

cushion of credit payments, repayment of loans made pursuant to Section 313 of the Act, and other sources as provided by law. This subaccount shall be used to provide grants or zero interest loans to borrowers under the Act for the purpose of promoting rural economic development.

§ 1785.67 Definitions.

"Accumulated (deferred) interest" means interest allowed to accumulate up to, and including, the basis date of REA notes covering loans approved before June 5, 1957. The accumulated interest is payable in equal periodic installments over the remaining life of the notes.

"Act" means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et. seq.).

"Advance payment" means a voluntary unscheduled payment on an REA note, made prior to October 2, 1987, credited to the advance payment account of a borrower.

"Cushion of Credit Payment" means a voluntary unscheduled payment on an REA note made after October 1, 1987, credited to the cushion of credit account of a borrower.

"Current interest" means interest payable periodically as it accrues.

"Fund" means the Rural Electrification and Telephone Revolving Fund established pursuant to the Act.

"Interest credit" means interest earned on balances in advance payment or cushion of credit accounts. Since the periodic installments are established by the terms of the notes, the interest credits cannot serve to change the total amount of each installment; therefore, an amount equal to the interest credits is added to the principal installment due. On receipt of the full installments, amounts equal to the interest credits (the principal offsets) are added to the respective advance payment accounts.

"Prepayment" means a voluntary unscheduled payment which the borrower instructs REA to apply directly and immediately to the principal of an REA note.

"REA notes" means those notes, bonds, or other obligations evidencing indebtedness created by loans made by REA pursuant to Titles I, II, or III of the Act.

"Subaccount" means the "Rural Economic Development Subaccount" established pursuant to the Act as part of the Fund.

§ 1785.68 Establishing an REA cushion of credit payment account.

A cushion of credit account shall be automatically established by REA for each borrower who makes a payment

after October 1, 1987, in excess of amounts then due on an REA note. Such account will bear interest at a rate of 5 percent per annum. All payments on REA notes which are in excess of required payments and not otherwise designated shall be deposited in the borrowers' respective cushion of credit accounts. Payments received in the month in which an installment is due will be applied to the installment due. However, if the regular installment payment is received at a later date in the month, the first payment received will be applied retroactively to a cushion of credit account and the second will be applied to the installment due.

§ 1785.69 Cushion of credit payment account computations.

(a) *Deposits.* Cushion of credit payments are credited to the borrowers' cushion of credit accounts.

(b) *Interest.* Interest at the rate of 5 percent per annum shall be credited on a quarterly basis to cushion of credit accounts. Interest earned will appear as a reduction in the interest billed on the borrower's REA notes and will be separately shown on REA Form 694, "Statement of Interest and Principal Due."

§ 1785.70 Application of RETRF cushion of credit payments.

(a) If a maturing installment on an REA note or a note which has been guaranteed by REA is not received by its due date, funds will be withdrawn from the borrower's cushion of credit account and applied as of the installment due date beginning with the oldest of such notes as follows: first, to current interest then due on all notes; second, to the accumulated interest due, if any, on all notes; and third, to the principal then due on all notes. In those instances where a borrower has prior to October 2, 1987, maintained an advance payment account with REA, its cushion of credit account will be applied in accordance with the provisions of this section prior to using any balance remaining in its advance payment account to pay interest and principal installments on notes. Computations required under this section have been made by REA as of October 2, 1987; however, any borrower may make a one time irrevocable election to have all such computations made as of April 5, 1989 by filing written notice to that effect with Robert D. Ruddy, Director, Fiscal Accounting Division, Rural Electrification Administration, Washington, DC 20250-1500.

(b) A borrower may reduce the balance of its cushion of credit account

only if the amount obtained from the reduction is used to make scheduled payments on loans made or guaranteed under the Act.

Dated: March 15, 1989.

Jack Van Mark,

Acting Administrator.

[FR Doc. 89-8022 Filed 4-4-89; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 260, 284, 385, and 388

[Docket No. RM87-17-000]

Natural Gas Data Collection System; Availability of Record Formats and Hard Copy Filing Formats for Certificate Filings

Issued March 29, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of availability of record formats and hard copy filing formats for certificate filings.

