

(i) Whether the election or adoption of a method of accounting was made in a pre-1987 or a post-1986 taxable year;

(ii) Whether the controlled foreign corporation was a controlled foreign corporation at the time of the election or adoption of method;

(iii) When ownership was acquired; or

(iv) Whether the United States shareholder received the written notice required by § 1.964-1(c)(3).

Adjustments to the appropriate separate category (as defined in § 1.904-5(a)(1)) of earnings and profits and income of the controlled foreign corporation shall be required using the principles of section 481 to prevent any duplication or omission of amounts attributable to previous years that would otherwise result from any such election or adoption.

(6) *Examples.* The following examples illustrate the rules of this section.

Example (1)—(i) *P*, a calendar year domestic corporation, owns all of the outstanding stock of *FX*, a calendar year controlled foreign corporation. None of the significant events specified in § 1.964-1(c)(6) or this section has occurred. In addition, neither *P* nor *FX* has ever made or adopted, or been required to make or adopt, an election or method of accounting for United States tax purposes with respect to *FX*. On June 1, 1990, *FX* makes a distribution to *P*. *FX* does not act to make any election or adopt a method of accounting for United States tax purposes.

(ii) *P* must compute *FX*'s earnings and profits in order to determine if any portion of the distribution is taxable as a dividend and to determine *P*'s foreign tax credit on such portion under section 902. *P* must satisfy the requirements of § 1.964-1(c)(3) and file the written statement and notice described therein within 180 days after the close of *FX*'s 1990 taxable year in order to make an election or to adopt a method of accounting on behalf of *FX*. Any such election or adoption will govern the computation of earnings and profits of *FX* for all federal income tax purposes (including, e.g., the determination of foreign tax credits on subpart F inclusions) in 1990 and subsequent taxable years unless the Commissioner consents to a change.

(iii) If *P* fails to satisfy the regulatory requirements in a timely manner and such failure is not shown to the satisfaction of the Commissioner to be due to inadvertence or reasonable cause, the earnings and profits of *FX* shall be computed as if no elections were made and any permissible methods of accounting not requiring an election and reflected in its books were adopted. Any subsequent attempt by *FX* or *P* to change an accounting method shall be effective only if the Commissioner consents to the change.

Example (2)—(i) The facts are the same as in *Example (1)*, except that *P* elects to allocate its interest expense under section 864(e)(4) for its 1989 taxable year under the tax book value method of § 1.861-12T(c) of the Temporary Income Tax Regulations.

(ii) *P* must compute the earnings and profits of *FX* in order to determine the adjustment to *P*'s basis in the stock of *FX* for *P*'s 1989 taxable year. *P* must satisfy the requirements of § 1.964-1(c)(3) and file the written statement and notice described therein within 180 days after the close of *FX*'s 1989 taxable year in order to make an election or to adopt a method of accounting on behalf of *FX*. Any such election or adoption will govern the computation of *FX*'s earnings and profits in 1989 and subsequent taxable years for all federal income tax purposes (including, e.g., the characterization of the June 1, 1990 distribution and the determination of *P*'s foreign tax credit, if any, with respect thereto) unless the Commissioner consents to a change.

(iii) If *P* fails to satisfy the regulatory requirements in a timely manner and such failure is not shown to the satisfaction of the Commissioner to be due to inadvertence or reasonable cause, the earnings and profits of *FX* shall be computed as if no elections were made and any permissible methods of accounting not requiring an election and reflected in its books were adopted. Any subsequent attempt by *FX* or *P* to change an accounting method shall be effective only if the Commissioner consents to the change.

Example (3)—(i) The facts are the same as in *Example (2)*, except that *P* elects to allocate its interest expense under section 864(e)(4) for its 1988 taxable year under the tax book value method of § 1.861-12T(c) of the Temporary Income Tax Regulations.

