impoundments, and roads); (4) sections 816.116(a)(1), 817.116(a)(1), 816.116(c)(4), and 817.116(c)(4) (standards for revegetation success); (5) sections 784.20(g)(2) and 817.121(c)(2) (subsidence control); and (6) section 823.12(a)(1) (prime farmland restoration), the revisions to the following sections of Oklahoma's permanent regulatory program rules submitted to OSM on May 18, 1988, as revised by Oklahoma on June 8, 1988, November 14, 1988, June 22, 1989, August 8, 1989, and December 15, 1989, are approved effective March 27, 1990.

* * * * *

[FR Doc. 90-11194 Filed 5-14-90; 8:45 am]

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendment to the Bank Secrecy Act Regulations Relating to Identification Required to Purchase Bank Checks and Drafts, Cashier's Checks, Money Orders and Traveler's Checks

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: Section 6185(b) of Title VI of the Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, November 18, 1988, prohibits financial institutions from issuing or selling cashier's checks, traveler's checks, money orders and bank checks in amounts of $3,000 or more in currency unless the financial institution verifies and records the identity of the purchaser as the Secretary of the Treasury shall prescribe in regulations. This is in addition to Treasury's authority in 31 U.S.C. 5313 to prescribe reports on domestic coins and currency. By this Final Rule, Treasury is requiring that financial institutions record this identifying information and maintain a chronological log or logs of the sales of these instruments.

EFFECTIVE DATE: This Final Rule is effective on August 13, 1990.

ADDRESSES: Amy G. Rudnick, Director, Office of Financial Enforcement, Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Scott, Attorney-Advisor, Office of the Assistant General Counsel (Enforcement), (202) 566-9947.

SUPPLEMENTARY INFORMATION: Section 6185(b) of title VI of the Anti-Drug Abuse Act of 1988 added a new section 5325 to the Bank Secrecy Act:

Section 5325. Identification required to purchase certain monetary instruments

(a) In general.—No financial institution may issue or sell a bank check, cashier's check, traveler's check, or money order to any individual in connection with a transaction or group of such contemporaneous transactions which involves United States coins or currency (or such other monetary instruments as the Secretary may prescribe) in amounts or denominations of $3,000 or more unless—

(1) The individual has a transaction account with such financial institution and the financial institution—

(A) Verifies that fact through a signature card or other information maintained by such institution in connection with the account of such individual; and

(B) Records the method of verification in accordance with regulations which the Secretary of the Treasury shall prescribe; or

(2) The individual furnishes the financial institution with such forms of identification as the Secretary of the Treasury may require in regulations which the Secretary shall prescribe and the financial institution verifies and records such information in accordance with regulations which such Secretary shall prescribe.

(b) Report to Secretary upon request.—Any information required to be recorded by any financial institution under paragraph (1) or (2) of subsection (a) shall be reported to the Secretary of the Treasury at the request of such Secretary.

(c) Transaction Account Defined.—For purposes of this section, the term "transaction account" has the meaning given to such term in section 19(b)(1)(C) of the Federal Reserve Act.

The legislative history indicates that Congress clearly felt that there was a need for heightened scrutiny over the sales of bank checks, cashier's checks, money orders and traveler's checks because money launderers commonly purchase these instruments for amounts under $10,000. The House Committee Report noted that the only identification records required for persons who conduct currency transactions in amounts under $10,000 are these needed to open an account, thus permitting nonaccount-holders to conduct currency transactions below $10,000 without having to identify themselves. The Committee indicated that it expected affected financial institutions to be "fully cooperative and responsive to this law enforcement effort." H. Rep. No. 100-716, 100th Cong., 2d Sess. 7.

Advance Notice of Proposed Rulemaking

On December 23, 1988 (53 FR 51846), Treasury published an Advance Notice of Proposed Rulemaking to solicit comments from the public on how best to implement this provision. In the Advance Notice, Treasury suggested that the best way to implement this new identification requirement might be by requiring a chronological log or logs of the purchase of bank checks, cashier's checks, money orders and traveler's checks. One hundred fifty six (156) comments were received from the public, primarily affected financial institutions, on how best to put this provision into effect.

Notice of Proposed Rulemaking

After review of the comments received in response to the Advance Notice, Treasury published a Notice of Proposed Rulemaking on August 22, 1989 (54 FR 34791). Treasury proposed that a new section, "Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks" be added to the Bank Secrecy Act regulations, 31 CFR part 103. The proposed section would require that all financial institutions subject to the Bank Secrecy Act regulations maintain a monthly chronological log or logs of their sales of bank checks and drafts, cashier's checks, money orders and traveler's checks to customers who purchase these instruments with currency in amounts of $3,000-$10,000 inclusive. The proposal also differentiated between transaction account holders and non-transaction accountholders. Under the proposal, if the purchaser had a transaction account (as that term is defined in § 103.11(p)) with the financial institution where the transaction is being conducted, only the following information would be required on the log:

(1) The name of the purchaser;

(2) The number of the purchaser's account;

(3) The date of purchase;

(4) The branch where the purchase occurred; and

(5) The type(s), serial number(s), and the dollar amount(s) of each of the instrument(s) purchased in currency.

In addition, the proposed rule would require financial institutions to verify that the individual is a transaction accountholder, either through a signature card on file or other record at the financial institution, if the accountholder's identity was verified at the time the account was opened, or at any subsequent time, and that information was recorded on the signature card or other file or record. The method of verification used would be noted on the log, such as "checked computerized customer file system," or "checked signature card #124-890."

The proposal further provided that if the transaction accountholder's identity had not been verified previously, then the purchaser would have to be treated as a non-transaction accountholder for purposes of verification of identity only. The financial institution in that case would have to verify the accountholder's name and address by examination of a document that contains the name and address of the purchaser and normally is acceptable within the banking community as a means of identification when cashing checks for nondepositors, and record that specific identifying information on the log (*e.g.*, state of issuance and number of driver's license). Because a credit card normally does not contain a name and address of the credit card holder, a credit card alone would not be an adequate form of identification. Under the proposed regulation, the financial institution then could add that identifying information to its records so that the accountholder would not be required to produce identification for subsequent purchases of these instruments.

If the purchaser is not a transaction accountholder, it was proposed that the financial institution record the following information on the log:

(1) The name and address of the purchaser;

(2) The social security number of the purchaser, or if the person is an alien without a social security number, the purchaser's alien identification number;

(3) The date of birth of the purchaser;

(4) The date of purchase;

(5) The branch where the purchase occurred;

(6) The type(s), serial number(s) and dollar amount of the instrument(s) being purchased;

(7) For cashier's checks and bank checks or drafts, the payees on the instrument(s) purchased;

(8) The amount of the purchase in currency; and

(9) If the individual is purchasing the instrument for a third person, the name of the person on whose behalf the instrument is being purchased and the account number of that third party if the third person is an accountholder at the institution. If the third person is not an accountholder, then the name, address and social security number, taxpayer identification number or alien identification number of the third party shall be noted on the log.

In addition, the proposal provided that for all purchasers who are not holders of transaction accounts, the financial institution must verify the purchaser's name and address by examination of a document that contains the name and address of the purchaser and normally is acceptable within the banking community as a means of identification when cashing checks for nondepositors, and record that specific identifying information on the log (*e.g.*, State of issuance and number of driver's license). Again, because a credit card normally does not contain a name and address of the credit card holder, a credit card alone would not be an adequate form of identification.

As proposed, contemporaneous purchases of the same or different types of instruments totaling $3,000 or more would be treated as one purchase. Comtemporaneous was defined in the proposal to mean originating, existing or happening at the same time. In addition, Treasury proposed to use its general Bank Secrecy Act authority under 31 U.S.C. 5313 to propose that multiple purchases during the same business day by the same person be treated as one purchase if an individual employee, officer, director or partner of the financial institution has knowledge that the purchases have taken place or there is knowledge on the part of the financial institution's computer system that the purchases have occurred. Under the proposal, financial institutions would not have to purchase new hardware or software computer systems to comply with this requirement. They could, but would not be required to, change any of their computer programs or manual systems presently in place.

Under the proposed rule, a financial institution could keep a single centralized chronological log or maintain individual chronological logs by branch. A separate chronological log for each type of instrument sold or issued also would be permissible. If the financial institution maintained individual logs by branch, it was proposed that the financial institution be required to send those logs to a central location by the fifteenth day after the end of the calendar month for which the log was compiled. The logs would not need to be integrated with each other; they merely would be kept in one place. This would make it easier for both the financial institution and the Treasury Department when the Department requested information from the financial institution about its sales of these instruments.

Finally, the proposed regulation stated that the Treasury Department may request the information on the logs at any time, and that the financial institution must provide the information, whether the log is at the central location or still at the branch, even though the information would not be required to be forwarded to the centralized location until fifteen days after the close of the calendar month.

Discussion of the Comments

One hundred and four (104) comments were received in response to the Notice of Proposed Rulemaking, and they have been carefully considered in drafting this Final Rule.

Accounts Covered

The proposed rule provided that financial institutions that sell the instruments covered by the rule to holders of transaction accounts only have to record limited information on the log: name of purchaser, number of the purchaser's account, date of purchase, branch where purchase occurred, and the types, serial numbers and dollar amount of each of the instruments purchased in currency. With regard to all other sales, it was proposed that additional information must be obtained, such as the social security number and date of birth of the purchaser, payees for cashier's checks and bank checks, and information on third parties. Many of the commenters pointed out that the term "transaction account" does not include savings accounts and other time deposits, and that it seemed unfair and extremely burdensome to the financial institution to have to obtain additional information from only some of their accountholders. They requested that the Final Rule make the less extensive recording requirements for transaction accountholders applicable to all accountholders.

Treasury has considered this issue very carefully and has decided to use its authority to prescribe exemptions from requirements of the Bank Secrecy Act under 31 U.S.C. 5318(a)(5) in this matter. Under the regulations, banks will not be required to apply the nonaccountholder logging and identification procedures to purchases by customers who hold "deposit accounts" as defined in the regulations. Deposit accounts would include all transaction accounts, savings accounts and other time deposits.

Aggregation

The proposed regulation would be applicable to all contemporaneous purchases of all types of the instruments listed in the proposed regulation as required by section 5325. Contemporaneous means occurring in the same period of time. This means that currency purchases totaling between $3,000 and $10,000 inclusive that occur at the same time of the same type of instrument (*e.g.*, two $2,500 currency purchases of traveler's checks) would be included as well as purchases that occur at the same time of different types of instruments totaling between $3,000 and

$10,000 inclusive (*e.g.*, a $5,000 currency purchase of a $2,500 cashier's check and $2,500 in traveler's checks).

In addition, in the Notice of Proposed Rulemaking, Treasury used its authority under 31 U.S.C. 5313 to propose that the regulation also cover currency purchases of instruments totaling between $3,000 and $10,000 inclusive within the course of a business day if a financial institution has knowledge of the multiple purchases. The reason for proposing this additional requirement is to prevent purchasers from easily evading the identification requirements by simply purchasing bank checks and drafts, cashier's checks, money orders and traveler's checks at amounts below $3,000 in currency during the course of a business day at the same financial institution. The proposal did not require a financial institution to purchase computer systems, or purchase additional hardware or software systems for their existing computers in order to comply with the new requirements. However, it indicated that it expected financial institutions that had systems and procedures in place that aggregate transactions to use them. If the financial institution does not have a computer or manual system in place that would capture that information, the financial institution may change its systems. In any event, financial institutions will have to rely on the knowledge of individual employees, officers, directors or partners of multiple purchases.

Many commenters requested clarification of the aggregation requirement and the knowledge element involved. Commenters wondered how far the financial institution had to go to obtain knowledge of multiple sales and whether it had to review each log each day or once a month and contact a customer for additional information. Many questioned whether they would be required to purchase new systems in order to comply with the requirement.

A financial institution does not have to institute changes to its procedures or its computer systems or purchase new systems in order to capture multiple sales; however, if the financial institution's computer system does produce information relating to multiple sales, then the financial institution may not ignore that information and must complete the log entry using whatever information the financial institution has at hand. In addition, if a teller or other employee knows that someone has made several purchases on the same business day, either because she serviced the customer, directly observed the customer coming into the financial institution several times during one business day, or was told by the customer that he had made several purchases in one business day, then the financial institution will be deemed to have knowledge of the multiple purchases, and it must complete a log entry.

The financial institution may use information that it maintains in its records to assist in completing the log for multiple purchases. Moreover, the financial institution may contact the purchaser after the purchases have been completed in order to obtain missing required information. In addition, financial institutions are not required to review each log at the end of the day in order to obtain knowledge of multiple transactions unless it does so as part of its internal procedures or aggregation system.