SUMMARY: This notice identifies revisions and additions to the record formats for certificate filings. There are now seventeen record descriptions for a certificate filings. These formats have been revised in response to certain recommendations and comments submitted prior to, during, and after the Order No. 493 (53 FR 15,025 (Apr. 27, 1988)) implementation conference held on February 1 and 2, 1989. In addition, several new record formats have been added to expedite staff analysis of certificate filings and to minimize both the number and detail of data requests issued to applicants subsequent to certificate filings.

DATES: The revised FERC certificate filing record formats and hard copy filing formats are available on March 29, 1989. Comments on the certificate filing formats are due by April 14, 1989.

FOR FURTHER INFORMATION CONTACT: George Dornbusch, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 7300, Washington, DC 20426, (202) 357-9181.

SUPPLEMENTARY INFORMATION: At the implementation conference held on February 1 and 2, 1989, commenters made recommendations and Commission staff advised the participants that it would make several significant revisions to the current

record formats for certificate filings and that new record formats would be designed that will (1) clarify filing requirements for applicants; (2) standardize data common to the universe of certificate filings; (3) expedite staff review of certificate applications; and (4) reduce the number and detail of necessary data requests for subsequent response by applicants.

Staff has revised the comments and incorporated most of the suggested revisions in the record formats released with this notice. A description of the technical revisions is contained in the attached Appendix A. Staff is also releasing with this notice a final draft of the hard copy filing formats that must accompany the certificate filing.

Persons representing companies required to make certificate filings with the Commission and any other interested parties should indicate in their comments whether or not the format for each record is adequate to satisfy the applicable statement or exhibit content requirements for certificate filings. If a particular format is not adequate, then commenters should propose all necessary technical additions or revisions.

In addition to publishing the text of this notice in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice, the associated record formats and the hard copy filing formats, during normal business hours in Room 1000 at the Commission's headquarters, 825 North Capitol Street NE., Washington, DC 20426.

This notice is also available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, eight data bits and one stop bit. The text of the notice will be available on CIPS for 30 days from the date of issuance.

Due to the size of the record format and hard copy print format files for certificate filings, these formats will not be available through CIPS. However, the revised formats are available 1) on a single 5.25" (1.2MB) double-sided, high density diskette in ASCII text file format or 2) on paper and may be purchased from the Commission's copy contractor, La Dorn Systems Corp., located in Room 1000, 825 North Capitol Street NE.,

Washington, DC. 20426. To order the diskette or paper copy, you must refer to: RM-87-17-000, Record Formats for Certificate Filings (March 29, 1989). Specify diskette, paper copy or both.

The diskette contains a copy of this notice and an INFO file which describes the files on the diskette and specifies the margin, font and orientation required to print each file after importing the file into a word processing program.

Lois D. Cashell,
Secretary.

Appendix A—Revisions to the Certificate Filing Record Formats

This appendix identifies the major technical changes to the draft formats presented at the implementation conference on February 1 and 2, 1989. Most of the records have been revised or corrected (new items or character positions, deletions, expanded codes, etc.). In addition, several new record formats have been added.

General Instructions

Revised Nos. 1, 2, and 8; changed Nos. 3 and 6; added Nos. 13-20.

Schedules

All data items have been numbered.
See below for specific changes.

(1) General Information Record

Type of case code has been moved from CA02 to CA01; code list is extended; codes are simplified; and space included for four separate type of case codes.

(2) Certificate Application—Customer/Shipper and Services (Sales, Transportation, Exchange, Storage, or Abandonment)

New record that replaces old records CA05, CA06, CA07, and CA08. This record will identify all customers and shippers and will indicate all proposed services by type, character (firm/interruptible), rate schedule, term of service and commencement date, and will include peak day, average day, and annual volumes.

(3) Certificate Application—Environmental Report—(Part 380 Environmental Factors)

New record.

(4) Certificate Application—Total Gas Supply—(Exhibit H)

New record.

(5) Certificate Application—Total Gas Requirements—(Exhibit I—Market Data, Part 1)

New record.

(6) Certificate Application—Customer Market Data—(Exhibit I—Market Data, Part 2)—Gas Supply

New record.