(ii) *P* must compute the earnings and profits of *FX* in order to determine the adjustment to *P*'s basis in the stock of *FX* for *P*'s 1988 taxable year. *P* must satisfy the requirements of § 1.964-1(c)(3) and file the written statement and notice described therein within 180 days after the close of *FX*'s 1988 taxable year in order to make an election or to adopt a method of accounting on behalf of *FX*. Any such election or adoption will govern the computation of *FX*'s earnings and profits in 1988 and subsequent taxable years for all federal income tax purposes (including, e.g., *P*'s basis adjustment for purposes of section 864(e)(4) in 1989 and the characterization of the June 1, 1990 distribution and the determination of *P*'s foreign tax credit, if any, with respect thereto) unless the Commissioner consents to a change.

(iii) If *P* fails to satisfy the regulatory requirements in a timely manner and such failure is not shown to the satisfaction of the Commissioner to be due to inadvertence or reasonable cause, the earnings and profits of *FX* for 1988 shall be computed as if no elections were made and any permissible methods of accounting not requiring an election and reflected in its books were adopted. However, a properly filed, timely election or adoption of method by, or on behalf of, *FX* with respect to its 1989 taxable year, when *P*'s basis adjustment for purposes of section 864(e)(4) first constitutes a significant event, shall not be treated as a change in accounting method. No recomputation of *P*'s basis adjustment for 1988 shall be required by reason of any such election or adoption of method with respect to *FX*'s 1989 taxable year, but prospective

adjustments to *FX*'s earnings and profits and income shall be made to the extent required by § 1.964-1T(g)(5).

Example (4)—(i) The facts are the same as in *Example (3)*, except that *FX* had subpart F income taxable to *P* in 1988, and *P* computed *FX*'s earnings and profits for purposes of determining the amount of the inclusion and the foreign taxes deemed paid by *P* in 1988 under section 960 pursuant to § 1.964-1(a) through (e).

(ii) Any election made or method of accounting adopted on behalf of *FX* by *P* pursuant to § 1.964-1(c) in 1988 is binding on *P* and *FX* for purposes of computing *FX*'s earnings and profits in 1988 and subsequent taxable years. Thus, in determining *P*'s basis adjustment for purposes of section 864(e)(4) in 1988 and 1989 and its deemed-paid credit with respect to the 1990 dividend, *FX*'s earnings and profits must be computed consistently with the method used by *P* with regard to the 1988 subpart F inclusion. (However, § 1.964-1(d), (e), and (f) do not apply in computing *FX*'s earnings and profits in post-1986 taxable years.)

Example (5)—(i) The facts are the same as in *Example (4)*, except that *FX* made a dividend distribution to *P* on June 1, 1985, and *P* computed *FX*'s earnings and profits for purposes of computing the foreign taxes deemed paid by *P* in 1985 under section 902 with respect to the distribution under § 1.964-1 exclusive of paragraphs (d), (e), and (f) pursuant to a timely election under § 1.902-1(g)(1).

(ii) Any election made or method of accounting adopted on behalf of *FX* by *P* pursuant to § 1.964-1(c) in 1985 is binding on *P* and *FX* for purposes of computing *FX*'s earnings and profits in 1985 and subsequent taxable years. Thus, in determining *P*'s basis adjustment for purposes of section 864(e)(4) in 1988 and 1989 and its deemed-paid credit with respect to the 1986 subpart F inclusion and the 1990 dividend, *FX*'s earnings and profits must be computed consistently with the method used by *P* with regard to the 1985 dividend. If, rather than choosing under § 1.902-1(g)(1) to use the section 864 rules, *P* computed *FX*'s earnings and profits for purposes of section 902 in 1985 in all respects as if *FX* were a domestic corporation, then *P* would have been free to make elections or adopt a method of accounting on behalf of *FX* under § 1.964-1(c) with respect to the subpart F inclusion in 1986. Any such election or adoption would be binding on *P* and *FX* as to the computation of *FX*'s earnings and profits in 1986 and subsequent taxable years.

Approved: December 21, 1989.

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.

