

contribution to the overall improvement in air quality in Midland County. According to air quality modeling, the increase in stack height from 65 meters to 81 meters only decreased ambient concentrations by 0.02 percent. USEPA believes that the redesignation is still approvable without crediting this improvement.

#### Regulatory Action

USEPA is today approving the redesignation of Midland, Michigan, to attainment for TSP. The State has provided eight quarters of violation-free data from monitors representative of worst case concentrations and evidence that the improvements in air quality were due to federally approved or permanent emission reductions.

USEPA believes today's action to be noncontroversial and routine. Therefore, it is being approved without prior proposal. This action will become

effective June 16, 1989. However, if we receive notice by May 17, 1989, that someone wishes to submit comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), I certify that this SIP approval action will not have a significant economic impact on a substantial number of small entities.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 16, 1989. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

#### List of Subjects in 40 CFR Part 81

Air pollution control, Total suspended particulates, Intergovernmental relations.

Date: March 23, 1989.

Valdas V. Adamkus,  
Regional Administrator.

#### Designation of Areas for Air Quality Planning Purposes—Michigan

Part 81 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follow:

#### PART 81—[AMENDED]

1. The entry "AQCR 122" of the TSP Table in § 81.323 is amended by removing "Midland County" and by renumbering the remainder of the entry to read as follows:

§ 81.323 Michigan.

#### MICHIGAN—TSP

| Designated area                                                                                                                                                                                                   | Do not meet primary standards | Does not meet secondary standards | Cannot be classified | Better than national standards |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|-----------------------------------|----------------------|--------------------------------|
| AQCR 122-Except subareas defined.....                                                                                                                                                                             |                               |                                   |                      | X                              |
| 1. Bay County:                                                                                                                                                                                                    |                               |                                   |                      |                                |
| R5E, T14N, Sections 14-16, 21-23.....                                                                                                                                                                             |                               |                                   |                      | X                              |
| 2. Genesee County:                                                                                                                                                                                                |                               |                                   |                      |                                |
| Starting on Industrial Ave., north to Pierson Rd., east to Dort Highway, south to Hitchcock St., south to Olive Ave. (extended), south to Robert T. Longway Boulevard, west and southwest to Industrial Ave. .... |                               |                                   |                      | X                              |
| 3. Muskegon County:                                                                                                                                                                                               |                               |                                   |                      |                                |
| R16W, T9N, Sections 5 and 6, R16W, T10N, Sections 21, 22 and 27-34.....                                                                                                                                           |                               |                                   |                      | X                              |
| 4. Saginaw County:                                                                                                                                                                                                |                               |                                   |                      |                                |
| a. Northeast Section:                                                                                                                                                                                             |                               |                                   |                      |                                |
| Starting on Tittabawassee Rd., east to I-75, south to Wadsworth Ave., west to I-675, west and north to Tittabawassee Rd. ....                                                                                     |                               |                                   |                      | X                              |
| b. Southwest Section                                                                                                                                                                                              |                               |                                   |                      |                                |
| T12N-R4E, the eastern half of Section 34 (that which is east of Maple St.) and Section 35. ....                                                                                                                   |                               |                                   |                      | X                              |

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#### 40 CFR Parts 141 and 142

[WH-FRL-3555-6]

#### Drinking Water Regulations; Public Notification

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; technical amendment.

**SUMMARY:** EPA is issuing this technical amendment to correct errors in the final rule amending the public notification requirements for public water systems which fail to comply with certain requirements of the National Primary Drinking Water Standards (NPDWRs)

promulgated pursuant to the Safe Drinking Water Act and public water systems that have a variance or exemption from a NPDWR requirement. This final regulation was published in the Federal Register on October 28, 1987 (52 FR 41534).

**EFFECTIVE DATE:** These amendments are effective April 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** Ralph Langemeier, Chief, Drinking Water Branch, Water Management Division, Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone (913) 236-2815; or Carl Reever, Deputy Director, State Programs Division, Office of Drinking Water, WH-550E, 401 M Street, SW., Washington, DC 20460, telephone (202) 382-5522.

**SUPPLEMENTARY INFORMATION:** On October 28, 1987, EPA amended 40 CFR § 141.32 which specifies public notification requirements for public water systems that violated certain requirements of NPDWRs or have a variance or exemption from an NPDWR requirement. Certain errors in the amended public notification requirements in § 141.32 have come to light. This notice amends the regulation to correct these errors.

**Note:** The October 28, 1987 notice also promulgated new public notification requirements regarding lead contamination of drinking water in 40 CFR § 141.34, and amended the public notification requirements for exceedances of the National Secondary Drinking Water Regulation for fluoride in 40 CFR § 143.5 and the State implementation regulations in 40 CFR Part 142, Subpart B.