(7) Certificate Application—Customer Market Data—(Exhibit I—Market Data, Part 2)—Requirements

New record.

(8) Certificate Application—Customer Market Data—(Exhibit I—Market Data, Part 3)—Number of Customers)

New record.

(9) Certificate Application—Construction & Operation or Abandonment—(Exhibit K, Project Summary)

Title has been changed; record also to be used for abandonments; new items added for cost of pipeline segments, other facilities cost (CA11), non-facility cost (CA12) and maximum daily capacity. All references to transportation and shippers have been deleted from this record.

(10) Certificate Application—Construction & Operation or Abandonment—(Exhibit K, Project Summary—Pipeline Segments)

Title has been changed; new items added to identify pipeline segment by numbers, beginning and ending mile posts, outside diameter, cost of segment, type of segment (mainline/lateral), maximum allowable operating pressure, and county location.

(11) Certificate Application—Construction & Operation or Abandonment—(Exhibit K, Project Summary—Compressors)

Title has been changed; items for location description have been revised.

(12) Certificate Application—Construction & Operation or Abandonment—(Exhibit K, Project Summary—Other Facilities)

New record; identifies facilities other than pipe and compressors, their location, and cost.

(13) Certificate Application—Construction & Operation or Abandonment—(Exhibit K, Project Summary—Non-Facility Costs)

New record; identifies costs for overheads, AFUDC, and regulatory fees.

(14) Footnotes Record

Number of character positions has been revised (previously schedule/record CA09).

(15) Standardized Format Header Record

Title has been changed; pitch items have been revised (previously schedule/record CA10).

(16) Non-standard Format Header Record

Title has been changed (previously schedule/record CA11).

- (17) Non-standard Format Trailer Record
Title has been changed (previously schedule/record CA12).
- Exhibit A: Magnetic Tape Procedures
File structure has been revised.
- Exhibit B: Diskette Filing Procedures
File structure has been revised.
- Exhibit C: Certificate Applications: Filing Requirements
Code numbers have been revised and compressed to coincide with complete exhibits where practicable. Structured data records column has been added to assist applicants. New Code 502 has been added: "Alternative Method and Preferred Format for Filing Environmental Report Text" (see new Exhibit G).
- Exhibit D: FERC Geographic Area Names
New exhibit; these codes are to be used to identify production areas of gas supply in Schedule/Record CA04.
- Exhibit E: State Codes
New exhibit.
- Exhibit F: Special Instructions for Schedule/Record CA03—Environmental Factors
New exhibit.
- Exhibit G: Alternative Method and Format for Filing Environmental Report (Code 502)
New exhibit.
- Exhibit H: Hard Copy Filing Formats
New exhibit, consisting of:
1. General Information Summary
 2. Customer/Shipper and Services, Schedule 1
 3. Customer/Shipper and Services, Schedule 2
 4. Environmental Report—Part B—Environmental Factors
 5. Gas Supply and Requirements—Actual & Estimated—Annual
 6. Gas Supply and Requirements—Actual & Estimated—Winter period
 7. Gas Supply and Requirements—Actual & Estimated—Summer Period
 8. Gas Supply and Requirements—Actual & Estimated—Winter Peak Day
 10. Customer Market Data—Gas Supply and Requirements—Annual
 11. Customer Market Data—Gas Supply and Requirements—Winter Period
 12. Customer Market Data—Gas Supply and Requirements—Summer Period
 13. Customer Market Data—Gas Supply and Requirements—Winter Peak Day
 14. Customer Market Data—Number of Customers—Annual
 15. Customer Market Data—Number

- of Customers—Winter Period
16. Customer Market Data—Number of Customers—Summer Period
17. Customer Market Data—Number of Customers—Winter Peak Day
18. Exhibit K—Facilities—Project Summary.

[FR Doc. 89-8083 Filed 4-4-89; 8:45 am]

BILLING CODE 6717-01-M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

Procedures Relating to Assessment of Fees and Waiving of Fees Under the Freedom of Information Act and Requests for Information in Cases To Which the Commission is Not a Party

AGENCY: U.S. International Trade Commission.

ACTION: Notice of final rulemaking.