Identification Concerns

Many commenters expressed concerns about the identification process. Many commenters noted that their particular institutions did not maintain signature cards or other account verification records at the teller window, and thus would prefer to identify all purchasers falling within the scope of the regulation by using the non-deposit accountholder identification procedures; *i.e.*, by reviewing a piece of identification with a name and address that is accepted by the financial institution when cashing a check for a nondepositor. This would eliminate the need for the teller to either leave the window to verify the deposit accountholder status of the purchaser, or the need to purchase new systems or extensively revamp old ones so that the records would be available at the teller window. Many commenters also asked whether they may rely on information available in the records that they do have in order to fill out the form, so that the financial institution does not need to re-identify the purchaser who is a deposit accountholder each time a purchase falling within the scope of the regulation is made. Some commenters requested that Treasury clarify how far a financial institution has to go to verify the identity of the purchaser, *i.e.*, may the financial institution rely on the identification presented to the teller.

Treasury agrees that there is merit to these comments, and therefore, is providing in the Final Rule that, for accountholders, a financial institution may either verify the fact that the customer has a deposit account at the financial institution or verify the identity of the accountholder. This will permit the financial institution to verify identity by viewing a piece of identification that contains the customer's name and address rather than by having to leave the teller window to review a signature card or other account record. If, however, the financial institution does not know whether the person is a deposit accountholder, it must treat him as a non-deposit accountholder for all purposes, *e.g.*, it must obtain the additional information such as social security number. A financial institution may obtain the limited information required of deposit accountholders only if the financial institution knows that the purchaser is a deposit accountholder.

Financial institutions should note that all purchasers falling within the new regulation, other than deposit accountholders who have had their identity previously verified and recorded, must be identified in the same manner, and that the identification requirements are similar to the requirements for identifying persons who conduct cash transactions exceeding $10,000. *See* 31 CFR 103.28. Thus, previous Treasury interpretations of how identification is verified for currency transactions exceeding $10,000 may be looked to for guidance. For example, financial institutions may rely on the identification presented to the teller, unless the financial institution has reason to believe that it is false. Moreover, if a financial institution has previously verified a customer's identity and included the identifying information in its records, it need not ask the same purchaser each time for the information.

Refusal of Transactions

Several commenters noted that the statutory authority for the proposed regulation stated that "no sales" of these instruments would take place until the required information was provided. The commenters raised the question of what a financial institution should do if the purchaser does not have "acceptable" identification and the financial institution does not have previously verified information; or does not have all the required information (for example, on third parties); or refuses to provide information. The commenters questioned whether in those instances the transaction had to be refused.

After review of the statutory language, Treasury has concluded that use of the term "no sales" means exactly that—if the relevant information cannot be provided by the purchaser at the window or by the financial institution's own previously verified records, then the transaction must be refused. If there are circumstances where a purchaser falling within the scope of the regulation is unable to provide sufficient identification with a name and address such as a driver's license (for example, elderly persons who may have no identification other than a social security number and an insurance card) or some other identifying information such as a social security number (such as the Amish), then the Treasury Department's Office of Financial Enforcement should be contacted at the address noted above to inquire about particularized exemptions in special circumstances pursuant to 31 CFR 103.45(a). As for aggregated sales where the financial institution does not have knowledge of the aggregated sales until after the purchases have been completed, the financial institution must fill out the log entry as completely as it can from information that it has on hand and note on the log entry that it is an aggregated sale.

Third Party Transactions

Many commenters requested clarification about obtaining information on purchases on behalf of third parties and whether there was a duty to inquire each time if the purchase was taking place on behalf of a third party.

A financial institution must obtain information on third parties only when the person actually purchasing the bank check, cashier's check, money order or traveler's check does not have a deposit account at that institution. A financial institution may rely on the information provided to it by the purchaser unless the financial institution has reason to believe otherwise. As for a duty to inquire, financial institutions should follow the advice given by Treasury with respect to transactions on behalf of other persons involving currency transactions exceeding $10,000, as outlined in BSA Administrative Ruling 89-5, issued December 21, 1989, and published in the **Federal Register** on January 11, 1990, at 55 FR 1021. It is the responsibility of the financial institution to develop internal controls and procedures to ensure the accurate completion of the logs required under the Final Rule. Generally, the only way that the financial institution will be able to obtain information on third parties involved in the transaction will be to ask the person conducting the purchase at the financial institution whether he is acting for himself or on behalf of another person.

Log Completion Issues

Many commenters raised questions about the practicalities of the log requirement, raising such issues as whether a negative report was required when no sales occurred falling within the scope of the regulation; whether a paper log was required or whether it could be kept in a computerized form; whether any exemptions would be permitted to the logging requirement; whether a financial institution was required to review the material for completeness prior to centralization; and whether extraneous material had to be deleted prior to furnishing the log to Treasury. Several commenters also questioned the entire idea of a log, saying that there were better ways of recording the information. Some commenters also requested information on the procedures that Treasury would follow in requesting the material so that financial institutions could take that into account in deciding how to design and index their logs.

Treasury has carefully considered the commenters' concerns. A negative report is not required if there are no sales of these instruments falling within the scope of the regulation. Moreover, the log need not be retained in paper form, as long as it is accessible, in readable form, upon request by Treasury. For example, logs may be maintained in a paperless form such as on magnetic tape or diskette.

In addition, Treasury has decided that no other routine exemptions will be granted from these provisions. Treasury sees no need to establish an exemption system at this time. Should a financial institution nevertheless feel that there is a need for an exemption in a specific situation, then it should use the procedures in 31 CFR 103.45(a) to request an individual exemption.

On the question of review of logs, financial institutions should remember that to the same extent that they are responsible for ensuring that CTR's are completed fully and accurately, they also should have compliance procedures in place to assure that the logs are maintained fully and accurately.

On the question of leaving extraneous material on the log, Financial institutions subject to the Right to Financial Privacy Act may report all information required by law or regulation to the Federal government. 12 U.S.C. 3413(d). To the extent that information not required by Treasury is included on the log, it would not be required by law and should be deleted prior to submission to Treasury.

In requesting copies of the logs, Treasury anticipates that generally, it will ask for logs by date of purchase, not by the names of purchasers.

After considering various alternatives, Treasury has decided to require a log or logs, because it is the most efficient way to maintain and access the information. It would be very difficult, if in response to a request for information, a financial institution produced many different records, instead of one, when information is requested on purchases of the instruments covered in this regulation. However, to minimize delays in selling these instruments and to prevent holding up customer lines, the required information may be noted on a copy of the instrument or other record associated with the instrument, and later transferred to a log after the purchase is concluded, at the end of the day, or, if kept at a branch, at the end of the month before the logs are sent to the centralized location. For example, many banks sell cashier's checks and require the purchaser to fill out an application prior to issuing the check. The required information could be noted on the application. After the customer leaves, the information could then be transferred to the log. Or, if it is a branch bank that maintains its own log and sends its logs to a centralized location, it could prepare the log at the end of the month prior to forwarding it to the bank's centralized location.

Financial institutions are reminded that Treasury has the right to request this information at any time. Thus, if Treasury requests information on sales of these instruments at an institution that records the information initially on another type of record and then transfers it to a log at a later date, the financial institution will have to be able to retrieve that information at any time after the purchase, even if it is not yet entered on the log.

The record retention period for these records is five years, the same retention period for all Bank Secrecy Act records. 31 CFR 103.38(d).

Centralization Issues

For those financial institutions that keep branch log or logs, the logs may be kept at the branch during the calendar month. The logs must be sent to the financial institution's centralized location within fifteen (15) days after the end of the month. Several commenters questioned the need for centralization.

After considering the issue, Treasury has decided to retain the idea of a central storage place for these logs. It not only will ensure quicker access to the logs when requested by Treasury, it also will enable the financial institutions to strengthen their internal compliance controls to make sure that all logs are readily accessible. Banks already are required to maintain a centralized list of customers granted exemptions from the CTR reporting requirements. For financial institutions that have branches all over the country, such as a telegraph or traveler's check company or a national securities dealer, the financial institution may centralize the logs by State, as opposed to one place for the entire country. However, a list of all such locations must be made available to the Treasury Department upon request. If there are financial institutions that operate in different States which have organizational structures set up along lines other than by State (for example, a seller of money orders that divides the country up into regions rather than by State, and maintains records only by region) and their business operations would be severely disrupted by having to maintain logs by State, the financial institution may take advantage of the process contained in 31 CFR 103.45 which provides for requesting an exemption from provisions of part 103.

Miscellaneous Issues

The Notice of Proposed Rulemaking had requested comments on how much time financial institutions would need to implement the Final Rule. Estimates ranged from 90 days to six months or longer. After consideration, Treasury has decided to establish an effective date 90 days from today's date of publication in the **Federal Register.**

Treasury encourages financial institutions to report suspicious activity by persons that the financial institution believes may be taking actions to evade the reporting requirements of § 103.22 or the identification requirements of this regulation. Some examples of activity that might be considered suspicious include a reluctance on the part of the customer to produce identification, a customer taking back part of the currency to reduce the purchase to below $3,000, or a customer coming into the same institution on consecutive or near-consecutive business days, as observed by an employee of the financial institution, and purchasing bank checks, cashier's checks, traveler's checks or money orders in amounts of less than $3,000. *See* BSA Administrative Ruling 88-1, dated June 22, 1988, printed at 53 FR 40062 (October 13, 1988). Financial institutions do not want to be abused by the money launderer or the tax evader; Treasury urges financial institutions to know their customers to avoid becoming involved inadvertently in illegal activity.

Finally, Treasury is renumbering the Final Rule as § 103.29 instead of proposed § 103.28, because the geographic targeting Final Rule of August 16, 1989 (54 FR 33675) renumbered sections of part 103.

Conclusion

Treasury is adopting the rule as proposed, with the changes noted above.

Executive Order 12291

This Final Rule is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. A Regulatory Impact Analysis therefore is not required.

Regulatory Flexibility Act

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this Final Rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this final rule has been approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h) under control number 1505-0063). The estimated average annual burden associated with the collections of information contained in this Final Rule is .33 hour per respondent and 7.5 hours per recordkeeper. Comments concerning the accuracy of the burden estimate and suggestions for reducing this burden should be directed to the Office of Financial Enforcement at the address noted above and to the Office of Management and Budget, Paperwork Reduction Project (1505-0063), Washington, DC 20503.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). However, personnel from other offices participated in its development.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law Enforcement, Reporting and recordkeeping requirements, Taxes.

Amendment

For the reasons set forth below in the preamble, 31 CFR part 103 is amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: Public Law 91-508, title I, 84 Stat. 1114 (12 U.S.C. 1829b and 1951-1959); and the Currency and Foreign Transactions Reporting Act, Public Law 91-508, title II, 84 Stat. 1118, as amended (31 U.S.C. 5311-5326).

2. Section 103.11 is amended by redesignating paragraphs (g) through (t) as (h) through (u), and adding a new paragraph (g) to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(g) *Deposit account.* For purposes of § 103.29 of this part, deposit accounts include transaction accounts described in paragraph (q) of this section, savings accounts, and other time deposits.

3. A new § 103.29 is added to subpart B after § 103.28, to read as follows:

§ 103.29 Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks.

(a) No financial institution may issue or sell a bank check or draft, cashier's check, money order or traveler's check for $3,000 or more in currency unless it maintains a chronological log or logs for each calendar month on which shall be recorded the following information. The following information must be obtained for each issuance or sale of one or more of these instruments to any individual purchaser which involves currency in amounts of $3,000-$10,000 inclusive:

(1) *If the purchaser has a deposit account with the financial institution:*

(i)(A) The name of the purchaser;

(B) The number of purchaser's account;

(C) The date of purchase;

(D) The branch where the purchase occurred;

(E) The type(s) of instrument(s) purchased;

(F) The serial number(s) of each of the instrument(s) purchased; and

(G) The dollar amount(s) of each of the instrument(s) purchased in currency.

(ii) In addition, the financial institution must verify that the individual is a deposit accountholder or must verify the individual's identity. Verification may be either through a signature card or other file or record at the financial institution, if the deposit accountholder's name and address were verified at the time the account was opened, or at any subsequent time, and that information was recorded on the signature card or other file or record; or by examination of a document that contains the name and address of the purchaser and normally is acceptable within the banking community as a means of identification when cashing checks for nondepositors. If the deposit accountholder's identity has not been verified previously, or if the financial institution is unable to determine whether the individual's identification had been verified previously, then the financial institution shall verify the deposit accountholder's identity by examination of a document that contains the name and address of the purchaser and normally is acceptable within the banking community as a means of identification when cashing checks for nondepositors, and shall record the specific identifying information on the log (*e.g.*, State of issuance and number of driver's license). The method of verification used shall be noted on the log.

