360 percent. The Commissioner is also permitted to increase the otherwise applicable dollar limits by up to 20 percent to account for the installation in the project of a solar energy system (as defined in section 2(a) of the National Housing Act) or certain residential energy conservation measures (as defined in sections 210(11)(A) through (G) and (I) of Pub. L. 95–619). The maximum coinsurable amount may not exceed the sum of the project's total calculated statutory cost limit, plus the applicable percentage below of estimated cost not attributable to dwelling use:

(1) Cooperative project loans—90 percent;

(2) Project loans insured under § 207.32a(*1*)—90 percent;

(3) All other project loans—85 percent.

* * * * *

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

74. The authority citation for 24 CFR Part 885 is revised to read as follows:

Authority: Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec 7(d), Department of Housing of Urban Development Act (42 U.S.C. 3535(d)).

75. In § 885.410, paragraphs (b), (c), and (f)(1) are revised to read as follows:

§ 885.410 Amount and terms of financing.

* * * * *

(b) For such part of the property or project attributable to dwelling use (excluding exterior land improvements, as defined by the Assistant Secretary) the maximum loan amount, depending on the number of bedrooms, may not exceed:

(1) $28,032 per family unit without a bedroom.

(2) $32,321 per family unit with one bedroom.

(3) $38,979 per family unit with two bedrooms.

(4) $49,893 per family unit with three bedrooms, restricted to nonelderly handicapped families.

(5) $55,583 per family unit with four or more bedrooms, restricted to nonelderly handicapped families.

(c) In order to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, the field office may increase the dollar limitations per family unit, as provided in paragraph (b) of this section, to not to exceed:

(1) $29,500 per family unit without a bedroom.

(2) $33,816 per family unit with one bedroom.

(3) $41,120 per family unit with two bedrooms.

(4) $53,195 per family unit with three bedrooms, restricted to nonelderly handicapped families.

(5) $58,392 per family unit with four or more bedrooms, restricted to nonelderly handicapped families.

* * * * *

(f) Increased Mortgage Limits—High Cost Areas. (1) The Assistant Secretary may increase the dollar amount limitations in paragraph (b) and (c) of this section—

(i) By not to exceed 110 percent in any geographical area in which the Assistant Secretary finds that cost levels so require and

(ii) By not to exceed 140 percent where the Assistant Secretary determines it necessary on a project-by-project basis.

In no case, however, may any such increase exceed 90 percent, where the Assistant Secretary determines that there is involved a mortgage purchased or to be purchased by the Government National Mortgage Association (GNMA) in implementing its Special Assistance Functions under section 305 of the National Housing Act (as section 305 existed immediately before its repeal on November 30, 1983).

(2) * * *

* * * * *

Date: March 2, 1988.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88–5904 Filed 3–17–88; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Part 888

[Docket No. N-88-1788; FR-2377]

Section 8 Housing Assistance Payments Program—Fair Market Rent Schedules for Use in the Existing Housing Certificates Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Housing Voucher Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final FY–88 fair market rents.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents periodically, but not less frequently then annually. This notice announces final FY–1988 Fair Market Rent schedules for the Section 8 Existing Housing Certificate Program (Part 882, Subparts A and B) including space rentals by owners of manufactured homes under the Section 8 Existing Housing Certificates Program (Part 882, Subpart F); the Section 8 Moderate Rehabilitation Program (Part 882, Subparts D and E); and Section 8 existing housing assisted under Part 886; Subparts A and C (Section 8 loan management and property disposition programs). FMRs are used to determine payment standard schedules in the Housing Voucher Program.

The Department published proposed FMRs for the Section 8 Existing Housing Program on August 28, 1987 (52 FR 32672) and solicited public comment. Today's document is the second announcement of effective FY–1988 FMRs. This notice contains an analysis and response to public comments on the proposed FMRs and makes appropriate revisions to the first announcement of effective FY–1988 FMRs published December 21, 1987 (52 FR 48205). This notice also establishes Westchester County, NY as a separate FMR area, sets the FMRs for this area, and requests comments on the Westchester County FMRs.

DATE: The Fair Market Rents published in this notice are effective on March 18, 1988. Comments are invited on the announced FMRs for Westchester County, NY. These comments are due May 17, 1988.

ADDRESSES: Interested persons should submit their comments on Westchester County FMRs to the Rules Docket Clerk Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500. Each comment should include the commenter's name and address and must refer to the docket number indicated in the heading of this notice. Each commenter should simultaneously submit a copy of its comments to the Economic and Market Analysis Staff, New York Regional Office, 26 Federal Plaza, New York, NY 10278–0068. A copy of each comment submitted to the Rules Docket Clerk will be available for public inspection during regular business hours at the above Washington, DC addresses.

FOR FURTHER INFORMATION CONTACT: Cecelia D. Livingston, Housing Voucher Division, Office of Elderly and Assisted Housing, telephone (202) 755–6477. For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Michael R. Allard, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 755-5577. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes a housing assistance program to aid lower income families in renting decent, safe, and sanitary housing. Assistance payments are limited by Fair Market Rents (FMRs) (or payment standards based on FMRs in the Housing Voucher Program) established by HUD for different areas.

In general, the FMR for an area is the amount that would be needed to rent privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.

Proposed Fair Market Rents

On August 28, 1987 (52 FR 32672), the Department proposed FMRs for Section 8 existing housing for FY-1988. These FMRs reflected estimated rent levels as of April 1, 1988. The criteria and methodology used by HUD in developing the proposed FMRs appear at 24 CFR Part 888, Subpart A and have been in use since 1983.

The elements used by HUD in development FMRs are: (1) The 45th percentile rent (that is, the rent below which 45 percent of the standard quality rental housing units are distributed); (2) rents based on units occupied by recent movers (households who moved within two years before the date of the survey data used in these calculations); and (3) exclusion from the data base of public housing units and recently completed housing (units built within two years of the survey dates). (See 24 CFR 888.113.) The FMRs for manufactured home spaces are based on the 45th percentile rent for manufactured home spaces. (See 24 CFR 888.113(a)).

In establishing the proposed FMRs, HUD used the most accurate data available. Data used to compute the FY-1988 FMRs include the 1980 Census data, post-1980 American Housing Survey (AHS) data and reliable area specific data submitted by public commenters in the development of the FY-1986 and FY-1987 FMRs.

This year's proposed FMRs were calculated by updating last year's final FMRs one additional year to April 1, 1988, based on the most recent CPI data available on average annual changes for rents and utilities. This year's proposed FMRs for manufactured homes spaces were calculated by updating last year's FMRs to April 1, 1988, using the most current average annual change in the CPI residential rent index (with heating costs included in the rent factored out).