Today's amendments do not affect these other provisions.

The first error concerns use of hand delivery or posting in lieu of electronic media notification to notify the public of "acute" violations, as defined elsewhere in the public notification rule. Specifically, in § 141.32(a)(3)(ii), it states that "[I]n lieu of the requirements of paragraphs (a) (1) and (2) \* \* \* a non-community water system may give notice within 14 days after the violation or failure by hand delivery or by continuous posting \* \* \*." Paragraph (a)(1) sets out the method and timing for initial public notification of "Tier 1" violations (which include maximum contaminant level, treatment technique, and variance and exemption schedule violations, some of which may be acute); paragraph (a)(2) sets out the repeat notice requirements for these violations. Paragraph (a)(3)(ii) allow alternative methods of notice, i.e., hand delivery and posting, for non-community water systems. Inadvertently, this paragraph does not address the timing of initial notification for acute violations. EPA

intended the timing to be the same for each type of violation, regardless of the notification method used (i.e., initial notice of Tier 1 violations within 14 days, unless the violation is acute, in which case, public notice must take place within 72 hours). This notice amends paragraph (a)(3)(ii) to add the timing requirements for acute violations so it is clear that the timing requirements are the same for all methods of notification.

Paragraph (a)(3)(i) sets out the public notification requirements for systems in areas not served by a daily or weekly newspaper of general circulation (they must substitute hand delivery or posting for newspaper notice). This paragraph specifies both the initial and repeat notice requirements; thus, it operates in lieu of the repeat notice requirements of paragraph (a)(2), as well as the initial notice requirements of paragraph (a)(1). Today's notice makes this clear by amending the citation in paragraph (a)(3)(i).

Paragraph (a)(3)(i) also discusses the timing of initial public notice for Tier 1 violations without addressing acute

violations. Thus, this notice makes the same correction described above for paragraph (a)(3)(ii) to make it clear that the timing of initial public notices is the same, regardless of the method used.

The preamble to the final public notification rule summarized the rule's requirements in Table 2. Today's notice contains a revised table that takes into account the clarification and corrections described above.

This notice also corrects two citations in Part 142 and removes the words "by establishing" which were inadvertently included in § 142.16(a)(2).

Dated: April 6, 1989.

Rebecca W. Hanmer,  
*Acting Assistant Administrator for Water.*

For the reasons set forth in the preamble, the following corrections are made to the Drinking Water Regulations; Public Notification, published in the *Federal Register* on October 28, 1987 (52 FR 41534).

1. In the preamble, on page 41542, the chart is corrected to read as follows:

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Table 2—Summary of the Final Public Notification Requirements

| Violation Category Type                     | Mandatory Health Effects Information Required (All PWS) | Notice to New Billing Units (CWS Only) | Type of PWS                | Time Frame Within Which Notice Must be Given (Box indicates time frame for initial notice, and is followed by the frequency of repeat notice) |                                           |        |         |         |          |
|---------------------------------------------|---------------------------------------------------------|----------------------------------------|----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|--------|---------|---------|----------|
|                                             |                                                         |                                        |                            | Violation                                                                                                                                     | 72 hours                                  | 7 days | 14 days | 45 days | 3 months |
| <b>TIER 1</b>                               |                                                         |                                        | Community                  | Acute Violations:                                                                                                                             |                                           |        |         |         |          |
| 1. MCL                                      | Yes                                                     | Yes                                    |                            | Elec. Media                                                                                                                                   | No Repeat                                 |        |         |         |          |
| 2. Treatment Technique                      | Yes                                                     | Yes                                    |                            | Newspaper <sup>1</sup>                                                                                                                        | No Repeat                                 |        |         |         |          |
| 3. Variance or Exemption Schedule Violation | Yes                                                     | Yes                                    |                            | Mail or Hand Delivery <sup>2</sup>                                                                                                            | Quarterly Repeat                          |        |         |         |          |
|                                             |                                                         |                                        |                            | Non-Acute Violations:                                                                                                                         |                                           |        |         |         |          |
|                                             |                                                         |                                        |                            | Newspaper <sup>1</sup>                                                                                                                        | No Repeat                                 |        |         |         |          |
|                                             |                                                         |                                        |                            | Mail or Hand Delivery <sup>2</sup>                                                                                                            | Quarterly Repeat                          |        |         |         |          |
|                                             |                                                         |                                        | Non-Community <sup>3</sup> | Option 1:                                                                                                                                     |                                           |        |         |         |          |
|                                             |                                                         |                                        |                            | Notice as for Community Water Systems                                                                                                         |                                           |        |         |         |          |
|                                             |                                                         |                                        |                            | Option 2:                                                                                                                                     |                                           |        |         |         |          |
|                                             |                                                         |                                        |                            | Acute Violations:                                                                                                                             |                                           |        |         |         |          |
|                                             |                                                         |                                        |                            | Posting or Hand Delivery                                                                                                                      | Continuous/Quarterly Repeat               |        |         |         |          |
|                                             |                                                         |                                        |                            | Non-Acute Violations:                                                                                                                         |                                           |        |         |         |          |
|                                             |                                                         |                                        |                            | Posting or Hand Delivery                                                                                                                      | Continuous/Quarterly Repeat               |        |         |         |          |
| <b>TIER 2</b>                               |                                                         |                                        | Community                  | Newspaper <sup>1</sup>                                                                                                                        | Quarterly Repeat by Mail or Hand Delivery |        |         |         |          |
| 1. Monitoring <sup>4</sup>                  | No                                                      | No                                     |                            |                                                                                                                                               |                                           |        |         |         |          |
| 2. Testing Procedure                        | No                                                      | No                                     |                            |                                                                                                                                               |                                           |        |         |         |          |
| 3. Variance or Exemption Issued             | Yes                                                     | No                                     | Non-Community <sup>3</sup> | Option 1:                                                                                                                                     |                                           |        |         |         |          |
|                                             |                                                         |                                        |                            | Notice as for Community Water Systems                                                                                                         |                                           |        |         |         |          |
|                                             |                                                         |                                        |                            | Option 2:                                                                                                                                     |                                           |        |         |         |          |
|                                             |                                                         |                                        |                            | Posting or Hand Delivery                                                                                                                      | Continuous/Quarterly Repeat               |        |         |         |          |