(2) *If the purchaser does not have a deposit account with the financial institution:*

(i)(A) The name and address of the purchaser;

(B) The social security number of the purchaser, or if the purchaser is an alien and does not have a social security number, then the alien identification number;

(C) The date of birth of the purchaser;

(D) If the individual is purchasing the instrument(s) on behalf of another person, the name of the person on whose behalf the instrument is being purchased and the account number of that third party; if there is no account number, then the name, address and social security number, as well as the taxpayer identification number, or alien identification number, of such person;

(E) The date of purchase;

(F) The branch where the purchase occurred;

(G) The type(s) of instrument(s) purchased;

(H) The serial number(s) of each of the instrument(s) purchased;

(I) The dollar amount(s) of each of the instrument(s) purchased;

(J) The payee(s) on each of the instrument(s) purchased (for cashier's checks and bank checks and drafts); and

(K) The amount of the purchase in currency.

(ii) In addition, the financial institution shall verify the purchaser's name and address by examination of a document that contains the name and address of the purchaser and normally is acceptable within the banking community as a means of identification when cashing checks for nondepositors, and shall record the specific identifying information on the log (*e.g.*, State of issuance and number of driver's license).

(b) Contemporaneous purchases of the same or different types of instruments totaling $3,000 or more shall be treated as one purchase. Multiple purchases during one business day totaling $3,000 or more shall be treated as one purchase if an individual employee, director, officer, or partner of the financial institution has knowledge that these purchases have occurred. Multiple sales must be noted as such on the log.

(c) The financial institution may maintain a single centralized chronological log or it may maintain separate chronological logs by branch. A financial institution also may keep a separate chronological log for each type of instrument sold. If the financial institution maintains a separate chronological log or logs for each branch, all of the branch logs for a calendar month must be sent to a centralized location by the fifteenth (15th) day after the end of the calendar month for which the log was compiled. Financial institutions with branches in more than one State may centralize the logs by State. A list of the centralized locations and branches shall be available to the Secretary upon request.

(d) Chronological logs shall be retained by the financial institution for a period of five years.

(e) The chronological logs shall be available to the Secretary upon request at any time.

Dated: April 24, 1990.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 90-11229 Filed 5-14-90; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 19

RIN 2900-AD14

Appeals Regulations and Rules of Practice; Request for Change in Representation, Request for Personal Hearing, or Submission of Additional Evidence Following Certification of an Appeal to the Board of Veterans Appeals

AGENCY: Department of Veterans Affairs.

ACTION: Final rules.

SUMMARY: The Department of Veterans Affairs (VA) is issuing final regulatory amendments concerning the consideration of additional evidence, hearing requests, and requests for changes in representation following the certification and transfer of an appeal to the Board of Veterans Appeals (BVA). These amendments set limits on the time in which these items may be submitted and are necessary to ensure the timely processing of appeals.

EFFECTIVE DATE: These rules are effective June 14, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jan Donsbach, Special Legal Assistant to the Chairman (01C), Board of Veterans Appeals, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2978.

SUPPLEMENTARY INFORMATION: On July 6, 1989, VA published in the Federal Register (54 FR 28445) a notice proposing amendment of 38 CFR 19.174 to add a cutoff date following which an appellant cannot submit a request for a change in representation and an appellant and/or representative cannot submit additional evidence or a request for a personal hearing in a case which has been transferred to the BVA for appellate consideration. Provision was made for accepting evidence and requests at a later date when good cause is shown. Related revisions to 38 CFR 3.103(c), 3.156(a), and 3.160(e) were proposed to insure that effective dates for subsequent awards, if any, are preserved when evidence is submitted too late for the BVA to consider in an appeal.

VA received 12 comments on the proposed rules—two from VA employees, two from a service organization and allied legal services organizations, seven from private attorneys-at-law, and one from a County Executive.

Several commenters objected to the objective of these amendments—setting a cutoff date for submitting additional evidence and requests for a change in representation and hearings following transfer of appeals to BVA. Two voiced general opposition, but gave no reasons for their objections. Some commenters suggested that the need for the restrictions in these amendments had not been adequately addressed in view of the perceived burdens which they impose. Others expressed general concern about an abridgment of rights. One commenter asserted that the proposed regulation gave the Chairman "extraordinary power to refuse to accept any new evidence, refuse to allow a change in the power of attorney, and refuse to allow a personal appearance hearing." One commenter asserted that extensive development was sometimes necessary in cases where appellants had not been represented at the local level, particularly in cases involving mentally ill appellants; cited possible problems in timely coordination of the efforts of local and appellate representatives when an appellant had been represented in the field; alleged that appellants were not notified when appeals were transferred to the Board; voiced concern about the inability to build a full appellate record for the consideration of the United States Court of Veterans Appeals; expressed concern about possible delays occasioned by the time necessary to rule on "good cause" motions and by the necessity to remand cases for additional development; and alleged that the proposed amendments would deprive appellants of rights accorded under chapter 71, title 38, United States Code and 38 CFR 3.103 and 19.150. One commenter felt that many appellants would not know of the restrictions. Another commenter expressed concern about appellants who may only become aware of their rights at a very late date and inquired as to the effect of the death of a representative following the cutoff date. Two other commenters expressed concern about the possible effect of the cutoff date with respect to mentally ill appellants. One commenter alleged that the changes were an attempt by the BVA to eliminate de novo review; that the period proposed did not allow representatives an adequate amount of time to review the record and consult with their clients, particularly in cases where transfer of the appellate record to the BVA might have been delayed; that the proposed rules were unclear about the submission of new evidence in cases where a timely request for a hearing had been entered; that the necessity to protect rights by filing a timely hearing request would result in the unnecessary scheduling of hearings; and that there would be unnecessary delays occasioned by the processing of requests to submit evidence, change representation, and conduct hearings. This commenter concluded that these amendments would serve to deny the "effective assistance of counsel."

The supplementary information provided with the notice of proposed rulemaking notes the following with respect to the need for these changes:

> Under existing procedures, an appellant may continue to submit additional evidence and may submit requests for a personal hearing or for a change in his or her representative throughout the appellate process. As a result, the appellate record can be a constant state of change while Members of the Board of Veterans Appeals are deliberating on the appeal. Confusion can sometimes result as to the exact nature of the record reviewed by the Board. Particularly with the advent of judicial review (see Pub. L. 100–687), it is essential that a point be reached at which the appellate record is fixed. In addition, considerable delay can result when it is necessary to remove an appellate record from the hands of those who are engaged in an orderly appellate review in order to respond to various tardy requests and submissions. The proposed changes would assist in orderly and prompt appeal processing and would help to clarify the nature and extent of evidence considered by the Board in reaching a decision in any given appeal.

The factors addressed in these remarks are not inconsequential. The BVA is well aware of the hardship imposed on appellants when action by the Board is delayed and is deeply concerned about the length of time which it takes to process an appeal after the case is transferred to the BVA (averaging approximately 165 days during the third quarter of fiscal year 1989). Tardy action by appellants and their representatives contributes to this extended processing time. It produces delays not only in their own individual cases, but delays in processing the appeals of the majority of appellants who are diligent in the prosecution of their appeals because of the time of Members of the Board and of the BVA's administrative staff which is wasted. Unfortunately, some appellants and, to a lesser extent, representatives indulge in not just one late request, but many. When late requests are received, the transfer of a case to Board Sections for deliberation and preparation of a decision must be delayed or appeals must be removed from the hands of members of the BVA professional staff who are assisting in the preparation of written decisions or from the hands of Members of the Board who are deliberating on the case in order to respond. In some cases, needless hours must be spent in revision of decisions which have already been prepared due to the late submission of evidence. The deliberation of Board Members must often begin anew because familiarity with the record has been lost by the time the record has been returned. Requests and added evidence may be received in the field or at the BVA so late that, by the time the request or additional evidence can be associated with the record, a BVA decision has already been promulgated. It may then be necessary to vacate the decision and begin again. (Seventy-three decisions were vacated during fiscal year 1989, primarily due to such problems.) At the least, it may be necessary to issue a supplemental decision. In short, aside from the self-evident administrative efficiency which these changes bring about, they serve to assist the Board in providing justice to appellants with the deliberate speed to which they are entitled.

One commenter suggested that these amendments were not necessary because Board Sections do not act on appeals until late in the period of time during which cases are at the BVA. This begs the question. Often the reason that Board Sections cannot act until a case has been at the BVA for a considerable period of time is because of delays occasioned in getting the case to the Section in the first place, or removing it from the Section during earlier deliberation, because of long delayed action by an appellant or representative.

The BVA is very much aware of the importance of safeguarding the rights of appellants. Protection of appellate due process is basic and the BVA attempts to aggressively guard individual rights at every stage of the appellate process. On the other hand, it is self evident that the time must eventually come in every case when an appellant must make a final decision with respect to representation and when development of the record and appellate presentations cease so that an appellate decision may be made. Nevertheless, in view of the concerns expressed, the BVA agrees to extend the time period established by these revisions from 60 days to 90 days. This should provide more than adequate time for appellants to act after their records have been transferred to BVA.

VA does not agree that these amendments unlawfully, or improperly, impair rights provided in chapter 71, title 38, United States Code (*e.g.*, in 38 U.S.C. 4002(b), 4004(a), 4005(a)) or otherwise provided by law.

Chapter 71 provides that the BVA will maintain a hearing docket and provide formal, recorded hearing (38 U.S.C. 4002(b)); that it will afford an opportunity for a hearing and will base its decisions on the entire record and its consideration of all of the evidence and material of record (4004(a)); and that it will accord appellants hearing and representation rights pursuant to the provisions of the chapter and regulations of the Secretary (38 U.S.C. 4005(a)). The BVA should, and must, provide hearings on appeal. This does not mean, however, that that opportunity must be extended indefinitely. It is not unreasonable to expect appellants to inform the BVA within a reasonable period of time whether a hearing is desired. The BVA also should, and must, base its decision on all of the relevant evidence contained in the record. That does not, however, translate to a requirement that the record must remain open indefinitely. If that were the case, the BVA would never have a final record upon which to base a decision. Finally, the BVA should, and must, afford appellants the right to be represented in proceedings before it. That does not mean that it has no right to expect appellants to make a choice concerning representation within a reasonable period of time so that the disposition of the appeal may proceed.

38 CFR 3.103 and 19.150, of course, are among the "regulations of the Secretary." They are implementations and interpretations of the statutory authority referred to above. These amendments revise 3.103 to call attention to the changes these amendments bring about. The BVA has not amended 38 CFR 19.150 because these amendments do not conflict with that regulation, one of the BVA's current Rules of Practice. 38 CFR 19.150 specifies that an appellant will be accorded full right to representation in all stages of an appeal. These amendments do not curtail the right to representation, they merely provide that the appellant must make a selection of who is to represent him or her within a reasonable period of time unless there is good cause for a late selection or change in representation.

With respect to opportunities to build the record, it should be borne in mind that the BVA is an appellate body. It is not an agency of original jurisdiction. While considerable latitude is allowed in order to extend appellants every reasonable consideration, extensive delays to build records while the appellate record is at the BVA are not appropriate. This does not mean, however, that the BVA is unmindful of the necessity of a full record for appellate consideration or that special considerations concerning record development may not come into play when an appellant changes representatives, or acquires a representative for the first time, at the appellate level. (Incidentally, there should be little difference between the nature of the record developed for the BVA or for the COVA. A complete record is just as necessary for adequate BVA review as for review by a higher tribunal.)

When appellate records are deemed to be deficient for whatever cause, whether for the BVA or for higher court review, and timely development efforts by the appellant and his or her representative have not been successful, the BVA has always been and will continue to be willing to consider reasonable requests for assistance. The Board will continue to entertain reasonable requests to remand cases back to the field, where development is almost always best carried out, for further development with the assistance of the agency of original jurisdiction. Field facilities have resources for assisting in development which the BVA does not have. The appellant is in reasonable proximity to field locations where he or she may be readily contacted for additional information and where any necessary field investigations and medical examinations can be performed. Except for needed service records which have not already been obtained, documentary evidence and witnesses are almost always located in the field. (As in the past, the BVA is more than willing to consider requests that it directly provide assistance in obtaining evidence such as service medical or administrative records.) If additional evidence is received at the appellate level, fairness to the appellant, and any other claimants/appellants affected, requires that that evidence be remanded to the agency of original jurisdiction for its consideration, further development, and, if necessary, preparation of a Supplemental Statement of the Case, except where that right has been specifically waived. The BVA is particularly sympathetic to both field and central development requests when an appellant is unrepresented or is under a mental or other handicap which prevents him or her from developing the record adequately on his or her own in a timely manner. Finally, appellants do not benefit by having their VA records tied up in Washington for extended periods of time, often delaying action on other VA benefits unrelated to their appeals, while the appellate record is developed.