Final FMR Schedules

On December 21, 1987 (52 FR 48205), HUD published its first notice announcing *effective* FMRs for all FMR areas for FY-1988. In accordance with the procedures announced in the August 28, 1987 notice, the FMRs announced in the December 21, 1987 notice were set either at the proposed level, or at the existing FY-1987 level. (FMRs for FY-1987 were published April 29, 1987 (52 FR 15630) and June 30, 1987 (52 FR 24381).)

The December 21, 1987 publication stated that the announced FMRs were subject to revision only if the FMRs were addressed by public comments. HUD stated that it would publish a second announcement making any necessary revisions to the FMR schedules, based on a review of the information contained in the public comments, as supplemented by information collected by field offices. Today's notice makes these revisions and includes an analysis and response to the public comments.

Modifications Required by Housing and Community Development Act of 1987

Section 142(b) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) amended section 8(c)(1) of the United States Housing Act of 1937 by adding: "The Secretary shall establish separate fair market rentals under this paragraph for Westchester County in the State of New York." In accordance with this statutory requirement, today's notice establishes separate effective FMRs for Westchester County.

Our prior notices included Westchester County as a part of the New York City FMR area. In response to the request for comments on the proposed FMRs, HUD received a comment filed by Westchester County on behalf of 18 PHAs administering Section 8 housing programs in that county. This comment included Westchester County FMR data. Today's notice provides the public with a further opportunity to comment on the appropriate FMR levels for Westchester County. HUD will accept public comments on this limited issue for 60 days following the publication of this notice. Following HUD's analysis of the public comments, HUD will publish a final notice making any necessary revisions for Westchester County FMRs.

Comments on the Westchester County FMR levels must include sufficient information (including a full description on local data and methodology used) to justify any proposed changes. Recommendations and supporting data must reflect the rent levels that exist within Westchester County. Local rental market surveys must show the 45th percentile rent levels. To be representative, the local data must exclude units built within the last two years of the PHA's survey, should not be drawn solely from vacant units, and should approximate the same proportion of units by structure type (for example, highrise or single family detached) and date of construction as exists in the total local inventory.

Public Comments

The December 21, 1987 notice stated that 80 comments were received in response to the proposed FMRs. HUD inadvertently failed to include one comment, addressing Alleghany, Ashe, Avery, Mitchell, Watauga, Wilkes, and Yancey Counties, NC. This comment has been considered in today's notice, and appropriate revisions to the FMR areas for five of these counties have been made in this notice.

Approximately two-thirds of the comments were submitted by PHAs. Of the remainder, 14 were from State and local governments, nine were from management companies, development corporations, and owners, two were filed by members of Congress, and two were from others.

Except for two comments supporting the proposed FMRs, all commenters stated that one or more of the proposed FMRs for their areas were too low. The Department has evaluated all comments carefully and has sought to look behind the information presented when the commenter's data appeared to have merit, but were incompletely or poorly represented. As a result of HUD's evaluation, modifications have been made in 38 of the 94 contested FMR areas.

Computation of FMRs

a. *Geographic areas.* Section 888.113 provides that FMRs are established for all Metropolitan Statistical Areas (MSAs), Primary Metropolitan Statistical Areas (PMSAs), nonmetropolitan counties, and county equivalents. Twenty-one commenters felt, given the actual markets existing in their areas, that it would be more appropriate for their jurisdiction to be included in an adjacent FMR area (with higher FMRs), to recompute FMRs for their areas to reflect FMRs in an adjacent or similarly situated FMR area with higher FMRs, or to exclude certain lower cost areas from their FMR areas.

A FMR published for Section 8 Existing Housing is established on a market area basis (*i.e.*, a geographic area within which housing units are in mutual competition). The factors used by the Office of Management and Budget (OMB) to define metropolitan and nonmetropolitan areas include commuting patterns, and population densities. These factors are also appropriate to define housing market areas. The Department believes that these OMB determinations constitute a rational basis for determining housing market areas and will continue to use the definitions of metropolitan and nonmetropolitan areas adopted by OMB.

Since FMRs within any geographic area reflect the rent level below which 45 percent of the rents will fall, actual rents will vary within each area. Thus, the 45th percentile rents for a specific locality within a FMR area may be more than the FMR. For such areas, HUD's regulations permit, under specified conditions, PHAs to approve rents that exceed FMRs. (See e.g., 24 CFR 882.106(a).) HUD has found that these exception rents usually will be sufficient to achieve the objectives of the Section 8 program.

b. *Data base*. As noted above, HUD computes FMRs by using a combination of 1980 census, AHS and CPI data. One commenter questioned HUD's use of the 1980 census data as a base. This commenter felt that the census figures, when applied to its FMR area, were erroneous or misinterpreted by HUD. HUD continues to believe that the estimates resulting from the application of the Census, AHS and CPI data provide FMRs that generally reflect local market conditions and changes. However, the Department relies on the public comment process to identify those areas where the use of the data is not appropriate or where there have been abrupt changes in local market areas. (Most questions regarding the accuracy of the HUD data base have been addressed at length in prior FMR publications. See HUD's August 29, 1986 publication of FMRs for FY–1986 (50 FR 31014, 31015–16) and the June 30, 1987 publication of FMRs for FY–1987 (52 FR 24382, 24383–84).

c. *Rent differentials by unit size*. One commenter argued that the two-bedroom FMR for its area was too low. The commenter's argument was based on the incorrect assumption that the two-bedroom FMRs are derived by applying a fixed percentage to the zero-bedroom (efficiency unit) FMR level for the area.

FMRs are actually computed by using the *two-bedroom* FMR as a base. (*I.e.* HUD establishes the two-bedroom FMR at the 45th percentile, and establishes FMRs for larger and smaller bedroom sizes by applying fixed percentages to the two-bedroom FMR). The two-bedroom FMR is used because these units comprise the largest share of the rental inventory. Percentage relationships developed from national data from the 1980 census and post-1980 American Housing Surveys are used to establish 45th percentile rents for zero- and one-bedroom units. Higher percentage relationships are provided for units that contain three or more bedrooms. (See 24 CFR 888.113(c).)

To the extent that commenters have demonstrated that the fixed percentages do not reflect their local market, the Department has made appropriate adjustments to the final FMRs.

d. *Local conditions*. Approximately two-thirds of the commenters argued that HUD's proposed FMRs ignored local conditions mandating higher FMRs. Commenters cited factors that create a high demand for, and low supply of, suitable rental properties in the area. These factors included: the location or expansion of universities, military bases or industries in the area; the proximity of major, often expanding, urban centers; the loss of housing due to condominium or cooperative conversions, gentrification, condemnation, demolition, or natural disasters; the high demand for seasonal rentals; declines in new construction; rapid population increases; and other factors. Many commenters cited sharp increases in housing costs including utility costs, insurance expenses, security costs, debt servicing costs, and local taxes.

