amended by removing from paragraph (a) the reference to "2604.23" and inserting, in its place, "2603.23".

4. Section 2603.21 is amended by removing from the heading of paragraph (d) the word "Records" and inserting, in

its place, "Records or information"; by changing all references to "investigatory records" or "investigative records" throughout paragraph (d) to read "records and information"; and by revising the section heading and paragraphs (a) and (c) to read as follows:

§ 2603.21 Records or information compiled for law enforcement purposes.

(a) *Restrictions on public access authorized.* Pursuant to the provisions of exemption (7) set forth in 5 U.S.C. 552(b), as amended by Pub. L. 99–570, 100 Stat. 3207–3248, effective October 27, 1986, the disclosure from Corporation records of matters that are "records or information compiled for law enforcement purposes" and to which access by the public would be detrimental to such purposes or to rights of privacy as specified in the statute, may be refused. Access to such records may be refused for any one or more of several specific reasons. Thus, exemption (7) protects from the public access requirements of the Freedom of Information Act records or information compiled for law enforcement purposes whenever their disclosure to any person requesting them—

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

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

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

(4) Could reasonably be expected to disclose (i) 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 (ii) 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; and/or

(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; and/or

(6) Could reasonably be expected to endanger the life or physical safety of any individual. Whenever a request is made which involves access to records described in paragraph (a)(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 pendancy and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Corporation may treat the records as not subject to the requirements of 5 U.S.C. 552 and this part during only such time as that circumstance continues. Moreover, where one or more of the consequences in paragraphs (a)(1) through (a)(6) of this section would ensue from the disclosure of particular records to any person requesting access to records or information compiled for law enforcement purposes, no determination to grant access to such records may be made by the disclosure officer under the disclosure policy set forth in §§ 2603.8 and 2603.16 in the ordinary case because in such circumstances it would not ordinarily be possible to determine that disclosure would serve the public interest and would not impede any of the functions of the Corporation.

* * * * *

(c) *"Records or information" compiled for law enforcement purposes.* The protection afforded records or information compiled for law enforcement purposes under the exemption set forth in paragraph (a) of this section extends, according to the legislative history of Pub. L. 99–570, to any Federal law enforcement information relating to pending investigations or confidential sources if disclosure of such information could reasonably be expected to cause the harms indentified in paragraph (a) of this section.

* * * * *

5. Section 2603.32 is amended by revising paragraph (c) to read as follows:

§ 2603.32 Submittal of requests for access to records.

* * * * *

(c) To avoid delay in receipt of a sufficiently complete request at the Corporation, each such request should identify the category of the requester, as defined in § 2603.51(b); reasonably describe the records sought, as provided in § 2603.33; and state specifically that whatever costs will be involved pursuant to §§ 2603.51 through 2603.53 will be acceptable, or will be acceptable up to an amount not exceeding a named figure.

6. Section 2603.36 is revised to read as follows:

§ 2603.36 Receipt by agency of request.

(a) The disclosure officer shall, upon receipt of a request for access to records, have the date and time of such receipt immediately inscribed thereon. Except as provided in paragraphs (b) through (d) of this section, the request shall be deemed received and the period within which action on such request shall be taken, as set forth in § 2603.45, shall begin on the next business day following such date.

(b) A request for access to records shall be deemed received only if such request is sufficiently complete, as set forth in §§ 2603.33 through 2603.35.

(c) To protect requesters from an unexpected accrual of liability greater than they may wish to assume for access to requested records, when the Corporation anticipates that search, review, and/or duplication charges under Subpart B of this part may be substantial, the requester will be given prompt notification of the Corporation's estimate of the costs and no receipt of a complete request will be deemed to have occurred unless or until the requester has perfected the request by assurance of payment. Such assurance may be in the form of a statement that whatever costs will be involved pursuant to §§ 2603.51 through 2603.53 will be acceptable or will be acceptable up to an amount not exceeding a named figure. To avoid delay in receipt of a sufficiently complete request, the requester may include such statement in the request.

(d) Where it is known or estimated that a request for access to records will require charges for search, review, and/or duplication services in excess of $250, or where the requester has previously failed to pay a fee charged in a timely fashion, such request shall not be deemed received until the Corporation has received fee payments or assurance of payment, as required under the provisions of § 2603.54(b).

