

Commodity	Parts per million
Horses, mbypp	0.05
Horses, meat	0.05
Milk	0.05
Mushrooms	0.2
Orange	0.5
Poultry, fat	0.05
Poultry, mbypp	0.05
Poultry, meat	0.05
Sheep, fat	0.05
Sheep, mbypp	0.05
Sheep, meat	0.05
Soybeans	0.05
Tangerine	0.5
Walnuts	0.1

(2) A temporary tolerance expiring June 30, 1999, is established for residues of the insecticide diflubenzuron (N-[[4-chlorophenyl]amino]-carbonyl]-2,6-difluorobenzamide) and metabolites convertible to p-chloroaniline expressed as diflubenzuron on rice grain at 0.01 ppm.

(b) Section 18 emergency exemptions. [Reserved]

(c) Tolerances with regional registrations. Tolerances with regional registration, as defined in § 180.1(n), are established for residues of diflubenzuron in or on the following raw agricultural commodities:

Commodity	Parts per million
Grass, pasture	1.0
Grass, range	3.0

(d) Indirect or inadvertent residues. [Reserved]

[FR Doc. 98-12640 Filed 5-12-98; 8:45 am]

BILLING CODE 6560-50-F

**GENERAL SERVICES ADMINISTRATION**

**41 CFR Chapter 301**

[FTR Amendment 72]

RIN 3090-AG72

**Federal Travel Regulation; Maximum Per Diem Rates**

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to change the maximum per diem rate prescribed in FTR Amendment 68 (62 FR 63798, December 2, 1997) for El Paso (El Paso County), Texas.

The General Services Administration (GSA), after an analysis of additional data, has determined that the current lodging allowance for El Paso, Texas does not adequately reflect the costs of lodging accommodations near Federal Government facilities. To provide adequate per diem reimbursement for Federal employee travel to El Paso, Texas, the maximum lodging allowance is being changed to \$78 and the meals and incidental expenses (M&IE) rate remains at \$34, resulting in a maximum per diem rate of \$112.

EFFECTIVE DATE: This final rule is effective May 13, 1998, and applies for travel performed on or after May 13, 1998.

FOR FURTHER INFORMATION CONTACT: Jody Garner, General Services Administration, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202-501-1538.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the Federal Register for notice and comment. Therefore, the Regulatory Flexibility Act does not apply. This rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

For the reasons set out in the preamble, under 5 U.S.C. 5701-5709 title 41, Chapter 301 of the Code of Federal Regulations is revised to read as follows:

**CHAPTER 301—TRAVEL ALLOWANCES**

Appendix A to chapter 301 is amended by removing the corresponding lodging, M&IE, and maximum per diem rates for El Paso, Texas, and inserting in their places the following entry:

**Appendix A To Chapter 301— Prescribed Maximum Per Diem Rates For Conus**

*	*	*	*	*	*	*
	El Paso		El Paso		78	34
	112					
*	*	*	*	*	*	*

Dated: May 6, 1998.

David J. Barram,

Administrator of General Services.

[FR Doc. 98-12827 Filed 5-12-98; 8:45 am]

BILLING CODE 6820-14-P

**CORPORATION FOR NATIONAL AND COMMUNITY SERVICE**

**45 CFR Parts 1215 and 2507**

RIN 3045-AA16

**Freedom of Information Act Regulation and Implementation of Electronic Freedom of Information Act Amendments of 1996**

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation") has revised its regulations under the Freedom of Information Act (FOIA). The Corporation redesignated the existing regulations under former ACTION's CFR chapter as updated regulations under the Corporation's CFR chapter. These procedures facilitate the public's access to Corporation records, and implement the Electronic Freedom of Information Act Amendments of 1996.

DATES: This final rule is effective June 12, 1998.

FOR FURTHER INFORMATION CONTACT: Bill Hudson, Corporation FOIA/Privacy Act Officer, at (202) 606-5000, ext. 265.

SUPPLEMENTARY INFORMATION: The Corporation published a notice of proposed rulemaking on March 12, 1998 (63 FR 12068) announcing its intention to redesignate the existing regulations under former ACTION's CFR chapter as updated regulations under the Corporation's CFR chapter. The functions of the ACTION agency, including the VISTA and senior volunteer programs, were transferred to the Corporation on April 4, 1994. The Corporation operates under two statutes, the National and Community Service Act of 1990, as amended, 42 U.S.C. 12501 et seq., and the Domestic Volunteer Service Act of 1973, as amended, 42 U.S.C. 4950 et seq.