HUD recognizes that the proposed FMRs may not keep pace with abrupt shifts in local rental housing conditions. However, we rely on local data submitted during the public comment period to identify such shifts. To the extent that the public comments have demonstrated that the proposed FMRs do not adequately reflect local conditions, the FMRs published for effect today have been revised.

Several commenters noted that increased utility costs have caused or will soon cause PHAs to increase the amount of utility allowances. These commenters noted that the increased allowances will effectively reduce the amount available for contract rent and urged HUD to permit FMR increases to offset the projected increases to the allowances.

The FMRs developed under Part 888 are intended to include the cost of contract rent *and* utilities (except telephones). In market areas for which data were submitted to demonstrate utility cost increases beyond the level reflected in the proposed FMRs, HUD has made appropriate adjustments.

e. *Tax code changes*. Several commenters predicted that recent tax code changes will increase ownership costs and argued that the FY–1988 FMRs should reflect these expected increases. Like all increase to expenses associated with the ownership of rental housing, if the projected changes occur, they will be reflected by an increase to the 45th percentile, standard quality, recent mover FMR standard. To the extent that these tax impacts will occur and are reflected in 45th percentile rents for future years, HUD will make appropriate increases to future FMRs levels.

Impact of the FMRs

Approximately 60 percent of the commenters discussed the impact that low FMRs would have on the functioning of Section 8 existing housing. The primary concern was that the proposed FMRs would not ensure an adequate supply of decent, safe and sanitary housing. Specifically, commenters argued that proposed FMRs would: (1) Not provide a sufficient economic incentive to owners to participate or continue to participate in the program; (2) severely limit the options of certificate and housing voucher holders, making it difficult or impossible to locate housing within prescribed time limits; (3) cause the clustering of assisted families in areas of low income or minority concentration, contrary to the purposes of the Section 8 program; (4) reduce the quality of housing by limiting family options to marginally acceptable units and by failing to provide the owner with sufficient revenues to maintain and rehabilitate deteriorating rental units; (5) increase homelessness; (6) have a negative impact on the Housing Voucher Program by increasing the percentage of family income necessary to rent an acceptable unit; (7) make it easier for owners to discriminate against low income and minority individuals; and (8) encourage owners to demand illegal "side payments" from certificate holders. One commenter argued that low FMRs would make it difficult to find owners willing to participate in the Rental Rehabilitation program.

The Department balanced many competing factors in establishing the FMR standard. HUD's objective was to set FMRs at a level high enough to provide a broad range of housing locations and amenities to assisted families while recognizing the need to serve as many families as possible within the limited resources. The use of the 45th percentile of recent mover rents is a standard that meets this objective.

Administrative Fee

FMRs are used to calculate the administrative fees paid to PHAs under the covered section 8 programs. (Administrative fees are not provided under the Property Disposition and Loan Management Programs (24 CFR Part 886, Subparts A and C) because HUD, rather than the PHA, administers these programs.) For the purpose of computing the administrative fee of a PHA administering a Section 8 program in a FMR area where the two-bedroom FMR is increased by this notice or was increased by the first notice of effective FMRs for FY-1988, the administrative fee will be computed as if the FMR was in effect on December 21, 1987, the effective date of the first announcement of FMRs.

One commenter argued that the administrative fee calculated from the proposed FMRs is inadequate and would impair the PHA's ability to administer the program. One component of the administrative fee (the ongoing fee) is based upon a percentage of the FMR. Today's notice is concerned only with the amount of the FMRs, not with the methodology for determining fees. Any change in the administrative fee calculation will be considered in the context of the rules and requirements for the affected program.

Other Matters

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the Section 8 Existing Housing program is categorically excluded from the Department's National Environment Policy Act procedures under 24 CFR 50.20(d).

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this Notice does not have a significant economic impact on a substantial number of small entities because FMRs reflect the rents for similar quality units in the area. Therefore, FMRs do not change the rent from that which would be charged if the project were not in the Section 8 program.

This document does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the document indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (Section 8).

Accordingly, the Fair Market Rent Schedules are proposed to be amended as follows:

Date: March 10, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Section 8 Fair Market Rent Schedules for Use in the Existing Housing Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Housing Voucher Program; Schedules B & D—General Explanatory Notes

1. Geographic Coverage

a. Except as described in paragraph c. below, FMRs for Existing Housing (Schedule B) are established for all Metropolitan Statistical Areas (MSAs), Primary Metropolitan Statistical Areas (PMSAs), nonmetropolitan counties, and county equivalents in the United States, District of Columbia, Puerto Rico, the Virgin Islands, and Guam. FMRs also are established for nonmetropolitan parts of counties in the New England States.

b. Except as described in paragraph c. below, FMRs for Manufactured Home spaces in the Section 8 Certificate Program (Schedule D) are established for all MSAs, PMSAs, selected nonmetropolitan counties, and the residual nonmetropolitan portion of each State.

c. FMRs for Existing Housing (Schedule B) and Manufactured Homes in the Section 8 Certificate Program (Schedule D) are also established for Westchester County, NY.

d. The current 338 MSAs and PMSAs are those established by the Office of Management and Budget effective October 18, 1986.

2. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedules B and D are listed alphabetically by MSA-PMSA and nonmetropolitan county within each State.

b. The constituent counties (and New England towns and cities) included in each MSA and PMSA are listed immediately following the MSA-PMSA names in each State listed in Schedule B. All of the constituent parts of an MSA that are in more than one State can be identified by consulting the listings for each applicable State.

c. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan part of a county are listed immediately following the county name.

e. The FMRs are listed by dollar amount on the first line beginning with the FMR area name.

BILLING CODE 4210-27-M

SCHEDU R EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 020488
FINAL

S T A T E: ALABAMA

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BUTLER	201	244	287	359	402

S T A T E: CALIFORNIA

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SAN JOSE, CA PMSA COUNTY(IES): SANTA CLARA	585	661	772	1007	1106

S T A T E: CONNECTICUT

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
STAMFORD, CT PMSA COUNTY: FAIRFIELD TOWNS OF DARIEN, GREENWICH, NEW CANAAN, STAMFORD	560	680	800	1000	1120

S T A T E: DIST. OF COLUMBIA

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
WASHINGTON, DC-MD-VA MSA COUNTY(IES): WASHINGTON	449	545	641	80·	897

S T A T E: FLORIDA

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
COLUMBIA	229	278	327	409	458
WASHINGTON	220	268	315	394	441
WAKULLA	218	264	311	389	435

S T A T E: LOUISIANA

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CALDWELL	194	235	277	341	381

S T A T E: MARYLAND

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
WASHINGTON, DC-MD-VA MSA COUNTY(IES): CALVERT, CHARLES, FREDERICK, MONTGOMERY, PRINCE GEORG	449	545	641	801	897

