Background and Purpose

We published a notice of proposed rulemaking (NPRM) in the **Federal Register** on February 12, 2009 (74 FR 7022), entitled ''Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington.'' In it we stated that we did not plan to hold a public meeting, but that we welcomed requests explaining why one would be beneficial (74 FR 7023). We received several such requests and have concluded that a public meeting would aid this rulemaking. Therefore, we are publishing this notice.

In the NPRM, we propose to establish Regulated Navigation Areas (RNA) covering specific bars along the coasts of Oregon and Washington that will include procedures for restricting and/or closing those bars as well as additional safety requirements for recreational and small commercial vessels operating in the RNAs. The RNAs are necessary to help ensure the safety of the persons and vessels operating in those hazardous bar areas. The RNAs will do so by establishing clear procedures for restricting and/or closing the bars and mandating additional safety requirements for recreational and small commercial vessels operating in the RNAs when certain conditions exist.

You may view the NPRM in our online docket, in addition to supporting documents prepared by the Coast Guard, including an ''Environmental Analysis Checklist'' and RNA Fact Sheets for recreational, passenger, and commercial fishing vessels, and comments submitted thus far by going to *http://www.regulations.gov*. Once there, select the Advanced Docket Search option on the right side of the screen, insert USCG–2008–1017 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

We encourage you to participate in this rulemaking by submitting comments either orally at the meetings or in writing. If you bring written comments to the meetings, you may submit them to Coast Guard personnel specified at the meetings to receive written comments. These comments will be submitted to our online public docket. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Comments submitted after the meetings must reach the Coast Guard on or before April 19, 2009. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility.

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LCDR Emily Saddler at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Public Meeting

The Coast Guard will hold a public meeting regarding its ''Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington'' proposed rule on Tuesday, April 14, 2009, from 6 p.m. to 9 p.m, at The Loft at the Red Building, 20 Basin Street, Astoria, OR 97103, telephone 503–325–2223, and on Wednesday, April 15, 2009, from 6 p.m. to 9 p.m., at The Embarcadero Resort Hotel & Marina, 1000 SE Bay Blvd., Newport, OR 97365, telephone 541–265–8521 or 1–800–547–4779.

We plan to have an official transcript of the meetings prepared and will make that transcript available through a link in our online docket.

Dated: March, 30, 2009.

J.P. Currier,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. E9–8266 Filed 4–7–09; 8:45 am]

BILLING CODE 4910–15–P

NATIONAL SCIENCE FOUNDATION

45 CFR Part 612

RIN 3145–AA52

Notice of Proposed Rulemaking and Opportunity for Comment

AGENCY: National Science Foundation.

ACTION: Notice of proposed rulemaking and opportunity for comment.

SUMMARY: This document sets forth proposed revisions of the Foundation's regulations under the Freedom of Information Act (FOIA). The new FOIA provisions implement the Openness Promotes Effectiveness in our National Government Act of 2007, or the OPEN Government Act of 2007, Public Law 110–175.

DATES: Submit comments on or before May 13, 2009.

ADDRESSES: Address all comments concerning this proposed rule to the Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, VA 22230. You may also send comments by facsimile transmission to (703) 292–9041, or send them electronically through the Federal Government's one-stop rulemaking Web site at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Leslie A. Jensen, Legal Analyst, Office of the General Counsel, National Science Foundation, telephone 703–292–8060 and e-mail *ljensen@nsf.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Records and Information (45 CFR part 612) (FOIA Regulations)

This revision of part 612 implements the new provisions of the Openness Promotes Effectiveness in our National Government Act of 2007, or the OPEN Government Act of 2007, Public Law 110–175. No changes to the Act's nine exemptions were made. The amendments address a range of procedural issues impacting FOIA administration, including the codification of several provisions of Executive Order 13392, Improving Agency Disclosure of Information. Clarifications or minor procedural changes are found at § 612.3(a), (b), (f) and (g) (Requirements for making requests), § 612.4(a) (Responding to requests), § 612.5 (c)(1) and (2) (Timing of Response to Requests), § 612.6 (a), (b), (c)(1) (Processing requests) and § 612.10(c)(iii) (Fees).