The depiction of these proposed amendments as giving the Chairman extraordinary power to refuse to accept any new evidence, refuse to allow a change in the "power of attorney," and to refuse personal hearings is highly inaccurate. These proposed amendments give the Chairman no authority whatever with regard to these matters until late in the appellate process. Even at that point, his or her authority is narrowly limited to a determination of whether good cause has been shown for tardy action by an appellant or representative.

There should be no reason for an appellant to first become aware of his or her rights at a late appellate stage. VA takes pains to advise claimants of their rights at every stage of the claims process. For example, the form (VA Form 1–4107) sent to every claimant when a claim is denied includes advisement of the right to appeal, the right to a hearing, and the right to representation. Rights are again explained in detail on the form used by appellants to appeal to the BVA (VA Form 1–9). (This advice is being expanded even further in revisions to this form which are now in progress.)

The death of an individual representative would, obviously, be good cause for a late change in representation. The provisions of 38 CFR 19.174(c) have been amended to remove whatever doubt there may have been that this is good cause for a change in representation.

VA agrees that mentally ill appellants, and other appellants suffering from a handicap which may impede the exercise of their rights, deserve special consideration. That is the reason why the revision to 38 CFR 19.174(c) was written to include "illness of the appellant or the representative which precluded action during the 60-day period" (now 90-day period) among the examples of good cause for allowing the tardy submission of evidence and requests for personal hearings and changes in representation.

These revisions have nothing to do with the standard of de novo review. That standard, which remains unchanged, simply means that the BVA will continue to review all of the evidence which is of record without regard to the fact that a claim has been denied in the field, provided that the appeal of that denial was timely and subject to the statutory requirement that there be allegations of specific error of fact or law in the determination being appealed.

As to the argument that these amendments do not allow representatives an adequate amount of time to review the record and consult with their clients, particularly in cases where transfer of the appellate record to the BVA might have been delayed, VA notes that in the great majority of cases appellants retain the representative at the appellate level which they had in the field. Even where this is not the case and there is a change, or initial selection, of representation at the appellate level, the approximately three-month period allowed should be more than adequate for review of the record and consultation with the client to the extent that an informed determination as to whether representation should be undertaken can be made by the appellant and the representative. These revisions in no way impede review of the record by representatives or their ability to consult fully with their clients after representation has been established. In addition to the extension of the cut-off date to 90 days, revisions have been made to 38 CFR 19.174(c) to specifically include delay in the transfer of the appellate record to the BVA as one of the examples of good cause for late action by an appellant or representatives.

In accordance with long-standing VA procedures and as clearly required by 38 CFR 19.174(a), appellants and their representatives are notified in writing when an appeal is certified and the appellate record is transferred to BVA. VA agrees that notice should also be given concerning the limitations imposed by these revisions at that time. Appropriate changes have been made to 38 CFR 19.174(a). (The word "claimant" has also been corrected to read "appellant" in that paragraph.)

The revisions to 38 CFR 19.174(b) already very clearly provide that evidence which is submitted at a hearing which was requested on time will be considered to have been received on time.

VA does not agree that an informed decision concerning whether or not a hearing is desirable cannot be made by the late date in the appellate process provided by these revisions in almost all cases or that the few cases where "show cause" determinations are necessary will produce delays which are unnecessary. The BVA considers appeals in claims which have already been in progress for months, and sometimes for years, at the field level. The appellant, and generally the representative, have had a great deal of time to consider the approach to the case for a long time before the appeal ever reaches BVA. Appellants are informed of the availability of personal hearings very early in this process. The VA form which they are sent when they are informed of the initial action taken by the agency of original jurisdiction (VA Form 1–4107) prominently displays this information. Appellants are specifically asked whether they wish a personal hearing (and, if so, where) on the form which constitutes their substantive appeal to the BVA (VA Form 1–9) which they submit to the agency of original jurisdiction prior to the transfer of the record to the BVA. Whether a hearing is desired is normally a preliminary question which can be decided early in the appellate process. In BVA's experience, factors rarely arise late in the appellate process which substantially influence this choice and the delay in requesting hearings is usually attributable to simple neglect. These regulations, as revised, permit the appellant and his or her representative a period of approximately three additional months within which to make this decision after notification of transfer of the appellate record to the BVA. Further, in those unusual cases where special circumstances require a late request, these amendments permit the filing of the late request when good cause is shown.

It is the late submission of hearing requests, not the submission of good-cause motions, which presents the greater risk of unnecessary delays. Except in unusual circumstances, such as severe hardship on the part of the appellant, hearings are provided at the BVA on a "first come, first served" basis. Due to the case load at the BVA, hearings must usually be scheduled weeks or months in advance. Late requests produce even later hearing dates. Further, requests which are submitted late may well not be processed and associated with the appellate record (particularly when wrongly sent to the field office, rather than to BVA, as is often the case) until after the BVA decision has already been entered in the case even though they may have been received somewhere within VA shortly before the decision was promulgated. In such cases, the decision must then be vacated and the appellate process must essentially begin again.

One commenter suggested that the amendment to 38 CFR 3.103(c) was incomplete, inasmuch as it did not include a reference to a recent revision to 38 CFR 19.159(b) pertaining to the rescheduling of hearings. (See 54 FR 11375.) Suggested language including a cross-reference to 38 CFR 19.159(b) was provided. This suggested language has not been adopted. The statement in 38 CFR 3.103(c) that a claimant is entitled to a hearing at any time means that a hearing will be afforded at any stage of the adjudication process. It does not concern hearing scheduling. Accordingly, a cross-reference to 38 CFR 19.159(b) is unnecessary.

The same commenter noted that the second closing parentheses in the body of 38 CFR 3.156(a), as amended, appeared to be misplaced. This was a typographical error and it has been corrected. This commenter suggested abbreviation of the first sentence of paragraph (b) and the last sentence of paragraph (c)(1) of 38 CFR 19.174. The alternate language suggested for paragraph (b) omitted some essential concepts and has only been adopted in part. The suggested abbreviation for paragraph (c)(1) was inadequate and has not been adopted. Correction of erroneous cross-references in 38 CFR 3.400(q) and the possible elimination of Rule of Practice nomenclature, suggested by this commenter, are beyond the scope of these amendments.

One commenter felt that these revisions require a conforming revision of 38 CFR 3.400(r). VA agrees. 38 CFR 3.400(r) currently provides that the effective date of an award based on a reopened claim will be the "date of receipt of claim or date entitlement arose, whichever is later." 38 CFR 3.160(e) and 19.174(c)(1), as amended, provide that requests for personal hearings and additional evidence which are received by the BVA prior to the date of an appellate decision, but which are rejected by the BVA because they were submitted late without good cause, will be referred back to the agency of original jurisdiction which may treat the testimony presented at a new hearing or other new evidence as the basis of a reopened claim. Paragraph 19.174(c)(1) also provides that, if the new evidence or new hearing then results in an allowance of benefits, the effective date will be the same as if the BVA had granted the appeal which was pending at the time that the hearing request or additional evidence was received. These amended provisions may thus be in conflict with the existing provisions of 38 CFR 3.400(r) in some cases. 38 CFR 3.400(r) has been revised to incorporate the exception in 38 CFR 19.174(c)(1). (VA recognizes that some conforming revisions to 38 CFR part 21 will also be required. These changes will be proposed at a later date.)

The same commenter asserted that these amendments, if adopted, will deprive appellants of the same "due-process" rights which they have at the "office of original jurisdiction" and that they would place an additional burden on such offices. It is true that these amendments do create some differences between procedures at field offices and before the BVA, but there are many such differences—as could be expected. The functions of field offices and of the BVA are not the same. Field offices are agencies of original jurisdiction, whereas the BVA is an appellate body. As previously noted, the time must eventually come in every case when an appellant must make a final decision with respect to representation and when development of the record and appellate presentations cease so that an appellate decision may be made. Some additional burden is imposed on VA field offices by these amendments, but it is not substantial. Essentially, it involves only their consideration of additional evidence and hearing testimony submitted too late for the BVA to consider. They must reconsider their position in the light of evidence initially submitted while a case is at the BVA anyway, unless this right is waived by the appellant. (See current § 19.174.)

One commenter suggested that, instead of requiring that good cause be shown for the late submission of evidence or requests for changes in representation or hearings, the rule be rewritten to provide for a motion for an extension of time to take these steps. This suggestion was not adopted. There would be little or no practical difference in the approach suggested. This commenter also suggested that the cutoff date be measured from the date that the appellate record was received by BVA, rather than from the time that the appellant is given notice of the transfer of the appellate record to BVA. This suggestion was not adopted either. The method adopted enables appellants and their representives to easily determine the exact cutoff date, inasmuch as they are always informed of the transfer of the appellate record to BVA. The proposed method does not. This commenter voiced concern about perceived problems in associating requests with the record, when the requests are submitted soon after notice of transfer of the record to the BVA has been given, because the request might be received at the BVA while the file was still in transit. In BVA's experience, proper association of these early requests with the appropriate file is rarely a problem.

Concerning this commenter's suggestion that these amendments will serve to encourage representatives to file protective requests for hearings and that this would add to BVA's workload due to the scheduling of hearings which do not materialize, the BVA does not believe that this will be a significant problem. As noted previously, a great deal of time is provided to make the choice of whether or not to request a hearing and the occurrence of events very late in the appellate process which make a hearing desirable for the first time is rare. In those unusual cases, these amendments provide a mechanism for obtaining a hearing. Thus, it will generally be unnecessary for appellants and their representatives to file protective hearing requests. Based on past experience, the BVA has every reason to believe that the vast majority of representatives will act responsibly and will not file frivolous hearing requests.

This commenter also expressed lengthy views about perceived limitations on the ability of representatives to withdraw from a case imposed by these revisions. These revisions focus on when an appellant may change representatives, not when a representative may withdraw. The language in 38 CFR 19.174 has been altered to make this clearer. In addition, withdrawal of a representative has been added to the list of examples of good cause for a late change in representation. The same commenter raised questions about restrictions on hearings in which the appellant is not present. That issue, while related, is not the subject of this rule. That issue will be clarified in the future in addressing comments concerning other proposed rules. (See 54 FR 34334)

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these regulatory amendments are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. They will have no significant direct impact on small entities (i.e., small businesses, small private and nonprofit organizations, and small governmental jurisdictions) inasmuch as they concern the appeals of individual appellants before BVA.

VA has also determined that these regulatory amendments are nonmajor in accordance with Executive Order 12291. They will not have an adverse economic impact on or increase costs to consumers, individual industries, Federal, State, and local government agencies, or geographic regions.

There is no Catalog of Federal Domestic Assistance program number involved with these regulatory amendments.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans

38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

Approved: April 17, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR parts 3 and 19 are amended as follows:

PART 3—[AMENDED]

1. In § 3.103, the first sentence of paragraph (c) is revised and an authority citation is added to read as follows:

§ 3.103 Due process—procedural and appellate rights with regard to disability and death benefits and related relief.

* * * * *

(c) *Hearings.* Upon request, a claimant is entitled to a hearing at any time on any issue involved in a claim within the purview of this part, subject to the limitations described in § 19.174 of this chapter with respect to hearings in claims which have been certified to the Board of Veterans Appeals for appellate review. * * *

(Authority: 38 U.S.C. 210(c))

* * * * *

2. In § 3.156, paragraph (a) is revised and an authority citation is added to read as follows:

§ 3.156 New and material evidence.

(a) New and material evidence received prior to the expiration of the appeal period, or prior to the appellate decision if a timely appeal has been filed (including evidence received prior to an appellate decision and referred to the agency of original jurisdiction by the Board of Veterans Appeals without consideration in that decision in accordance with the provisions of § 19.174(c)(1) of this chapter), will be considered as having been filed in connection with the claim which was pending at the beginning of the appeal period.

(Authority: 38 U.S.C. 210(c))

* * * * *

3. In § 3.160, paragraph (e) is revised and an authority citation is added to read as follows:

§ 3.160 Status of claims.

* * * * *

(e) *Reopened claim.* Any application for a benefit received after final disallowance of an earlier claim, or any application based on additional evidence or a request for a personal hearing submitted more than 90 days following notification to the appellant of the certification of an appeal and transfer of applicable records to the Board of Veterans Appeals which was not considered by the Board in its decision and was referred to the agency of original jurisdiction for consideration as provided in § 19.174(c)(1) of this chapter.

(Authority: 38 U.S.C. 210(c))

* * * * *

4. In § 3.400, paragraph (r) is revised and an authority citation is added to read as follows:

§ 3.400 Status of claims.

* * * * *

(r) *Reopened claims.* (§§ 3.109, 3.156, 3.157, 3.160(e)) Date of receipt of claim or date entitlement arose, whichever is later, except as provided in § 19.174(c)(1) of this chapter.

(Authority: 38 U.S.C. 210(c))

* * * * *

PART 19—[AMENDED]

Section 19.174 is revised to read as follows:

§ 19.174 Rule 74. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans Appeals.