The Corporation received only two comments on this proposed rule. One comment requested that the Corporation publish a more detailed index list of documents available on its internet web site. The Corporation's FOIA Officer will publish a more detailed index list on its internet web site as additional types of documents become available on that site. The other comment was a request to grant the Corporation's Office of Inspector General (OIG) authority to make the final determination on all FOIA appeals where the OIG denied the initial request for any document in its possession. The Corporation has determined that its Chief Operating

Officer (COO) will continue to make the final determination on all appeals filed as a result of the OIG's initial determination to deny the release of documents to a FOIA requester.

This final rule redesignates ACTION's policy at 45 CFR Chapter XII, Part 1215, to be revised as 45 CFR Chapter XXV, Part 2507, and governs the Corporation as a whole.

Distribution Table

Old 45 CFR part 1215	New 45 CFR part 2507
1215.1 .....	2507.1
1215.2 .....	2507.2
1215.3 .....	2507.3
1214.4 .....	2507.4
1215.5 .....	2507.5
1215.6 .....	2507.6
1215.7 .....	2507.7
1215.8 .....	2507.8
1215.9 .....	2507.9
1215.10 .....	2507.10
Appendix 1(A) .....	Appendix A
Appendix 1(B) .....	Appendix B

### Regulatory Flexibility Act

The General Counsel, in accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Under the Freedom of Information Act, agencies may recover only the direct costs for searching for, reviewing, and duplicating the records processed for requesters. Thus, fees assessed by the Corporation are nominal. Further, the "small entities" that make FOIA requests, as compared with individual requesters and other requesters, are relatively few in number.

### Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866. The Office of Management and Budget has reviewed this rule and has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review.

### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

### List of Subjects in 45 CFR Parts 1215 and 2507

Confidential business information, Freedom of information.

Accordingly, and under the authority of 42 U.S.C. 12501 et. seq., the Corporation amends 45 CFR chapters XII and XXV as follows:

### PART 1215—[REDESIGNATED AS PART 2507]

1. Part 1215 in 45 CFR chapter XII is redesignated as part 2507 in 45 CFR chapter XXV and is revised to read as follows:

### PART 2507—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

Sec.

- 2507.1 Definitions.
- 2507.2 What is the purpose of this part?
- 2507.3 What types of records are available for disclosure to the public?
- 2507.4 How are requests for records made?
- 2507.5 How does the Corporation process requests for records?
- 2507.6 Under what circumstances may the Corporation extend the time limits for an initial response?
- 2507.7 How does one appeal the Corporation's denial of access to records?
- 2507.8 How are fees determined?
- 2507.9 What records will be denied disclosure under this part?
- 2507.10 What records are specifically exempt from disclosure?
- 2507.11 What are the procedures for the release of commercial business information?
- 2507.12 Authority.
- Appendix A to Part 2507—Freedom of Information Act Request Letter (Sample)
- Appendix B to Part 2507—Freedom of Information Act Appeal for Release of Information (Sample)

**Authority:** 42 U.S.C. 12501 et seq.

#### § 2507.1 Definitions.

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

(a) *Act* means section 552 of Title 5, United States Code, sometimes referred to as the "Freedom of Information Act",

and Pub. L. 104-231, 110 Stat. 3048, sometimes referred to as the "Electronic Freedom of Information Act Amendments of 1996."

(b) *Agency* means any executive department, military department, government corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency. Thus, the Corporation is a Federal agency.

(c) *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 the requester will put the records sought will be considered in determining whether the request is a commercial use request.

(d) *Corporation* means the Corporation for National and Community Service.

(e) *Educational institution* means a pre-school, elementary or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocational education, which operates a program of scholarly research.

(f) *Electronic data* means records and information (including e-mail) which are created, stored, and retrievable by electronic means.

(g) *Freedom of Information Act Officer (FOIA Officer)* means the Corporation official who has been delegated the authority to make the initial determination on whether to release or withhold records, and to assess, waive, or reduce fees in response to FOIA requests.

