

under the other without the need for handlers to engage in unnecessary and expensive hauling and handling practices;

(b) This termination does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this termination. One response in support of the proposed action and no comments in opposition were received.

Therefore, good cause exists for making this order effective upon publication in the Federal Register.

List of Subjects in 7 CFR Part 1076

Milk marketing orders.

It is therefore ordered, That the aforesaid provisions in § 1076.13 the Eastern South Dakota order are hereby terminated.

PART 1076—MILK IN THE EASTERN SOUTH DAKOTA MARKETING AREA

1. The authority citation for 7 CFR part 1076 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 1076.13 [Amended]

2. In § 1076.13, paragraphs (c) (2), (3) and (4) are removed and reserved.

Signed at Washington, DC, on August 27, 1990.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 90-20623 Filed 8-31-90; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1922, 1930, and 1944

Rural Rental Housing Loan Policies, Procedures, and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends the Agency's loan policies and procedures governing appraisal of rental housing. This change will authorize and establish a policy to use contract appraisers in the rural rental housing loan programs. The intended effect of this action is to increase objectivity in Agency loan making decisions.

EFFECTIVE DATE: September 4, 1990.

FOR FURTHER INFORMATION CONTACT:

Steven D. Jorgensen, Senior Loan Officer, Multi-Family Housing Branch, Loan Processing Division, Farmers Home Administration, U.S. Department of Agriculture, room 5347, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250; telephone (202) 382-1608.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rule making since it involves only internal agency management, making publication for comment unnecessary.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.415, Rural Rental Housing Loans and is subject to the provisions of Executive Order 12371 which requires intergovernmental consultation with State and local officials. 7 CFR 3015, subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, Environmental Program. It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

List of Subjects

7 CFR Part 1922

Rural housing, Loan programs—Housing and community development, Low and moderate income housing.

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, Reporting requirements.

7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mobile homes, Mortgages, Nonprofit organizations, Rent subsidies. Therefore, FmHA amends chapter XVIII, title 7, Code of Federal Regulations as follows:

PART 1922—APPRAISAL

1. The authority citation for part 1922 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Appraisal of Single Family Residential Property

2. The second sentence of § 1922.104(a)(12) is amended by changing the reference from "Exhibit A" to "Exhibit D".

PART 1930—GENERAL

3. The authority citation for part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

4. Exhibit D paragraph VI A 1 is amended by changing the reference from "Exhibit A" to "Exhibit D".

5. Exhibit D-1, paragraph D. 1. is amended by changing the reference from "Exhibit A" to "Exhibit D".

PART 1944—HOUSING

6. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1489; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

§ 1944.222 [Amended]

7. The third sentence of § 1944.222(a) is amended by changing the phrase "two or less" to read "less than four (4)", and the fourth sentence of § 1944.222 is amended by changing the phrase "more than two" to read "four (4) or more".

Dated: July 25, 1990.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 90-20721 Filed 8-31-90; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 775

[Docket No. 900801-0201]

Establishment of Import Certificate/
Delivery Verification Procedure for
SwedenAGENCY: Bureau of Export
Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration requires a foreign importer to file an Import Certificate (IC) in support of individual validated license applications to export certain commodities controlled for national security reasons to specified destinations. The commodities are identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List, which identifies those items subject to Department of Commerce export controls. By issuing an IC, the government of the importing country undertakes to exercise legal control over the disposal of those commodities covered by the IC.

The Bureau of Export Administration also requires a Delivery Verification Certificate (DV) on a selective basis, as described in 15 CFR 775.3(i). By issuing a DV, the government of a country to which an export has been made confirms that exported commodities have either entered the export jurisdiction of that country or are otherwise accounted for by the importer.

New documentation practices adopted by Sweden warrant inclusion of that country in the IC/DV procedure. This rule amends the Export Administration Regulations by adding Sweden to the list of countries that issue Import Certificates and by adding the names and addresses of the Swedish authorities to the list of foreign offices that administer the IC/DV systems.

In the past, BXA has required letters of assurance on an ad hoc basis from Swedish customers importing goods for resale. This new IC/DV procedure replaces the letter of assurance requirement.