(a) *Notification.* When an appeal is certified to the Board of Veterans Appeals for appellate review and the appellate record is transferred to the Board, the appellant and his or her representative, if any, will be notified in writing of the certification and transfer and of the time limit for requesting a change in representation, for requesting a personal hearing, and for submitting additional evidence described in this section.

(b) *Request for a change in representation, request for a personal hearing, or submission of additional evidence within 90 days following notification of certification and transfer of records.* An appellant and his or her representative, if any, will be granted a period of 90 days following the mailing to them of the notice described in paragraph (a), or until the date the appellate decision is promulgated by the Board of Veterans Appeals, whichever comes first, during which they may submit a request for a personal hearing or additional evidence, and during which the appellant may request a change in representation. Any such request or additional evidence should be submitted directly to the Board and not to the agency of original jurisdiction. The date of the letter of notification will be presumed to be the date of mailing for purposes of determining whether the request was timely made or the evidence timely submitted. Any evidence which is submitted at a hearing on appeal which was requested during such period will be considered to have been received during such period, even though the hearing may be held following the expiration of the period. Any pertinent evidence submitted by the appellant or representative is subject to the requirements of paragraph (d) of this section and, if a simultaneously contested claim is involved, the requirements of paragraph (e) of this section.

(c) *Subsequent request for a change in representation, request for a personal hearing, or submission of additional evidence.* Following the expiration of the period described in paragraph (b) of this section, the Board of Veterans Appeals will not accept a request for a change in representation, a request for a personal hearing, or additional evidence except when the appellant demonstrates on motion that there was good cause for the delay. Examples of good cause include, but are not limited to, illness of the appellant or the representative which precluded action during the period; death of an individual representative; illness or incapacity of an individual representative which renders it impractical for an appellant to continue with him or her as representative; withdrawal of an individual representative; the discovery of evidence that was not available prior to the expiration of the period; and delay in transfer of the appellate record to the Board which precluded timely action with respect to these matters. Such motions must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (*e.g.*, a veteran's survivor or guardian); the applicable Department of Veterans Affairs file number; and an explanation of why the request for a change in representation, the request for a personal hearing, or the submission of additional evidence could not be accomplished in a timely manner. Such motions should be filed at the following address: Office of the Chairman, Special Legal Assistant (01C), Board of Veterans Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. The ruling on the motion will be by the Chairman. Depending upon the ruling on the motion, action will be taken as follows:

(1) *Good cause not shown.* If good cause is not shown, the request for a change in representation, the request for a personal hearing, or the additional evidence submitted will be referred to the agency of original jurisdiction upon completion of the Board's action on the pending appeal without action by the Board concerning the request or additional evidence. Any personal hearing granted as a result of a request so referred or any additional evidence so referred may be treated by that agency as the basis for a reopened claim if appropriate. If the Board denied a benefit sought in the pending appeal and any evidence so referred which was received prior to the date of the Board's decision, or testimony presented at a hearing resulting from a request for a hearing so referred, together with the evidence already of record, is subsequently found to be the basis of an allowance of that benefit, the effective date of the award will be the same as if the benefit had been granted by the Board as a result of the appeal which was pending at the time that the hearing request or additional evidence was received.

(2) *Good cause shown.* If good cause is shown, the request for a change in representation or for a personal hearing will be honored. Any pertinent evidence submitted by the appellant or representative will be accepted, subject to the requirements of paragraph (d) of this section and, if a simultaneously contested claim is involved, the requirements of paragraph (e) of this section.

(d) *Consideration of additional evidence by agency of original jurisdiction.* Any pertinent evidence submitted by the appellant or representative which is accepted by the Board under the provisions of this section, as well as any referred to the Board by the originating agency under Rule 73(b) (§ 19.173(b) of this part), must be referred to the agency of original jurisdiction for review and preparation of a Supplemental Statement of the Case unless this procedural right is waived by the appellant or unless the Board determines that the benefit, or benefits, to which the evidence relates may be allowed on appeal without such referral. Such waiver must be in writing or, if a hearing on appeal is conducted, formally entered on the record orally at the time of the hearing.

(e) *Simultaneously contested claims.* In simultaneously contested claims, if pertinent evidence is submitted by any claimant and is accepted by the Board under the provisions of this section, the substance of such evidence will be mailed to each of the other claimants who will then have 60 days from the date of mailing of notice of the new evidence within which to comment upon it and/or submit additional evidence in rebuttal. The date of the letter of notification of the new evidence will be presumed to be the date of mailing for purposes of determining whether such comment or evidence in rebuttal was timely submitted. No further period will be provided for response to such comment or rebuttal evidence.

(Authority: 38 U.S.C. 4004, 4005, 4005A)

Cross-References: For further information concerning: Hearings, see § 3.103 and Rules 57 through 71 (§§ 19.157–19.171); New and Material Evidence, see § 3.156(a); Reopened Claim; see §§ 3.160(e) and 3.400(r); Computation of Time Limit, see Rule 31 (§ 19.131); Legal Holidays, see Rule 32 (§ 19.132).

[FR Doc. 90-11128 Filed 5-14-90; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 17

RIN 2900-AD41

Expanded Eligibility for 30–40 Percent Service-Connected Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending its medical regulations (38 CFR part 17) to re-define the eligibility requirements under which outpatient/ambulatory health care is provided. These amendments will incorporate the provisions of recently enacted legislation.

EFFECTIVE DATE: June 13, 1990.

FOR FURTHER INFORMATION CONTACT: Paul C. Tryhus, Chief, Policies and Procedures Division (136F), Veterans Health Services and Research Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2504.

SUPPLEMENTARY INFORMATION: Under VA regulations for determining eligibility for outpatient care (38 United States Code 17.60), VA shall furnish outpatient/ambulatory care to the following specified groups of eligible veterans: (1) Veterans who require care for their service-connected disabilities; (2) Veterans who are 50 percent or more service-connected and require care for any condition; and (3) Veterans who have a disability for which they receive compensation under 38 United States Code 351. Pre-bed care, post-hospital care, and care to obviate the need for hospitalization, for any condition, shall be furnished to the following groups of veterans: (1) Veterans who are rated 30 or 40 percent service-connected; (2) Category "A" veterans whose annual income does not exceed the pension rate of a veteran in need of Regular Aid and Attendance.

Outpatient medical services for any condition may be furnished on an outpatient or ambulatory basis to the following groups of veterans: (1) Veterans who are former prisoners of war; (2) Veterans who served during the Mexican Border Period or World War I; (3) Veterans in receipt of increased pension, additional compensation or allowance based on the need of Regular Aid and Attendance or by being permanently housebound (or who, but for the receipt of retired pay, would be in receipt of such pension, compensation or allowance). Pre-bed care, care to obviate the need for hospitalization and post hospital care may be furnished to the following groups of veterans: (1) Catgegory "A" veterans whose income exceeds the pension rate of a veteran in need of Regular Aid and Attendance but below that of a Category "A" veteran; (2) Category "B" veterans; (3) Category "C" veterans (with co-payment) and (4) Veterans exposed to toxic substance or radiation.

VA finds, for good cause, advance publication for notice and public comment is not required. The regulatory amendment merely updates VA regulations consistent with the recent change in law and does not involve any substantive change in VA policy or regulations. Thus, in accordance with the provisions of 38 CFR 1.12, advance publication in the **Federal Register** is unnecessary. Accordingly, the change in the regulations is now published as final.

These final regulatory amendments do not meet the criteria for a major rule as that term is defined by Executive Order 12291, Federal Regulation. These regulatory amendments will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices and will not have any other significant adverse effects on the economy.

The Secretary hereby certifies that these regulations will not have a significant economic impact on the substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 United States Code 601–612. Pursuant to 5 United States Code 605(b), these regulations are therefore exempt from the regulatory analysis requirements of 5 United States Code 603 and 604. The reason for this certification is that the regulations only apply to veterans receiving outpatient medical care within the VA system and impose no regulatory burden on small entities.

(The Catalog of Federal Domestic Assistance Numbers are 64.009 and 64.011)

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Veterans.

Approved: April 18, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 17, Medical, is amended as follows:

PART 17—[AMENDED]

Section 17.60 is being revised in its entirety to read as follows:

§ 17.60 Eligibility for outpatient services.

(a) VA shall furnish on an ambulatory or outpatient basis medical services as are needed, to the following applicants under the conditions stated, except that applications for dental treatment must also meet the provisions of § 17.123.

(Authority: 38 U.S.C. 612)

(1) *For service-connected disability.* Medical services on an ambulatory or outpatient basis shall be provided to any veteran for a service-connected disability (including a disability that was incurred or aggravated in the line of duty and for which the veteran was discharged or released from the active military, naval, or air service).

(2) *For verterans 50 percent or more disabled from a service-connected disability.* Medical services on an ambulatory or outpatient basis shall be provided for any disability of a veteran who has a service-connected disability rated at 50 percent or more.

(3) *For veterans in receipt of compensation under section 351 of title 38 U.S.C.* Medical services on an ambulatory or outpatient basis shall be provided to any veteran for a disability for which the veteran is in receipt of compensation under section 351 of title 38 U.S.C. or for which the veteran would be entitled to compensation under that section (but in the case of such a suspension, such medical services may be furnished only to the extent that such person's continuing eligibility for medical services is provided for in the judgment or settlement).

(4) *For compensation and pension examinations.* A compensation and pension examination shall be performed for any veteran who is directed to have such an examination by VA.

(Authority: 38 U.S.C. 111 and 210)

(5) *For adjunct treatment.* Medical services on an ambulatory or outpatient basis shall be provided to veteans for an adjunct nonservice-connected condition associated with and held to be aggravating a disability from a disease or injury adjudicated as being service-connected.

(b) VA shall furnish on an ambulatory or outpatient basis medical services as necessary to the following applicants in preparation for hospital admission; to obviate the need of a hospital admission; or such medical services necessary to complete an episode of treatment incident to hospital, nursing home, or domiciliary care, under the conditions stated below except that applicants for dental treatment must also meet the applicable provisions of § 17.123.

(1) *For veterans with a service-connected rating of 30 to 40 percent.* Medical services on an ambulatory or outpatient basis shall be provided to any veteran who has service-connected disability rated at 30 or 40 percent.

(2) *For veterans whose annual income does not exceed the maximum annual rate of pension with aid and attendance.* Medical services on an ambulatory or outpatient basis shall be provided to any veteran who is eligible for hospital care and whose annual income does not exceed the maximum annual rate of pension that would be applicable to the veteran if the veteran were eligible for pension.

(Authority: 38 U.S.C. 503, 521(d), and 610(a))

(c) The term "shall furnish" in paragraphs (a) and (b) means that, if the veteran is in immediate need of outpatient medical services, VA shall furnish care at the VA facility where the veteran applies. If the needed medical services are not available there, VA shall arrange for care at the nearest VA medical facility or Department of Defense facility (with which VA has a sharing agreement) that can provide the needed care. If VA and Department of Defense facilities are not available, VA shall arrange for care on a fee basis, but only if the veteran is eligible to receive medical services in non-VA facilities under § 17.50b.

If the veteran is not in immediate need of outpatient medical services, VA shall schedule the veteran for care where the veteran applied, if the schedule there permits, or refer the veteran for scheduling to the nearest VA medical center or Department of Defense facility (with which VA has a sharing agreement).

(d) VA may furnish on an ambulatory or outpatient basis medical services as needed to the following applicants, except that applications for dental treatment must also meet the provisions of § 17.123.

(1) *For former prisoners of war.* Medical services on an ambulatory or outpatient basis may be provided to any veteran who is a former prisoner of war.

(2) *World War I and Mexican border period.* Medical services on an ambulatory or outpatient basis may be provided to any veteran of World War I or the Mexican border period.

(3) *For veterans who are housebound or in need of aid and attendance.* Medical services on an ambulatory or outpatient basis may be provided to any veteran who is in receipt of increased pension or additional compensation or allowances based on the need of regular aid and attendance or by reason of being permanently housebound (or who, but for receipt of retired pay, would be in receipt of such pension, compensation or allowance).

(4) *For Commonwealth Army Veterans and New Philippine Scouts.* Medical services on an ambulatory or outpatient basis may be furnished to Commonwealth Army veterans and New Philippine Scouts within the limits of facilities in the United States over which the VA has direct jurisdiction or other Federal facilities with which the Secretary contracts, for the treatment of service-connected disabilities.

(Authority 38 U.S.C. 634)

(5) *For veterans participating in a rehabilitation program under 38 U.S.C. chapter 31.* Medical services on an ambulatory or outpatient basis may be provided as determined medically necessary for a veteran participating in a rehabilitation program under 38 U.S.C. chapter 31 as defined in § 17.48(j).