(h) *Non-commercial scientific institution* means an institution that is not operated substantially for purposes of furthering its own or someone else's business trade, or profit interests, and that is operated for purposes of conducting scientific research whose results are not intended to promote any particular product or industry.

(i) *Public interest* means the interest in obtaining official information that sheds light on an agency's performance of its statutory duties because the information falls within the statutory purpose of the FOIA to inform citizens about what their government is doing.

(j) *Record* includes books, brochures, electronic mail messages, punch cards, magnetic tapes, cards, discs, paper tapes, audio or video recordings, maps, pamphlets, photographs, slides, microfilm, and motion pictures, or other documentary materials, regardless of physical form or characteristics, made or received by the Corporation pursuant

to Federal law or in connection with the transaction of public business and preserved by the Corporation as evidence of the organization, functions, policies, decisions, procedures, operations, programs, or other activities. Record does not include objects or articles such as tangible exhibits, models, equipment, or processing materials; or formulas, designs, drawings, or other items of valuable property. Record does not include books, magazines, pamphlets or other materials acquired solely for reference purposes. Record does not include personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use. Record does not include information stored within a computer for which there is no existing computer program for retrieval of the requested information. A record must exist and be in the possession and control of the Corporation at the time of the request to be considered subject to this part and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. See § 2507.5(d) with respect to creating a record in the electronic environment.

(k) *Representative of the news media* means a person who is actively gathering information for an entity organized to publish, broadcast or otherwise disseminate news to the public. News media entities include television and radio broadcasters, publishers of periodicals who distribute their products to the general public or who make their products available for purchase or subscription by the general public, and entities that may disseminate news through other media (e.g., electronic dissemination of text). Freelance journalists will be treated as representatives of a new media entity if they can show a likelihood of publication through such an entity. A publication contract would be the clearest proof, but the Corporation may also look to the past publication record of a requester in making this determination.

(l) *FOIA request* means a written request for Corporation records, made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency, an order from a court, or a fugitive from the law, that either explicitly or implicitly involves the FOIA, or this part. Written requests may be received by postal service or by facsimile.

(m) *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.

(n) *Search* means looking for records or portions of records responsive to a request. It includes reading and interpreting a request, and also page-by-page and line-by-line examination to identify responsive portions of a document. However, it does not include line-by-line examination where merely duplicating the entire page would be a less expensive and quicker way to comply with the request.

#### § 2507.2 What is the purpose of this part?

The purpose of this part is to prescribe rules for the inspection and release of records of the Corporation for National and Community Service pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, as amended. Information customarily furnished to the public in the regular course of the Corporation's official business, whether hard copy or electronic records which are available to the public through an established distribution system, or through the **Federal Register**, the National Technical Information Service, or the Internet, may continue to be furnished without processing under the provisions of the FOIA or complying with this part.

#### § 2507.3 What types of records are available for disclosure to the public?

(a) (1) The Corporation will make available to any member of the public who requests them, the following Corporation records:

(i) All publications and other documents provided by the Corporation to the public in the normal course of agency business will continue to be made available upon request to the Corporation;

(ii) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of administrative cases;

(iii) Statements of policy and interpretation adopted by the agency and not published in the **Federal Register**;

(iv) Administrative staff manuals and instructions to the staff that affect a member of the public; and

(v) Copies of all records, regardless of form or format, which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.

(2) Copies of a current index of the materials in paragraphs (a)(1)(i) through (v) of this section that are maintained by the Corporation, or any portion thereof, will be furnished or made available for inspection upon request.

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

(c) 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 to the public at the cost of duplication, provided, however, that, in the event no copy exists, the Corporation shall not be responsible for reprinting the document.

(d) All records of the Corporation which are requested by a member of the public in accordance with the procedures established in this part shall be duplicated for the requester, except to the extent that the Corporation determines that such records are exempt from disclosure under the Act.

(e) The Corporation 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 has been compiled previously and is available in the form of a record.)

(f) These records will be made available for public inspection and copying in the Corporation's reading room located at the Corporation for National and Community Service, 1201 New York Avenue, NW., Room 8200, Washington, D.C. 20525, during the hours of 9:30 a.m. to 4:00 p.m., Monday through Friday, except on official holidays.