7. Section 2603.51 is revised to read as follows:

§ 2603.51 Charges for services.

(a) *Generally.* Pursuant to the provisions of the Freedom of Information Act, as amended, charges will be assessed to cover the direct costs of searching for, reviewing, and/or duplicating records requested under the Act from the Corporation, except where the charges are limited or waived under paragraph (b) or (d) of this section, according to the fee schedule in § 2603.52. No charge will be assessed if the costs of routine collection and processing of the fee would be equal to or greater than the fee itself.

(1) "Direct costs" means those expenditures which the Corporation actually incurs in searching for and

duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request under the Act and these regulations. Direct costs include, for example, the salary of the employee performing work (*i.e.*, the basic rate of pay plus benefits) or an established average pay for a homogeneous class of personnel (*e.g.*, all administrative/clerical or all professional/executive), 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.

(2) "Search" means all time spent looking for material that is responsive to a request under the Act and these regulations, including page-by-page or line-by-line identification of materials within a document, if required, and may be done manually or by computer using existing programming. "Search" should be distinguished from "review" which is defined in paragraph (a)(3) of this section.

(3) "Review" means the process of examining documents located in response to a request under the Act and these regulations to determine whether any portion of any document located is permitted or required 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) "Duplication" means the process of making a copy of a document necessary to respond to a request under the Act and these regulations, in a form that is reasonably usable by the requester. Copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (*e.g.*, magnetic tape or disk), among others.

(b) *Categories of requesters.* Requesters who seek access to records under the Act and these regulations are divided into four categories: commercial use requesters, educational and noncommercial scientific institutions, representatives of the news media, and all other requesters. The Corporation will determine the category of a requester and charge fees according to the following rules.

(1) *Commercial use requesters.* When records are requested for commercial use, the Corporation will assess charges, as provided in this subpart, for the full direct costs of searching for, reviewing for release, and duplicating the records sought. Fees for search and review may be charged even if the record searched for is not found or if, after it is found, it is determined that the request to inspect it may be denied under the provisions of 5 U.S.C. 552(b) and these regulations.

(i) "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.

(ii) In determining whether a request properly belongs in this category, the Corporation will look to the use to which a requester will put the documents requested. Moreover, where the Corporation 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 Corporation will require the requester to provide clarification before assigning the request to this category.

(2) *Educational and noncommercial scientific institution requesters.* When records are requested by an educational or noncommercial scientific institution, the Corporation will assess charges, as provided in this subpart, for the full direct cost of duplication only, excluding charges for the first 100 pages.

(i) "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.

(ii) "Noncommercial scientific institution" means an institution that is not operated on a "commercial" basis as that term is defined in paragraph (b)(1)(i) 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.

(iii) To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and 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.

(3) *Requesters who are representatives of the news media.* When records are requested by representatives of the news media, the Corporation will assess charges, as provided in this subpart, for the full direct cost of duplication only, excluding charges for the first 100 pages.

(i) "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. "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.

(ii) To be eligible for inclusion in this category, the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester who is a representative of the news media shall not be considered to be a request that is for a commercial use.

(4) *All other requesters.* When records are requested by requesters who do not fit into any of the categories in paragraphs (b)(1) through (b)(3) of this section, the Corporation will assess charges, as provided in this subpart, for the full direct cost of searching for and duplicating the records sought, with the exceptions that there will be no charge for the first 100 pages of duplication and the first two hours of manual search time (or its cost equivalent in computer search time). Notwithstanding the preceding sentence, there will be no charge for search time in the event of requests under the Privacy Act of 1974 from subjects of records filed in the Corporation's systems of records for the disclosure of records about themselves. Search fees, where applicable, may be charged even if the record searched for is not found.

(c) *Aggregation of requests.* If the Corporation reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Corporation will aggregate any such requests and charge accordingly. In no case will the Corporation aggregate multiple requests on unrelated subjects from one requester.

(d) *Waiver or reduction of charges.* Circumstances under which searching, review, and duplication facilities or services may be made available to the

requester without charge or at a reduced charge are set forth in § 2603.55.

8. Section 2603.52, is amended by revising (a) introductory text, (a)(1), (b) introductory text and (c) to read as follows:

§ 2603.52 Fee schedule.