For purposes of the Regulatory Flexibility Act (5 U.S.C. 601), the proposed rule will not have a significant

economic effect on a substantial number of small entities; the proposed rule addresses the procedures to be followed when submitting or responding to requests for information under the Freedom of Information Act. For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) the proposed rule would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more. For purposes of Executive Order 12866, the proposed rule is not a significant regulatory action requiring review by the Office of Management and Budget. For the purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 35) it has been determined that this proposed rulemaking does not impose any reporting or recordkeeping requirement on the public.

List of Subjects in 45 CFR Part 612

Administrative practice and procedure: Freedom of information.

For the reasons stated in the preamble, the National Science Foundation proposes to amend 45 CFR chapter VI by revising part 612 as follows:

PART 612—AVAILABILITY OF RECORDS AND INFORMATION

Sec.
612.1 General provisions.
612.2 Public reading room.
612.3 Requirements for making requests.
612.4 Responding to requests.
612.5 Timing of responses to requests.
612.6 Processing requests.
612.7 Exemptions.
612.8 Business information.
612.9 Appeals.
612.10 Fees.
612.11 Other rights and services.

Authority: 5 U.S.C. 552, as amended.

§ 612.1 General provisions.

This part contains the rules that the National Science Foundation follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. Information routinely made available to the public as part of a regular Foundation activity (for example, program announcements and solicitations, summary of awarded proposals, statistical reports on U.S. science, news releases) may be provided to the public without reliance on this part. As a matter of policy, the Foundation also makes discretionary disclosures of records or information otherwise exempt under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption. This policy, however, does not create any right enforceable in court. When individuals seek records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, NSF processes those requests under both NSF's Privacy regulations at part 613, and this part.

§ 612.2 Public reading room.

(a) The Foundation maintains a public reading room located in the NSF Library at 4201 Wilson Boulevard, Suite 225, Arlington, Virginia, open during regular working hours Monday through Friday. It contains the records that the FOIA requires to be made regularly available for public inspection and copying and has computers and printers available for public use in accessing records. Also available for public inspection and copying are current subject matter indexes of reading room records.

(b) Information about FOIA and Privacy at NSF and copies of frequently requested FOIA releases are available Online at *http://www.nsf.gov/pubinfo/foia.html*. Most NSF policy documents, staff instructions, manuals, and other publications that affect a member of the public, are available in electronic form through the ''Documents'' option on the tool bar on NSF's Home Page on the Internet at *http://www.nsf.gov*.

§ 612.3 Requirements for making requests.

(a) *Where to send a request*. The National Science Foundation has one Agency component. You may make a FOIA request for records of the National Science Foundation by writing directly to the FOIA Officer, Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, VA 22230. For records maintained by the NSF Office of the Inspector General (OIG), a designated Agency component, you may write directly to the Office of Inspector General, National Science Foundation, 4201 Wilson Boulevard, Suite 1135, Arlington, VA 22230. The Agency FOIA officer and the OIG component will also forward requests as appropriate. Requests may also be sent by facsimile to the Agency FOIA Officer on (703) 292–9041 or by e-mail to *foia@nsf.gov*; or, as appropriate to the OIG component via Fax on (703) 292–9158.

(b) *Form of request*. A FOIA request need not be in any particular format, but it must be in writing, include the requester's name and mailing address, and be clearly identified both on the envelope and in the letter, or in a facsimile or electronic mail message as a Freedom of Information Act or ''FOIA'' request. It must describe the records sought with sufficient specificity to permit identification, and include agreement to pay applicable fees chargeable under the Foundation's fee schedule as described in § 612.10.

(c)(1) If you are making a request for records about yourself and the records are not contained in a Privacy Act system of records, your request will be processed only under the FOIA, since the Privacy Act does not apply. If the records about you are contained in a Privacy Act system of records, NSF will respond with information on how to make a Privacy Act request (*see* NSF Privacy Act regulations at 45 CFR 613.2).

(2) If you are making a request for personal information about another individual, either a written authorization signed by that individual in accordance with § 613.2(f) permitting disclosure of those records to you, or proof that that individual is deceased (for example, a copy of a death certificate or a published obituary) will help the agency process your request.

(d) *Description of records sought*. Your request must describe the records that you seek in enough detail to enable NSF personnel to locate them with a reasonable amount of effort. A record must have been created or obtained by NSF and under the control of NSF at the time of the request to be subject to the FOIA. NSF has no obligation under the FOIA to create, compile or obtain a record to satisfy a FOIA request. Whenever possible, your request should include specific descriptive information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Foundation will be able to locate those records in response to your request, and the more likely fees will be reduced or eliminated. If NSF determines that your request does not reasonably describe records, you will be advised what additional information is needed to perfect your request or why your request is otherwise insufficient.