[FR Doc. 90-1633 Filed 1-24-90; 8:45 am]

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**29 CFR Part 1601****Procedural Regulations: Notices To Be Posted**

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission is revising its regulation concerning the posting of notices as required by section 711 of Civil Rights Act of 1964, as amended. The streamlined language of the newly revised regulation will conform with language of our procedural regulation concerning notice of posting under the Age Discrimination in Employment Act. The streamlined language will necessitate fewer revisions of this regulation in order to keep its information current and accurate.

DATE: February 26, 1990.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Assistant Legal Counsel, Advice and External Litigation Division, or Stephanie Garner Thompson, Staff Attorney, at (202) 663-4669.

SUPPLEMENTARY INFORMATION: The Commission is revising its title VII notice posting regulation in order to obviate the need for frequent revisions to keep the information it contains current and to bring the language and format into conformance with § 1627.10

For the Commission.

Clarence Thomas,
Chairman.

PART 1601—PROCEDURAL REGULATIONS

1. The authority citation for part 1601 continues to read as follows:

Authority: 42 U.S.C. 2000e to 2000e-17.

2. Section 1601.30 is amended by revising paragraph (a), by removing paragraph (b), and by redesignating paragraph (c) as (b) to read as follows:

§ 1601.30 Notices to be posted.

(a) Every employer, employment agency, labor organization, and joint labor-management committee controlling an apprenticeship or other training program which has an obligation under title VII of the Civil Rights Act of 1964, as amended, shall post and keep posted in conspicuous places upon its premises the notice pertaining to the applicability of the Act prescribed by the Commission or its authorized representative. Such notice must be posted in prominent and

accessible places where notices to employees, applicants and members are customarily maintained.

[FR Doc. 90-1522 Filed 1-24-90; 8:45 am]

BILLING CODE 6750-05-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD**36 CFR Part 1120****Public Availability of Information**

AGENCY: United States Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Final rule.

SUMMARY: On December 8, 1980, the Architectural and Transportation Barriers Compliance Board published in final form its regulations at 36 CFR part 1120, Public Availability of Information (45 FR 10012), which provide to the public procedures for obtaining information from the Board. Section 1803 of the Freedom of Information Reform Act of 1986 required each Federal agency to establish a schedule and system for collecting fees to recover certain direct costs associated with responding to Freedom of Information Act (FOIA) requests for information. Guidelines were issued by the Office of Budget and Management on March 27, 1987 (52 FR 10012) regarding standard government-wide definitions and administrative provisions for assessing and collecting FOIA fees. On November 10, 1987, the Architectural and Transportation Barriers Compliance Board issued an interim final rule amending its Public Availability of Information Procedures to incorporate the OMB guidelines regarding fee setting and collection procedures. This notice contains the final revision of the regulations setting forth the standards to be used in making fee waiver determinations according to the Freedom of Information Act ("FOIA"), 5 U.S.C. 552(a)(4)(A)(i), which requires that individual agency FOIA regulations contain "procedures and guidelines for determining when FOIA fees shall be waived or reduced." The fee waiver provisions 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) ("OMB Fee Guidelines").

EFFECTIVE DATE: January 25, 1990.

FOR FURTHER INFORMATION CONTACT: James Raggio, General Counsel, ATBCB, 1111 18th Street, NW., Suite 501,

Washington, DC 20036, (202) 653-7834 (v/TDD). This is not a toll-free number. This final rule is available on cassette at the above address for persons with visual impairments.

SUPPLEMENTARY INFORMATION:**Background**

On October 28, 1986, Congress enacted omnibus drug enforcement legislation which included amendments to the Freedom of Information Act (5 U.S.C. 552, as amended; Freedom of Information Reform Act of 1986, Public Law 99-570.) The revisions, among other things, required agencies to charge standard reasonable fees for the direct costs they incur in responding to FOIA requests. Further, the amendments required OMB to issue a uniform FOIA fee schedule for all agencies in order to ensure the consistent application of fees government-wide. On March 27, 1987, OMB issued its "Uniform Freedom of Information Act Fee Schedule and Guidelines." (52 FR 10012)

In responding to the statute's directive, OMB interpreted the direct cost provision of the legislation to mean the costs each agency incurs in operating its FOIA program. Therefore, since the costs of operating a FOIA program may vary from agency to agency, OMB determined that it was not feasible to establish a single set of FOIA fees, but rather that it was more appropriate to establish a standard set of criteria upon which agencies could establish individual fee schedules to assess actual charges for FOIA services.