S T A T E: MICHIGAN

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
GRAND RAPIDS, MI MSA COUNTY(IES): KENT, OTTAWA	306	375	439	548	619

S T A T E: NEW YORK

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
WESTCHESTER, NY COUNTY(IES): WESTCHESTER	450	545	642	802	898

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
JEFFERSON	297	361	425	530	595

S T A T E: NORTH CAROLINA

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BURLINGTON, NC MSA COUNTY(IES): ALAMANCE	308	374	440	550	617

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
AVERY	239	288	338	422	463
MITCHELL	239	288	338	422	464
ROBESON	206	268	298	368	412
WILKES	275	331	388	485	532
IREDELL	231	356	415	478	535
PENDER	211	257	348	434	487
WATAUGA	328	395	463	578	635
YANCEY	257	309	363	453	498

S T A T E: OKLAHOMA

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
MCCURTAIN	218	266	313	390	437

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 020488
FINAL FMRS

STATE: OREGON

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
PORTLAND, OR PMSA COUNTY(IES): CLACKAMAS, MULTNOMAH, WASHINGTON, YAMHILL	301	367	457	604	669

STATE: TEXAS

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
MCCULLOCH	220	269	317	393	438

STATE: VIRGINIA

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
WASHINGTON, DC-MD-VA MSA COUNTY(IES): ARLINGTON, FAIRFAX, LOUDOUN, PRINCEWILLIA, STAFFORD, ALEXANDRIA, FAIRFAX, FALLS CHURCH, MANASSAS MANASSAS PRK	449	545	641	801	897

STATE: WASHINGTON

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
VANCOUVER, WA PMSA COUNTY(IES): CLARK	258	314	410	542	600

STATE: WEST VIRGINIA

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BARBOUR	246	298	351	439	491
RANDOLPH	246	298	351	439	491
UPSHUR	246	298	351	439	491
LEWIS	246	298	351	439	491
TUCKER	246	298	351	439	491

STATE: WISCONSIN

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SAUK	266	324	381	476	533

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 15 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.15 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

SCHEDULE D- FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) 020588

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
STATE: CALIFORNIA		
RIVERSIDE-SAN BERNARDINO, CA PMSA	140	230
COUNTY(IES): RIVERSIDE, SAN BERNARDINO		
SAN DIEGO, CA MSA	250	273
COUNTY(IES): SAN DIEGO		
STATE: NEW YORK		
EXCEPTION COUNTY: WESTCHESTER	217	217
STATE: VERMONT		
BURLINGTON, VT MSA	140	161
COUNTY: CHITTENDEN TOWNS OF BURLINGTON, CHARLOTTE, COLCHESTER, ESSEX, HINESBURG, JERICHO, MILTON, RICHMOND, ST. GEORGE, SHELBURNE, SOUTH BURLIN, WILLISTON, WINOOSKI		
COUNTY: FRANKLIN TOWNS OF GEORGIA		
COUNTY: GRAND ISLE TOWNS OF GRAND ISLE, SOUTH HERO		
EXCEPTION COUNTY: FRANKLIN	115	132
EXCEPTION COUNTY: ORANGE	125	144
EXCEPTION COUNTY: WASHINGTON	115	132
EXCEPTION COUNTY: WINDHAM	165	190
EXCEPTION COUNTY: WINDSOR	177	203

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OFFICE OF INDEPENDENT COUNSEL

28 CFR Part 701

Procedures for Disclosure of Records Under the Freedom of Information Act

AGENCY: Office of Independent Counsel.

ACTION: Final rule.

SUMMARY: On December 14, 1987, the Office of Independent Counsel issued a proposed regulation to amend Title 28 of the Code of Federal Regulations, Chapter VII, by adding Part 701, Procedures for Disclosure of Records Under the Freedom of Information Act. This action was necessary to ensure the effective discharge of the Office's obligations under the Freedom of Information Act.

The Office of Independent Counsel received one comment concerning its proposed regulation. The Office of Independent Counsel has reviewed the comment and has made minor changes regarding fees (§ 701.11) and notice to business submitters (§ 701.15).

EFFECTIVE DATE: March 18, 1988.

FOR FURTHER INFORMATION CONTACT: Pamela Krems, Office of Independent Counsel, Telephone Number (202) 383-8989.

SUPPLEMENTARY INFORMATION: The Office of Independent Counsel operates pursuant to two distinct and separate sources of authority. On December 4, 1986, Attorney General Edwin Meese III filed an application for appointment of an Independent Counsel with the Division for the purpose of Appointing Independent Counsels of the United States Court of Appeals for the District of Columbia Circuit. On December 19, 1986, the Special Division of the Court of Appeals filed an order appointing Lawrence E. Walsh as Independent Counsel in the Iran/Contra matter. Order Appointing Independent Counsel, *In re Oliver L. North, et al.*, Div. No. 86-6 (Dec. 19, 1986).

On March 5, 1987, Attorney General Meese issued a regulation that created an "Office of Independent Counsel: Iran/Contra" and provided that office with the same jurisdiction and powers that it already possessed under the Ethics in Government Act, 28 U.S.C. 591-598, and the December 19, 1986 court order appointing Independent Counsel Walsh. 52 FR 7270 (Mar. 10, 1987), 9241 (Mar. 23, 1987) (to be codified at 28 CFR Parts 600 and 601). The "Office of Independent Counsel" and the "Office of Independent Counsel: Iran/Contra" are in actuality one and the same office. This regulation is issued by Independent Counsel under both grants of authority.

This order relates primarily to individuals rather than to small business entities. However, as required by the Regulatory Flexibility Act, 5 U.S.C. 601-612, the Office hereby states that this regulation will not have a significant economic impact on a substantial number of small business entities.

List of Subjects in 28 CFR Part 701

Freedom of Information.

Dated: March 14, 1988.

Lawrence E. Walsh,

Independent Counsel.

For the reasons set forth in the preamble, and pursuant to the authority vested in me by the Ethics in Government Act, 28 U.S.C. 591-598, the December 19, 1986 Court order, and the authority delegated to me by the Attorney General pursuant to the Attorney General's regulation issued on March 5, 1987, 52 FR 7270 (Mar. 10, 1987), 9241 (Mar. 23, 1987), and 5 U.S.C. 552, Title 28 of the Code of Federal Regulations, Chapter VII, is amended by adding Part 701, to read as follows:

PART 701—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

Authority: 5 U.S.C. 552.

§ 701.10 General provisions.

(a) This part contains the regulations of the Office of Independent Counsel implementing the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. Information customarily furnished to the public in the regular course of the performance of official duties may continue to be furnished to the public without complying with this part, provided that the furnishing of such information would not violate the Privacy Act of 1974, 5 U.S.C. 552a, and would not be inconsistent with regulations issued pursuant to the Privacy Act. To the extent permitted by other laws, the Office will also consider making available records that it is permitted to withhold under the FOIA if it determines that such disclosure would be in the public interest and would not interfere with the functioning of the Office.