EFFECTIVE DATES: This rule is effective September 4, 1990. In lieu of the 45 day grace period provided in 15 CFR 775.9(b)(2), the Swedish Import Certificate must be submitted with export license applications as of March 14, 1990. In the interim, applications will be accepted if supported by either a Form BXA-629P (Statement By Ultimate

Consignee and Purchaser) or the Swedish IC.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule eliminates a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection had been approved by the Office of Management and Budget under control number 0694-0062. As a result of this rule, there will be an increase in the number of Delivery Verification Certificates, Form BXA-647P, approved by OMB under control number 0694-0016 and a decrease of Statements by Ultimate Consignee and Purchaser, approved under OMB control number 0694-0021.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Patricia Muldonian, Office

of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 775

Exports, Reporting and recordkeeping requirements.

Accordingly, part 775 of the Export Administration Regulations is amended as follows:

PART 775—[AMENDED]

1. The authority citation for 15 CFR part 775 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, Pub. L. 99-64 of July 12, 1985 and Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 775.1 [Amended]

2. The table in § 775.1 is amended by adding "Sweden" before the entry "Turkey" in the column title "and the country of destination is".

§ 775.3 [Amended]

3. The list of countries in § 775.3(b)(3) is amended by adding "Sweden" before the entry "Turkey".

4. Supplement No. 1 to part 775 is amended by adding a new entry for "Sweden" immediately before the entry for "Switzerland", as follows:

Supplement No. 1 to Part 775 Authorities
Administering Import Certificates/
Delivery Verification Systems in Foreign
Countries¹

* * * * *

¹ Facsimiles of Import Certificates and Delivery Verifications issued by each of these countries may be inspected at the Bureau of Export Administration Western Regional Office, 3300 Irvine Avenue, Suite 345, Newport Beach, California 92660-3198 or at any U.S. Department of Commerce District Office (see listing on page ii under Commerce Office Addresses) or at the Office of Export Licensing, Room 1099D, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

Country	IC/DV authorities	System administered ²
Sweden.....	The Association of Swedish Chambers, of Commerce and Industry, P.O. Box 16050, S-103 22, Stockholm Office: Vastra Tradsgata 9.	IC/DV.

² IC—Import Certificate and/or DV—Delivery Verification.

Dated: August 28, 1990.

Michael P. Galvin,
Assistant Secretary for Export
Administration.

[FR Doc. 90-20644 Filed 8-31-90; 8:45 am]

BILLING CODE 3510-DT-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Delegation of Authority To Determine To Publish Exchange Rule Amendments

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending part 140 of its rules by adding a provision delegating to the Director of the Division of Economic Analysis, and to the Director of the Division of Trading and Markets, with the concurrence of the General Counsel, authority to publish in the *Federal Register* for public comment proposed exchange rule amendments when publication of the proposed rule amendment is in the public interest and will assist the Commission in considering the views of interested persons. The Commission's action relates solely to agency organization, procedure and practice.

EFFECTIVE DATE: September 4, 1990.

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Associate Director, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION: The Commission publishes notice of all exchange rule amendments of major economic significance pursuant to the provisions of section 5a(12) of the Commodity Exchange Act. Since November 1985, authority to determine to publish such amendments has been delegated to the Director of the Division of Economic Analysis. 17 CFR 140.96(1989). The Commission has also published, on occasion, other proposed

exchange rule amendments when publication of the proposed rule amendment was in the public interest and would assist the Commission in considering the views of interested persons.

To streamline internal procedures, the Commission is amending part 140 of its rules by amending § 140.96. New paragraph (b) delegates to the Director of the Division of Economic Analysis, or the Director's designee, and to the Director of the Division of Trading and Markets, or the Director's designee, with the concurrence of the General Counsel, or the General Counsel's designee, the authority to decide to publish, and to publish, proposed exchange rule amendments in the *Federal Register* when publication of the proposed rule amendment would be in the public interest and would assist the Commission in considering the views of interested persons.

Paragraphs (b) and (c) of § 140.96 are redesignated as paragraphs (c) and (d). New paragraph (c) has been revised to provide that the Director of the Division of Economic Analysis or the Director of the Division of Trading and Markets may submit any matter which has been delegated to such Director under paragraphs (a) or (b) of this section to the Commission for its consideration. New paragraph (d) has been revised to provide that nothing in the section may prohibit the Commission from exercising the authority delegated to the Director of the Division of Economic Analysis and to the Director of the Division of Trading and Markets under paragraphs (a) and (b) of this section. The Commission believes that this delegation of authority will further its goal of streamlining exchange rule review procedures.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., requires agencies to consider the impact of proposed rules on small entities. It is not anticipated that these new regulations, which deal solely with internal rules governing Commodity Futures Trading Commission procedures, will impose any new burden on small entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rule promulgated herein will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The rule adopted herein does not contain a collection of information requirement, nor an "information collection request" within the meaning of 44 U.S.C. 3502(4), and relates solely to

CFTC management and personnel. Therefore, the Commission has determined that the provisions of the Paperwork Reduction Act do not apply to this rule.

