

- (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.

[FR Doc. 89-8103 Filed 4-4-89; 8:45 am]

BILLING CODE 7020-02-M

19 CFR Part 201

Procedures Relating To Appeals of Denial of Requests for Confidential Treatment, Notification of Intent To Use Certain Equipment at Hearings, and Notification To Submitters of Confidential Business Information of a Request Under the Freedom of Information Act

AGENCY: U.S. International Trade Commission.

ACTION: Notice of final rulemaking.

SUMMARY: The U.S. International Trade Commission has adopted as final rules the following rules relating to (1) the definition of the term "confidential business information"; (2) information and argumentation presented in conjunction with appeals to the Commission of denials of requests for confidential treatment; (3) notification of intent to use audio-visual or other equipment at hearings; and (4) notification to submitters of confidential business information of a request for disclosure of such information under the Freedom of Information Act (FOIA).

Notice of proposed rulemaking was published in the *Federal Register* of January 3, 1989 (54 FR 37), and interested persons were given until February 2, 1989, to submit comments. One comment was submitted. The submitter, the Reporters Committee for Freedom of the Press, addressed the part of the proposed rules relating to notification to submitters of confidential business information of requests under FOIA for such information. The Committee urged that the proposed rules be adopted in final form and expressed the hope that the Commission would resist any suggestions it might receive that would effectively extend the time limits for response.

The final rules adopted are the same as the proposed rules published on January 3, with the exception of a correction to the authority citation to Part 201. The final rules amend § 201.6 (relating to confidential business information), § 201.13 (relating to conduct of nonadjudicative hearings), and §§ 201.18, 201.19 (relating to denials of requests for information under the Freedom of Information Act and appeals thereof) of the Commission's Rules of Practice and Procedure (19 CFR 201.6, 201.13, 201.18, and 201.19). Former § 201.19, which related to appeals from denial of requests for records, has been combined with former § 201.18, which relates to denial of requests for records. New § 201.18 is entitled "Denial of requests, appeals from denial".

Promulgation of new rules with respect to notification to submitters of confidential business information, the fourth item identified above, is required by Executive Order 12600 of June 23, 1987 (52 FR 23781). The final rules largely reflect longstanding Commission practice and paralleled final rules issued by the Department of Justice and published in the *Federal Register* of July 19, 1988 (53 FR 27161).

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: The Commission's part 201 rules are of general application. The Commission's rules concerning requests for confidential treatment of business information are set forth in § 201.6, rules concerning conduct of nonadjudicative hearings are set forth in § 201.13, and rules relating to requests for agency records under the Freedom of Information Act are set forth in §§ 201.17-201.20.

None of the amendments constitutes a "major rule" within the meaning of Executive Order No. 12291 (Improving Government Regulations), 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).

Definition of Term "Confidential Business Information"

The first of the amendments makes clear the fact that "proprietary information" in section 777(b) of the Tariff Act of 1930 (19 U.S.C. § 1677f(b)) is the equivalent of "confidential business information" in § 201.6(a) of the rules. The term "proprietary" in section 777(b) was substituted for "confidential" by the Tax Reform Act of 1986 to "clarify that the reference always is to sensitive company commercial and financial data rather than national security information at the 'confidential' level." *Mudge Rose Guthrie Alexander & Ferdon v. U.S. International Trade Commission* (Civil Action No. 87-5312, D.C. Cir., May 20, 1988). Section 777(b) provides for the submission and nondisclosure (except under limited circumstances) of proprietary information submitted to the Commission in connection with investigations conducted under the

antidumping and countervailing duty laws (19 U.S.C. 1671 et seq.).

Section 1886(a)(13)(A) of the Tax Reform Act of 1986 (Pub. L. No. 99-514, 100 Stat. 2922) substituted the terms "proprietary", "non-proprietary", and "proprietary status" for the terms "confidential", "nonconfidential", and "confidentiality" in § 777(b) and changed the title of § 777(b) to "proprietary information" from "confidential information".

Appeals of Denials of Requests for Confidential Treatment

The second of the amendments adds to the end of § 201.6(e) a new paragraph (3) providing that, (i) in the case of an appeal to the Commission of a denial by the Secretary or Acting Secretary of a request for confidential treatment, that justification for confidential treatment submitted to the Commission by the appealing party with the appeal shall be limited to that submitted to the Secretary; (ii) when the Secretary or Acting Secretary has denied a request for confidential treatment on the ground that the submitter failed to provide adequate justification, the submitter may file any such additional justification with the Secretary as part of an amended request for confidential treatment; and (iii) with respect to the 20-day period for filing an appeal set forth in paragraph (1) of § 201.6(e), that such period be considered to recommence as of the date any amended request had been denied, or approval or denial had not been forthcoming within 10 days of the filing of the amended request.