## Footnotes

<sup>1</sup>If no newspaper of general circulation is available, posting or hand delivery is required as specified in §141.32(a)(3)(i) and §141.32(b)(3)(i).

<sup>2</sup>May be waived in accordance with §141.32(a)(1)(ii).

<sup>3</sup>Includes both transient non-community public water systems and non-transient non-community public water systems.

<sup>4</sup>Less frequent notice (but no less than annual) to be required as in §142.16(a).

**PART 141—[AMENDED]****2. In Part 141:**

a. The authority citation for Part 141 continues to read as follows:

Authority: 42 U.S.C. 300g-1, 300g-3, 300g-6, 300j-4, and 300j-9.

b. Section 141.32 is amended by revising paragraph (a)(3)(i) and (ii) to read as follows:

**§ 141.32 Public notification.**

(a) \* \* \*

(3)(i) In lieu of the requirements of paragraphs (a) (1) and (2) of this section, the owner or operator of a community water system in an area that is not served by a daily or weekly newspaper of general circulation must give notice by hand delivery or by continuous posting in conspicuous places within the area served by the system. Notice by hand delivery or posting must begin as soon as possible, but no later than 72 hours after the violation or failure for acute violations (as defined in paragraph (a)(1)(iii) of this section), or 14 days after the violation or failure (for any other violation). Posting must continue for as long as the violation or failure exists. Notice by hand delivery must be repeated at least every three months for as long as the violation or failure exists.

(ii) In lieu of the requirements of paragraphs (a) (1) and (2) of this section, the owner or operator of a non-community water system may give notice by hand delivery or by continuous posting in conspicuous places within the area served by the system. Notice by hand delivery or posting must begin as soon as possible, but no later than 72 hours after the violation or failure for acute violations (as defined in paragraph (a)(1)(iii) of this section), or 14 days after the violation or failure (for any other violation). Posting must continue for as long as the violation or failure exists. Notice by hand delivery must be repeated at least every three months for as long as the violation or failure exists.

**PART 142—[AMENDED]****3. In Part 142:**

a. The authority citation for Part 142 continues to read as follows:

Authority: 42 U.S.C. 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, and 300j-9.

b. Section 142.10 is amended by revising paragraph (b)(6)(v) to read as follows:

**§ 142.10 Requirements for a determination of primary enforcement responsibility.**

(b) \* \* \*

(6) \* \* \*

(v) Authority to require public water systems to give public notice that is no less stringent than the EPA requirements in §§ 141.32 and 142.16(a).

c. Section 142.16 is revised to read as follows:

**§ 142.16 Special primacy requirements.**

(a) *State public notification requirements.* If a State exercises the option specified in § 141.32(b)(4) to authorize less frequent notice for minor monitoring violations, it must adopt a program revision enforceable under State authorities which promulgates rules specifying either: (1) Which monitoring violations are minor and the frequency of public notification for such violations; or (2) criteria for determining which monitoring violations are minor and the frequency of public notification.

(b) [reserved]

[FR Doc. 89-9122 Filed 4-14-89; 8:45 am]

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**COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED****41 CFR Part 51-7****Public Availability of Agency Materials**

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Final rule.