(b) As used in this part, the following terms shall have the following meanings:

(1) "Appeal" means the appeal by a requester of an adverse determination of his request, as described in 5 U.S.C. 552(a)(6)(A)(ii).

(2) "Agency" has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(e).

(3) "Request" means any request for records made pursuant to 5 U.S.C. 552(a)(3).

(4) "Requester" means any person who makes a request to the Office.

(5) "Business information" means trade secrets or other commercial or financial information.

(6) "Business submitter" means any commercial entity that provides business information to the Office and that has a proprietary interest in the information.

(c) The FOIA/PA Officer of the Office of Independent Counsel shall be responsible to Independent Counsel for all matters pertaining to the administration of this part.

(d) The Office of Independent Counsel shall comply with the time limits set forth in the FOIA for responding to and processing requests and appeals, unless there are exceptional circumstances within the meaning of 5 U.S.C. 552(a)(6)(C). The Office shall notify a requester whenever it is unable to respond to or process the request or appeal within the time limits established by the FOIA. The Office shall respond to and process requests and appeals in their approximate order of receipt, to the extent consistent with sound administrative practice.

§ 701.11 Requirements pertaining to requests.

(a) *How made and addressed.* A requester may make a request under this part for a record of the Office of Independent Counsel by writing to the Office at: FOIA/PA Officer, Office of Independent counsel, Suite 701 West, 555 Thirteenth Street NW., Washington, DC 20004. A request should be sent to the Office at its proper address and both the envelope and the request itself should be clearly marked: "Freedom of Information Act Request."

(b) *Request must reasonably describe the records sought.* A request must describe the records sought in sufficient detail to enable Office personnel to locate the records with a reasonable amount of effort. A request for a specific category of records shall be regarded as fulfilling this requirement if it enables responsive records to be indentified by a technique or process that is not unreasonably burdensome or disruptive of Office operations. Wherever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. In additon, if the request seeks records pertaining to pending litigation, the request should indicate the title of the case, the court in which the case was filed, and the nature of the case. If the Office determines that a request does not reasonably describe the records sought, the Office shall either advise the requester what additional information is needed or otherwise state why the request is insufficient. The Office also shall extend to the requester an opportunity to confer with Office personnel with the objective of reformulating the request in a manner that will meet the requirements of this section.

(c) *Agreement to pay fees.* (1) The filing of a request under this part shall be deemed to constitute an agreement by the requester to pay all applicable fees charged under § 701.18 of this part, up to $25, unless a waiver of fees is sought. The Office shall confirm this agreement in its letter of acknowledgement to the requester. When filing a request, a requester may specify a willingness to pay a greater amount, if applicable.

(2) If a waiver of fees up to $25 is sought in the requester's request to the Office, the Office will make its determination on the fee waiver (and notify the requester as soon as possible) after receipt of the request. The submission of a request for fee waiver will not delay the Office's responsibility to search for responsive records.

(3) If the fee waiver is denied by the Office, and the fees involved total $25 or less, the Office will send the responsive documents to the requester, along with a bill for fees. The collection of the unpaid bill shall follow the procedures found herein at § 701.18 (g)(2) and (h).

§ 701.12 Responses by the Office to requests.

(a) *Authority to grant or deny requests.* The head of the Office, or his designee, is authorized to grant or deny and request for a record of the Office.

(b) *Initial action by the Office.* When the Office receives a request for a record in its possession, the Office shall promptly determine whether another agency of the Government is better able to determine whether the record is exempt, to any extent, from mandatory disclosure under the FOIA; and whether the record, if exempt to any extent from mandatory disclosure under the FOIA, should nonetheless be released to the requester as a matter of discretion. If the Office determines that it is the agency best able to determine whether to disclose the record in response to the request, then the Office shall respond to the request. If the Office determines that it is not the agency best able to determine whether to disclose the record in response to the request, the Office shall either:

(1) Respond to the request, after consulting with the other agency best able to determine whether to disclose the record and with any other agency having a substantial interest in the requested record or the information contained therein; or

(2) Refer the responsibility for responding to the request to another agency that generated or originated the record, but only if that other agency is subject to the provisions of the FOIA. Under ordinary circumstances, the agency that generated or originated a requested record shall be presumed to be the agency best able to determine whether to disclose the record in response to the request.

(c) *Law-enforcement information.* Whenever a request is made for a record containing information that relates to an investigation of a possible violation of criminal law or to a criminal law-enforcement proceeding and that was generated or originated by another agency, the Office shall refer the responsibility for responding to the request to that other agency; however, such referral shall extend only to the information generated or originated by that other agency.

(d) *Classified information.* Whenever a request is made for a record containing information that has been classified, or that may be eligible for classification, by another agency under the provisions of Executive Order 12356 or any other Executive Order concerning the classification of records, the Office shall refer the responsibility for responding to the request to the agency that classified the information or should consider the information for classification. Whenever a record contains information that has been derivatively classified by the Office because it contains information classified by another agency, the Office shall refer the responsibility for responding to the request to the agency that classified the underlying information; however, such referral shall extend only to the information classified by the other agency.

(e) *Notice of referral.* Whenever the Office refers all or any part of the responsibility for responding to a request to another agency, the Office will consult with the other agency to obtain specific approval to notify the requester of the referral and inform the requester of the name and address of the agency to which the request has been referred and the portions of the request so referred.

(f) *Agreements regarding consultations and referrals.* No provision of this section shall preclude formal or informal agreements between the Office and another agency to eliminate the need for consultations or referrals of requests or classes of requests.

(g) *Separate referrals of portions of a request.* Portions of a request may be referred separately to one or more other agencies whenever necessary to process the request in accordance with the provisions of this section.

(h) *Date for determining responsive records.* In determining records responsive to a request, the Office ordinarily will include only those records within the Office's possession and control as of the date of its receipt of the request.

§ 701.13 Form and content of Office responses.

(a) *Form of notice granting a request.* After the Office has made a determination to grant a request in whole or in part, the Office shall so notify the requester in writing. The notice shall describe the manner in which the record will be disclosed, whether by providing a copy of the record to the requester or by making a copy of the record available to the requester for inspection at a reasonable time and place. The procedure for such an inspection shall not unreasonably disrupt the operations of the Office. The Office shall inform the requester in the notice of any fees to be charged in accordance with the provisions of § 701.18 of this part.

(b) *Form of notice denying a request.* The Office, when denying a request in whole or in part, shall so notify the requester in writing. The notice must be signed by the FOIA/PA Officer, or her designee, and shall include:

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

(2) A brief statement of the reason or reasons for the denial, including the FOIA exemption or exemptions that the Office has relied upon in denying the request and a brief explanation of the manner in which the exemption or exemptions apply to each record withheld; and

(3) A statement that the denial may be appealed under § 701.16(a) and a description of the requirements of that subsection.