On November 10, 1987, the Architectural and Transportation Barriers Compliance Board published an interim final rule which incorporated the standard criteria developed by OMB and established a fee schedule for FOIA requests to the ATBCB. Comments on the interim final rule were invited, with the comment period time extending to December 10, 1987.

Only one comment was received which was from the United States Department of Justice, Office of Legal Policy, regarding the absence of fee waiver provisions contained in the interim final rule and urging the ATBCB to amend its interim regulation to set forth detailed procedures and guidelines to be used in making fee waiver determinations. After review, fee waiver provisions have been incorporated in the Final Rule at subpart E, § 1120.53(e). Additionally, § 1120.23 was amended to reflect the new address of the ATBCB.

Provisions of the Final Rule**Subpart A, Section 1120.2**

This section is amended to incorporate the standard definitions provided in OMB's guidelines. Definitions of the terms "direct costs," "document search," "duplication," and "review," clarify the nature of services to be provided. Definitions of the terms "commercial use requestor," "educational institution and non-commercial scientific institution," and "representative of the news media" provide criteria for classifying requestors.

Subpart D, Section 1120.23

This section is amended to reflect the new address of the ATBCB.

Subpart D, Section 1120.25

This section was amended in the interim rule to correct an inaccurate reference regarding fee estimates and assurance of payments. In addition, it was amended to revise the dollar amount which establishes (in accordance with the dollar limitation specified in 5 U.S.C. 552) when such estimate/assurance will be required. These changes are adopted as final without change.

Subpart E, Section 1120.51

Changes in this section amend subpart E, § 1120.51 and specifically amend paragraph (a) which states ATBCB policy with respect to assessing and collecting the full direct costs the agency incurs in responding to FOIA requests; redesignate paragraph (b) as paragraph (e); remove paragraphs (e) (1), (3) and (4); redesignate paragraph (e)(2) as paragraph (e)(3) and paragraphs (e) (5) through (8) as (e) (4) through (7) and add new paragraphs (e) (1) and (2) to provide that no charge shall be made if the costs of routine collection and processing of the fee equal or exceed the amount of the fee; or for the first two hours of search time and the first 100 pages of duplication for individuals or groups falling into categories listed at § 1120.51(b) excepting commercial use requests. Additionally, paragraph (c) is redesignated as paragraph (f).

Further, new paragraphs (b) and (c) are added to incorporate OMB guidelines regarding categories of requestors and levels of fees appropriate for each category. Paragraph (b) lists the four categories of requestors—commercial use requestor; educational and non-commercial scientific institution requestor; requestors who are representatives of the news media; and, all other requestors. Paragraph (c) sets forth the levels of fees for each category

of requestor defined in paragraph (b). Further, a new paragraph (d) is added which sets forth the schedule of FOIA fees for records search, document review and duplication of documents.

Subpart E, Section 1120.51(b)

The revisions found in this section classify four distinct categories of requestors.

Subpart E, Section 1120.51(c) (1) through (4)

The revisions found in this section reiterate the four categories of requestors and contain specific provisions for recovering costs in connection with researching, reviewing, and duplicating information provided by the ATBCB.

Subpart E, Section 1120.51(g)

This section is added to advise requestors that the ATBCB will aggregate requests if there is reason to believe a requestor has broken down a request to avoid fee assessments.

Subpart E, Section 1120.53

This section is amended by redesignating paragraph (b) as paragraph (c); amending and redesignating paragraph (c) as paragraph (e), and adding paragraphs (b) and (d). Paragraph (b) advises requestors that the ATBCB will charge interest on overdue payments. Amended paragraph (c) advises requestors that advance payment or assurance of payment may be required if the amount due is likely to exceed \$250.00 (an amount established by Congress). Further, if a requestor fails to make timely payments, the agency may not process further or pending requests until the debt is cleared. Paragraph (d) advises requestors that the ATBCB will employ the remedies afforded in the Debt Collection Act of 1982 to collect any overdue fees. Paragraph (e) is amended to provide certain criteria for determining proper circumstances under which fees may be waived or reduced.