(e) *Agreement to pay fees*. Your request must state that you will promptly pay the total fees chargeable under this regulation or set a maximum amount you are willing to pay. NSF does not charge if fees total less than $25.00. If you seek a waiver of fees, please see § 612.10(k) for a discussion of the factors you must address. If you place an inadequate limit on the amount you will pay, or have failed to make payments for previous requests, NSF may require advance payment (see § 612.10(i)).

(f) *Receipt date*. A request that meets the requirements of this section will be considered received on the date it is received by the Office of the General Counsel or the Office of the Inspector General. In determining which records are responsive to a FOIA request, the Foundation will include only records in its possession as of the date the search begins.

(g) *Publications excluded*. For the purpose of public requests for records the term ''record'' does not include publications which are available to the public in the Federal Register, or by sale or free distribution. NSF publications are available in print. To request one or more print publications (*http://www.nsf.gov/publications/obtain.jsp*), you may:

(1) Fill out Web-based order form. *http://www.nsf.gov/publications/orderpub.jsp*.

(2) Contact NSF Publications at (703) 292–PUBS (7827).

(3) Send a letter with the publication number(s) clearly stated to: NSF Publications, National Science Foundation, 4201 Wilson Boulevard, Suite P–60, Arlington, VA 22230.

§ 612.4 Responding to requests.

(a) *Monitoring of requests*. The NSF Office of the General Counsel (OGC), or such other office as may be designated by the Director, will serve as the central office for administering these regulations. For records maintained by the Office of Inspector General, that Office will control incoming requests made directly or referred to it, dispatch response letters, and maintain administrative records. For all other records maintained by NSF, OGC (or such other office as may be designated by the Director) will control incoming requests, assign them to appropriate action offices, monitor compliance, consult with action offices on disclosure, approve necessary extensions, dispatch denial and other letters, and maintain administrative records.

(b) *Consultations and referrals*. When the Foundation receives a request for a record in its possession that originated with another agency or in which another agency has a substantial interest, it may decide that the other agency of the Federal Government is better able to determine whether the record should or should not be released under the FOIA.

(1) If the Foundation determines that it is the agency best able to process the record in response to the request, then it will do so, after consultation with the other interested agencies where appropriate.

(2) If it determines that it is not the agency best able to process the record, then it will refer the request regarding that record (or portion of the record) to the agency that originated or has a substantial interest in the record in question (but only if that agency is subject to the FOIA). Ordinarily, the agency that originated a record will be presumed to be best able to determine whether to disclose it.

(c) *Notice of referral*. Whenever the Foundation refers all or any part of the responsibility for responding to a request to another agency, it ordinarily will notify the requester of the referral and inform the requester of the name of each agency to which the request has been referred and of the part of the request that has been referred, unless such notification would disclose information otherwise exempt.

§ 612.5 Timing of responses to requests.

(a) *In general*. NSF ordinarily will initiate processing of requests according to their order of receipt.

(b) *Time for response*. The Foundation will make reasonable effort to act on a request within 20 days of when a request is received by the OGC or the OIG or perfected (excluding the date of receipt, weekends, and legal holidays). A request is perfected when you have reasonably described the records sought under § 612.3(d), agreed to pay fees chargeable under § 612.3(c), or otherwise met the fee requirements under § 612.10.

(c) *Unusual circumstances*. (1) Where the time limits for processing a request cannot be met because of ''unusual circumstances'' as defined in the FOIA, the FOIA Officer or the OIG component will notify the requester as soon as practicable in writing of the unusual circumstances and may extend the response period for up to ten working days.

(2) Where the extension is for more than ten working days, the FOIA Officer or the OIG component will provide the requester with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an agreed upon alternative time period with the FOIA Officer or the OIG component for processing the request or a modified request.

(d) *Expedited processing*. (1) If you want to receive expedited processing you must submit a statement, certified to be true and correct to the best of your knowledge and belief, explaining in detail the basis for requesting expedited processing.

(2) Requests and appeals will be given expedited treatment whenever it is determined that a requester has demonstrated compelling need by presenting:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged Federal government activity, if made by a person primarily engaged in disseminating information.

For example, a requester who is not a full-time member of the news media must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. Such requester also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally, and that the information sought has particular value that would be lost if not disseminated quickly.