(e) VA may furnish on an ambulatory or outpatient basis medical services necessary in preparation for hospital admission to the following applicants; to obviate the need of a hospital admission; or such medical services necessary to complete an episode of treatment incident to hospital, nursing home, or domiciliary care, under the conditions stated below except that applications for dental treatment must also meet the applicable provisions of § 17.123. Medical services to complete an episode of hospital, nursing home, or domiciliary care may not be provided for a period in excess of 12 months after discharge from such care, except where a staff physician determines that a longer period is required by virtue of the disability being treated.

(1) *For any veteran who has a service-connected disability rating of less than 30 percent.* Medical services on an ambulatory or outpatient basis may be provided to veterans who have a service-connected disability rating of less than 30 percent; including zero percent service-connected veterans.

(2) *For veterans exposed to toxic substances in Vietnam.* Medical services on an ambulatory or outpatient basis may be provided to veterans who served during the Vietnam Era in the Republic of Vietnam and who claim their need for treatment is as a result of exposure to toxic substances while in Vietnam.

(3) *For veterans exposed to ionizing radiation.* Medical services on an ambulatory or outpatient basis may be provided to veterans who claim their need for treatment is as a result of exposure to ionizing radiation following the detonation of a nuclear device during such service or who were exposed to ionizing radiation following the detonation of such devices in Japan during World War II.

(4) *Category "A" veterans whose income exceeds the maximum rate of pension.* Medical services on an ambulatory or outpatient basis may be provided to veterans who were not otherwise eligible and whose income exceeds the pension rate of a veteran in need of regular aid and attendance but is below that of a Category "A" veteran based upon completion of the "Means Test". Section 622 of title 38 U.S.C. lists the criteria for the determination of inability to defray necessary expenses; income thresholds (Means Test).

(5) *Category "B" veterans.* Medical services on an ambulatory or outpatient basis may be provided to veterans who are determined to be Category "B" based upon completion of the "Means Test".

(6) *Category "C" veterans.* Medical services on an ambulatory or outpatient basis may be provided to veterans who are determined to be Category "C" based upon completion of the "Means Test" and who agree to make the co-payment.

(7) *Veterans eligible for hospital care under 38 U.S.C. 610.* Ambulatory or outpatient medical services may be provided to any veteran eligible for hospital care under 38 U.S.C. 610 not otherwise specified above.

(f) *Home health services.* Home health services determined by VA to be necessary for effective and economical treatment of a disability may be furnished to any veteran to include home improvement and structural alterations as are necessary to assure continuation of treatment for the veteran's disability or to provide access to the home or to essential lavatory and sanitary facilities. The cost to VA or reimbursement by VA to the veteran will not exceed $2,500 for home improvements or structural alterations for veterans being treated under § 17.60(a) (1)–(3) and will not exceed $600 for any other veteran being treated under this section.

(Authority: 38 U.S.C. 617)

[FR Doc. 90-11129 Filed 5-14-90; 8:45 am]

BILLING CODE 8320-01-M

ACTION

45 CFR Part 1215

Freedom of Information Act Regulations

AGENCY: ACTION.

ACTION: Final rule.

SUMMARY: The provisions contained herein establish regulations for this Agency with regard to the dissemination of records, documents and other information in conformity with the Public Information Act, 5 USC as amended by Public Law 93-502, 88 Stat. 1561.

EFFECTIVE DATE: June 14, 1990.

FOR FURTHER INFORMATION CONTACT: Edward F. Carey, FOIA Officer, ACTION, room 3202, 1100 Vermont Ave., NW., Washington, DC 20525, (202) 634-9242.

SUPPLEMENTARY INFORMATION: On January 20, 1988, (53 FR 1496), a notice of proposed rule making was published in the **Federal Register** (88 1036) proposing to add a new part 1215 to part 45 of the Code of Federal Regulations to provide rules and regulations for the production, inspection and copying of records and documents. Notice was given that inquiries, comments or views concerning the proposed subpart were to be submitted to ACTION on or before February 19, 1988. The following comments have been received to this date:

A. A comment on § 1215.2(i), Definitions, suggested that no definition for "Representative of the News Media" be provided since the term can be deemed to be self-explanatory or that the Agency modify its definition so that it would not be in the position of making "editorial determinations" of what is considered news. The Agency has adopted a definition identical to the definition adopted by the National Foundation on the Arts and Humanities and nearly identical to that adopted by the Consumer Product Safety Commission, i.e.,

"Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast information that is about current events or that would be current interest to the public.

As suggested by the comment referenced above, this definition is acceptable since it considers the organization rather than the specific information the requester seeks in applying the definition of "news". The Agency does, however, maintain examples of "news media entities" with the qualification that "These examples are not intended to be all inclusive."

B. A comment on § 1215.7(k), Schedule of Fees, objected to the use of the Justice Department's guidance on the promulgation of fee and waiver guidelines on the basis that:

(a) Congress named the Office of Management and Budget, not Justice to promulgate these guidelines, and

(b) The guidance restricts the granting of waivers beyond what Congress intended and raises additional questions.

The Agency has incorporated the Department of Justice's guidance. The Agency has an obligation to inform the public as to the criteria that will be used to determine the public interest. The Agency believes that the criteria developed by the Justice Department provides a fair method of determination which can easily be applied by requesters and the Agency.

The 1986 FOIA amendments changed the law on fee waivers—requiring that fees must be waived or reduced if disclosure of the 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." In effect, the Justice Department's guidance facilitates the determination of waivers without delaying the timely response of FOIA requests. The Agency has also added as appendix A to subpart 1215, a sample request letter containing optional language asking for a fee waiver. In response to a specific comment on the public's interest in monitoring the activities of its government, this sample request letter helps to ensure recognition of the public's interest as a criterion for granting a public interest fee waiver.

Finally, the Agency's fee schedules ensure benefits guaranteed by the FOIA Reform Act of 1986. For example, the Agency excludes charges for reproduction of the first 100 pages in response to requests from representatives of the news media and educational or noncommercial scientific institutions when these requesters are not seeking records for commercial use.

C. A comment on § 1215.7(k)(1), Schedule of Fees, suggests that the Agency's proposed regulations violate the Paperwork Reduction Act. According to the comment, the Paperwork Reduction Act requires that federal agencies "shall not conduct or sponsor the collection of information" without first obtaining the approval of the director of the Office of Management and Budget (5 CFR part 3507(a)). Under OMB regulations, the comment adds, an agency sponsors a collection of information if it "requires a person to provide information to another person" (5 CFR 1320.7(t)).

This comment's narrow interpretation of the meaning of the term collection of information relies on a federal agency being considered the sponsor for the "collection of information from one person to another," as referenced in (5 CFR 1320.7(t)). However, OMB regulations are clear and explicit in defining the "collection of information" as meaning "the obtaining or soliciting of information from ten or more persons by means of identical questions, whether such collection of information is mandatory, voluntary, or required to obtain a benefit" (5 CFR 1320.7(c)). The Agency's regulations, therefore, are not in violation of the Paperwork Reduction Act since they do not impose any obligatory information requirements on the public.

D. A comment on § 1215.7(k)(2)(v), Schedule of Fees, states that the Agency's proposals do not consider the legitimacy of the public's interest in monitoring its activities as a criterion for granting a public interest fee waiver.

As indicated earlier, the sample request letter added to ACTION's regulations helps to ensure recognition of the public's interest in monitoring the Agency's activities as a criterion for granting a public interest fee waiver.

Additionally, the adoption of the Justice Department's guidance provides assistance to submitters to help them include in their FOIA requests adequate and identifiable information that is in the public interest to obtain. For example, when a news media requester has satisfied the "public interest" standard necessary for a waiver, that, and not the requester's commercial interest, is the interest primarily served by disclosure to that requester, and a waiver or reduction of fees will be granted. Generally, a representative of the news media, a scholar, or a public interest group is more likely to qualify for a waiver or a reduction of fees. A commercial user may find it difficult to qualify for a waiver.

E. A comment on § 1215.7(k)(2)(v), Schedule of Fees, suggests that notably absent from the fee waiver tests in the Agency's proposals is a statement excepting the news dissemination function from a test to determine the requester's commercial interest, a test that could eliminate entitlement to a fee waiver.

In response to this comment, the Agency has added the following section on waivers, specifically § 1215.7(l)(2)(v):

In those instances where a news media requester, scholar, or public interest group has satisfied the "public interest" standard necessary for waiver, that, and not the requester's commercial interest, is the interest primarily served by disclosure to the requester and a waiver or reduction of fees will be granted.

This additional statement also complements the Justice Department's guidance on the determination of fees and waiver.

F. A comment on part 1215.7(k)(3), Schedule of Fees, suggests that the Agency's proposal not to begin processing a FOIA request until a decision has been reached on granting or denying a fee waiver is considered obstructive and conducive to routine and unnecessary delay. This comment did state, however, that any Agency requirement to decide fee waivers and delay a decision to grant or deny information should be limited to those requests where cost might reasonably be in issue.

In response to this comment, the Agency has explicitly added a stipulation on costs to ensure that no delays will occur whenever costs are not in issue in responding promptly to FOIA requests. (In practice, the Agency has generally assumed that a determination on waivers is primarily decided by the costs involved.)

Accordingly, § 1215.7(k)(3) has been modified to begin:

When a fee waiver application involving costs reasonably in issue (as in the case of voluminous requests for information) has been included in a request for records, * * *.

G. A comment on part 1215.7(g), Schedule of Fees, considers the proposal to require advance payment as interference with the Agency's prompt provision of information and with the media's timely dissemination of information. According to this comment, "news media requesters would need to await the assessment and mailing of a bill, return payment and still other bureaucratic processes for recording payment and certifying release."

The Agency's requirement for advance payment is considered reasonable because of the limited circumstances and frequency when advance payments would be assessed, i.e., only (1) when such fees are likely to exceed $250 and the requester has no history of payment of FOIA fees and (2) a requester has previously failed to pay a FOIA fee charged in a timely fashion.

This requirement will not affect many requesters. In those limited circumstances where requests may involve substantial amounts of search time or extensive copying, the advance payment provision is not, in the Agency's opinion, unreasonable.

The Agency has, however, modified this specific requirement to emphasize these limited circumstances. Section 1215.7(g) now reads:

Advance payment of assessable fees are not required from a requester unless: (1) The Agency estimates * * *.

H. A comment on § 1215.5(e), Record Request and Response Procedures, suggests that ACTION's proposal to write the requester for further clarification of insufficiently identified records is "archaic in the telephone age."

In response to this comment, the Agency has modified this section to state that:

On making a determination that the description contained in the request does not sufficiently describe a requested record, the FOIA Officer shall promptly so advise the requester in writing and by telephone if possible. The FOIA Officer shall provide the requester with appropriate assistance to help the requester provide any additional information which would better identify the record.

Telephoning requesters to help clarify insufficiently identified records has been standard practice by the Agency. However, written communications are required to formally document FOIA requests and the Agency's responses. Written communications also help clarify and identify the requests and the responses, thus benefiting both the requester and the Agency.

As a matter of formal practice, the Agency also documents its understanding of revisions to a FOIA request in its written communications with the requester.

I. A comment on § 1215.8, Business Information, acknowledges the requirement of Executive Order 12600 to notify business submitters of information when release of the information is in issue. However, the comment suggests that this requirement cannot override the requirement of the Freedom of Information Act that requesters be granted or denied information within 10 working days.

In response to this comment, the Agency has modified § 1215.8(c) as follows:

Through the notice required in paragraph (b) of this section, the Agency shall, after determining (1) that a submitter had in good faith previously designated the information as confidential commercial information or (2) that disclosure of the information could reasonably be expected to cause substantial competitive harm to the submitter, and to the extent permitted by law to grant or deny information to requesters of information within 10 working days, afford a business submitter a reasonable opportunity to object to disclosure of the information in question and to provide the Agency with a written statement of grounds for such objection.

J. A comment on § 1215.6(b)(3), Time Limits and Extensions, suggests that the Agency inappropriately adds to the statutory provisions allowing extension of time from 10 to 20 days in unusual circumstances. According to this comment, Congress did not contemplate consultation with business submitters in limiting the specific circumstances in which an agency can extend its response time, and therefore, the Agency may not add to those exceptions.

The Agency considers reasonable the statutory provisions which allow extension of time from 10 to 20 days in circumstances where time is necessary for consultation with a submitter of business information having an interest in the request.

Given (a) the time necessary to consult the submitter of business information having an interest in the request and (b) the Agency's policy not to release information which is a trade secret or commercial or financial information which is privileged or confidential within the meaning of section 5 U.S.C. 552(b)(4) of the Freedom of Information Act, the Agency considers these statutory provisions reasonable.