**SUMMARY:** The Committee has revised its regulations to implement the provisions of the Freedom of Information Act of 1986.

**EFFECTIVE DATE:** May 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** Beverly L. Milkman, Executive Director (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** On October 27, 1986, the President signed the Freedom of Information Reform (FOIA) Act of 1986 (Pub. L. 99-570). This legislation amended the FOIA to provide broader exemption protection for law enforcement information and modified the Act's fee and fee waiver provisions. On January 19, 1988, the Committee published a proposed rule revising its FOIA regulations accordingly. The fee provisions conform to the uniform FOIA fee schedule and guidelines promulgated by OMB, 52 FR 10011-10020 (March 27, 1987). In issuing the fee waiver criteria, policy guidance issued by the

Department of Justice on April 2, 1987 was considered. Public comment was invited, with the comment period extending to March 15, 1988. During that period, comments were received from one interest group representing the media. A discussion of their comments follows:

*Comment:* The Committee should furnish records "promptly" rather than "within a reasonable time" as proposed.

*Response:* The Committee Regulations at § 51-7.7(c) have been revised to provide the records "as soon as possible."

*Comment:* The Committee should offer assistance to requesters who do not reasonably describe the information that they request.

*Response:* § 51-7.2(a) of the Committee's regulations have been revised to include: "Where a request does not reasonably describe the requested information, the requester will be asked to provide more specific information."

*Comment:* The Committee's proposed business notification procedures would interfere with and regularly prevent the agency from adhering to the 10-day time limit for responding to FOIA requests.

*Response:* § 51-7.8(a) in part states that in responding to an FOIA request, if the Committee cannot readily determine whether the information is privileged or confidential business information, it will obtain and consider the views of the submitter of the information and provide the submitter at least 10 working days to object to any decision to disclose the information. The Committee believes that business submitters of information should be afforded an opportunity to object to the release of information considered privileged or confidential. Further, taking time extensions for the purpose of consulting with submitters of information is consistent with court decisions and the intent of Executive Order 12600, "Predisclosure Notification Procedures for Confidential Commercial Information," June 1987.

*Comment:* The Committee should not defer its responsibility for granting or denying requests if another agency has "primary responsibility" for the requested records.

*Response:* FOIA does not preclude an agency from referring requests for records to the agency which has primary responsibility for the requested records, particularly where the primary agency is in the best position to determine whether records must be disclosed or whether an exemption can and should be asserted. This practice is not unusual among federal agencies.

**Comment:** The Committee's regulations should indicate that records denied to an FOIA requester will be preserved for the life of the Statute of Limitations regarding those records.

**Response:** The Committee addresses "Preservation of Records" at § 51-7.16 in its regulations. The Committee will comply with all applicable recordkeeping requirements.

**Comment:** The Committee in its regulations should eliminate or redefine its definition of "representative of the news media."

**Response:** The Committee's definition was taken from the OMB fee guidelines which were made final only after a period of public comment during which concerns were raised and considered. The statute specifically mandates that agencies follow OMB guidelines in promulgating their own regulations. The Committee believes that its definition properly implements the statutory terms of the amended Act.

**Comment:** The Committee should make it easier to obtain fee waivers on requests for information.

**Response:** The Committee's fee waiver regulations are based on and in compliance with the Department of Justice guidelines issued on April 2, 1987. The Committee has reviewed these guidelines and believes they are in accord with the 1986 fee waiver amendments to FOIA. Special concerns raised by the commenter have been addressed by the Department in its notice of final rulemaking, 52 FR 33230-33231 (September 2, 1987).

**Comment:** The Committee's regulations violate the Paperwork Reduction Act by requiring FOIA requesters seeking waiver of fees to provide proof of entitlement. The Committee should be able to determine from the initial request whether a fee is justified.

**Response:** The Committee agrees that, in many instances, the initial request itself may provide sufficient information for the Committee to make a fee waiver determination. However, the Committee recognizes that there will be instances where the initial request does not provide sufficient information. In such cases, the requester should be given an opportunity to provide additional justification. Accordingly, the Committee's regulations have been revised to allow for this circumstance. The Committee believes its fee waiver procedures are in compliance with the Paperwork Reduction Act.

**Comment:** The Committee's proposed regulations on fee waivers should exclude the news dissemination function from its test to determine the requester's commercial interest.

**Response:** The Department of Justice in its fee waiver guidelines indicated that news gathering and dissemination by established news media organizations, as a rule, should not be considered to be "primarily" in their commercial interest. However, the Department indicated there are instances such as "the disclosure of agency records to data brokers or others who compile and market Government information for direct economic return which can more readily be considered as primarily in the commercial interests of the requester." The Committee concurs with the Department's statement, that each agency is best situated to make a comparative assessment as to the likely effects of disclosure of its own records.