(3) Within ten calendar days of receipt of a request for expedited processing, the FOIA Officer or OIG component will decide whether to grant it, and will notify the requester of the decision orally or in writing. If a request for expedited treatment is granted, the request will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

§ 612.6 Processing requests.

(a) *Acknowledgment of requests*. Each request is assigned a tracking number and the requester is advised of this FOIA number, the receipt date and the estimated date of action on the request.

(b) *Grants of requests*. Once the Foundation makes a determination to grant a request in whole or in part, it will notify the requester in writing. The Foundation will inform the requester in the notice of any applicable fee and will disclose records to the requester promptly on payment of applicable fees. Records disclosed in part will be marked or annotated to show both the amount, the location and the FOIA Exemption under which the deletion is made.

(c) *Denials of requests*. (1) Denials of FOIA requests will be made by the Office of the General Counsel, the Office of the Inspector General, or such other office as may be designated by the Director. The response letter will briefly set forth the reasons for the denial, including any FOIA exemption(s) applied by the Foundation or the OIG in denying the request. It will also provide the name and title or position of the

person responsible for the denial, will inform the requester of the right to appeal, and will, where appropriate, include an estimate of the volume of any requested materials withheld. An estimate need not be provided when 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.

(2) Requesters can appeal an agency determination to withhold all or part of any requested record; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the Act; a disapproval of a fee category claim by a requester; denial of a fee waiver or reduction; or a denial of a request for expedited treatment (see § 612.9).

§ 612.7 Exemptions.

(a) *Exemptions from disclosure*. The following types of records or information may be withheld as exempt in full or in part from mandatory public disclosure:

(1) *Exemption 1—5 U.S.C. 552(b)(1)*. Records specifically authorized and properly classified pursuant to Executive Order to be kept secret in the interest of national defense or foreign policy. NSF does not have classifying authority and normally does not deal with classified materials.

(2) *Exemption 2—5 U.S.C. 552(b)(2)*. Records related solely to the internal personnel rules and practices of NSF. This exemption primarily protects information that if released would allow the recipient to circumvent a statute or agency regulation. Administrative information such as rules relating to the work hours, leave, and working conditions of NSF personnel, or similar matters, can be disclosed to the extent that no harm would be caused to the functions to which the information pertains. Examples of records exempt from disclosure include, but are not limited to:

(i) Operating rules, guidelines, manuals on internal procedure, schedules and methods utilized by NSF investigators, inspectors, auditors and examiners.

(ii) Negotiating positions or limits at least until the execution of a contract (including a grant or cooperative agreement) or the completion of the action to which the negotiating positions were applicable. They may also be exempt pursuant to other provisions of this section.

(iii) Information relating to position management and manpower utilization, such as internal staffing plans, authorizations or controls, or involved in determination of the qualifications of candidates for employment, advancement, or promotion including examination questions and answers.

(iv) Computer software, the release of which would allow circumvention of a statute or NSF rules, regulations, orders, manuals, directives, instructions, or procedures; or the integrity and security of data systems.

(3) *Exemption 3—5 U.S.C. 552(b)(3)*. Records specifically exempted from disclosure by another statute that either requires that the information be withheld in such a way that the agency has no discretion in the matter; or establishes particular criteria for withholding or refers to particular types of information to be withheld. Examples of records exempt from disclosure include, but are not limited to:

(i) Trade secrets, processes, operations, style of work, or apparatus; or the confidential statistical data, type, amount, or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation or association, 18 U.S.C. 1905;

(ii) Records that disclose any invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license), 35 U.S.C. 205;

(iii) Contractor proposals not specifically set forth or incorporated by reference into a contract, 41 U.S.C. 253b(m);

(iv) Information protected by the Procurement Integrity Act, 41 U.S.C. 423.

(4) *Exemption 4—5 U.S.C. 552(b)(4)*. Trade secrets and commercial or financial information obtained from a person, and privileged or confidential. Information subject to this exemption is that customarily held in confidence by the originator(s), including nonprofit organizations and their employees. Release of such information is likely to cause substantial harm to the competitive position of the originator or submitter, or impair the Foundation's ability to obtain such information in the future. NSF will process information potentially exempted from disclosure by Exemption 4 under § 612.8. Examples of information exempt from disclosure include, but are not limited to:

(i) Information received in confidence, such as grant applications, fellowship applications, and research proposals prior to award;

(ii) Confidential scientific and manufacturing processes or developments, and technical, scientific, statistical data or other information developed by a grantee.