The Commission's rules provide that requests for confidential treatment shall be submitted to the Secretary and that appeals shall be filed with the Chairman for consideration by the full Commission. However, previously Commission rules were silent on the question of whether an appellant may submit additional justification with his appeal. It is estimated that about half the appeals filed in recent years have contained justification in addition to that submitted to or considered by the Secretary. In many cases it appears that the Secretary would have granted the request if he had considered the additional justification. As a result, the Commissioners have frequently become, in effect, a first level rather than second level reviewer of requests for confidential treatment. This submitting of new justification at the appeal level unnecessarily adds to the time it takes to dispose of a request (under the rules appeals are decided by the Commissioners in 20 working days, but

initial requests are disposed of by the Secretary in 10 working days), unnecessarily adds to the Commissioners' dockets, and deprives submitters of a level of agency review (the second level of review effectively becomes the Federal courts).

Notification of Intent To Use Certain Equipment at Hearings

Section 201.13 of the rules is amended by adding at the end thereof a new subsection (1) that directs parties wishing to use audio-visual equipment, easels, and other equipment in the course of their hearing presentation to advise the Secretary that they intend to use such equipment at least three (3) days in advance of the hearing. Parties in recent years have increasingly used such equipment in their hearing presentations.

Notification to the Secretary will (1) facilitate the conduct of hearings by giving the Secretary advance notice of the number and kinds of equipment to be used in order that he might anticipate and coordinate setups, (2) enable the Secretary to determine in advance whether Commission facilities can accommodate the equipment, and (3) enable the Secretary to advise parties as to the availability of Commission equipment, thus obviating the need in some instances for parties to bring their own equipment.

Notification to Submitters of Business Information of a Request for such Information Under the Freedom of Information Act

Executive Order 12600 of June 23, 1987 (52 FR 23781) requires that agencies publish rules with respect to notification to submitters of confidential business information of requests for such information under the Freedom of Information Act (5 U.S.C. 552). The new Commission rules, set forth in revised § 201.19, provide for such notification, parallel rules issued by the U.S. Department of Justice and published in the Federal Register of July 19, 1988 (53 FR 27161), and largely reflect existing agency practice.

In addition, the authority citation for Part 201 is revised to reflect present statutory authority by deleting a reference to a provision in the Trade Expansion Act of 1962 that has been repealed and adding a reference in the Trade Act of 1974.

PART 201—[AMENDED]

1. The authority citation for Part 201 is revised to read as follows:

Authority: Sec. 335 of the Tariff Act of 1930 (19 U.S.C. 1335), and sec. 603 of the Trade Act

of 1974 (19 U.S.C. 2482), unless otherwise noted.

§ 201.6 [Amended]

2. Section 201.6(a) is amended by removing the designations "(1)" and "(2)" and by adding the following sentence to the end of the paragraph: The term "confidential business information" includes "proprietary information" within the meaning of section 777(b) of the Tariff Act of 1930 (19 U.S.C. 1677f(b)).

3. Section 201.6 is amended by adding the following paragraph (e)(3):

(e) * * *

(3) The justification submitted to the Commission in connection with an appeal shall be limited to that presented to the Secretary with the original or amended request. When the Secretary or Acting Secretary has denied a request on the ground that the submitter failed to provide adequate justification, any such additional justification shall be submitted to the Secretary for his consideration as part of an amended request. For purposes of paragraph (e)(1) of this section, the twenty (20) day period for filing an appeal shall be tolled on the filing of an amended request and a new twenty (20) day period shall begin once the Secretary or Acting Secretary has denied the amended request, or the approval or denial has not been forthcoming within ten (10) days of the filing of the amended request. A denial of a request by the Secretary on the ground of inadequate justification shall not obligate a requester to furnish additional justification and shall not preclude a requester from filing an appeal with the Commission based on the justification earlier submitted to the Secretary.

§ 201.13 [Amended].

4. Section 201.13 is amended by adding the following paragraph (f):

(f) To facilitate the conduct of hearings, parties intending to use easels, audio visual, and similar equipment in the course of hearing presentations should advise the Secretary of their intent to use such equipment at least three (3) working days before the hearing.

5. The authority citation for Subpart C is revised to read as follows:

Authority: 19 U.S.C. 1335, 5 U.S.C. 552.

§§ 201.18 and 201.19 [Amended]

5a. Section 201.18 is amended as follows:

(a) The title of § 201.18 is amended to read: "Denial of requests, appeals from denial."

(b) The text of present § 201.18 is redesignated as § 201.18(a).

(c) Paragraphs (a) through (d) of present § 201.19 are redesignated as paragraphs (b) through (e), respectively, of § 201.18.

6. Section 201.19 is revised to read as follows:

§ 201.19 Notification regarding requests for confidential business information.

(a) *In general.* Business information provided to the Commission by a business submitter which the Commission has designated as "confidential business information" will not be disclosed pursuant to a Freedom of Information Act (FOIA) request except in accordance with this section.

(b) *Definitions.* The following definitions are to be used in reference to this section:

"Confidential business information" means commercial or financial information that has been designated as confidential business information by the Commission under § 201.6 of this part.

"Submitter" means any person or entity who provides confidential business information, directly or indirectly, to the Commission. The term includes, but is not limited to, corporations, producers, importers, and state and foreign governments.