(c) *Record cannot be located or has been destroyed.* If a requested record cannot be located from the information supplied, or is known or believed to have been destroyed or otherwise disposed of, the Office shall so notify the requester in writing.

§ 701.14 Classified information.

In processing a request for information that is classified or classifiable under Executive Order 12356 or any other Executive Order concerning the classification of records, the Office shall review the information to determine whether it warrants classification. Information that does not warrant classification shall not be withheld from a requester on the basis of 5 U.S.C. 552(b)(1). The Office shall, upon receipt of any appeal involving classified or classifiable information, take appropriate action to ensure compliance with Executive Order 12356 or any other Executive Order concerning the classification of records.

§ 701.15 Business information.

(a) *In general.* Business information provided to the Office by a business submitter shall not be disclosed pursuant to a FOIA request except in accordance with this section.

(b) *Notice to business submitters.* The Office shall provide a business submitter with prompt written notice of a request encompassing its business information whenever required under paragraph (c) of this section, except as is provided in paragraph (g) of this section, and only to the extent permitted by law. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

(c) *When notice is required.* For business information submitted to the Office it shall provide a business submitter with notice of a request whenever the business submitter has in good faith designated the information as commercially or financially sensitive, or the Office has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter. Notice of a request for business information falling within the former category shall be required for a period of not more than ten years after the date of submission unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration. Whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the company that the information in question is in fact confidential commercial or financial information and has not been disclosed to the public.

(d) *Opportunity to object to disclosure.* Through the notice described in paragraph (b) of this section, the Office shall afford a business submitter a reasonable period within which to provide the Office with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the FOIA and, in the case of Exemption 4, shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(e) *Notice of intent to disclose.* (1) The Office shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the Office decides to disclose business information over the objection of a business submitter, the Office shall forward to the business submitter a written notice which shall include:

(i) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A specified disclosure date.

(2) Such notice of intent to disclose shall be forwarded a reasonable number of days, as circumstances permit, prior to the specified date upon which disclosure is intended. A copy of such disclosure notice shall be forwarded to the requester at the same time.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (c) of this section, the Office shall promptly notify the business submitter.

(g) *Exceptions to notice requirements.* The notice requirements of this section shall not apply if:

(1) The Office determines that the information should not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The Office is a criminal law-enforcement agency that acquired information in the course of a lawful investigation of a possible violation of criminal law.

§ 701.16 Appeals.

(a) *Appeals to Independent Counsel.* When a request for access to records or for a waiver of fees has been denied in whole or in part, or when the Office fails to respond to a request within the time limits set forth in the FOIA, the requester may appeal the denial of the request to Independent Counsel within 30 days of his receipt of a notice denying his request. An appeal to Independent Counsel shall be made in writing and addressed to the Office of Independent Counsel, Suite 701 West, 555 Thirteenth Street NW., Washington, DC 20004. Both the envelope and the letter of appeal itself must be clearly marked: "Freedom of Information Act Appeal."

(b) *Action on appeals by the Office of Independent Counsel.* Unless Independent Counsel otherwise directs, his designee shall act on behalf of the Independent Counsel on all appeals under this section, except that a denial of a request by Independent Counsel shall constitute the final action of the Office on that request.

(c) *Form of action on appeal.* The disposition of an appeal shall be in writing. A decision affirming in whole or in part the denial of a request shall include a brief statement of the reason or reasons for the affirmance, including each FOIA exemption relied upon and its relation to each record withheld, and a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has his principal place of business, the judicial district in which the requested records are located, or the District of Columbia. If the denial of a request is reversed on appeal, the requester shall be so notified and the request shall be processed promptly in accordance with the decision on appeal.

§ 701.17 Preservation of records.

The Office shall preserve all correspondence relating to the requests it receives under this part, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code. Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 701.18 Fees.

(a) *In general.* Fees pursuant to the FOIA shall be assessed according to the schedule contained in paragraph (b) of this section for services rendered by the Office in responding to and processing requests for records under this part. All fees so assessed shall be charged to the requester, except when the charging of fees is limited under paragraph (c) of this section or when a waiver or reduction of fees is granted under paragraph (d) of this section. The Office shall collect all applicable fees before making copies of requested records available to a requester. Requesters shall pay fees by check or money order made payable to the Treasury of the United States.

(b) *Charges*. In responding to requests under this part, the following fees shall be assessed, unless a waiver or reduction of fees has been granted pursuant to paragraph (d) of this section:

(1) *Search*. (i) No search fee shall be assessed with respect to requests by educational institutions, noncommercial scientific institutions, and representatives of the news media (as defined in paragraphs (j)(6), (j)(7), and (j)(8) of this section, respectively). Search fees shall be assessed with respect to all other requests, subject to the limitations of paragraph (c) of this section. The Office may assess fees for time spent searching even if it fails to locate any respective record or when records located are subsequently determined to be entirely exempt from disclosure.

(ii) For each quarter hour spent by clerical personnel in searching for and retrieving a requested record, the fee shall be $2.25. When the search and retrieval cannot be performed entirely by clerical personnel—for example, when the identification of records within the scope of the request requires the use of professional personnel—the fee shall be $4.50 for each quarter hour of search time spent by such professional personnel. When the time of managerial personnel is required, the fee shall be $7.50 for each quarter hour of time spent by such managerial personnel.

(iii) For computer searches of records, which may be undertaken through the use of existing programming, requesters shall be charged the actual direct costs of conducting the search, although certain requesters (as defined in paragraph (c)(2) of this section) shall be entitled to the cost equivalent of two hours of manual search time without charge. These direct costs shall include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the costs of operator/programmer salary apportionable to the search (at no more than $4.50 per quarter hour of time so spent). The Office is not required to alter or develop programming to conduct a search.

(2) *Duplication*. Duplication fees shall be assessed with respect to all requesters, subject to the limitations of paragraph (c) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be $0.10 per page. For other methods of duplication, the Office shall charge the actual direct costs of duplicating a record.

(3) *Review*. Review fees shall be assessed with respect to only those requesters who seek records for a commercial use, as defined in paragraph (j)(5) of this section. For each quarter hour spent by agency personnel in reviewing a requested record for possible disclosure, the fee shall be $4.50, except that when the time of professional personnel is required, the fee shall be $7.50 for each quarter hour of time spent by such managerial personnel. Review fees shall be assessed only for the initial record review, *i.e.*, all of the review undertaken when the Office analyzes the applicability of a particular exemption to a particular record or record portion at the initial request level. No charge shall be assessed for review at the administrative appeal level of an exemption already applied. However, records or record portions withheld pursuant to an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs of such a subsequent review are properly assessable, particularly when that review is made necessary by a change of circumstances.