Other Information

The ATBCB has determined, as required by the National Environmental Policy Act of 1969, 42 U.S.C. 4332, that the rule will not have any significant impact on the environment. This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the ATBCB certifies that this rule will not have a significant economic impact

on a substantial number of small entities.

Accordingly, 38 CFR part 1120 is amended as set forth below.

By vote of the Board on March 15, 1989.
Stanley W. Smith,
Chair.

Accordingly, the interim rule amending 38 CFR part 1120 which was published at 52 FR 43193 (November 10, 1987) is adopted as a final rule with the following changes:

PART 1120—PUBLIC AVAILABILITY OF INFORMATION

1. The authority citation for part 1120 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Section 1120.2 is amended by revising paragraphs (h) through (o) to read as follows:

§ 1120.2 Definitions.

(h) "Direct Costs" means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requestors, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 18 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 the facility in which the records are stored.

(i) "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. Agencies should ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. For example, agencies should not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. "Search" should be distinguished, moreover, from "review" of material in order to determine whether the material is exempt from disclosure (see paragraph (k) of this section). Searches may be done manually or by computer using existing programming.

(j) "Duplication" refers to the process of making a copy of a document necessary to respond to an 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 must be in a form that is reasonably usable by requesters.

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

(l) "Commercial Use 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. In determining whether a requester properly belongs in this category, agencies must determine the use to which a requester will put the documents requested. Moreover, where an agency has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, agencies should seek additional clarification before assigning the request to a specific category.

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

(n) "Non-Commercial Scientific Institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (l) 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.

(o) "Representative of the News Media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators

of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive.

Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but agencies may also look to the past publication record of a requester in making this determination.

§ 1120.23 [Amended]

3. Section 1120.23 is amended by (1) deleting the following language "Room 1010, 330 C Street SW., Washington, DC 20201" and (2) inserting the language "Suite 501, 1111 18th Street NW., Washington, DC 20036".

4. Section 1120.51 is revised to read as follows:

§ 1120.51 Charges for services, generally.

(a) It shall be the policy of the ATBCB to comply with requests for documents made under the FOIA using the most efficient and least costly methods available. Requesters will be charged fees, in accordance with the administrative provisions and fee schedule set forth below, for searching for, reviewing (in the case of commercial use requesters only), and duplicating requested records.

(b) *Categories of requesters.* For the purpose of standard FOIA fee assessment, the four categories of requesters are: Commercial use requesters; educational and non-commercial scientific institution requesters; requesters who are representatives of the news media; and, all other requesters (see § 1120.2 (l) through (o), Definitions).

(c) *Levels of fees.* Levels of fees prescribed for each category of requester are as follows:

(1) *Commercial Use Requesters.* When the ATBCB receives a request for documents which appears to be a request for commercial use, the Board may assess charges in accordance with the fee schedule set forth below, which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Costs for time spent reviewing records to determine whether they are exempt from mandatory disclosure applies to the initial review only. No fees will be

assessed for reviewing records, at the administrative appeal level, of the exemptions already applied.

(2) *Educational and Non-Commercial Scientific Institution Requesters.* The ATBCB shall provide documents to requesters in this category for the cost of reproduction alone, in accordance with the fee schedule set forth below, excluding charges for the first 100 pages of reproduced documents.

(i) To be eligible for inclusion in this category, requesters must demonstrate the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(ii) Requesters eligible for free search must reasonably describe the records sought.

(3) *Requesters Who Are Representatives of the News Media.* The ATBCB shall provide documents to requesters in this category for the cost of reproduction alone, in accordance with the fee schedule set forth below, excluding charges for the first 100 pages of reproduced documents.

(4) *All Other Requesters.* The ATBCB shall charge requesters who do not fit into any of the categories described above, fees which recover the full direct cost of searching for and reproducing records that are responsive to the request, except that the first two hours of search time and the first 100 pages of reproduction shall be furnished without charge.