**Comment:** The Committee's prepayment requirement interferes with the agency's requirement to provide information promptly, and the media's ability to provide timely dissemination of information.

**Response:** The Committee believes its prepayment requirement is fair and necessary. Further, both the Act and OMB guidelines specifically provide for prepayment of fees.

#### Miscellaneous

In the proposed rule as published, the Committee did not include the statutory requirement that extensions of time for responding to a request may be extended for a total of 10 working days, divided between the initial response and the appeal response. The Committee has recognized this oversight and has added conforming language to § 51-7.11. The Committee has also recognized that it did not include the usual and customary 30-day time frame for the submission of appeals to initial denials of records, and it has amended § 51-7.10 accordingly.

#### List of Subjects in 41 CFR Part 51-7

##### Freedom of Information.

41 CFR Part 51-7 is revised to read as follows:

#### PART 51-7 PUBLIC AVAILABILITY OF AGENCY MATERIALS

##### Sec.

- 51-7.1 Purpose.
- 51-7.2 Scope.
- 51-7.3 Definitions.
- 51-7.4 Availability of materials.
- 51-7.5 Requests for records.
- 51-7.6 Aggregating requests.
- 51-7.7 Committee response to requests for records.
- 51-7.8 Business information.
- 51-7.9 Records of other agencies.
- 51-7.10 Appeals.
- 51-7.11 Extensions of time.

##### Sec.

- 51-7.12 Fee schedule.
- 51-7.13 Fees charged by category of requester.
- 51-7.14 Fee waivers and reductions.
- 51-7.15 Collection of fees and charges.
- 51-7.16 Preservation of records.

Authority: 5 U.S.C. 552.

#### § 51-7.1 Purpose.

These regulations implement the provisions of the "Freedom of Information Act," 5 U.S.C. 552. They establish procedures under which the public may inspect and obtain copies of nonexempt material maintained by the Committee, provide for administrative appeal of initial determinations to deny requests for material, and prescribe uniform fees to be charged by the Committee to recover search, review, and duplication costs.

#### § 51-7.2 Scope.

(a) These regulations shall apply to all final determinations made by the Committee, including all objections; and to any other Committee records reasonably described and requested by a person in accordance with these regulations—except to the extent that such material is exempt in accordance with paragraph (b) of this section. Where a request does not reasonably describe the requested information, the requester will be asked to provide more specific information.

(b) Requests for inspection and copies shall not be granted with respect to matters that are:

(1) Related to records:

(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and

(ii) In fact properly classified pursuant to such Executive Order;

(2) Related solely to the internal personnel rules and practices of the Committee;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Committee;

(6) Personnel, medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

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

(i) Could reasonably be expected to interfere with enforcement proceedings.

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication.

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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

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

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

(8) Contained in or related to examination, operation, or condition of reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps concerning wells.

(c) Whenever a request is made which involves access to records described in paragraph (b)(7)(i) of this section and:

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that:

(i) The subject of the investigation or proceeding is not aware of its pendency, and

(ii) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, then the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(d) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(e) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in paragraph (b)(1) of this section, the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

#### § 51-7.3 Definitions.

As used in these regulations:

(a) The term "Act" means the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) The term "Committee" means the Committee for Purchase from the Blind and Other Severely Handicapped.

(c) The term "Chairman" means the Chairman of the Committee for Purchase from the Blind and Other Severely Handicapped.

(d) The term "Executive Director" means the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped.

(e) The term "exempt materials" means those materials described in § 51-7.2(b).

(f) The term "non-exempt materials" refers to all materials described in § 51-7.2(a), except "exempt materials" included in § 51-7.2(b).

(g) The term "duplication" refers to the process of making a copy of a document necessary to respond to a request. Such copies can take the form of paper copy, audio-visual materials, or machine readable materials (e.g., magnetic tape or disk), among others.

(h) 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.

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

#### § 51-7.4 Availability of materials.

All non-exempt materials shall be available for inspection during normal business hours at the Committee's offices, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway,

Arlington, Virginia 22202-3509. Space shall be made available at that location for the use of any person who is granted permission to inspect such materials. An individual who intends to visit the Committee offices in person to inspect non-exempt material shall make an appointment with the Executive Director at least one week in advance, except when the Committee has provided notification that certain records are available for inspection in the Committee offices. An individual who intends to inspect those records shall make an appointment with the Executive Director at least 24 hours in advance.

#### § 51-7.5 Requests for records.

(a) Requests to inspect and obtain copies of any material maintained by the Committee must be submitted in writing to the Executive Director, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509. The requester may in his or her petition ask for a fee waiver if there is likely to be a charge for the requested information. All requests for records shall be deemed to have been made pursuant to the FOIA, regardless of whether the Act is specifically mentioned. Failure to submit a request in accordance with these procedures may delay the processing of the request.