SUMMARY: This notice sets forth final rules which the U.S. International Trade Commission has adopted relating to: (1) Assessment of fees and waiving of fees under the Freedom of Information Act (5 U.S.C. 552), and (2) requests for information in cases or matters in which the Commission is not a party. The rules amend § 201.20 (relating to fees) and § 201.21 (relating to availability of specific records).

Notice of proposed rulemaking was published in the *Federal Register* of January 23, 1989 (54 FR 3079) and interested persons were given until February 22, 1989, to submit comments. None were submitted. The final rules adopted are the same as those proposed and published in the *Federal Register* of January 23, 1989, with the exception of technical corrections to the title and to the authority citation of Subpart C of Part 201 to delete reference to a 1979 amendment to the Freedom of Information Act.

The revised rules with respect to fees under the Freedom of Information Act (5 U.S.C. 552) reflect the new fee provisions of the Freedom of Information Act of 1986 (Pub. L. No. 99-570, section 1803) and conform to the Uniform Freedom of Information Act Fee Schedule and Guidelines promulgated by the Office of Management and Budget (52 FR 10011, March 27, 1987). These revised rules also contain procedures and guidelines for determining when such fees should be waived or reduced. They parallel rules on fees and waivers of fees promulgated by the U.S. Department of Justice (see 28 CFR Part 16). The recommended charges in rule § 201.20(b)(1)(ii) for document

searches follow such guidelines. They reflect distinctions between lower grade clerical/professional and higher grade professional/managerial staff costs. They are based on January 1989 salary levels for GS-8, step 1, and GS-12, step 1, respectively, as calculated by the Commission's Finance Division, which the Commission estimates are the average staff grades in each of these two categories of personnel likely to be doing such searches. The fees for computer searches (§ 201.20(b)(1)(iii)) and review (§ 201.20(b)(3)) are also based on salary level GS-12, step 1, which the Commission estimates is the average staff grade of personnel likely to be doing such computer searches or review.

The rules governing requests for information in cases or matters to which the Commission is not a party specify the Commission's procedures with respect to such requests. The rules are intended to prevent the harm that may result from inappropriate disclosure of nonpublic information or inappropriate allocation of Commission resources.

EFFECTIVE DATE: March 31, 1989.

ADDRESS: Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: William W. Gearhart, Esq., Assistant General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1091.

SUPPLEMENTARY INFORMATION: None of the amendments constitutes a "major rule" within the meaning of Executive Order No. 12291 (Improving Government Relations), and none exerts a "significant economic impact on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 19 CFR Part 201

Administrative practice and procedure, Freedom of Information, Investigations.

PART 201—[AMENDED]

1. The title and the authority citation for Subpart C of Part 201 is revised to read as follows:

Subpart C—Availability of Information to the Public Pursuant to 5 U.S.C. 552

Authority: 19 U.S.C. 1335, 5 U.S.C. 552, unless otherwise noted.

2. Section 201.20 is revised to read as follows:

§ 201.20 Fees.

(a) *In general.* Fees pursuant to 5 U.S.C. 552 shall be assessed according to the schedule contained in paragraph (b) of this section for services rendered by agency personnel in responding to and processing requests for records under this subpart. All fees so assessed shall be charged to the requester, except where the charging of fees is limited under paragraph (c) of this section or where a waiver or reduction of fees is granted under paragraph (d) of this section. The Secretary will collect all applicable fees. 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 subpart, 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), (7), and (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 secretary may assess fees for time spent searching even if agency personnel fail to locate any respective record or where records located are subsequently determined to be entirely exempt from disclosure.

(ii) For each quarter hour spent by agency personnel in salary grades GS-2 through GS-10 in searching for and retrieving a requested record, the fee shall be \$3.00. When the time of agency personnel in salary grades GS-11 and above is required, the fee shall be \$5.00 for each quarter hour of search and retrieval time spent by such personnel.

(iii) For computer searches of records, which may be undertaken through the use of existing programming, requester 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 \$5.00 per quarter hour of time so spent). Agency personnel are 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 copies produced by computer, such as tapes or printouts, the Secretary shall charge the actual direct costs, including operator time, of producing the copy. For other methods of duplication, the Secretary shall charge the actual direct costs of duplicating a record.

(3) *Review.* (i) 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 \$5.00.