Waiver of Public Notice and Comment

The following regulations shall be effective immediately. The Commission finds that the amendments relate solely to agency organization, practice and procedure and that the public procedures and publication prior to the effective date of the amendments, in accordance with the Administrative Procedure Act, as codified, 5 U.S.C. 553, are not required.

List of Subjects in 17 CFR Part 140

Authority delegations (Government agencies), Delegation, Exchange rule amendments, Organization and functions (Government agencies).

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 2(a)(11) and 5a(12) of the Commodity Exchange Act, 7 U.S.C. 4a(j) and 7a(12), the Commission hereby amends Chapter I of title 17 of the Code of Federal Regulation as follows:

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

1. The authority citation for part 140, continues to read as follows:

Authority: 7 U.S.C. 4a(j), 7, 7a(12) and 8.

2. In § 140.96, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d) and revised, and new paragraph (b) is added to read as follows:

§ 140.96 Delegation of authority to publish in the Federal Register.

(b) The Commodity Futures Trading Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Economic Analysis or the Director's designee, and to the Director of the Division of Trading and Markets or the Director's designee, with the concurrence of the General Counsel or the General Counsel's designee, the authority to determine to publish, and to publish, in the *Federal Register*, requests for public comment on proposed exchange rule amendments when publication of the proposed rule amendment is in the public interest and will assist the Commission in considering the views of interested persons.

(c) The Director of the Division of Economic Analysis or the Director of the

Division of Training and Markets may submit any matter which has been delegated to such Director under paragraphs (a) or (b) of this section to the Commission for its consideration.

(d) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Economic Analysis and to the Director of the Division of Trading and Markets under paragraphs (a) and (b) of this section.

Issued in Washington, DC, on August 28, 1990 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-26708 Filed 8-31-90; 8:45 am]

BILLING CODE 6351-01-M

INTERNATIONAL BOUNDARY AND WATER COMMISSION

22 CFR Part 1102

United States and Mexico, United States Section, Freedom of Information Act: Uniform Fee Schedule and Administrative Guidelines

AGENCY: United States Section, International Boundary and Water Commission.

ACTION: Final rule.

SUMMARY: This final rule revises the United States Section, International Boundary and Water Commission (IBWC) regulations to implement the provisions of the Freedom of Information Reform Act of 1986. This legislation amended the FOIA to provide broader exemption protection for law enforcement information and modified the Act's fee and fee waiver provisions. IBWC's regulations are also revised to conform with the Office of Management and Budget's final fee schedule guidelines published in the Federal Register on March 27, 1987 (52 FR 10012), and fee waiver criteria established by the Department of Justice.

EFFECTIVE DATES: This rule is effective September 3, 1990.

ADDRESSES: United States Section, International Boundary and Water Commission, 4171 North Mesa, Suite C-310, El Paso, TX 79902-1422.

FOR FURTHER INFORMATION CONTACT: Mr. Reinaldo Martinez, U.S. Section Freedom of Information Act (FOIA) Officer, (915-534-6674).

SUPPLEMENTARY INFORMATION: On July 11, 1990, the United States Section, IBWC, published this agency's FOIA proposed rules in the Federal Register

(55 FR 28407). The comment period was from date of publication to August 10, 1990. No formal comments were received at this agency, therefore rules remain as published in the July 11, 1990 Federal Register, with the exception of the definitions which have been placed in alphabetical order.

List of Subjects in 22 CFR Part 1102

Freedom of information.

22 CFR part 1102 is revised as follows:

PART 1102—FREEDOM OF INFORMATION ACT

Sec.

1102.1 Purpose.

1102.2 Definitions.

1102.3 Procedures for requesting access to records or information.

1102.4 Fees.

1102.5 Categories of requesters for fee purposes.

1102.6 Fee waivers and appeals.

1102.7 The Section's determination and appeal procedures.

1102.8 Exemptions.

1102.9 Annual report to Congress.

1102.10 Examination of records.

Authority: 5 U.S.C. 552 (Pub. L. 90-23, as amended by Pub. L. 93-502 and 90-570).