(c) *Notice to submitters.* Except as provided for in paragraph (e) of this section, the Commission will, to the extent permitted by law, provide a submitter with prompt written notice of a FOIA request or administrative appeal encompassing its confidential business information whenever required under paragraph (d) of this section, in order to afford the submitter an opportunity to object to disclosure pursuant to paragraph (f) of this section. Such written notice will describe the nature of the confidential business information requested. The requester will also be notified that notice and opportunity to object to are being provided to a submitter.

(d) *When notice is required.* Notice will be given to a submitter in writing at submitter's last known address whenever:

(1) The information the subject of the FOIA request or appeal has been designated by the Commission as confidential business information; and

(2) The Commission has reason to believe that the information may not be protected from disclosure under FOIA Exemptions 3 or 4.

(e) *Exceptions to notice requirement.* The notice requirements of paragraph (c) of this section will not apply if:

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

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

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

(f) *Opportunity to object to disclosure.* In general, the Commission has 10 working days in which to respond to a FOIA request. Through the notice described in paragraph (c) of this section, the Commission will afford a submitter an opportunity, within the period afforded to the Commission to make its decision in response to the FOIA request, to provide the Commission with a detailed written statement of any objection to disclosure. Such statement shall be filed at least one working day before the Commission is required to respond to the FOIA request, and it shall specify all grounds for withholding any of the information under any exemption of FOIA. In the case of FOIA Exemptions 3 or 4, it shall demonstrate why the information should continue to be considered confidential business information within the meaning of § 201.6 of this part and should not be disclosed. The submitter's claim of continued confidentiality should be supported by a certification by an officer or authorized representative of the submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under FOIA.

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

- (1) A statement of the reasons for which the submitter's disclosure objections were not sustained;
- (2) A description of the information to be disclosed; and
- (3) A specified disclosure date.

Such notice of intent to disclose will be forwarded to the submitter a reasonable number of days prior to the specified disclosure date and the requester will be notified likewise.

(h) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of information that the Commission has designated as confidential business information, the Commission will promptly notify the submitter at its last known address. For the purpose of this paragraph, the

Secretary may assume such address to be that given on the submission.

By order of the Commission.

Issued: March 31, 1989.

Kenneth R. Mason,

Secretary.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8247]

Requirement for Certain Partnerships and S Corporations To Separately State Meal, Travel, and Entertainment Expenses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document provides final regulations relating to the requirement for certain partnerships and S corporations to separately state meal, travel, and entertainment expenses. These regulations are necessary because of changes made to prior law by the Tax Reform Act of 1986. These regulations provide the public with guidance needed to comply with the law.

EFFECTIVE DATE: The regulations are effective for taxable years beginning on or after January 1, 1987.

FOR FURTHER INFORMATION CONTACT: David R. Haglund, 202-377-9470 (not a toll-free call).

SUPPLEMENTARY INFORMATION: On March 2, 1988, the Federal Register published (53 FR 6670) proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 702 and 1366 of the Internal Revenue Code, as well as temporary regulations (T.D. 8182, 53 FR 6602) containing the same rules. The amendments to the regulations were made necessary because of amendments to the Code by section 142 of the Tax Reform Act of 1986 (the Act). Three comments were received on the notice of proposed rulemaking. A public hearing was not requested or held. After consideration of the comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision. These regulations supersede the temporary regulations issued under §§ 1.702-1T and 1.1366-1T.

Section 142 of the Act made significant changes to the rules for deducting meal, travel, and entertainment expenses. These changes are effective for taxable years beginning on or after January 1, 1987. On March 2, 1987, the Internal Revenue Service published Notice 87-23 in the Internal Revenue Bulletin (1987-1 C.B. 467). The notice announced special effective date rules that required partnerships and S corporations that have taxable years beginning before January 1, 1987, and ending with or within partners' or shareholders' taxable years beginning on or after January 1, 1987, to separately state meal, travel, and entertainment expenses paid or incurred after December 31, 1986. With respect to skybox rentals, partnerships and S corporations that have taxable years beginning before January 1, 1989, and ending with or within partners' or shareholders' taxable years beginning on or after January 1, 1987, are required to separately state rents paid or incurred after December 31, 1986. On June 22, 1987, the Service published Notice 87-45 in the Internal Revenue Bulletin (1987-1 C.B. 502). Notice 87-45 provided additional instructions to Form 1065 and Form 1120S concerning certain expenses for meals, travel, and entertainment of 1986-87 fiscal year corporations. The temporary regulations and cross-referencing notice of proposed rulemaking implemented the special effective date rules announced in the notices.

Three comments were received on the notice of proposed rulemaking. All three commentators stated that the special effective date rules in the proposed regulations are inconsistent with the statutory effective date for section 142 of the Act. The commentators suggested that the limitations imposed by section 142 of the Act should not apply to expenses paid or incurred by a partnership or an S corporation until the first day of the partnership's or S corporation's taxable year beginning after December 31, 1986. This suggestion was not adopted by the final regulations because the limitations imposed by section 142 of the Act should be applied to expenses incurred after the statutory effective date of section 142 of the Act and deducted on the returns of partners and shareholders in taxable years beginning on or after January 1, 1987. This effective date rule is consistent with congressional intent in the Act of applying the reductions of tax rates and the restrictions on deductions as of the same date.