(ii) Review fees shall be assessed only for the initial record review, i.e., all of the review undertaken when a component 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 where 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 Secretary 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 paragraph (b) of this section is \$25.00 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 is in excess of two hours plus the

cost of duplication in excess of 100 pages exceeds \$25.00.

(d) *Waiver or reduction of fees.* (1) Records responsive to a request under 5 U.S.C. 552 shall be furnished without charge or at a charge reduced below that established under paragraph (b) of this section where the Secretary determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the Secretary 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 the government—the Secretary 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 identifiable operations or activities 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 will 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 of government operations or activities.* The disclosable portions of the requested records must be meaningfully informative on specific government 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 of 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 interested persons. A requester's identity and qualifications—e.g., expertise in the subject area and ability and intention to effectively convey information to the general public—shall be considered. It will 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 Secretary shall not make separate 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 Secretary 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 Secretary 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 which would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration shall be given to 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 where, 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 Secretary 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 government information for direct economic return shall not be presumed to primarily serve the "public interest."

(4) Where 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.* Where the Secretary determines or estimates that the fees to be assessed under this section may amount to more than \$25.00, he 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 Secretary shall advise the requester that the estimated fee may be only a portion of the total fee.) In cases where 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 of the requester pursuant to this paragraph shall offer him the opportunity to confer with agency personnel in order to reformulate his

request to meet his needs at a lower cost.

(f) *Aggregating requests.* Where the Secretary 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 Secretary may aggregate any such requests and charge accordingly. The Secretary may presume that multiple requests of such type made within a 30-day period have been made in order to evade fees. Where requests are separated by a longer period, the Secretary shall aggregate them only where there exists a reasonable basis for determining that said aggregation is warranted, e.g., where the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(g) *Advance payments.* (1) Where the Secretary estimates that a total fee to be assessed under this section is likely to exceed \$250.00, the Secretary 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 where the Secretary receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) Where a requester has previously failed to pay a records access fee within 30 days of the date of billing, the Secretary may require the requester to pay the full amount owed, plus any applicable interest (as provided for in paragraph (h) of this section), and to make an advance payment of the full amount of any estimated fee before he 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 Secretary 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 on work already completed is not an advance payment.

(4) Where the Secretary acts under paragraph (g) (1) or (2) of this section, the administrative time limits described 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 Secretary has received payment of the assessed fee.

(h) *Charging interest.* The Secretary 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 Secretary, 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 Secretary shall follow the provisions of the Debt Collection Act of 1982, Pub. L. 97-265 (Oct. 25, 1982), 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 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 maximum extent possible; or

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

(2) Where records responsive to requests are maintained for distribution by agencies operating statutorily based fee schedule programs, the Secretary 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 which the agency 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 Secretary shall ensure, however, that searches are undertaken in the most efficient and least expensive manner reasonably possible; thus, for example, the Secretary shall not engage in line-by-line search where 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, microform, 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 Secretary shall determine, as well as reasonably possible, the use to which a requester will put the records requested. Where 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 Secretary otherwise has reasonable cause to doubt a requester's stated use, the Secretary shall provide the requester a reasonable opportunity to submit further clarification.

(6) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an 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 where 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 clear basis for expecting publication through that organization; a publication contract would be the clearest proof, but the Secretary 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, where the Secretary 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.

3. Section 201.21 is amended by adding paragraph (c) to read as follows:

§ 201.21 Availability of specific records.

(c) *Information requested in cases or matters to which the Commission is not a party.* (1) The procedure specified in this section will apply to all demands directed to Commission employees for the production of documents or for testimony that relates in any way to the employees' official duties. These procedures will also apply to demands directed to former employees if the demands seek nonpublic materials or information acquired during Commission employment. The provisions of paragraph (c)(2) of this section will also apply to demands directed to the agency. For purposes of this section, the term "demand" means any request, order or subpoena for testimony or production of documents; the term "subpoena" means any compulsory process in a case or matter to which the Commission is not a party; the term "nonpublic" includes any material or information which, under § 201.21(b), is exempt from availability for public inspection and copying; the term "employee" means any current or former officer or employee of the Commission; the term "documents" means all records, papers or official files, including without limitation, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, graphs, notes, charts, tabulations, data analysis, statistical or information accumulations, records of meetings and conversations, film impressions, magnetic tapes, and sound or mechanical reproductions; the term "case or matter" means any civil proceeding before a court of law, administrative board, hearing officer, or other body conducting a legal or administrative proceeding in which the Commission is not a named party.