§ 1102.1 Purpose.

The purpose of this part is to prescribe rules, guidelines and procedures to implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended on November 21, 1974, by Public Law 93-502, and on October 27, 1986, by Public Law 99-570.

§ 1102.2 Definitions.

Act means the Freedom of Information Act, 5 U.S.C. 552, as amended.

Commercial-use request refers to a request from or on behalf of one who seeks information for a cause or purpose that furthers the commercial, trade, or profit interests of the requester or person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Section will consider how the requester will use the documents.

Commissioner means head of the United States Section, International Boundary and Water Commission, United States and Mexico.

Direct costs means those expenditures which the Section actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead

expenses such as costs of space, and heating or lighting the facility where the records are stored.

Disclose or disclosure means making records available, on request for examination and copying, or furnishing a copy of records.

Duplication refers to the process of making a copy of a document in response to a FOIA request. Such copies can take the form of paper, microform, audiovisual materials, or machine-readable documentation. The Section will provide a copy of the material in a form that is usable by the requester unless it is administratively burdensome to do so.

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

Noncommercial scientific institution refers to an institution that is not operated on a "commercial" basis as that term is referenced above, 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.

Person or Requester includes any individual, firm, corporation, organization or other entity.

Records and/or information are defined as all books, papers, manuals, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the Section under Federal law or in connection with the transaction of public business or in carrying out its treaty responsibilities and obligations, and preserved or appropriate for preservation by the Section as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the information value of the data in them, but does not include books, magazines or other material acquired solely for library purposes and through other sources, and does not include analyses, computations, or compilations of information not extant at the time of the request. The term "records" does not include objects or articles such as structures, furniture, paintings, sculptures, three-dimensional models, vehicles, and equipment.

Representative of the news media refers to any person actively gathering

news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization even though not actually employed by it.

Request means a letter or other written communication seeking records or information under the Freedom of Information Act.

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

Search includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches should be performed in the most efficient and least expensive manner so as to minimize costs for both the Section and the requester; for example, line-by-line searches should not be undertaken when it would be more efficient to duplicate the entire document. Note that such activity should be distinguished from "review" of material in determining whether the material is exempt from disclosure. Searches may be done manually or by computer using existing programming.

The *Section* means United States Section, International Boundary and Water Commission, United States and Mexico.

All terms used in this part which are defined in 5 U.S.C. 552 shall have the same meaning herein.

§ 1102.3 Procedures for requesting access to records or information.

(a) A request for any information or records shall be addressed to the FOIA Officer, United States Section, International Boundary and Water Commission, 4171 North Mesa, suite C-310, El Paso, TX 79902-1422. The

envelope and the letter shall be clearly marked "Freedom of Information Request" or "Request for Records," or the equivalent, to distinguish it from other mail to the Section. If the request is not so marked and addressed, the 10-day time limit described in the Act will not begin to run until the request has been received by the FOIA Officer in the normal course of business. In each instance where a request is received in the normal course of business, the FOIA Officer shall notify the requester that its request was improperly addressed and the date the request was received.

(b) In order for the Section to locate records or information and make them available, it is necessary that it be able to identify the specific record or information sought. Persons wishing to inspect or obtain copies of records or information should, therefore, seek to identify them as fully and accurately as possible. In cases where requests are submitted which are not sufficient to permit identification, the FOIA Officer will endeavor to assist the persons seeking the records or information in filling in necessary details. In most cases, however, persons seeking records or information will find that time taken in trying to identify materials in the beginning is well worth their while in enabling the Section to respond promptly to their request.

(c) A person submitting a request should—

(1) Indicate the specific event or action, if any or if known, to which the request has reference.

(2) Designate the Division, Branch, or Project Office of the Section which may be responsible for or may have produced the record or information requested.

(3) Furnish the date of the record or information or the date or period to which it refers or relates, if known.

(4) Name the character of record or information, such as a contract, an application, or a report.

(5) List the Section's personnel who may have prepared or have knowledge of the record or information.

(6) Furnish the reference material such as newspapers or publications which are known to have made a reference to the record or information desired.

(7) If the request relates to a matter in pending litigation or one which has been litigated, supply the Court location and case style and number.

(8) Describe, when the request includes more than one record or source of information, specifically each record or information so that availability may be separately determined.