(iii) Technical, scientific, or statistical data, and commercial or financial information privileged or received in confidence from an existing or potential contractor or subcontractor, in connection with bids, proposals, or contracts, concerning contract performance, income, profits, losses, and expenditures, as well as trade secrets, inventions, discoveries, or other proprietary data. When the provisions of 41 U.S.C. 253b(m) or 41 U.S.C. 423 are met, certain proprietary and source selection information may also be withheld under Exemption 3.

(iv) Confidential proprietary information submitted on a voluntary basis.

(v) Statements or information collected in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(5) *Exemption 5—5 U.S.C. 552(b)(5)*. Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with NSF. Factual material contained in such records will be considered for release if it can be reasonably segregated and is not otherwise exempt. Examples of records exempt from disclosure include, but are not limited to:

(i) Reports, memoranda, correspondence, work papers, minutes of meetings, and staff papers, containing evaluations, advice, opinions, suggestions, or other deliberative material that are prepared for use within NSF or within the Executive Branch of the Government by agency personnel and others acting in a consultant or advisory capacity;

(ii) Advance information on proposed NSF plans to procure, lease, or otherwise acquire, or dispose of materials, real estate, facilities, services or functions, when such information would provide undue or unfair competitive advantage to private interests or impede legitimate government functions;

(iii) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interest;

(iv) Records prepared for use in proceedings before any Federal or State court or administrative body;

(v) Evaluations of and comments on specific grant applications, research projects or proposals, or potential contractors and their products, whether

made by NSF personnel or by external reviewers acting either individually or in panels, committees or similar groups;

(vi) Preliminary, draft or unapproved documents, such as opinions, recommendations, evaluations, decisions, or studies conducted or supported by NSF;

(vii) Proposed budget requests, and supporting projections used or arising in the preparation and/or execution of a budget; proposed annual and multi-year policy, priorities, program and financial plan and supporting papers;

(viii) Those portions of official reports of inspection, reports of the Inspector General, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of NSF, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(6) *Exemption 6—5 U.S.C. 552(b)(6).* Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The exemption applies to living persons and to family members of a deceased person identified in a record. Information in such files which is not otherwise exempt from disclosure pursuant to other provisions of this section will be released to the subject or to his designated legal representative, and may be disclosed to others with the subject's written consent. Examples of records exempt from disclosure include, but are not limited to:

(i) Reports, records, and other materials pertaining to individual cases in which disciplinary or other administrative action has been or may be taken. Opinions and orders resulting from those administrative or disciplinary proceedings shall be disclosed without identifying details if used, cited, or relied upon as precedent.

(ii) Records compiled to evaluate or adjudicate the suitability of candidates for employment, and the eligibility of individuals (civilian or contractor employees) for security clearances, or for access to classified information.

(iii) Reports and evaluations which reflect upon the qualifications or competence of individuals.

(iv) Personal information such as home addresses and telephone and facsimiles numbers, private e-mail addresses, social security numbers, dates of birth, marital status and the like.

(v) The exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest.

(7) *Exemption 7—5 U.S.C. 552(b)(7).* Records or information compiled for civil or criminal law enforcement purposes, including the implementation of Executive Orders or regulations issued pursuant to law. This exemption may exempt from mandatory disclosure records not originally created, but later gathered, for law enforcement purposes.

(i) This exemption applies only to the extent that the production of such law enforcement records or information:

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

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

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, or family members of a deceased person identified in a record;

(D) Could reasonably be expected to disclose the identity of a confidential source, including a source within the Federal Government, or a State, local, or foreign agency or authority, or any private institution, that furnished information on a confidential basis; and information furnished by a confidential source and obtained by a criminal law enforcement authority in a criminal investigation;

(E) 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

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

(ii) Examples of records exempt from disclosure include, but are not limited to:

(A) The identity and statements of complainants or witnesses, or other material developed during the course of an investigation and all materials prepared in connection with related government litigation or adjudicative proceedings;

(B) The identity of firms or individuals investigated for alleged irregularities involving NSF grants, contracts or other matters when no indictment has been obtained, no civil action has been filed against them by the United States, or no government-wide public suspension or debarment has occurred.

(C) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by the NSF Officer of the Inspector General.

(iii) The exclusions contained in 5 U.S.C. 552(c)(1) and (2) may also apply to these records.