(g) Corporation records will be made available to the public unless it is determined that such records should be withheld from disclosure under subsection 552(b) of the Act and or in accordance with this part.

#### § 2507.4 How are requests for records made?

(a) *How made and addressed.* (1) Requests for Corporation records under the Act must be made in writing, and can be mailed, hand-delivered, or received by facsimile, to the FOIA Officer, Corporation for National and Community Service, Office of the

General Counsel, 1201 New York Avenue, N.W., Room 8200, Washington, D.C. 20525. (See Appendix A for an example of a FOIA request.) All such requests, and the envelopes in which they are sent, must be plainly marked "FOIA Request". Hand-delivered requests will be received between 9 a.m. and 4 p.m., Monday through Friday, except on official holidays. Although the Corporation maintains offices throughout the continental United States, all FOIA requests must be submitted to the Corporation's Headquarters office in Washington, DC.

(2) Corporation records that are available in the Corporation's reading room will also be made available for public access through the Corporation's "electronic reading room" internet site under "Resource Links". The following address is the Corporation's Internet Web site: <http://www.nationalservice.org>.

(b) *Request must adequately describe the records sought.* A request must describe the records sought in sufficient detail to enable Corporation personnel to locate the records with reasonable effort, and without unreasonable burden to or disruption of Corporation operations. Among the kinds of identifying information which a requester may provide are the following:

(1) The name of the specific program within the Corporation which may have produced or may have custody of the record (e.g., AmeriCorps\*State/National Direct, AmeriCorps\*NCCC (National Civilian Community Corps), AmeriCorps\*VISTA (Volunteers In Service To America), Learn and Serve America, National Senior Service Corps (NSSC), Retired and Senior Volunteer Program (RSVP), Foster Grandparent Program (FGP), Senior Companion Program (SCP), and HUD Hope VI);

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

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

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

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

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

(c) *Agreement to pay fees.* The filing of a request under this section shall be deemed to constitute an agreement by the requester to pay all applicable fees, up to \$25.00, 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. (See § 2507.8 for further information on fees.)

#### § 2507.5 How does the Corporation process requests for records?

(a) *Initial processing.* Upon receipt of a request for agency records, the FOIA Officer will make an initial determination as to whether the requester has reasonably described the records being sought with sufficient specificity to determine which Corporation office may have possession of the requested records. The office head or his or her designees shall determine whether the description of the record(s) requested is sufficient to permit a determination as to existence, identification, and location. It is the responsibility of the FOIA Officer to provide guidance and assistance to the Corporation staff regarding all FOIA policies and procedures. All requests for records under the control and jurisdiction of the Office of the Inspector General will be forwarded to the Inspector General, through the FOIA Officer, for the Corporation's initial determination and reply to the requester.

(b) *Insufficiently identified records.* On making a determination that the description contained in the request does not reasonably describe the records being sought, the FOIA Officer shall promptly advise the requester in writing or 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. Receipt of an amended request shall start a new 20 day period in which the Corporation will respond to the request.

(c) *Furnishing records.* The Corporation is required to furnish only copies of what it has or can retrieve. It is not compelled to create new records or do statistical computations. For example, the Corporation is not required to write a new program so that a computer will print information in a special format. However, if the requested information is maintained in computerized form, and it is possible, without inconvenience or unreasonable burden, to produce the information on paper, the Corporation will do this if this is the only feasible way to respond to a request. The Corporation is not required to perform any research for the requester. The Corporation reserves the right to make a decision to conserve government resources and at the same time supply the records requested by consolidating information from various records rather than duplicating all of them. For example, if it requires less

time and expense to provide a computer record as a paper printout rather than in an electronic medium, the Corporation will provide the printout. The Corporation is only required to furnish one copy of a record.

(d) *Format of the disclosure of a record.* The requester, not the Corporation, will be entitled to choose the form of disclosure when multiple forms of a record already exist. Any further request for a record to be disclosed in a new form or format will have to be considered by the Corporation, on a case-by-case basis, to determine whether the records are "readily reproducible" in that form or format with "reasonable efforts" on the part of the Corporation. The Corporation shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of replying to a FOIA request.