(9) Clearly indicate whether the request is an initial request or an appeal

from a denial of a record or information previously requested.

(10) Identify, when the request concerns a matter about the Section's personnel, the person as follows: First name, middle name or initial, and surname; date and place of birth; and social security account number, if known.

(d) No particular format is needed for the request, except that it:

(1) Must be in writing;

(2) Must describe the records or information sought with sufficient detail to permit identification;

(3) Should state a limitation of the fees the requester is willing to pay, if any; and

(4) Must include the name, address, and telephone number (optional) of the person submitting the request.

§ 1102.4 Fees.

(a) The following shall be applicable with respect to services rendered to members of the public under this subpart:

(1) Fee schedule.

(i) Searching for records, per hour or fraction thereof per individual:

Professional.....	\$18.00
Clerical.....	\$9.00

Includes the salary of the category of employee who actually performs the search, plus an additional 16% of that rate to cover benefits.

(ii) The cost for computer searches will be calculated based on the salary of the category of employee who actually performs the computer search, plus 16% of that rate to cover benefits, plus the direct costs of the central processing unit, input-output devices, and memory capacity of the actual computer configuration.

(iii) Reproduction fees:

Pages no larger than 8½ by 14 inches when reproduced by routine electrostatic copying: \$0.10 per page.

Pages requiring reduction, enlargement, or other special services will be billed at direct cost to the Section.

Reproduction by other than routine electrostatic copying will be billed at direct cost to the Section.

(iv) Certification of each record as a true copy—\$1.00

(v) Certification of each record as a true copy under official seal—\$1.50

(vi) For each signed statement of negative result of search for record—\$1.00

(vii) For each signed statement of nonavailability of record—\$1.00

(viii) Duplication of architectural photographs and drawings:

Available tracing or reproducible, per

square foot.....\$0.10
 If intermediate negative and
 reproducible required.....\$2.00;
 Plus tracing per square foot.....\$1.00

(ix) Postage and handling. It will be up to the person requesting the records or information to designate how the material will be mailed or shipped. In the absence of such instructions no records or information will be sent to a foreign address, and records and information will be sent to domestic addresses utilizing first class certified mail, return receipt requested and will be billed at direct cost to the Section.

(2) Only requesters who are seeking documents for commercial use will be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. The cost for review will be calculated based on the salary of the category of the employee who actually performed the review plus 16% of the rate to cover benefits. Charges will be assessed only for the initial review (i.e., review undertaken the first time in order to analyze the applicability of specific exemption(s) to a particular record or portion of record) and not review at the administrative appeal level of the exemption(s) already applied.

(3) If records requested under this part are stored elsewhere than the headquarters of the U.S. Section, IBWC, 4171 North Mesa, EL Paso, TX, the special cost of returning such records to the headquarters shall be included in the search costs. These costs will be computed at the actual costs of transportation of either a person or the requested record between the place where the record is stored and the Section headquarters when, for time or other reasons, it is not feasible to rely on Government mail service.

(4) When no specific fee has been established for a service, or the request for a service does not fall under one of the above categories due to the amount or size or type thereof, the FOIA Officer is authorized to establish an appropriate fee, pursuant to the criteria established in Office of Management and Budget Circular No. A-25, entitled "User Charges."

(b) Where it is anticipated that the fees chargeable under this part will amount to more than \$25 and the requester has not indicated in advance her/his willingness to pay fees as high as anticipated, the requester shall be promptly notified of the amount of the anticipated fees or such portion thereof as can readily be estimated. The notice or request for an advance deposit shall extend an offer to the requester to confer with knowledgeable Section personnel in an attempt to reformulate

the request in a manner which will reduce the fees and meet the needs of the requester. Dispatch of such notice or request shall suspend the running of the period for response by the Section until a reply is received from the requester.

(c) Search costs are due and payable even if the record which was requested cannot be located after all reasonable efforts have been made, or if the Section determines that a record which has been requested, but which is exempt from disclosure under this part, is to be withheld.

(d) The Section will begin assessing interest charges on an unpaid bill starting the 31st day following the day on which the billing was sent. The accrual of interest will be stayed upon receipt of the fee, rather than upon its processing by the Section. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C.

(e) A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Section reasonably believes that a requester or a group of requesters acting in concert is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Section will aggregate any such requests and charge accordingly.