(d) *Schedule of FOIA fees.*

(1) Record search (ATBCB employees)—\$14.00 per hour

(2) Document review (ATBCB employees)—\$20.00 per hour

(3) Duplication of documents (paper copy of paper original)—\$.20 per page

(e) No charge shall be made:

(1) If the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee;

(2) For any request made by an individual or group of individuals falling into the categories listed at § 1120.51(b) and described in paragraph 1120.51(c) (excepting commercial use requests) the first two hours of search time and first 100 pages of duplication;

(3) For the cost of preparing or reviewing letters of response to a request or appeal;

(4) For responding to a request for one copy of the official personnel record of the requestor;

(5) For furnishing records requested by either House of Congress, or by duly authorized committee or subcommittee or Congress, unless the records are requested for the benefit of an individual Member of Congress or for a constituent;

(6) For furnishing records requested by and for the official use of other Federal agencies; or

(7) For furnishing records needed by an A&TBCB contractor or grantee to perform the work required by the A&TBCB contract or grant.

(f) Requestors may be charged for unsuccessful or unproductive searches or for searches when records located are determined to be exempt from disclosure.

(g) Where the ATBCB reasonably believes that a requestor or group of requestors is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the ATBCB shall aggregate any such requests and charge accordingly.

5. § 1120.53 is amended by revising paragraphs (b)–(e) to read as follows:

§ 1120.53 Payment of fees.

(b) *Charging interest.* The ATBCB may charge interest to those requestors failing to pay fees assessed in accordance with the procedures described in § 1120.51. Interest charges, computed at the rate prescribed in § 3717 of title 31 U.S.C.A., will be assessed on the full amount billed starting on the 31st day following the day on which the bill was sent.

(c) *Advance payment or assurance of payment.*

(1) When an ATBCB office determines or estimates that the allowable charges a requestor may be required to pay are likely to exceed \$250.00, the ATBCB may require the requestor to make an advance payment or arrangements to pay the entire fee before continuing to process the request. The ATBCB shall promptly inform the requestor (by telephone, if practicable) of the need to make an advance payment or arrangements to pay the fee. That office need not search for, review, duplicate, or disclose records in response to any request by that requestor until he or she pays, or makes acceptable arrangements to pay, the total amount of fees due (or estimated to become due) under this subpart.

(2) Where a requestor has previously failed to pay a fee charged in a timely fashion, the ATBCB may require the requestor to pay the full amount owed, plus any applicable interest, as provided in § 1120.53(b) of this section, and to

make an advance payment of the full amount of the estimated fee before any new or pending requests will be processed from that requestor.

(3) In those instances described in paragraphs (1) and (2) above, the administrative time limits prescribed in § 1120.33(d) will begin only after the ATBCB has received all fee payments due or acceptable arrangements have been made to pay all fee payments due.

(d) *Effect of the Debt Collection Act of 1982 (Pub. L. 97–365).* Requestors are advised that the ATBCB shall use the authorities of the Debt Collection Act of 1982, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment of debts arising from freedom of information act requests.

(e) *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 (d) of § 1120.51 where the Freedom of Information Officer determines, based upon information provided by a requestor in support of a fee waiver request or otherwise made known to the Freedom of Information Officer, 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 requestor. 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—Freedom of Information Officer 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 increase public understanding of those operations and activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record.

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure:* Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons. A requestor's identity and qualifications—e.g., expertise in the subject area and ability and intention to effectively convey information to the general public—should be considered. It reasonably may be presumed that a representative of the news media (as defined in § 1120.2(o)) 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 requestors who intend merely to disseminate information to such institutions) shall be analyzed, like those of other requestors 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. Freedom of Information Officer shall not make separate value judgments as to whether information, even though it in fact would contribute significantly to public understanding of the operations or activities of the government, is "important" enough to be made public.