K. Various minor changes have been made, such as: the FOIA Officer has been designated to administer the distribution of copies of records to any person entitled to them; an appendix has been added, namely, a Sample FOIA Request Letter and a Sample FOIA Appeal Letter; and the new ACTION address of 1100 Vermont Avenue, NW., Washington, DC 20525 has been included.

43 CFR part 1215 is revised to read as follows:

PART 1215—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

Sec.

Appendix 1(A) to Part 1215—Freedom of Information Act Request Letter (Sample)

Appendix 1(B) to Part 1215—Freedom of Information Act Appeal Letter (Sample)

Authority: Pub. L. 93–113, 87 Stat. 411 (42 U.S.C. 4951, *et seq.*); and 5 U.S.C. 552.

§ 1215.1 Purpose.

The purpose of this part is to prescribe rules for the inspection and copying of opinions, policy statements, manuals, instructions, and other records of ACTION pursuant to the Freedom of Information Act (5 U.S.C. 552). Information customarily furnished to the public in the regular course of ACTION's official business may continue to be furnished to the public without complying with this part, provided that the furnishing of such information would not violate the Privacy Act of 1974 (5 U.S.C. 552a). Rules for the disclosure by ACTION of records protected by the Privacy Act are set forth at 45 CFR part 1224.

§ 1215.2 Definitions.

As used in the part, the following definitions shall apply:

(a) *The Act* means the Freedom of Information Act (5 U.S.C. 552).

(b) *The Agency* means ACTION.

(c) *Records* include all books, papers, maps, photographs or other documentary material, or copies thereof, regardless of physical form or characteristics, made or received by ACTION and preserved as evidence of its organization, functions, policies, decisions, procedures, operations or other activities; but do not include books, magazines, or other materials not produced by ACTION and acquired solely for reference purposes.

(d) *Search* means time spent locating records responsive to a request, including page-by-page or line-by-line identification of responsive material within a record.

(e) *Review* means the process of examining records located in response to a request to determine whether any record or portion of a record is permitted to be withheld. It also includes processing records for disclosure (*i.e.*, excising portions not subject to disclosure under the Act and otherwise preparing them for release). Review does not include time spent resolving legal or policy issues regarding the application of exemptions under the Act.

(f) *Commercial use request* means a request from, or on behalf of, a person 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. The use to which a requester will put the records sought will be considered in determining whether the request is a commercial use request.

(g) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(h) *Non-commercial scientific institution* means an institution that is not operated on a for-profit basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(i) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast information that is about current events or that would be of current interest to the public. Examples of news media entities include television and radio stations broadcasting to the public at large, and publishers of periodicals (but only those publishers who 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 new methods of news dissemination evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Agency may also look to the past publication record of a requester in making this determination.

(j) *Business information* means trade secrets or other commercial or financial information.

(k) *Business submitter* means any commercial entity which provides business information to ACTION and which has a proprietary interest in such information.

(l) *Appeal* means the appeal by a requester of an adverse Agency determination on his/her request, or on his/her application for a waiver of fees, as described in 5 U.S.C. 552(a)(6)(A)(ii).

§ 1215.3 Availability of records.

(a) All publications and other documents heretofore provided by ACTION to the public in the normal course of Agency business will continue to be made available upon request to the Agency.

(b) The Agency will promptly make available to any member of the public who requests them, the following Agency records:

(1) Final opinions and orders made in the adjudication of cases;

(2) Statements of policy and interpretation adopted by an office which have not been published in the **Federal Register**; and

(3) Administrative staff manuals and instructions to the staff which affect the public.

(c) A current index, which shall be updated at least quarterly, of the foregoing materials, is maintained by the Agency, and copies of same or any portion thereof will be furnished upon request. The Agency deems further publication of such index in the Federal **Register** unnecessary and impractical.

(d) To the extent necessary to prevent a clearly unwarranted invasion of personal privacy, the Agency may delete identifying details from materials furnished under this section.

(e) Brochures, leaflets, and other similar published materials shall be furnished to the public on request to the extent they are available. Copies of any such materials which are out of print shall be furnished at the cost of duplication, provided, however, that, in the event no copy exists, the Agency shall not be responsible for reprinting the document.

(f) All records of ACTION which are requested by a member of the public in accordance with the procedures established in this part shall be timely made available for inspection or copying, at the Agency's option, except to the extent that the Agency determines such records are exempt from disclosure under the Act.

(g) The Agency will not be required to create new records, compile lists of selected items from its files, or provide a requester with statistical or other data (unless such data have been compiled previously and are available in the form of a record, in which event such data shall be made available as provided in this part).

§ 1215.4 Location of records.

(a) The Agency maintains a central records room at its headquarters, located at 1100 Vermont Avenue NW., Washington, DC 20525. The specific location of the central records room may change from time to time, but may be ascertained by inquiry to the receptionist in the Office of the Director, ACTION.

(b) The Agency maintains regional offices in the following locations:

Region I—Boston, Massachusetts (Connecticut, Maine, Massachusetts, New Hampshire, Vermont and Rhode Island)
Region II—New York, New York (New Jersey, New York, Puerto Rico and Virgin Islands)
Region III—Philadelphia, Pennsylvania (Delaware, District of Columbia, Kentucky, Maryland, Ohio, Pennsylvania, Virginia and West Virginia)
Region IV—Atlanta, Georgia (Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina and Tennessee)
Region V—Chicago, Illinois (Illinois, Indiana, Iowa, Michigan, Minnesota and Wisconsin)
Region VI—Dallas, Texas (Arkansas, Kansas, Louisiana, Missouri, New Mexico, Oklahoma and Texas)
Region VIII—Denver, Colorado (Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming)
Region IX—San Francisco, California (American Samoa, Arizona, California, Guam, Hawaii and Nevada
Region X—Seattle, Washington (Alaska, Idaho, Oregon and Washington)

ACTION also maintains offices in most States, usually in the State capital.

These field offices are not responsible for maintaining indexes, reading rooms, or records or documents other than those created and maintained in the normal course of the official business of such offices.

§ 1215.5 Record request and response procedures.

(a) *How made and addressed.* Requests under the Act for access to ACTION records must be in writing, and must either be mailed or hand-delivered to the FOIA Officer, 1100 Vermont Avenue NW., Washington, DC 20525. All such requests, and the envelopes in which they are sent, must be plainly marked "FOIA Request". Hand-delivered requests will be received between 8:30 a.m. and 5 p.m., Monday through Friday, except on official holidays.

(b) *Agreement to pay fees.* The filing of a request under this subpart shall be deemed to constitute an agreement by the requester to pay all applicable fees under § 1215.7 of this part, up to $25, unless a waiver of fees is sought in the request letter. When filing a request, a requester may agree to pay a greater amount, if applicable.

(c) *Request must adequately describe the records sought.* A request must describe the records sought in sufficient detail to enable Agency personnel to locate the records with reasonable effort. A request shall be regarded as fulfilling this requirement if it enables the Agency to identify responsive documents without unreasonable burden to or disruption of Agency operations. Persons wishing to inspect or secure copies of records should describe and identify such records as fully and as accurately as possible. Among the kinds of identifying information which a requester may provide are the following:

(1) The unit or program of the Agency which may have produced or may otherwise have custody of the record, e.g., VISTA (Volunteers In Service To America), RSVP (Retired Senior Volunteer Program), FGP (Foster Grandparent Program);

(2) The specific event or action, if any, to which the record pertains;

(3) The date of the record, or the time period to which it refers or relates;

(4) The type of record (e.g., application, contract, grant or report);

(5) The name(s) of Agency personnel who may have prepared or been referenced in the record; and

(6) Citation to newspapers or other publications which refer to the record.

(d) *Initial processing.* Upon receipt of a request for Agency records, the FOIA Officer will make an initial determination as to whether the request describes requested records with sufficient specificity to determine the office of the Agency having custody of any responsive records. If so, upon making such initial determination, he/she shall refer such request to the head of the custodial office. The office head shall promptly ascertain whether the description of record(s) requested is sufficient to permit a determination as to existence, identification, and location. The FOIA Officer will provide FOIA guidance and assistance to the ACTION staff.

(e) *Insufficiently identified records.* On making a determination that the description contained in the request does not sufficiently describe a requested record, the FOIA Officer shall promptly so advise the requester in writing and by telephone if possible. The FOIA Officer shall provide the requester with appropriate assistance to help the requester provide any additional information which would better identify the record.

The requester may submit an amended request providing the necessary additional identifying information. Such a request shall be deemed to have been received by the Agency on the date it receives the amended request.

(f) *Release of record; denial and right to appeal.* Upon receipt of a request specifically identifying existing Agency records, the Agency shall, within ten working days, either grant or deny the request in whole or in part, as provided in this subpart. Any notice of denial in whole or in part shall also inform the requester of his/her right to appeal the denial, in accordance with the procedures set forth at § 1215.9 below.

If the FOIA Officer determines that a request describes a requested record sufficiently to permit its identification, he/she shall make it available unless he/she determines, after consultation with the General Counsel, as appropriate, to withhold the record as exempt from mandatory disclosure under the Act.

(g) *Form and content of notice granting a request.* The Agency shall provide written notice of a determination to grant a request. Such notice shall describe the manner in which the record will be disclosed, whether by providing a copy of the record to the requester or by making the record available to the requester for inspection at a reasonable time and place. The procedure for inspection shall not unreasonably disrupt the operations of the Agency. The Agency shall inform the requester in the notice of any fees charged in accordance with the provisions of § 1215.7 of this part.

(h) *Form and content of notice denying a request.* The Agency shall notify a requester in writing of the denial of a request in whole or in part. Such notice shall include:

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

(2) A brief statement of the reason or reasons for the denial, including the exemption or exemptions under the Act on which the Agency has relied in denying the request, and a specific explanation of the manner in which the exemption or exemptions apply to each record withheld; and

(3) A statement that the denial may be appealed under § 1215.9 of this part, and a copy of that section.

§ 1215.6 Time limits and extensions.

(a) The time limits specified for the Agency's initial response in § 1215.5, and for its determination on an appeal in § 1215.9, are mandatory, and a person requesting records shall be deemed to have exhausted his/her administrative remedies with respect to such request in the event the Agency fails to comply with the applicable time limits in accordance with this section.

(b) The time limits specified for the Agency's initial response in § 1215.5, and for its determination on an appeal in § 1215.9, may be extended by the Agency upon written notice to the requester which sets forth the reasons for such extension and the date upon which the Agency will respond to the request. Such extension may be applied at either the initial response stage or the appeal stage, or both, provided the aggregate of such extensions shall not exceed ten working days. Circumstances justifying an extension under this subpart may include the following:

(1) Time necessary to search for and collect requested records from field offices of the Agency;

(2) Time necessary to locate, collect and review voluminous records responsive to a single request; or

(3) Time necessary for consultation with another agency having an interest in the request; or among two or more offices of ACTION which have an interest in the request; or with a submitter of business information having an interest in the request.

§ 1215.7 Schedule of fees.

(a) It is the policy of ACTION to encourage the widest possible dissemination of information concerning the programs under its jurisdiction. To the extent practicable, its policy will be applied under this part so as to permit requests for inspection of copies of records to be met without substantial cost to requesters.

(b) Request processing charges will be determined by category of request, as follows:

(1) *Commercial use requests.* When a request for records is made for commercial use, charges will be assessed to cover the costs of searching for, reviewing for release, and reproducing the records sought.

(2) *Requests for educational and non-commercial scientific institutions.* When a request for records is made by an educational or a non-commercial scientific institution in furtherance of scholarly or scientific research, respectively, charges will be assessed to cover the cost of reproduction alone, excluding charges for reproduction of the first 100 pages.

(3) *Requests from representatives of the news media.* When a request for records in made by a representative of the news media for the purpose of news dissemination, charges will be assessed to cover the cost of reproduction alone, excluding charges for reproduction of the first 100 pages.

(4) *All other requests.* When a request for records is made by a requester who does not fit into any of the preceding categories, charges will be assessed to cover the costs of searching for and reproducing the records sought, excluding charges for the first two hours of search time and for reproduction of the first 100 pages. (However, requests from individuals for records about themselves contained in the Agency's systems of records will be treated under the fee provisions of the Privacy Act of 1974 which permit the assessment of fees for reproduction costs only, regardless of the requester's characterization of the request).

(c) Fees assessed shall provide only for recovery of the Agency's direct costs of search, review, and reproduction. Review costs shall include only the direct costs incurred during the initial examination of a record for the purposes of determining whether a record must be disclosed under this part and whether any portion of a record is exempt from disclosure under this part. Review costs shall not include any costs incurred in resolving legal or policy issues raised in the course of processing a request or an appeal under this part.

(d) When the Agency believes that a requester or group of requesters has divided one request into series of requests for the purpose of evading the assessment of fees, the Agency may treat such requests as a single request.