(8) *Exemption 8—5 U.S.C. 552(b)(8).* Records contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(9) *Exemption 9—5 U.S.C. 552(b)(9).* Records containing geological and geophysical information and data, including maps, concerning wells.

(b) *Deletion of exempt portions and identifying details.* Any reasonably segregable portion of a record will be provided to requesters after deletion of the portions which are exempt. Whenever any final opinion, order, or other materials required to be made available relates to a private party or parties and the release of the name(s) or other identifying details will constitute a clearly unwarranted invasion of personal privacy, the record shall be published or made available with such identifying details left blank, or shall be published or made available with obviously fictitious substitutes and with a notification such as the following: Names of parties and certain other identifying details have been removed (and fictitious names substituted) in order to prevent a clearly unwarranted invasion of the personal privacy of the individuals involved.

§ 612.8 Business information.

(a) *In general.* Business information obtained by the Foundation from a submitter of that information will be disclosed under the FOIA only under this section's procedures.

(b) *Definitions.* For purposes of this section:

(1) *Business Information* means commercial or financial information obtained by the Foundation from a submitter that may be protected from disclosure under Exemption 4 of the FOIA and § 612.7(a)(4).

(2) *Submitter* means any person or entity from whom the Foundation obtains business information, directly or indirectly. The term includes corporations; state, local, and tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information must use good faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter

requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* The Foundation will provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information wherever required under this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (f) of this section. The notice shall either describe the business information requested or include copies of the requested records or record portions containing the information.

(e) *Where notice is required.* Notice will be given to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) The Foundation has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* NSF will allow a submitter a reasonable time, consistent with statutory requirements, to respond to the notice described in paragraph (d) of this section. If a submitter has any objection to disclosure, it must submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, must show why the information is a trade secret, or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond within the time specified in the notice, the submitter will be considered to have no objection to disclosure of the information. Information provided by a submitter under this paragraph may itself be a record subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* The Foundation will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever it decides to disclose business information over the objection of a submitter, the Foundation will give the submitter written notice, which will include:

(1) A statement of the reason(s) why the submitter's disclosure objections were not sustained;

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

(3) A specified disclosure date, which will be a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section will not apply if:

(1) The Foundation determines that the information should not be disclosed (the Foundation protects from disclosure to third parties information about specific unfunded applications, including pending, withdrawn, or declined proposals);

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

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1988 Comp., p. 235); or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous, in which case the Foundation will, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(i) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the Foundation will promptly notify the submitter(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the Foundation will notify the requester(s).

§ 612.9 Appeals.

(a) *Appeals of denials.* You may appeal a denial of your request to the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, VA 22230. You must make your appeal in writing and it must be received by the Office of the General Counsel within ten days of the receipt of the denial (weekends, legal holidays, and the date of receipt excluded). Clearly mark your appeal letter and the envelope ''Freedom of Information Act Appeal.'' Your appeal letter must include a copy of your written request and the denial together with any written argument you wish to submit.

(b) *Responses to appeals.* A written decision on your appeal will be made by the General Counsel. A decision affirming an adverse determination in whole or in part will contain a statement of the reason(s) for the affirmance, including any FOIA exemption(s) applied, and will inform you of the FOIA provisions for court review of the decision. If the adverse determination is reversed or modified on appeal, in whole or in part, you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.

(c) *When appeal is required.* If you wish to seek review by a court of any denial, you must first appeal it under this section.

§ 612.10 Fees.

(a) *In general.* NSF will charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (k) of this section. If fees are applicable, NSF will itemize the amounts charged. NSF may collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because NSF has reasonable cause to doubt a requester's stated use, NSF will provide the requester a reasonable opportunity to submit further clarification.

(2) *Direct costs* means those expenses that an agency actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) *Duplication* means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape or disk) among others. NSF will honor a requester's specified preference of form or format of disclosure if the record is readily reproducible by NSF, with reasonable effort, in the requested form or format.

(4) *Educational institution* means a preschool, a public or private elementary or secondary school, an

institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought to further scholarly research.

(5) *Noncommercial scientific institution* means an institution that is not operated on a ''commercial'' basis, as that term is defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and made under the auspices of a qualifying institution and that the records are not sought for a commercial use or to promote any particular product or industry, but are sought to further scientific research.