(f) The Section will not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) The Section estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250. Then the Section will notify the requester of the likely costs and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) Requesters who have previously failed to pay fees charged in a timely fashion (i.e., within 30 days of the date of the billing), the Section will require such requesters to pay the full amount owed plus any applicable interest as provided above or demonstrate that they have, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process new requests or pending requests from such requesters.

When the Section acts under paragraph (f) (1) or (2) of this section, the administrative time limit prescribed in subsection (a)(6) of the FOIA (i.e., 10

working days from receipt of initial requests plus permissible extensions of that time limit) will begin only after the Section has received payments described above.

(g) In accordance with the provisions and authorities of the Debt Collection Act of 1982 (Pub. L. 97-365), the Section reserves the right to disclose information to consumer reporting agencies and to use collection agencies, where appropriate, to encourage repayment.

(h) No fees under \$10 will be billed by the Section because the cost of collection would be greater than the fee.

(i) Requester should pay fees by check or money order made out to the U.S. Section, International Boundary and Water Commission, and mailed to the Finance and Accounting Office, United States Section, International Boundary and Water Commission, 4171 North Mesa, suite C-310, El Paso, TX 79902-1422.

§ 1102.5 Categories of requesters for fee purposes.

There are four categories of requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each of these categories. The Section will take into account information provided by requesters in determining their eligibility for inclusion in one of these categories as defined in § 1102.2. It is in the requester's best interest to provide as much information as possible to demonstrate inclusion within a non-commercial category of fee treatment.

(a) The Section will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought for commercial use. Commercial use requesters are entitled to neither two hours of free search time nor 100 free pages of reproduction of documents.

(b) The Section will provide documents to educational and non-commercial scientific institutions for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request being made is authorized by, and under the auspices of, a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(c) The Section will provide documents to representatives of the news media for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 1102.2(m), and the request must not be made for a commercial use. In reference to this class of requesters, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(d) The Section will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests from record subjects for records about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction.

(e) In making determinations under this section, the Section may take into account whether requesters who previously were granted (b), (c), or (d) status under the Act did in fact use the requested records for purposes compatible with the status accorded them.

§ 1102.6 Fee waivers and appeals.

(a) Waiver or reduction of any fee provided for in § 1102.4 may be made upon a determination by the FOIA Officer, United States Section, International Boundary and Water Commission, 4171 North Mesa, suite C-310, El Paso, TX 79902-1422. The Section shall furnish documents without charge or at a reduced charge provided that: 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. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(1) In order to determine whether 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, the Section will consider the following four factors:

(i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the Government;

(ii) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to

an understanding of Government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of Government operations or activities.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Section will consider the following two factors:

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

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(b) The Section will not consider waiver or reduction of fees for requesters (persons or organizations) from whom unpaid fees remain due to the Section for another information access request.

(c)(1) The Section's decision to refuse to waive or reduce fees as requested under paragraph (a) of this section may be appealed to the Commissioner, United States Section, International Boundary and Water Commission, 4171 North Mesa, Suite C-310, El Paso, TX 79902-1422. Appeals should contain as much information and documentation as possible to support the request for a waiver or reduction of fees.

(2) Appeals will be reviewed by the Commissioner, who may consult with other officials of the Section as appropriate. The requester will be notified within thirty working days from the date on which the Section received the appeal.

§ 1102.7 The Section's determination and appeal procedures.

Upon receipt of any request for records of information under the Act the following guidelines shall be followed:

(a) The FOIA Officer will determine within 10 days (excepting Saturdays, Sundays, and legal holidays) after receipt of any such request whether to comply with such request and will immediately notify the person making such request of such determination, the reasons therefore, and of the right to

such person to appeal to the Commissioner any adverse determination.

(b) All appeals should be addressed to the Commissioner, United States Section, International Boundary and Water Commission, 4171 North Mesa, Suite C-310, El Paso, TX 79902-1422, and should be clearly identified as such on the envelope and in the letter of appeal by using the marking "Freedom of Information Appeal" or "Appeal for Records" or the equivalent. Failure to properly address an appeal may defer the date of receipt by the Section to take into account the time reasonably required to forward the appeal to the Commissioner. In each instance when an appeal is incorrectly addressed to the Commissioner, he shall notify the person making the appeal that his appeal was improperly addressed and of the date the appeal was received by the Commissioner. The Commissioner will make a determination with respect to any appeal within 20 days (excepting Saturdays, Sundays, and legal holidays) after the receipt of an appeal. If on appeal the denial or the request is in whole or in part upheld, the Commissioner will notify the person making such request of the provisions for judicial review under the Act. An appeal must be in writing and filed within 30 days from receipt of the initial determination (in cases of denials of an entire request), or from receipt of any records being made available pursuant to the initial determination (in case of partial denials). In those cases where a request or appeal is not addressed to the proper official, the time limitations stated above will be computed from the receipt of the request or appeal by the proper official.