(b) A request must reasonably describe the records to enable agency personnel to locate them with reasonable effort. Where possible, a requester should supply specific information regarding dates, titles, and other identification which will help to identify the records.

(c) If the Committee determines that a request does not reasonably describe the records, it shall inform the requester of this fact and extend to the requester an opportunity to clarify the request or to confer promptly with knowledgeable agency personnel to attempt to identify the records he or she is seeking. The "date of receipt" in such instances shall be the date of receipt of the amended or clarified request.

(d) Nothing in this part shall be interpreted to preclude the Committee from honoring an oral request for information, but, if the requester is dissatisfied with the response, the Committee official involved shall advise the requester to submit a written request in accordance with paragraph (a) of this section. The "date of receipt" of such a request shall be the date of receipt of the written request. For recordkeeping purposes, the Committee in responding to an oral request for information may

ask the requester to confirm the oral request in writing.

#### § 51-7.6 Aggregating requests.

When the Committee reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Committee may aggregate any such requests and charge accordingly. Elements to be considered in determining whether a belief would be reasonable include the time period in which the requests have occurred and the subject matter involved.

#### § 51-7.7 Committee response to requests for records.

(a) An initial determination whether, and to what extent, to grant each request for records or a fee waiver shall be made by the Executive Director within 10 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of that request. The person making the request shall be notified as soon as the determination is made.

(b) In making an initial determination whether and to what extent requested information will be released, the Committee shall first consider whether the material requested is of a type described in § 51-7.2(a); if it is, the request shall be granted unless the material is exempted by § 51-7.2(b). If the material requested is not a type described in § 51-7.2(a), or is the subject of one or more exemptions, the request may be denied.

(c) If a determination is made to grant a request, the relevant material shall be furnished as soon as possible following the determination to grant the request, and after payment of the fee specified in § 51-7.12 when required, except that copies of less than 10 pages of material requested in person ordinarily will be furnished immediately following the determination to grant the request.

(d) Where portions of the requested material are exempt under § 51-7.2(b), and are reasonably segregable from the remainder of the material, those portions shall be excised from the materials disclosed.

(e) If a determination is made to deny a request, or a portion thereof, the notification shall include a statement of the reasons for such action, shall set forth the name and position of the person responsible for the denial, and shall advise the requester of the right, and the procedures required under § 51-7.10 to appeal the denial to the Chairman.

(f) The Committee will require prepayment of fees for search, review,

and reproduction which are likely to exceed \$250.00. When the anticipated total fee exceeds \$250.00, the requester will receive notice to prepay and at the same time will be given an opportunity to modify his or her request to reduce the fee. The Committee will also inform the requester that fees for search time will be charged even if the search proves unsuccessful. The Committee will not start processing a request until payment is received.

(g) Whenever duplication fees or search fees are anticipated to exceed \$25.00, but not more than \$250.00 and the requester has not indicated, in advance, a willingness to pay fees as high as those anticipated, the Committee will notify the requester of the amount of the anticipated fee. Similarly, where an extensive and therefore costly successful search is anticipated, the Committee will notify requesters of the anticipated fees. The Committee will not start processing the request until assurance of payment is received.

(h) Photocopies and directives furnished to the public are restricted to one copy of each page.

#### § 51-7.8 Business information.

(a) When, in responding to an FOIA request, the Committee cannot readily determine whether the information obtained from a person is privileged or confidential business information or when a submitter has labeled information as proprietary at the time of submission, it shall:

(1) Obtain and consider the views of the submitter of the information and provide the submitter at least 10 working days to object to any decision to disclose the information and to provide reasons for the objection;

(2) Provide business information submitters with notice of any determination to disclose such records, to which the submitter has objected to disclosure, 10 working days prior to the disclosure date, and the reasons for which its disclosure objection is not sustained;

(3) Notify business information submitters promptly of all instances in which FOIA requesters are bringing suit seeking to compel disclosure of submitted information.

(b) The submitter, in responding to a request under paragraph (a)(1) of this section, must explain fully all grounds upon which disclosure is opposed. For example, if the submitter maintains that disclosure is likely to cause substantial harm to its competitive position, the submitter must explain how disclosure would cause such harm.

(c) When a central nonprofit agency has submitted business information on

behalf of a workshop, the workshop shall be considered to be the "business information submitter" for the purposes of this section.

#### § 51-7.9 Records of other agencies.

(a) When the Committee receives a request to make available current records that are the primary responsibility of another agency, the Committee will refer the request to the agency concerned for appropriate action.

(b) The Committee will notify the requester of the referral in paragraph (a) of this section and include the name and address of the office to which the request was referred.