(2) Prior to or simultaneously with a demand to a Commission employee for the production of documents or for testimony concerning matters relating to official duties, the party seeking such production or testimony must serve upon the General Counsel of the Commission an affidavit, or if that is not feasible, then a statement which sets forth the title of the case, the forum, the party's interest in the case, the reasons for the request, and a showing that the desired testimony or documents are not reasonably available from any other source. Where testimony is sought, the party must also provide a summary of the testimony desired, the intended use of the testimony, and show that Commission records could not be provided and used instead of the requested testimony. A subpoena for

testimony from a Commission employee concerning official matters or for the production of documents shall be served in accordance with Rule 45 of the Federal Rules of Civil Procedure and a copy of the subpoena shall be sent to the General Counsel.

(3) Any employee or former employee who is served with a subpoena or other demand shall promptly advise the General Counsel of the service of the subpoena or other demand, the nature of the documents or information sought, and all relevant facts and circumstances.

(4) Absent written authorization from the Chairman of the Commission ("Chairman"), the employee shall respectfully decline to produce the requested documents, to testify, or to otherwise disclose requested information. If a court rules that the demand must be complied with despite the absence of such written authorization, the employee upon whom the demand is made shall respectfully refuse to comply based upon these regulations and *Touhy v. Ragan*, 340 U.S. 462 (1951).

(5) The Chairman will consider and act upon subpoenas under this section with due regard for statutory restrictions, the Commission's rules and the public interest, taking into account such factors as the need to conserve employees' time for conducting official business, the need to prevent the expenditure of the United States government's time and money for private purposes, the need to maintain impartiality between private litigants in cases where no substantial governmental interest is involved, and the relevant legal standards for determining whether justification exists for the disclosure of nonpublic information and documents. If the Chairman determines that the subpoenaed documents or information are protected by a privilege or that the Commission has a duty in law or equity to protect such documents or information from disclosure, the General Counsel shall move the court to quash the subpoena or for other appropriate action.

(6) The General Counsel may consult or negotiate with counsel or the party seeking testimony or documents to refine and limit the demand so that compliance is less burdensome, or obtain information necessary to make the determination described in paragraph (c)(5) of this section. Failure of the counsel or party seeking the testimony or documents to cooperate in good faith to enable the General Counsel to make an informed

recommendation to the Chairman under paragraph (c)(5) of this section may serve as the basis for a determination not to comply with the demand.

(7) Permission to testify will, in all cases, be limited to the information set forth in the affidavit as described in paragraph (c)(2) of this section, or to such portions thereof as the Chairman deems proper.

(8) If the Chairman authorizes the testimony of an employee, then the General Counsel shall arrange for the taking of the testimony by methods that are least disruptive of the official duties of the employee. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law. Costs of providing testimony, including transcripts, will be borne by the party requesting the testimony. Such costs shall also include reimbursing the Commission for the usual and ordinary expenses attendant upon the employee's absence from his or her official duties in connection with the case or matter, including the employee's salary and applicable overhead charges and any necessary travel expenses.

(9) The Secretary in consultation with the General Counsel is further authorized to charge reasonable fees to parties demanding documents or information. Such fees, calculated to reimburse the government for the expense of responding to such demand, may include the costs of time expended by Commission employees to process and respond to the demand, attorney time for reviewing the demand and for related legal work in connection with the demand, and expenses generated by equipment used to search for, produce and copy the responsive information. In general, such fees will be assessed at the rates and in the manner specified in § 201.20 of this part.

(10) This section does not affect the rights and procedures governing the public access to official documents pursuant to the Freedom of Information Act or the Privacy Act.

(11) This section is intended to provide instructions to Commission employees and does not create any right or benefit, substantive or procedural, enforceable by any party against the Commission.

By order of the Commission.

Issued: March 31, 1989.

Kenneth R. Mason,
Secretary.

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