(6) *Representative of the news media or news media requester* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. For ''freelance'' journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but the Agency or the OIG, as appropriate, shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

(7) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure, for example, doing all that is necessary to redact it and prepare it for disclosure. Review costs are recoverable even if a record ultimately is not disclosed. Review time includes time spent considering any formal objection to disclosure made by a business submitter under § 612.8, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* means the process of looking for and retrieving records or information responsive to a request. It includes page by page or line by line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. NSF will ensure that searches are done in the most efficient and least expensive manner reasonably possible. For example, NSF will not search line by line where duplicating an entire document would be quicker and less expensive.

(c) *Fees*. In responding to FOIA requests, NSF will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section:

(1) *Search*. (i) Search fees will be charged for all requests—other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media—subject to the limitations of paragraph (d) of this section. NSF may charge for time spent searching even if responsive records are not located or are withheld entirely as exempt from disclosure.

(ii) *Manual searches for records*. Whenever feasible, NSF will charge at the salary rate(s) (i.e., basic pay plus 16 percent) of the employee(s) conducting the search. Where a homogeneous class of personnel is used exclusively (e.g., all administrative/clerical or all professional/executive), NSF has established an average rate for the range of grades typically involved. Routine search for records by clerical personnel are charged at $2.50 for each quarter hour. When a non-routine, non-clerical search by professional personnel is conducted (for example, where the task of determining which records fall within a request requires professional time) the charge is $7.50 for each quarter hour.

(iii) *Computer searches of records*. NSF will charge at the actual direct cost of conducting the search. This will include the cost of computer operations for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary (i.e., basic pay plus 16 percent) apportionable to the search. When NSF can establish a reasonable agency-wide average rate for computer operating costs and operator/programmer salaries involved in FOIA searches, the Foundation will do so and charge accordingly.

(2) *Duplication*. Duplication fees will be charged to all requesters, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee will be 25 cents per page. For copies produced by computer, such as tapes or printouts, NSF will charge the direct costs, including operator time, of producing the copy. For other forms of duplication, NSF will charge the direct costs of that duplication.

(3) *Review*. Review fees will be charged to requesters who make a commercial use request. Review fees will be charged only for the initial record review—in other words, the review done when NSF determines whether an exemption applies to a particular record or record portion at the initial request level. NSF may charge for review even if a record ultimately is not disclosed. No charge will be made for review at the administrative appeal level for an exemption already applied. However, records or record portions withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies; the costs of that review are chargeable where it is made necessary by a change of circumstances. Review fees will be charged at the salary rate (basic pay plus 16%) of the employee(s) performing the review.

(d) *Limitations on charging fees*. (1) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) Except for requesters seeking records for a commercial use, NSF will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent); and

(ii) The first two hours of search (or the cost equivalent).

(3) Whenever a total fee calculated under paragraph (c) of this section is $25.00 or less for any request, no fee will be charged.

(4) The provisions of paragraphs (d)(2) and (3) of this section work together. This means that noncommercial requesters will be charged no fees unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than $25.00. Commercial requesters will not be charged unless the costs of search, review, and duplication total more than $25.00.

(e) *Notice of anticipated fees in excess of $25.00.* When NSF determines or estimates that the fees to be charged under this section will exceed $25.00, it will notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, NSF will advise the requester that the estimated fee may be only a portion of the total fee. In cases in which a requester has been notified that actual or estimated fees exceed $25.00, the request will not be considered perfected and further work will not be done until the requester agrees to pay the anticipated total fee. Any such agreement should be memorialized in writing. A notice under this paragraph will offer the requester an opportunity to discuss the matter with Foundation personnel in order to reformulate the request to meet the requester's needs at a lower cost, if possible. If a requester fails to respond within 60 days of notice of actual or estimated fees with an agreement to pay those fees, NSF may administratively close the request.

(f) *Charges for other services.* Apart from the other provisions of this section, when NSF chooses as a matter of administrative discretion to provide a requested special service—such as certifying that records are true copies or sending them by other than ordinary mail—the direct costs of providing the service will be charged to the requester.

(g) *Charging interest.* NSF may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by NSF. NSF will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* Where NSF 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 agency may aggregate those requests and charge accordingly. NSF 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, NSF will aggregate them only where there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) and (3) of this section, NSF will not require the requester to make an advance payment—in other words, a payment made before work is begun or continued on a request. Payment owed for work already completed (i.e., a prepayment before copies are sent to a requester) is not an advance payment.