#### § 51-7.10 Appeals.

(a) An appeal to the Chairman of any denial, in whole or in part, of a request for access to and copies of material may be made by submission of a written request for reconsideration. Such requests shall state the specific reasons for reconsideration that address directly the grounds upon which the denial was based. Requests must be addressed to the Chairman at the Committee offices and must be received within 30 calendar days of the requester's receipt of the Committee's initial denial.

(b) The Chairman shall make a determination with respect to any appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of the request for reconsideration. The person making such a request shall immediately be notified by mail of the determination.

(c) If the initial denial is reversed by the Chairman, any material with which the reversal is concerned shall be made available in accordance with § 51-7.7(b).

(d) If the denial is upheld, in whole or in part, the Chairman shall include in the notification a statement of the requester's right of judicial review under 5 U.S.C. 552(a)(4), and the name and position of the person responsible for the denial.

#### § 51-7.11 Extensions of time.

(a) Whenever unusual circumstances exist, such as those set forth in paragraph (b) of this section, the times within which determinations must be made by the Executive Director on requests for access (10 working days), and by the Chairman on requests for reconsideration (20 working days), may be extended by written notice to the requester for a time not to exceed an aggregate of 30 working days. The notice shall set forth the reasons for such extension, and the date on which a determination is expected to be made.

Extensions of time shall be utilized only to the extent reasonably necessary to the proper processing of the particular request.

(b) As used in this section, "unusual circumstances" may mean:

(1) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are the subject of a single request;

(2) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request; or

(3) The need to obtain and consider the views of a business information submitter under § 51-7.8.

#### § 51-7.12 Fee schedule.

(a) This schedule sets forth fees to be charged for processing requests for records under the FOIA. No higher fees or charges in addition to those provided for in this schedule may be charged a party requesting records under FOIA.

(b) Subject to the criteria set forth in § 51-7.13, fees may be assessed under FOIA on all requests involving document search, duplication, and review. Fees may also be charged in situations involving special service to requests, such as certifying that records requested are true copies, or sending records by special methods such as express mail, etc.

(c) Instances in which fees may not be charged are as follows:

(1) No charge shall be made for the first 100 pages of duplicated information (8½"x14" or smaller-size paper), or the first two hours of manual search time, or the first two minutes of computer search time, except on requests seeking documents for a commercial use, as specified in § 51-7.13;

(2) Also, no charge shall be made—even to commercial use requesters—if the cost of collecting a fee would be equal to or greater than the fee itself;

(3) In addition, fees shall not be charged for time spent by an agency employee in resolving legal or policy issues, or in monitoring a requester's inspection of agency records;

(4) Documents shall also be furnished without charge when members of the public provide their own copying equipment, in which case no copying fee will be charged (although search and review fees may still be assessed).

(d) Fees for records and related services are as follows:

(1) The fee for photocopies of pages 8½"x14" or smaller shall be \$0.20 for each page;

(2) The fee for photocopies larger than 8½"x14" shall be \$0.50 per linear foot of the longest side of the copy;

(3) The fee for other forms of duplicated information, such as microfilm, audio-visual materials, or machine-readable documentation (i.e., magnetic tape or disk) shall be the actual direct cost of producing the document(s);

(4) Manual searches shall be charged at the salary rate of the employee conducting the search, plus 16 percent of the employee's basic pay.

(e) Computer searches and services shall be charged at the rate of \$22.00 per minute. The \$22.00-per-minute rate includes the cost of operating the central processing unit (CPU), and the computer operator's salary. When the services of a computer programmer or a computer program analyst are required in connection with an FOIA request, the fee for those services shall be \$16.00 and \$20.00 per hour, respectively.

(f) Charges for unsuccessful searches, or searches which fail to locate records or which locate records which are exempt from disclosure, shall be assessed at the same fee rate as searches which result in disclosure of records.

(g) The fee for providing review services shall be the hourly salary rate (i.e., basic pay plus 16 percent) of the employee conducting the review to determine whether any information is exempt from mandatory disclosure.

#### § 51-7.13 Fees charged by category of requester.

(a) Under the FOIA, as amended, there are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each category.

(b) Commercial use requesters. For commercial use requesters, the Committee shall assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents referenced in § 51-7.12(c)(1). The Committee may charge for the cost of searching for and reviewing records for commercial use requesters even if there is ultimately no disclosure of records.

(1) A commercial use requester is defined as 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.

(2) In determining whether a requester

properly belongs in this category the Committee must determine whether the requester will put the documents to a commercial use. Where the Committee 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 Committee may seek additional clarification from the requester.

(c) Educational and non-commercial scientific institution requesters. Fees for this category of requesters shall be limited to the cost of providing duplication service alone, minus the charge for the first 100 reproduced pages. No charge shall be made for search or review services. To qualify for this category, requesters must show that the request is being made as authorized by and under the auspices of an eligible institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly research (if the request is from a non-commercial scientific institution).