(e) *Release of record.* Upon receipt of a request specifically identifying existing Corporation records, the Corporation shall, within 20 days (excepting Saturdays, Sundays, and legal public holidays), either grant or deny the request in whole or in part, as provided in this section. Any notice of denial in whole or in part shall require the FOIA Officer to inform the requester of his/her right to appeal the denial, in accordance with the procedures set forth in § 2507.7. 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, as appropriate, to withhold the record as being exempt from mandatory disclosure under the Act.

(f) *Form and content of notice granting a request.* The Corporation shall provide written notice of a determination to grant access within 20 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of the request. This will be done either by providing a copy of the record to the requester or by making the record available for inspection at a reasonable time and place. If the record cannot be provided at the time of the initial response, the Corporation shall make such records available promptly. Records disclosed in part shall be marked or annotated to show both the amount and the location of the information deleted wherever practicable.

(g) *Form and content of notice denying request.* The Corporation shall notify the requester in writing of the denial of access within 20 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of the request. 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(s) for denial, including the specific exemption(s) under the Act on which the Corporation has relied in denying each document that was requested;

(3) A statement that the denial may be appealed under § 2507.7, and a description of the requirements of that § 2507.7;

(4) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption.

**§ 2507.6 Under what circumstances may the Corporation extend the time limits for an initial response?**

The time limits specified for the Corporation's initial response in § 2507.5, and for its determination on an appeal in § 2507.7, may be extended by the Corporation upon written notice to the requester which sets forth the reasons for such extension and the date upon which the Corporation 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 section may include the following:

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

(b) Time necessary to locate, collect and review voluminous records; or

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

**§ 2507.7 How does one appeal the Corporation's denial of access to records?**

(a) *Right of appeal.* A requester has the right to appeal a partial or full denial of an FOIA request. The appeal must be put in writing and sent to the reviewing official identified in the denial letter. The requester must send the appeal within 60 days of the letter denying the appeal.

(b) *Contents of appeal.* The written appeal may include as much or as little information as the requester wishes for the basis of the appeal.

(c) *Review process.* The Chief Operating Officer (COO) is the

designated official to act on all FOIA appeals. The COO's determination of an appeal constitutes the Corporation's final action. If the appeal is granted, in whole or in part, the records will be made available for inspection or sent to the requester, promptly, unless a reasonable delay is justified. If the appeal is denied, in whole or in part, the COO will state the reasons for the decision in writing, providing notice of the right to judicial review. A decision will be made on the appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays), from the date the appeal was received by the COO.

(d) *When appeal is required.* If a requester wishes to seek review by a court of an unfavorable determination, an appeal must first be submitted under this section.

**§ 2507.8 How are fees determined?**

(a) *Policy.* It is the policy of the Corporation to provide the widest possible access to releasable Corporation records at the least possible cost. The purpose of the request is relevant to the fees charged.

(b) *Types of request.* Fees will be determined by category of requests 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 non-commercial scientific institution in furtherance of scholarly or scientific research, respectively, charges may be assessed to cover the cost of reproduction alone, excluding charges for reproduction of the first 100 pages. Whenever the total fee calculated is \$18.00 or less, no fee shall be charged.

(3) *Requests from representatives of the news media.* When a request for records is made by a representative of the news media for the purpose of news dissemination, charges may be assessed to cover the cost of reproduction alone, excluding the charges for reproduction of the first 100 pages. Whenever the total fee calculated is \$18.00 or less, no fee shall be charged.

(4) *Other requests.* When other requests for records are made which do not fit the three 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 (5 U.S.C. 552a) which permit the assessment of fees for reproduction costs only, regardless of the requester's characterization of the request.)

Whenever the total fee calculated is \$18.00 or less, no fee shall be charged to the requester.

(c) *Direct costs.* Fees assessed shall provide only for recovery of the Corporation'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) *Charging of fees.* 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 \$4.00 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 \$7.00 per quarter hour.

(4) Where the time of managerial personnel is required, the fee shall be \$10.25 for each quarter hour of time spent by such managerial personnel.

(5) 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.

(6) *Charges for non-release.* Charges may be assessed for search and review time, even if the Corporation fails to locate records responsive to a request or if records located are determined to be exempt from disclosure.