(a) *Charges for searching and review of records.* Charges applicable under this subpart to the search for and review of records will be made according to the following fee schedule:

(1) *Search and review time.* (i) Ordinary search and review by custodial or clerical personnel, $1.75 for each one-quarter hour or fraction thereof of employee worktime required to locate or obtain the records to be searched and to make the necessary review; and (ii) search or review requiring services of professional or supervisory personnel to locate or review requested records, $4.00 for each one-quarter hour or fraction thereof of professional or supervisory personnel worktime.

* * * * *

(b) *Charges for duplication of records.* Charges applicable under this subpart for obtaining requested copies of records made available for inspection will be made according to the following fee schedule and subject to the following conditions.

* * * * *

(c) *Other charges.* The scheduled fees, set forth in paragraphs (a) and (b) of this section, for furnishing records made available for inspection and duplication represent the direct costs of furnishing the copies at the place of duplication. Upon request, single copies of the records will be mailed, postage prepaid, free of charge. Actual costs of transmitting records by special methods such as registered, certified, or special delivery mail or messenger, and of special handling or packaging, if required, will be charged in addition to the scheduled fees.

9. Section 2603.53 is amended by revising paragraph (a) to read as follows:

§ 2603.53 Computerized records.

(a) Charges for information that is available in whole or in part in computerized form will be made available at the actual direct cost to the Corporation, including 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 the request, personnel salaries apportionable to the search, and tape or printout production or an established agency-wide average rate for CPU operating costs and operator/programmer salaries involved in FOIA searches. Charges will be computed at the rates prescribed in § 2603.52 (a) and (b).

* * * * *

10. Section 2603.54 is amended by removing from paragraph (a) the phrase "as set forth in §§ 2603.51–2603.53" and inserting, in its place, "as provided in this subsection"; and by revising paragraphs (b) and (c) to read as follows:

§ 2603.54 Payment of fees.

* * * * *

(b) *Advance payment or assurance of payment.* Payment or assurance of payment before work is begun or continued on a request may be required under the following rules.

(1) Where the Corporation estimates or determines that charges allowable under the rules in this subpart are likely to exceed $250, the Corporation may require advance payment of the entire fee or assurance of payment, as follows:

(i) Where the requester has a history of prompt payment of fees under this regulation, the Corporation will notify the requester of the likely cost and obtain satisfactory assurance of full payment; or

(ii) Where the requester has no history of payment for requests made pursuant to the Act and this regulation, the Corporation may require the requester to make an advance payment of an amount up to the full estimated charges.

(2) Where the requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), the Corporation may require the requester to pay the full amount owed plus any applicable interest as provided in paragraph (c) of this section (or demonstrate that he has, in fact, paid the fee) and to make an advance payment of the full amount of the estimated fee.

When advance payment, assurance of payment, or payment of past due amounts is required by the Corporation under this paragraph, the request shall not be deemed received and the period within which action on such request shall be taken, as set forth in § 2603.45, shall not begin until the Corporation has received the required fee payment (including any applicable interest on past due amounts) or assurance of payment, whichever is required.

(c) *Late payment interest charges.* The Corporation may assess late payment interest charges on any amounts unpaid by the 31st day after the date a bill is mailed to a requester. Interest will be assessed at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date the bill is mailed.

11. Section 2603.55 is revised to read as follows:

§ 2603.55 Waiver or reduction of charges.

(a) The disclosure officer may waive or reduce fees otherwise applicable under this subpart when 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. A fee waiver request shall set forth full and complete information upon which the request for waiver is based.

(b) The disclosure officer may reduce or waive fees applicable under this subpart when the requester has demonstrated his inability to pay such fees.

Issued in Washington, DC, this 5th day of August, 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Approval of an Amendment to the Ohio Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing approval of a program amendment to the Ohio Abandoned Mine Land Reclamation (AMLR) Plan received by OSMRE pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

This amendment clarifies the role of Ohio's Rural Abandoned Mine Program (RAMP), allows use of "Opinions of Increase in Property Values" for property value increases of $2,000 or less, updates and streamlines Ohio's AMLR Plan appendices and program administration, and improves the format of selected informational tables in the Plan along with other minor technical changes.

The Federal Rules at 30 CFR Part 935 codifying decisions concerning the Ohio program are being amended to implement this action.