(c) In unusual circumstances, as set forth in paragraph (d) of this section, the time limits for responding to the original request or the appeal may be extended by not more than an additional 10 working days by written notice to the person making a request. This notice must be sent within either 10- or 20-day time limit and will specify the reason for the extension and the date on which determination is expected to be dispatched. The extension may be invoked only once during the consideration of a request either during the initial consideration period or during the consideration of an appeal, but not both.

(d) The unusual circumstances are:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the requestor among two or more components of the agency having substantial subject-matter interest therein.

(e) If the FOIA Officer receives a request which is of proper concern to an agency or entity outside the Section, it will be returned to the person making the request, advising the requester to refer it to the appropriate agency or entity if requester desires, and providing the requester with the name or title, address and other appropriate information. An information copy of the request and the letter of referral will be forwarded promptly to the agency or entity outside the Section that may expect the request. In the event the FOIA Officer receives a request to make available a record or provide information which is of interest to more than one agency (Federal, State, municipal, or legal entity created thereby), the FOIA Officer will retain and act upon the request if the Section is one of the interest agencies and if its interest in the record is paramount.

(f) The Commissioner's determination on an appeal shall be in writing and when it denies records in whole or in part, the letter to the person making a request shall include:

(1) Notation of the specific exemption or exemptions of the Act authorizing the withholding.

(2) A statement that the decision is final for the Section.

(3) Advice that judicial review of the denial is available in the district in which the person making the request resides or has his principal place of business, the district in which the Section's records are situated, or the District of Columbia.

(4) The names and titles or positions of each official responsible for the denial of a request.

When appropriate, the written determination may also state how an exemption applied in that particular case, and, when relevant, why a discretionary rebasis is not appropriate.

(g) In those cases where it is necessary to find and examine records before the legality or appropriateness of their disclosure can be determined, and where after diligent effort this has not been achieved within the required period, the FOIA Officer may advise the

person making the request that a determination to presently deny the request has been made because the records or information have not been found or examined, that the determination will be considered when the search or examination is completed and the time within which completion is expected, but that the person making the request may immediately file an administrative appeal to the Commissioner.

§ 1102.8 Exemptions.

(a) 5 U.S.C. 552(b) provides that the requirements of the FOIA do not apply to matters that are:

(1) Classified Documents: Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and that are, in fact, properly classified under the Executive order.

(2) Internal Personnel Rules and Practices: Related solely to the internal personnel rules and practices of an agency.

(3) Information Exempt Under Other Laws: Specifically exempted from disclosure by statute, provided that the statute—

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Confidential Business Information: Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(5) Internal Government Communications: Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.

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

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

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

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

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

(iv) Could reasonably be expected to disclose the identity of a confidential

source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation information furnished by a confidential source;

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

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

(8) Financial Institutions: Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

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

(b) The Section will provide any reasonably segregable portion of a record to a requester after deletion of the portions that are exempt under this section.

(c) The section will invoke no exemption under this section if the requested records are available to the requester under the Privacy Act of 1974 and its implementing regulations.

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

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

(2) There is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

§ 1102.9 Annual report to Congress.

(a) On or before March 1 of each calendar year the Commissioner shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include:

(1) The number of determinations made by the section not to comply with

request for records made to the section under the Act and this part and the reasons for each such determination.

(2) The number of appeals made by persons under the Act and this part, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information.

(3) The names and titles or positions of each person responsible for the denial of records requested under the Act, and the number of instances of participation for each.

(4) The results of each proceeding conducted pursuant to 552(1)(4)(F) of the Act, including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken.

(5) A copy of this part.

(6) A copy of the fee schedule and the total amount of fees collected by the section for making records available under the Act.

(7) Such other information as indicates efforts to administer fully the Act.

(b) A copy of each such report to the Congress made pursuant to paragraph (a) of this section will be made available for public inspection and copying in the office of the FOIA Officer, United States Section, International Boundary and Water Commission, 4171 North Mesa, Suite C-310, El Paso, TX 79902-1422.