(e) *Consent to pay fees.* In the event that 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. 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 for paying the anticipated costs. Such a request shall be deemed to have been received by the Corporation upon the date of receipt of the amended request.

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

(i) The Corporation 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 Corporation shall notify the requester of the likely cost and obtain written assurance of full payment.)

(ii) 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).

(2) When the Corporation acts under paragraphs (f)(1)(i) or (ii) of this section, the administrative time limits prescribed in § 2507.5(a) and (b) will begin to run only after the Corporation has received fee payments or assurances.

(g) *Interest on non-payment.* 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 31 U.S.C. 3717 and will accrue from the date of the billing. The Corporation may use the authorization of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including disclosure to consumer reporting agencies and the use of collection agencies, to encourage payment of delinquent fees.

(h) *Aggregating requests.* Where the Corporation reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the Corporation may aggregate those requests and charge accordingly. The Corporation may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, the Corporation will aggregate them only where there exists a solid basis for determining that aggregation is warranted under the circumstances involved. Multiple

requests involving unrelated matters will not be aggregated.

(i) *Making payment.* Payment of fees shall be forwarded to the FOIA Officer by check or money order payable to "Corporation for National and Community Service". A receipt for any fees paid will be provided upon written request.

(j) *Fee processing.* No fee shall be charged if the administrative costs of collection and processing of such fees are equal to or do not exceed the amount of the fee.

(k) *Waiver or reduction of fees.* 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. Upon receipt of such a request, the FOIA Officer will determine whether a fee waiver or reduction should be granted.

(1) 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 Corporation, and it is not primarily in the commercial interest of the requester. The Corporation shall consider the following factors in determining whether a waiver or reduction of fees will be granted:

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

(ii) If so, will disclosure of the information be likely to contribute to public understanding of the Corporation'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?

(2) In applying the criteria in paragraph (k)(1) of this section, the Corporation will weigh the requester's commercial interest against any public interest in disclosure. Where there is a public interest in disclosure, and that interest can fairly be regarded as being of greater magnitude than the requester's commercial interest, a fee waiver or reduction may be granted.

(3) When a fee waiver application has been included in a request for records, the request shall not be considered officially received until a 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 in writing by the Corporation.

#### **§ 2507.9 What records will be denied disclosure under this part?**

Since the policy of the Corporation is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for a Corporation record made under the provisions of the FOIA may be denied when:

(a) The record is subject to one or more of the exemptions of the FOIA.

(b) The record has not been described clearly enough to enable the Corporation staff to locate it within a reasonable amount of effort by an employee familiar with the files.

(c) The requestor has failed to comply with the procedural requirements, including the agreement to pay any required fee.

(d) For other reasons as required by law, rule, regulation or policy.

#### **§ 2507.10 What records are specifically exempt from disclosure?**

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of portions which are exempt under this section. The following categories are examples of records maintained by the Corporation which, under the provision of 5 U.S.C. 552(b), are exempted from disclosure:

(a) *Records required to be withheld under criteria established by an Executive Order in the interest of national defense and policy and which are in fact properly classified pursuant to any such Executive Order.* Included in this category are records required by Executive Order No. 12958 (3 CFR, 1995 Comp., p. 333), as amended, to be classified in the interest of national defense or foreign policy.

(b) *Records related solely to internal personnel rules and practices.* Included in this category are internal rules and regulations relating to personnel management operations which cannot be disclosed to the public without substantial prejudice to the effective performance of significant functions of the Corporation.

(c) Records specifically exempted from disclosure by statute.

(d) *Information of a commercial or financial nature including trade secrets*

given in confidence. Included in this category are records containing commercial or financial information obtained from any person and customarily regarded as privileged and confidential by the person from whom they were obtained.

(e) *Interagency or intra-agency memoranda or letters which would not be available by law to a party other than a party in litigation with the Corporation.* Included in this category are memoranda, letters, inter-agency and intra-agency communications and internal drafts, opinions and interpretations prepared by staff or consultants and records meant to be used as part of deliberations by staff, or ordinarily used in arriving at policy determinations and decisions.

(f) *Personnel, medical and similar files.* Included in this category are personnel and medical information files of staff, individual national service applicants and participants, lists of names and home addresses, and other files or material containing private or personal information, the public disclosure of which would amount to a clearly unwarranted invasion of the privacy of any person to whom the information pertains.