(e) The following charges may be assessed for copies of records provided to a requester:

(1) Copies made by photostat shall be charged at the rate of $0.10 per page.

(2) Searches for requested records performed by clerical/administrative personnel shall be charged at the rate of $3.00 per quarter hour.

(3) Where a search for requested records cannot be performed by clerical/administrative personnel (for example, where the tasks of identifying and compiling records responsive to a request must be performed by a skilled technician or professional), such search shall be charged at the rate of $5.50 per quarter hour.

(4) Computer searches for requested records shall be charged at a rate commensurate with the combined cost of computer operation and operator's salary attributable to the search.

(f) In the event a request for records does not state that the requester will pay all reasonable costs, or costs up to a specified dollar amount, and the FOIA Officer determines that the anticipated assessable costs for search, review and reproduction of requested records will exceed $25.00, or will exceed the limit specified in the request, the requester shall be promptly notified in writing and by telephone. Such notification shall state the anticipated assessable costs of search, review and reproduction of records requested. The requester shall be afforded an opportunity to amend the request to narrow the scope of the request, or, alternatively, may agree to be responsible to pay the anticipated costs. Such a request shall be deemed to have been received by the Agency upon the date of receipt of the amended request.

(g) Advance payment of assessable fees are not required from a requester unless:

(1) The Agency estimates or determines that assessable charges are likely to exceed $250.00, and the requester has no history of payment of FOIA fees. (Where the requester has a history of prompt payment of fees, the Agency shall notify the requester of the likely cost and obtain satisfactory assurance of full payment.)

(2) A requester has previously failed to pay a FOIA fee charged in a timely fashion (*i.e.,* within 30 days of the date of the billing).

When the Agency acts under paragraph (g) (1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the Act will begin to run only after the Agency has received fee payments or assurances.

(h) Interest charges on an unpaid bill may be assessed starting on the 31st day following the day on which the billing was sent. Interest will be assessed at the rate prescribed in section 3717 of title 31 U.S.C., and will accrue from the date of billing.

(i) Payment of fees shall be forwarded to the FOIA Officer by check or money order payable to "ACTION." A receipt for any fees paid will be provided upon written request.

(j) Charges may be assessed for search and review time, even if the Agency fails to locate records responsive to a request of if records located are determined to be exempt from disclosure.

(k) No fee shall be charged if the costs of routine collection and processing of the fee will equal or exceed the amount of the fee.

(l) A requester may, in the original request, or subsequently, apply for a waiver or reduction of document search, review and reproduction fees. Such application shall be in writing, and shall set forth in detail the reason(s) a fee waiver or reduction should be granted. The amount of any reduction requested shall be specified in the request. (See appendix A—Sample Request Letter.) Upon receipt of such a request, the

FOIA Officer shall refer the request to the Deputy Director or to such official as the Deputy Director may designate, who shall promptly determine whether such fee waiver or reduction shall be granted.

(2) A waiver or reduction of fees shall be granted only if release of the requested information to the requester is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Agency, and is not primarily in the commercial interest of the requester. The Agency shall consider the following factors in determining whether an application for a fee waiver or reduction will be granted:

(i) Does the requested information concern the operations or activities of the Agency?

(ii) If so, will disclosure of the information be likely to contribute to public understanding of the Agency's operations and activities?

(iii) If so, would such a contribution be significant?

(iv) Does the requester have a commercial interest that would be furthered by disclosure of the information?

(v) If so, is the magnitude of the identified commercial interest of the requester sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester? In applying this criterion, the Agency will weigh the requester's commercial interest against any public interest in disclosure. Where there is a public interest in disclosure, and the public interest can fairly be regarded as being of greater magnitude than the requester's commercial interest, a fee waiver or reduction will be granted. In those instances where a news media requester, scholar, or public interest group has satisfied the "public interest" standard necessary for waiver, that, and not the requester's commercial interest, is the interest primarily served by disclosure to that requester and a waiver or reduction of fees will be granted.

(3) When a fee waiver application involving cost has been included in a request for records, the request shall not be deemed to have been received until an Agency determination is made regarding the fee waiver application. Such determination shall be made within five working days from the date any such request is received by the Agency.

(l) The Agency may use the authorities of the Debt Collection Act of 1982 (Pub. L. 97-365), including disclosure to consumer reporting agencies and the use of collection agencies, to encourage payment of delinquent fees.

§ 1215.8 Business information.

(a) Business information provided to ACTION by a business submitter shall be disclosed pursuant to a request under the Act in accordance with this section.

(b) The Agency shall promptly notify a business submitter in writing of any request for Agency records containing business information. Such written notice shall either specifically describe the nature of the business information requested or provide copies of the records, or portions thereof containing the business information.

(c) Through the notice required in paragraph (b) of this section, the Agency shall afford a business submitter a reasonable opportunity to object to disclosure of the information in question, and to provide the Agency with a written statement of grounds for such objection.

Such statement shall specify all grounds for withholding any information under any exemption of the Act and, in cases where it argues information should be withheld under Exemption (b)(4) of the Act, a business submitter shall state specifically why the information is a trade secret or is otherwise protected as proprietary commercial or financial information. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the Act.

(d) The Agency shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to release requested business information. Whenever the Agency decides to disclose business information over the objection of a business submitter, the Agency shall forward to the business submitter a written notice of such decision, which shall include:

(1) The name, and title or position, of the person responsible for denying the submitter's objection;

(2) A statement of the reasons for which the business submitter's objection was not sustained;

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

(4) A specific disclosure date.

Such notice of intent to disclose business information shall be mailed by the Agency not less than six working days prior to the date upon which disclosure will occur, with a copy of such notice to the requester.

(e) Whenever a requester brings suit to compel disclosure of business information, the Agency shall promptly notify the business submitter.

(f) The notice to submitter requirements of this section shall not apply if:

(1) The Agency determines that the information shall not be disclosed;

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

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

§ 1215.9 Appeal procedures.

Upon receipt of a notice of denial, a requester may, within 15 calendar days from the date of receipt of such notice, appeal such adverse determination to the Deputy Director. Such appeal shall be in writing and shall specify the date upon which the notice of denial was received by the person making such appeal. (See appendix 1 (A & B)—Sample Request and Appeal Letters.) The Deputy Director shall make a determination with respect to any appeal within 20 working days after receipt of such appeal, and shall give written notice of such determination to the person making the appeal. To the extent the Deputy Director's determination on appeal upholds the original denial, the notice of such determination shall inform the person making the appeal of his/her right to seek judicial review of the Agency's denial and ruling on appeal as provided in 5 U.S.C. 552(a)(4).

Appendix 1(A)—Freedom of Information Act Request Letter (Sample)

Freedom of Information Act Officer
Name of Agency
Address of Agency
City, State, Zip Code

Re: Freedom of Information Act Request.

Dear ________:

This is a request under the Freedom of Information Act.

I request that a copy of the following documents [or documents containing the following information] be provided to me: [identify the documents or information as specifically as possible].

In order to help to determine my status to assess fees, you should know that I am (insert a suitable description of the requester and the purpose of the request).

[Sample requester descriptions:

—a representative of the news media affiliated with the ________ newspaper (magazine, television station, etc.), and this request is made as part of news gathering and not for a commercial use.

—affiliated with an educational or noncommercial scientific institution, and this request is made for a scholarly or scientific purpose and not for a commercial use.

—an individual seeking information for personal use and not for a commercial use.

—affiliated with a private corporation and am seeking information for use in the company's business.]

[Optional] I am willing to pay fees for this request up to a maximum of $________. If you estimate that the fees will exceed this limit, please inform me first.

[Optional] I request a waiver of all fees for this request. Disclosure of the requested information to me 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 my commercial interest. [Include a specific explanation.]

Thank you for your consideration of this request.

Sincerely,
Name
Address
City, State, Zip Code
Telephone Number [Optional]

Appendix 1(B)—Freedom of Information Act Appeal Letter (Sample)

Appeal Officer
Name of Agency
Address of Agency
City, State, Zip Code

Re: Freedom of Information Act Appeal.

Dear________:

This is an appeal under the Freedom of Information Act.

On (date), I requested documents under the Freedom of Information Act. My request was assigned the following identification number ________. On (date), I received a response to my request in a letter signed by (name of official). I appeal the denial of my request.

[Optional] The documents that were withheld must be disclosed under the FOIA because . . . .

[Optional] I appeal the decision to deny my request for a waiver of fees. I believe that I am entitled to a waiver of fees. Disclosure of the documents I requested is in the public interest because the information is likely to contribute significantly to public understanding of the operation or activities of government and is not primarily in my commercial interest. (Provide details)

[Optional] I appeal the decision to require me to pay review costs for this request. I am not seeking the documents for a commercial use. (Provide details)

[Optional] I appeal the decision to require me to pay search charges for this request. I am a reporter seeking information as part of news gathering and not for commercial use.

Thank you for your consideration of this appeal.

Sincerely,
Name
Address
City, State, Zip Code
Telephone Number [Optional]

(42 U.S.C. 5042(13); 5 U.S.C. 552)

Issued at Washington, DC, on May 9, 1990.

Jane A. Kenny,
Director.

[FR Doc. 90-11271 Filed 5-14-90; 8:45 am]
BILLING CODE 6050-28-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88-17; Notice 2]

RIN 2127-AC65

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends Federal Motor Vehicle Safety Standard No. 108 to incorporate by reference (with minor exceptions) the current SAE Standards for stop lamps and turn signal lamps. The principal substantive effect of the rule is to require vehicles whose overall width is 80 inches or more to be equipped with stoplamps and rear turn signal lamps with a minimum luminous lens area of 12 square inches, which is presently required only if those lamps are spaced less than 22 inches apart. Other amendments are adopted essentially as proposed.

DATES: The overall effective date of the rule is December 1, 1990. The requirement for stop lamps and turn signal lamps with a larger minimum luminous lens area on certain vehicles is effective December 1, 1991. The Director of the Federal Register approves the incorporation by reference of certain SAE Standards in 49 CFR 571.108 effective December 1, 1990.

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Rulemaking, NHTSA (202-366-5271).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking on this subject was published September 9, 1988 (53 FR 35097). Comments were received from the Truck Safety Equipment Institute (TSEI), Grote Manufacturing Company, Peterson Manufacturing Company, Truck Lite, Hella AG., Ford Motor Company, Chrysler Motors, Volkswagen of America (VW), and Volvo of North America.

1. Updating Certain SAE Standards Incorporated by Reference

Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* incorporates by reference SAE Standard J586c *Stop Lamps,* August 1970, and SAE Standard J588e *Turn Signal Lamps,* September 1970, as the basic requirements for those items of motor vehicle lighting equipment. NHTSA's proposal granted a petition by TSEI for rulemaking to amend Standard No. 108 to substitute four updated SAE standards for the two presently incorporated. The updated standards are SAE J586 FEB84 *Stop Lamps for Use on Motor Vehicles Less Than 2032 mm in Overall Width,* SAE J588 NOV84 *Turn Signal Lamps for Use on Motor Vehicles Less Than 2032 mm in Overall Width,* SAE J1395 APR85 *Turn Signal Lamps for Use on Motor Vehicles 2032 mm or More in Overall Width,* and SAE J1398 MAY85 *Stop Lamps for Use on Motor Vehicles 2032 mm or More in Overall Width.* In its new standards, the SAE distinguishes between vehicles whose overall width is less than 80 inches (2032 mm), and vehicles of greater width, a distinction made from the beginning by Standard No. 108 in its Tables. TSEI supported its petition with the argument that the Society of Automotive Engineers had determined that it was desirable to adopt separate standards for certain devices when used on wider vehicles, which because of their size should be more conspicuous and better delineated with lighting devices than smaller vehicles. In the final rule, NHTSA has adopted the SAE revisions, with the exceptions proposed in 1988, subject to the comments discussed below.

A. Increase in Minimum Lens Area for Wide Vehicles

Until now, the minimum lens area for turn signal and stop lamps on vehicles 80 inches and wider has been 8 square inches, except that if the stop and turn signal lamps are mounted less than 22 inches apart, lenses with a minimum area of 12 square inches are required. The new SAE standards increase the minimum to 12 square inches regardless of the mounting location. In proposing the adoption of this requirement, NHTSA accepted the rationale of the SAE that the increase for all wider vehicles is necessary regardless of lamp spacing because they are susceptible to build up of grime, and concluded that an increase in lens area would enhance vehicle conspicuity and contribute to safety.

Five comments were received on this aspect of the proposal. Volvo believes that wide vehicles currently meet the specification. Peterson, Truck Lite, Grote, and Chrysler supported it. Chrysler, however, questioned applying the requirement to dual rear wheel pickup trucks, which are derivatives from those of lesser width, and asked that they be exempted from the requirement, or that a 3-year leadtime be afforded for compliance. Truck Lite