(1) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(2) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis, 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.

(d) Requesters who are representatives of the news media—Fees for this category of requesters shall also be limited to the cost of providing duplication service alone, minus the charge for the first 100 reproduced pages. No charge shall be made for providing search for review services. Requests in this category must not be made for a commercial use.

(1) 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.

(2) The term "news" means information that is about current events or that would be of current interest to the public.

(3) Examples of news media entities include television or radio stations broadcasting to the public at large, and

publishers of periodicals which disseminate news and who make their products available for purchase or subscription by the general public.

(4) "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.

(e) All other requesters. Fees for requesters who do not fit into any of the above categories shall be assessed for the full reasonable direct cost of searching for and duplicating documents that are responsive to a request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge.

#### § 51-7.14 Fee waivers and reductions.

The Committee will waive or reduce fees on requests for information if disclosure of the information is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and is not primarily in the commercial interest of the requester.

(a) In determining when fees shall be waived or reduced, the Committee will consider the following six factors:

(1) The subject of the request, i.e., whether the subject of the requested records concerns "the operations or activities of the Government";

(2) The informative value of the information to be disclosed, i.e., whether the disclosure is "likely to contribute" to an understanding of Government operations or activities;

(3) The contribution to an understanding of the subject by the general public likely to result from disclosure, i.e., whether disclosure of the requested information will contribute to "public understanding";

(4) The significance of the contribution to public understanding, i.e., whether the disclosure is likely to contribute "significantly" to public understanding of Government operations or activities;

(5) The existence and magnitude of a commercial interest, i.e., whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(6) The primary interest in disclosure, i.e., 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."

(b) The Committee may waive or

reduce fees associated with a request for disclosure regardless of whether a waiver or reduction has been requested if the Committee determines that disclosure will primarily benefit the general public.

(c) Fees shall be waived, however, without discretion in all circumstances where the amount of the fee is \$20.00 or less.

#### § 51-7.15 Collection of fees and charges.

(a) Except when prepayment is required, payments shall be collected to the fullest extent possible at the time the requested materials are furnished. Payments shall be made by requesters within 30 days of the date of the billing.

(b) Payments shall be made by check, draft, or money order made payable to the Treasury of the United States.

(c) In instances where a requester has previously failed to pay a fee, the Committee may require the requester to pay the full amount owed, plus any applicable interest as provided below, as well as the full estimated fee associated with any new request before it begins to process the new or subsequent request.

(d) On requests that result in fees being assessed, interest will be charged on an unpaid bill starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 United States Code, and will accrue from the date of the billing.

(e) In attempting to collect fees levied under FOIA, the Committee will abide by the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365) in disclosing information to consumer reporting agencies and in the use of collection agencies, where appropriate, to encourage payment.

#### § 51-7.16 Preservation of records.

The Committee 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 United States Code, and to the General Records Schedule. Records shall not be destroyed while they are the subject of a pending request, appeal, or lawsuit under the Act.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-9034 Filed 4-14-89; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 0 and 19

[FCC 89-102]

### Establishment of the Office of Inspector General and Internal Control and Security Office

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** The FCC is creating an Office of Inspector General (OIG) in conformance with the Inspector General Act Amendments of 1988. The Commission is also transferring all audit and many investigatory functions from the Internal Review and Security Division (IRSD), Office of the Managing Director, to the new OIG in conformance with this law. To reflect this change in functions, IRSD is renamed the Internal Control and Security Office, but continues to report to the Managing Director.

**EFFECTIVE DATE:** April 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** Brent Weingardt or Eileen Savell, Office of the Managing Director, 202-632-3906.

**SUPPLEMENTARY INFORMATION:** This is the complete text of the Commission's Order (FCC 89-102), Adopted March 29, 1989 and Released April 12, 1989.

1. By this action, the Commission amends its rules to reorganize the Internal Review and Security Division within the Office of Managing Director into two distinct organizations: an independent Office of Inspector General reporting directly to the Chairman and the Internal Control and Security Office, which will be under the supervision of the Managing Director.

2. On October 18, 1988, the President signed into law the Inspector General Act Amendments of 1988. Pub. L. No. 100-504, 102 Stat. 2515 (1988). This law amends the Inspector General Act of 1978<sup>1</sup> to require 33 designated federal entities to create an Office of Inspector General (OIG) as they now exist in many Executive Branch departments. Section 104 of the Act defines the Federal Communications Commission as one of the designated federal entities that must establish and maintain an Office of Inspector General not later than 180 days after the enactment of the law.

3. The reasons for the creation of an Office of Inspector General are set out in the Inspector General Acts. First, the

<sup>1</sup> 5 U.S.C. Appendix 3.