(g) *Investigatory files.* Included in this category are files compiled for the enforcement of all laws, or prepared in connection with government litigation and adjudicative proceedings, provided however, that such records shall be made available to the extent that their production will not:

- (1) Interfere with enforcement proceedings;
- (2) Deprive a person of a right to a fair trial or an impartial adjudication;
- (3) Constitute an unwarranted invasion of personal privacy;
- (4) Disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful security intelligence investigation, confidential information furnished by confidential source;
- (5) Disclose investigative techniques and procedures; or
- (6) Endanger the life or physical safety of law enforcement personnel.

**§ 2507.11 What are the procedures for the release of commercial business information?**

(a) *Notification of business submitter.* The Corporation shall promptly notify a business submitter of any request for Corporation records containing business information. The 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.

(b) *Business submitter reply.* The Corporation shall afford a business submitter 10 working days to object to disclosure, and to provide the Corporation with a written statement specifying the grounds and arguments why the information should be withheld under Exemption (b)(4) of the Act.

(c) *Considering and balancing respective interests.* (1) The Corporation shall carefully consider and balance the business submitter's objections and specific grounds for nondisclosure against such factors as:

(i) The general custom or usage in the occupation or business to which the information relates that it be held confidential; and

(ii) The number and situation of the individuals who have access to such information; and

(iii) The type and degree of risk of financial injury to be expected if disclosure occurs; and

(iv) The length of time such information should be regarded as retaining the characteristics noted in paragraphs (c)(1) (i) through (iii) of this section in determining whether to release the requested business information.

(2)(i) Whenever the Corporation decides to disclose business information over the objection of a business submitter, the Corporation shall forward to the business submitter a written notice of such decision, which shall include:

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

(B) A statement of the reasons why the business submitter's objection was not sustained;

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

(D) A specific disclosure date.

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

(d) *When notice to business submitter is not required.* The notice to business submitter shall not apply if:

(1) The Corporation 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).

(e) *Notice of suit for release.*

Whenever a requester brings suit to

compel disclosure of business information, the Corporation shall promptly notify the business submitter.

**§ 2507.12 Authority.**

The Corporation receives authority to change its governing regulations from the National and Community Service Act of 1990, as amended (42 U.S.C. 12501 et seq.).

**Appendix A to Part 2507—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].

[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 commercial use.

—Affiliated with an educational or non-commercial scientific institution, and this request is not for commercial use.

—An individual seeking information for personal use and not for 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 government and is not primarily in my commercial interest. [Include a specific explanation.]

In order to help you 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).

Thank you for your consideration of this request.

Sincerely,

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

**Appendix B to Part 2507—Freedom of Information Act Appeal for Release of Information (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] Respond for waiver of fees. 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] \_\_\_\_\_

Dated: May 8, 1998.

**Kenneth L. Klothen,**

General Counsel.

[FR Doc. 98-12650 Filed 5-12-98; 8:45 am]

BILLING CODE 6050-28-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 69

[CC Docket 96-128; DA 98-701]

#### Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996; AT&T Request for Limited Waiver of the Per-Call Compensation Obligation

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; clarification and waivers.

**SUMMARY:** The Common Carrier Bureau adopted an Order ("Order"), which clarifies certain requirements set forth in the *Per-phone Compensation Waiver Order*. The *Order* clarifies the following: the data to be used for the payment of payphone compensation for the fourth quarter of 1997 and first quarter of 1998 for payphones that are not capable of providing payphone-specific coding digits; the method for allocating among

payors the payphone compensation requirements for payphones served by non-equal access switches; and the eligibility of payphones on automatic number identification ("ANI") lists.

**DATES:** Effective April 10, 1998.

**FOR FURTHER INFORMATION CONTACT:** Rose Crellin, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau, (202) 418-0960.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Bureau's Order in CC Docket No. 96-128 [DA 98-701], adopted on April 10, 1998, and released on April 10, 1998. The full text of the *Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, N.W., Washington, D.C. 20036.