(2) Where NSF determines or estimates that a total fee to be charged under this section will be more than $250.00, it may require the requester to make an advance payment of an amount up to the amount of the entire anticipated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester that has a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged fee to any agency within 30 days of the date of billing, NSF may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before NSF begins to process a new request or continues to process a pending request from that requester.

(4) In cases in which NSF requires advance payment or payment due under paragraph (i)(2) or (3) of this section, the request will not be considered perfected and further work will not be done on it until the required payment is received.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. Where records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, NSF will inform requesters of the steps for obtaining records from those sources so that they may do so most economically.

(k) *Waiver or reduction of fees.* (1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section where NSF determines, based on all available information, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) To determine whether the first fee waiver requirement is met, NSF will consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns ''the operations or activities of the government.'' The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) The informative value of the information to be disclosed: Whether disclosure is ''likely to contribute'' to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. Disclosure of information already in the public domain, in either duplicative or substantially identical form, is unlikely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to ''public understanding.'' The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public will be considered. A representative of the news media as defined in paragraph (b)(6) of this section will normally be presumed to satisfy this consideration.

(iv) The significance of the contribution to public understanding: Whether disclosure is likely to contribute ''significantly'' to public understanding of government operations or activities. The public's understanding of the subject in question must be enhanced by the disclosure to a significant extent as compared to the level of public understanding existing prior to the disclosure. NSF will make no value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is ''important'' enough to be made public.

(3) To determine whether the second fee waiver requirement is met, NSF will consider the following 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. NSF will consider any commercial interest of the requester (with reference to the definition of ''commercial use'' in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters will be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.'' A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. NSF ordinarily will presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(4) Where only some of the requested records satisfy the requirements for a waiver of fees, a waiver will be granted for those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (k)(2) and (3) of this section, insofar as they apply to each request.

§ 612.11 Other rights and services.

Nothing in this part will be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Dated: April 7, 2009.

Amy Northcutt,

Deputy General Counsel.

[FR Doc. E9–8262 Filed 4–10–09; 8:45 am]

BILLING CODE 7555–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 19 and 52

[FAR Case 2006–005; Docket 2009–0014; Sequence 1]

RIN 9000–AL18

Federal Acquisition Regulation; FAR Case 2006–005, HUBZone Program Revisions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement revisions to the Small Business Administration's HUBZone Program as a result of revisions to the Small Business Administration's regulations.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before June 12, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2006–005 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov*. Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2006–005'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with FAR Case 2006–005. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''FAR Case 2006–005'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2006–005 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Rhonda Cundiff, Procurement Analyst, at (202) 501–0044 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAR case 2006–005.

SUPPLEMENTARY INFORMATION:

A. Background

On May 24, 2004, the Small Business Administration (SBA) published a final rule in the **Federal Register** at 69 FR 29411, and on August 30, 2005, an interim rule at 70 FR 51243 amending its HUBZone regulations at 13 CFR Part 126 to implement the Small Business Reauthorization Act of 2000, the Consolidated Appropriations Act, 2005, and other various policy changes. This rule proposes to amend the FAR, as follows, to implement changes in the HUBZone regulations:

- FAR 19.1303(d), Status as a qualified HUBZone small business concern; 52.219–3, Notice of Total HUBZone Set-Aside; and 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, are revised to stipulate that to be eligible for a HUBZone contract, a HUBZone small business concern must be a HUBZone small business concern both at the time of its initial offer and at the time of contract award. SBA revised the HUBZone regulations to require HUBZone small business concerns to ''certify,'' at the time of their initial offers and again at the time of contract award, their HUBZone small business concern status. While the SBA regulations use the term ''certify,'' the certification is intended to be a ''representation'' as used in the FAR. Small business concern offerors are already required to ''represent'' their HUBZone small business concern status at the time of their initial offer.
- FAR 52.219–3 and 52.219–4 are revised to add a requirement that the HUBZone concern provide to the contracting officer a copy of the notice required by 13 CFR 126.501 if material changes occur before award that could affect its HUBZone eligibility.
- The performance of work requirements of sections 52.219–3 and 52.219–4 are revised to be consistent with the SBA HUBZone regulations. Alternate I would be used if there are not at least two HUBZones that can meet the 50 percent requirement. FAR 19.1308, Performance of work requirements (limitations on subcontracting), is also revised to reflect the changes in the performance of work requirements.
- The definition of ''HUBZone contract,'' which is used in the SBA