§ 1102.10 Examination of records.

When a request to examine records is approved by the FOIA Officer, every reasonable effort will be made to provide facilities for the purpose of such examination. "On the spot" copying will be available if the FOIA Officer decides there will be no interference with ordinary activities or routine business of the section.

Dated: August 22, 1990.

Reinaldo Martinez,

FOIA Officer.

[FR Doc. 90-20642 Filed 8-31-90; 8:45 am]

BILLING CODE 7010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 140

[FHWA Docket No. 89-14]

RIN 2125-AC07

Payment Procedures: Construction Engineering Costs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation to implement changes mandated by section 133 of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1967 (Pub. L. 100-17, 101 Stat. 132) and to clarify the FHWA policy relating to the limitation for reimbursement of eligible construction engineering (CE) costs established in 23 U.S.C. 121(d). Current law establishes the limitation at 15 percent without the prior request to obtain specific approval from FHWA.

EFFECTIVE DATE: September 4, 1990.

FOR FURTHER INFORMATION CONTACT: Max I. Inman, Office of Fiscal Services, (202) 366-2853, or Michael J. Laska, Office of the Chief Counsel, (202) 366-1383, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 133 of the STURAA of 1967 revised 23 U.S.C. 121(d) by eliminating the 10 percent limitation on CE costs and increasing the limitation to 15 percent of construction costs without specific approval from the FHWA.

Prior to the revision of 23 U.S.C. 121(d), reimbursement of CE costs to State highway agencies (SHAs) was limited by law to 10 percent of construction costs or 15 percent if approved by FHWA. SHAs desiring the higher limitation were required to submit a request to FHWA, along with adequate justification and supporting data, to demonstrate that a percentage increase in excess of 10 percent was necessary when actual eligible CE costs exceeded the limitation.

Other revisions are also being made to clarify current FHWA policy regarding CE costs. The specific changes for each section of the regulation are as follows:

Section 140.201 Purpose

This section is amended by removing the statement relating to increasing the statutory limitation from 10 to 15 percent.

Section 140.203 Definitions

This section is revised by removing the definitions and adding a new section, Policy. This new section includes provisions relating to the 15 percent limitation and also includes the following provisions which have been added to clarify existing FHWA policy on reimbursement of CE costs:

(1) The new § 140.203(d) requires that estimated CE costs approved at the time of project authorization be based on the

amount of costs the SHA expects to incur, not to exceed the 15 percent limitation. The 15 percent is not a standard additive rate for project cost estimates.

(2) The new § 140.203(e) provides clarification of FHWA policy for determining CE costs when SHAs opt to use average rates in lieu of actual costs per project in accordance with the provisions of 23 U.S.C. 120(h).

Section 140.205 Increase in Per Centum of Limitation

This section is revised to remove the procedures for increasing the percentage limitation from 10 to 15 percent which are no longer applicable. The revision to § 140.205 contains provisions relating to the application of the limitation.

Section 140.207 Categories of Funds Subject to Application of Limitation

Section 140.207 is removed, but the provisions of this section are included in the revised § 140.205, Application of Limitation. The current regulation lists specific categories of funds subject to the limitation. Since most categories of funds are subject to the limitation, the revised section lists only those categories of funds exempt from the limitation.

A notice of proposed rulemaking (NPRM) was published in the Federal Register of August 25, 1989 [54 FR 35354-35356]. A total of 8 responses were received from seven State Highway Agencies (SHAs), and one engineering consulting firm within the 60 day comment period provided in the notice of proposed rulemaking. Of the comments received, four supported the rule change in its entirety. The other four comments supported the rule change, but with various recommendations.

Discussion of Comments

1. One comment recommended that FHWA limit CE costs to 15 percent of the annual cost of the Federal-aid Construction Program for each State.

FHWA cannot accomplish this change by regulation due to the current language in section 121, of title 23, U.S.C. In accordance with 23 U.S.C. 121(a), a State is reimbursed for the costs of construction incurred by it on a project-by-project basis. Reimbursement for CE (23 U.S.C. 121(d)) is limited to a percentage (15%) of the construction costs of a project, excluding from the cost of construction the costs of rights-of-way, preliminary engineering, and construction engineering.

2. One comment recommended that FHWA restrict the statewide aggregate