#### SUMMARY OF ORDER

##### Introduction

1. In the *Order*, the Bureau clarifies certain requirements set forth in the *Per-phone Compensation Waiver Order*,<sup>1</sup> published elsewhere in this issue of the **Federal Register**, which was adopted on April 3, 1998, by the Common Carrier Bureau ("Bureau"). The *Per-phone Compensation Waiver Order* granted interexchange carriers ("IXCs") a limited waiver of the payphone compensation requirements set forth in the *Payphone Orders*<sup>2</sup> to enable IXCs to pay to payphone service providers ("PSPs") per-phone instead of per-call compensation for subscriber 800 and access code calls originated from payphones when payphone-specific

<sup>1</sup> Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Memorandum Opinion and Order, DA 98-642 (rel. Apr. 3, 1998) ("Per-phone Compensation Waiver Order").

<sup>2</sup> Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, 61 FR 52307 (October 7, 1996) ("Report and Order"); Order on Reconsideration, 61 FR 65341 (December 12, 1996) ("Order on Reconsideration") (together the "Payphone Orders"). The Payphone Orders were affirmed in part and vacated in part. See *Illinois Public Telecomm. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997) ("Illinois Public Telecomm."); see also Second Report and Order, 13 FCC Rcd 1778 (1997) ("Second Report and Order"), pets. for recon. pending, review pending, MCI Telecomm. Corp. v. FCC, D.C. Circuit No. 97-1675 (filed Nov. 7, 1997); Sprint Corp. v. FCC, D.C. Circuit No. 97-1685 (filed Nov. 13, 1997); Personal Communications Industry Association v. FCC, D.C. Circuit No. 97-1709 (filed Dec. 1, 1997); Illinois Public Telecommunications Association v. FCC, D.C. Circuit No. 97-1713 (filed Dec. 3, 1997).

coding digits<sup>3</sup> are not available from those payphones. The Bureau's *Order* clarifies the following: (1) The data to be used for the payment of payphone compensation for the fourth quarter of 1997 and first quarter of 1998 for payphones that are not capable of providing payphone-specific coding digits; (2) the method for allocating among payors the payphone compensation requirements for payphones served by non-equal access switches; and (3) the eligibility of payphones on automatic number identification ("ANI") lists.

#### II. Background

2. In the *Per-phone Compensation Waiver Order*, the Bureau concluded that the waiver granted therein to allow IXCs to pay per-phone compensation when payphone-specific coding digits are not available from a payphone is necessary to ensure that PSPs receive fair compensation while local exchange carriers ("LECs"), PSPs, and IXCs transition to providing and receiving payphone-specific coding digits to identify calls from payphones.

3. Previously, the Bureau had adopted the *Bureau Coding Digit Waiver Order* clarifying the payphone-specific coding digit requirements set forth in the *Payphone Orders* and granting limited waivers of the requirement that LECs provide payphone-specific-coding digits to PSPs, and that PSPs provide payphone-specific coding digits from their payphones to IXCs, before PSPs can receive per-call compensation from IXCs for subscriber 800 and access code calls. The Bureau explained in the *Per-phone Compensation Waiver Order* that the order serves as a companion order to the *Bureau Coding Digit Waiver Order*, because in the *Per-phone Compensation Waiver Order*, the Bureau granted IXCs<sup>4</sup> a waiver of the per-call compensation requirement so they may pay per-phone instead of per-call

<sup>3</sup> Payphone-specific coding digits provide a method for LECs to transmit, with the automatic number identification (ANI), information (coding number or digits) identifying a call as having been placed specifically from a payphone. Order on Reconsideration, 11 FCC Rcd 21,265-66, para. 64. See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Memorandum Opinion and Order, CC Docket No. 96-128, DA 98-481 (rel. Mar. 9, 1998) 63 FR 20534 (April 27, 1998) ("Bureau Coding Digit Waiver Order").

<sup>4</sup> For purposes of paying compensation for compensable calls and other associated obligations, such as tracking calls, we note that the term "IXC" includes an LEC when it provides interstate, intraLATA toll service. See Report and Order, 61 FR 52307 (October 7, 1996); Order on Reconsideration, 11 FCC Rcd at 21,270, paras. 74-75 & 21,278, para. 92. Carriers required to pay per-call compensation pursuant to the Payphone Orders also are referred to as "payors" in this order.