(c) *Limitations on charging fees*. (1) No search or review fee shall be charged for a quarter-hour period unless more than half of that period is required for search or review.

(2) Except for requesters seeking records for a commercial use (as defined in paragraph (j)(5) of this section), the Office shall provide without charge

(i) The first 100 pages of duplication (or its cost equivalent), and

(ii) The first two hours of search (or its cost equivalent).

(3) Whenever a total fee calculated under this section is $8.00 or less, no fee shall be charged.

(4) The provisions of paragraphs (c)(2) and (3) of this section work together. For requesters other than those seeking records for a commercial use, no fee shall be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages exceeds $8.00.

(d) *Waiver or reduction of fees*. (1) Records responsive to a request under the FOIA shall be furnished without charge or at a charge reduced below that established under paragraph (b) of this section when the Officer determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the Office, that disclosure of the requested 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. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(2) In order to determine whether the first fee waiver requirement is met—*i.e.*, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government—the Office shall consider the following four factors in sequence:

(i) *The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government."* The subject matter of the requested records, in the context of the request, must specifically concern the identifiable operations of the federal government—with a connection that is direct and clear, not remote or attenuated. Furthermore, the records must be sought for their informative value with respect to those government operations or activities; a request for access to records for their intrinsic informational content alone would not satisfy this threshold consideration.

(ii) *The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding or government operations or activities.* The disclosable portions of requested records must be meaningfully informative or specific governmental operations or activities in order to hold potential for contributing to increased public understanding of those operations and activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record.

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public* *understanding.*" The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of identified persons. A requester's identity and qualifications—*e.g.*, expertise in the subject area and ability and intention to convey effectively information to the general public—should be considered. It reasonably may be presumed that a representative of the news media (as defined in paragraph (j)(8) of this section) who has access to the means of public dissemination readily will be able to satisfy this consideration. Requests from libraries or other record repositories (or requesters who intend merely to disseminate information to such institutions) shall be analyzed, like those of other requesters, to identify a particular person who represents that he actually will use the requested information in scholarly or other analytic work and then disseminate it to the general public.

(iv) *The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.* The public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. The Office shall not make separate value judgments as to whether information, even though it in fact would contribute significantly to public understanding of the operations or activities of the government, is "important" enough to be made public.

(3) In order to determine whether the second fee waiver requirement is met—*i.e.*, that disclosure of the requested information is not primarily in the commercial interest of the requester—the Office shall consider the following two factors in sequence:

(i) *The existence and Magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.* The Office shall consider all commercial interests of the requester (with reference to the definition of "commercial use" in paragraph (j)(5) of this section), or any person on whose behalf the requester may be acting, but shall consider only those interests that would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration shall be given the role that such FOIA-disclosed information plays with respect to those commercial interests, as well as to the extent to which FOIA disclosures serve those interests overall. Requesters shall be given a reasonable opportunity in the administrative process to provide information bearing upon this consideration.

(ii) *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."* A fee waiver or reduction is warranted only when, once the "public interest" standard set out in paragraph (d)(2) of this section is satisfied, that public interest can fairly be regarded as greater in magnitude than that of the requester's commercial interest in disclosure. The Office shall ordinarily presume that, where a news media requester has satisfied the "public interest" standard, that will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who compile and market governmental information for direct economic return shall not be presumed to serve primarily the "public interest."

(4) When only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(5) Requests for the waiver or reduction of fees shall address each of the factors listed in paragraphs (d) (2) and (3) of this section, as they apply to each record request.

(e) *Notice of anticipated fees in excess of $25.00.* When the Office determines or estimates that the fees to be assessed under this section may amount to more than $25.00, the Office shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. (If only a portion of the fee can be estimated readily, the Office shall advise the requester that the estimated fee may be only a portion of the total fee.) In cases when a requester has been notified that actual or estimated fees may amount to more than $25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to the requester pursuant to this paragraph shall offer him the opportunity to confer with Office personnel in order to reformulate his request to meet his needs at a lower cost.

(f) *Aggregating requests.* When the Office reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the Office may aggregate any such requests and charge accordingly. The Office may presume that multiple requests of this type made within a 30-day period have been made in order to evade fees. When requests are separated by a longer period, the Office shall aggregate them only when there exists a solid basis for determining that such aggregation is warranted, *e.g.*, when the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(g) *Advance payments.* (1) When the Office estimates that a total fee to be assessed under this section is likely to exceed $250.00, it may require the requester to make an advance payment of an amount up to the entire estimated fee before beginning to process the request, except when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment or where a fee waiver, or reduction of fees, has been requested. In the case where a fee waiver or reduction of fees has been requested, the requester shall submit the advance payment, if required by the agency. This prepayment will not affect the Office's responsibility for speedy determination of the fee waiver, or reduction of fees, nor be deemed in derogation of the request for the fee waiver or reduction of fees. If the agency approves the fee waiver, or reduction of fees, the appropriate sum will be reimbursed to the requester, with no accumulated interest, if any.

(2) When a requester has previously failed to pay a records access fee within 30 days of the date of billing, the Office may require the requester to pay the full amount owned, plus any applicable interest (as provided for in paragraph (h) of this section), and to make an advance payment of the full amount of may estimated fee before the Office begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraphs (g) (1) and (2) of this section, the Office shall not require the requester to make an advance payment, *i.e.*, a payment made before work is commenced or continued on a request. Payment owed for work already completed is not an advance payment.

(4) When a component acts under paragraphs (g) (1) or (2) of this section,

the administrative time limits prescribed in subsection (a)(6) of the FOIA for the processing of an initial request or an appeal, plus permissible extensions of these time limits, shall be deemed not to begin to run until the Office has received payment of the assessed fee.

(h) *Charging interest.* The Office may assess interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent to the requester. Once a fee payment has been received by the Office, even if not processed, the accrual of interest shall be stayed. Interest charges shall be assessed at the rate prescribed in section 3717 of Title 31 U.S.C. and shall accrue from the date of the billing. The Office shall follow the provisions of the Debt Collection Act of 1982, Pub. L. No. 97–265 (Oct. 25, 1982), 96 Stat. 1749, and its implementing procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(i) *Other statutes specifically providing for fees.* (1) The fee schedule of this section does not apply with respect to the charging of fees under a statute specifically providing for setting the level of fees for particular types of records—*i.e.*, any statute that specifically requires a government priniting entity such as the Government Printing Office or the National Technical Information Service to set and collect fees for particular types of records—in order to:

(i) Serve both the general public and private sector organizations by conveniently making available government information;

(ii) Ensure that groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(iii) Operate an information-dissemination activity on a self-sustaining basis to the extent possible; or

(iv) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

(2) When records responsive to requests are maintained for distribution by agencies operating statutorily based fee schedule programs, the Office shall inform requesters of the steps necessary to obtain records from those sources.