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

(i) The existence and magnitude of a commercial interest: Whether the requestor has a commercial interest that would be furthered by the requested disclosure. The Freedom of Information Officer shall consider all commercial interests of the requestor (with reference to the definition of "commercial use" in § 1120.2(1)) or any person on whose behalf the requestor 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. Requestors 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 requestor is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requestor." A fee waiver or reduction is warranted only where, once the "public interest" standard set out in paragraph (e)(2) of this section is satisfied, that public interest can fairly be regarded as greater in magnitude than that of the requestor's commercial interest in disclosure. The Freedom of Information Officer shall ordinarily presume that where a news media requestor has satisfied the "public interest" standard, that will be the interest primarily served by disclosure to that requestor. Disclosure to data brokers or others who compile and market government information for direct economic return shall not be presumed to primarily serve "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 (e) (2) and (3) of this section, as they apply to each record request. One hundred pages

of reproduction shall be furnished without charge.

(6) A request for reduction or waiver of fees shall be addressed to the Freedom of Information Officer at the address shown in § 1120.23. The ATCB office which is responding to the request for records shall initially determine whether the fee shall be reduced or waived and shall so inform the requestor. The initial determination may be appealed by letter addressed to the address shown in § 1120.23. The General Counsel or his or her designee shall decide such appeals.

Stanley W. Smith,
Chair.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 90 and 91

[CGD 82-004a]

RIN 2115-AC86

Alternative Provisions for Reinspection of Offshore Supply Vessels in Foreign Ports

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing an alternative to have Coast Guard personnel conduct the required midperiod reinspection of Offshore Supply Vessels (OSVs). The alternative reinspection program will be open to OSVs, except Liftboats, of less than 400 gross tons operating in foreign ports. Overseas inspections of OSVs result in a less than optimum allocation of Coast Guard resources. Further, OSV owners must reimburse the Coast Guard for the expenses of marine inspectors conducting overseas inspections, and occasionally bear the cost of relocating vessels to certain ports to facilitate required inspections. The benefits of the alternative reinspection program will include flexibility and financial savings to the OSV industry, and more effective use of limited Coast Guard resources.

EFFECTIVE DATE: February 26, 1990.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander W.C. Bennett, Project Manager, (202) 267-1181.

SUPPLEMENTARY INFORMATION: On May 17, 1988 a Notice of Proposed Rulemaking (NPRM) was published in the Federal Register (53 FR 17477). Comments on the NPRM were requested to be submitted on or before August 15,

1988. A public hearing was not requested or held.

Drafting Information

The principal persons involved in drafting this proposal are Lieutenant Commander W.C. Bennett, Project Manager, Merchant Vessel Inspection Division, Office of Marine Safety, Security and Environmental Protection and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

Background

OSVs are inspected for certification every two years. They are required to be reinspected once between the tenth and fourteenth month of the period of validity of the certificate of inspection. The rules allow an alternative to having Coast Guard personnel conduct the examination required for the reinspection of OSVs that are continuously employed outside of the United States.

In 46 U.S.C. 2101(19) an OSV is defined as a motor vessel of more than 15 gross tons but less than 500 gross tons that regularly carries goods, supplies, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources and is not a small passenger vessel.

While a large number of OSVs operate in areas where Coast Guard inspectors are reasonably available, an increasing number are based overseas due to a decline in the domestic offshore exploration and production industry since 1962. Some have been based in remote locations. Most do not normally return to the United States for long periods of time.

Reinspection required by 46 CFR subpart 91.27 are necessary to promote and maintain marine safety. In the past, Coast Guard marine inspectors have performed OSV reinspections overseas. However, overseas reinspections of these vessels results in less than optimum allocation of Coast Guard resources. Also, under 46 U.S.C 3317(b), vessel owners or operators must reimburse the Coast Guard for marine inspector travel and per diem costs incurred to conduct inspections in foreign ports. Additional matters of concern are the official status and personal security of marine inspectors assigned to temporary duty overseas in remote locations where OSVs operate.

This rulemaking concerns only who may perform the alternative midperiod examinations and how the examination reports will be evaluated. In place of the reinspection process currently required, the Coast Guard is permitting Officers in