(j) *Definitions.* For the purpose of this section:

(1) The term "direct costs" means those expenditures that the Office actually incurs in searching for and duplicating (and, in the case of commercial use requesters, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the 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 of the facility in which the records are stored.

(2) The term "search" includes 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. The Office shall ensure, however, that searches are undertaken in the most efficient and least expensive manner reasonably possible; thus, for example, the Office shall not engage in line-by-line search when merely duplicating an entire document would be quicker and less expensive.

(3) The term "duplication" refers to the process of making a copy of a record necessary to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, audio-visual materials, or machine-readable documentation (*e.g.*, magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(4) The term "review" refers to the process of examining a record located in response to a request in order to determine whether any portion of it is permitted to be withheld. It also includes processing any record for disclosure, *e.g.*, doing all that is necessary to excise it and otherwise prepare it for release, although review costs shall be recoverable even where there ultimately is no disclosure of a record. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term "commercial use" in the context of a request refers to 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, which can include furthering those interests through litigation. The Office shall determine, as well as reasonably possible, the use to which a requester will put the records requested. When the circumstances of a request suggest that the requester will put the records sought to a commercial use, either because of the nature of the request itself or because the Office otherwise has reasonable cause to doubt a requester's stated use, the Office shall provide the requester a reasonable opportunity to submit futher clarification.

(6) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, and institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. To be eligible for inclusion in this category, a requester 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 research.

(7) The term "noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (j)(5) 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, a requester 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 scientific research.

(8) The term "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. 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. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization; a publication contract would be the clearest proof, but the Office shall also look to the past publication record of a requester in making this determination. To be eligible for inclusion in this category, a requester also must not be seeking the requested records for a commercial use. In this regard, a request for records supporting the news dissemination function of the requester shall not be considered to be for a commercial use.

(k) *Charges for other services and materials.* Apart from the other provisions of this section, when the

Office elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending them other than by ordinary mail, the actual direct costs of providing the service or materials shall be charged.

§ 701.19 Other rights and services.

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under 5 U.S.C. 552.

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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 518

[Army Reg 340-17]

Release of Information and Records From Army Files

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army is amending its rule for administering the Freedom of Information Act by revising Initial Denial Authorities' responsibilities resulting from reorganization.

DATES: March 18, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Walker, Policy and Strategy Directorate, Office of the Director of Information Systems for Command, Control, Communications and Computers, Office of the Secretary of the Army, Washington, DC 20310-0107.

SUPPLEMENTARY INFORMATION: This amendment shifts responsibilities for initial denial authority to conform with the reorganization of the Department of the Army as a result of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, and other organizational realignments. Initial denial responsibility for the functions of the following former offices has been absorbed by the Administrative Assistant to the Secretary of the Army: Assistant Chief of Staff for Information Management (records relating to information systems, including automation, telecommunications, records management, publications, and audio-visual resources); records under the purview of the Directorate for Contracting and the Competition Advocate General, Office of the Deputy Chief of Staff for Logistics, which transferred to the Assistant Secretary of the Army (Research, Development, and Acquisition); The Comptroller of the Army (finance and accounting records); The Deputy Chief of Staff for Research, Development, and Acquisition (records created by his office relating to the Army's research, development, and acquisition programs and activities); The Inspector General; and, the Auditor General. The initial denial authority responsibilities of the Deputy Chief of Staff for Intelligence has been absorbed by the Commander, US Army Intelligence and Security Command. The rule is not a "major rule" as defined by Executive Order 12291. Therefore, no regulatory impact analysis has been prepared. The Department of the Army certifies that this document will not have an impact on a significant number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Therefore, no regulatory flexibility analysis has been prepared. The rule has no collection of information requirements and therefore does not require the approval of OMB under 44 U.S.C. 3501 *et. seq.*

List of Subjects in 32 CFR Part 518

Information, Archives and records, Privacy, Freedom of Information.

Dated: March 4, 1988.

John O. Roach,

Department of the Army Liaison Officer with the Federal Register.

PART 518—[AMENDED]

32 CFR Part 518 is amended to read as follows:

* * * * *

Subpart E—Release and Processing Procedures

1. 32 CFR Part 518.15 is amended by revising paragraphs (a)(4) (i) thru (xvii) and removing (a)(4) (xviii) thru (xxiii) as follows:

§ 518.15 Initial determinations.

(a) * * *

(4) * * *

(i) The Administrative Assistant to the Secretary of the Army, is authorized to act for the Secretary of the Army (SA) on requests for all records maintained by the Office of the Secretary of the Army and its serviced activities, as well as those requests requiring the personal attention of the SA, except the activities specified which follow:

(A) The Inspector General remains a separate IDA authorized to act on requests for all Inspector General records under AR 20-1.

(B) The Auditor General remains a separate IDA authorized to act on requests for records relating to audits done by the U.S. Army Audit Agency under AR 10-2. This includes requests for related records developed by the Audit Agency.

(ii) The Deputy Chief of Staff for Operations and Plans is authorized to act on requests for records relating to strategy formulation; force development; individual and unit training policy; strategic and tactical command and control systems; nuclear and chemical matters; use of DA forces, and military police records and reports; prisoner confinement and correctional records.

(iii) The Deputy Chief of Staff for Personnel is authorized to act on requests for case summaries; letters of instruction to boards; behavioral science records; safety records; and general education records.

(iv) The Deputy Chief of Staff for Logistics is authorized to act on requests for records relating to DA logistical requirements and determinations; policy concerning materiel maintenance and use, equipment standards, and logistical readiness.

(v) The Chief of Engineers is authorized to act on requests for records involving civil works, military construction, engineer procurement, and ecology; and the records of the U.S. Army Engineer divisions, districts, laboratories, and field operating agencies.

(vi) The Surgeon General is authorized to act on requests for medical research and development records; and the medical records of active duty military personnel, dependents, and persons given physical examinations or treatment at DA medical facilities.

(vii) The Chief of Chaplains is authorized to act on requests for records involving ecclesiastical rites performed by DA chaplains, and privileged communications relating to the clergy.

(viii) The Judge Advocate General (TJAG) is authorized to act on requests for records relating to claims, courts-martial, legal services, and similar legal-type records. TJAG is also authorized to act on requests for records described elsewhere in this AR, if those records relate to litigation in which the United States has an interest. In addition, TJAG is authorized to act on requests for records that are not within the functional areas of responsibility of any other IDA.

(ix) The Chief, National Guard Bureau, is authorized to act on requests for all Army National Guard records, unless such records clearly fall within another IDA's responsibility. This includes National Guard organization and training files; plans, operations, and