

corrections to § 411.15(o) retroactive because failure to apply the change retroactively to January 1, 2007 would be contrary to the public interest because it would fail to preserve the public fisc. *OPM v. Richmond*, 496 U.S. 414 (1990). Moreover, retroactivity is necessary to comply with statutory requirements in section 1862(m) of the Act which did not authorize payment for category A devices.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 5, 2007.

Ann C. Agnew,

Executive Secretary to the Department.

Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendments:

**PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS**

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102, 1834, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395m, and 1395hh).

**Subpart B—Medical and Other Health Services**

2. Section 410.33 is amended by—  
A. Revising paragraph (a)(2).  
B. Revising paragraph (g)(6).

The revisions read as follows:

**§ 410.33 [Amended]**

(a) \* \* \*

(2) *Exceptions.* The following diagnostic tests that are payable under the physician fee schedule and furnished by a nonhospital testing entity are not required to be furnished in accordance with the criteria set forth in paragraphs (b) through (e) and (g) and (h) of this section.

\* \* \* \* \*

(g) \* \* \*

(6) Have a comprehensive liability insurance policy of at least \$300,000 per location that covers both the place of business and all customers and employees of the IDTF. The policy must be carried by a nonrelative-owned company.

\* \* \* \* \*

**PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT**

3. The authority citation for part 411 is amended to read as follows:

Authority: Secs. 1102, 1860D–1 through 1860D–42, 1871, and 1877 of the Social

Security Act (42 U.S.C. 1302, 1395w–101 through 1395w–152, 1395hh, and 1395nn).

**Subpart A—General Exclusions and Exclusion of Particular Services**

4. Section 411.15 is amended by revising paragraph (o) to read as follows:

**§ 411.15 [Amended]**

\* \* \* \* \*

(o) Experimental or investigational devices, except for certain devices.

(1) Categorized by the FDA as a non-experimental/investigational (Category B) device defined in § 405.201(b) of this chapter; and

(2) Furnished in accordance with the FDA-approved protocols governing clinical trials.

\* \* \* \* \*

**PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES**

5. The authority citation for Part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(1)).

**Subpart J—Submission of Manufacturer’s Average Sales Price Data**

6. Section 414.804(a)(3)(iv) is revised to read as follows:

**§ 414.804 [Amended]**

(a) \* \* \*

(3) \* \* \*

(iv) *Example.* After adjusting for exempted sales, the total lagged price concessions (discounts, rebates, etc.) over the most recent 12-month period available associated with sales for National Drug Code 12345–6789–01 subject to the ASP reporting requirement equal \$200,000, and the total in dollars for the sales subject to the average sales price reporting requirement for the same period equals \$600,000. The lagged price concessions percentage for this period equals 200,000/600,000 = 0.33333. The total in dollars for the sales subject to the average sales price reporting requirement for the quarter being reported, equals \$50,000 for 10,000 units sold. The manufacturer’s average sales price calculation for this National Drug Code for this quarter is: \$50,000 – (0.33333 × \$50,000) = \$33,334 (net total sales amount); \$33,334/10,000 = \$3.33 (average sales price).

\* \* \* \* \*

[FR Doc. E7–6989 Filed 4–13–07; 8:45 am]

BILLING CODE 4120–01–P

**NATIONAL TRANSPORTATION SAFETY BOARD**

**49 CFR Part 801**

**Public Availability of Information**

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Final rule.

SUMMARY: The NTSB is updating its regulations regarding the availability of information. This amendment updates the NTSB regulations that implement the Freedom of Information Act (FOIA) and Privacy Act, notifies the public of changes in the NTSB’s Freedom of Information Act processing procedures and, in general, advises the public on the availability of information from NTSB accident investigations.

DATES: This final rule will become effective May 23, 2007.

ADDRESSES: A copy of the notice of proposed rulemaking (NPRM), published in the **Federal Register**, is available for inspection and copying in the Board’s public reading room, located at 490 L’Enfant Plaza, SW., Washington, DC 20594–2000. Alternatively, a copy of the NPRM is available on the Board’s Web site, at <http://www.ntsbn.gov>.

FOR FURTHER INFORMATION CONTACT: Gary L. Halbert, General Counsel, (202) 314–6080.

**SUPPLEMENTARY INFORMATION:**

**Regulatory History**

On November 22, 2006, the NTSB published a notice of proposed rulemaking entitled, “Public Availability of Information,” in the **Federal Register** (71 FR 67523). This NPRM set forth amendments to the Board’s regulations regarding the availability of information, and provided updated information regarding how the public may obtain NTSB records. The NPRM also set forth an updated fee schedule to apply to requests for NTSB records.

**Discussion of Comments and Changes**

The NTSB did not receive any comments regarding the aforementioned NPRM. The NTSB also did not receive any requests for a public meeting; therefore, the NTSB did not hold a public meeting on the NPRM.

In the interest of ensuring that all provisions of 49 CFR part 801 are accurate and complete, the Board’s final rule herein will include one minor revision to § 801.60(a) that the NTSB did not include in the NPRM: In the final sentence of § 801.60(a), the rule will now advise requesters to “pay fees in accordance with the instructions

provided on the invoice the FOIA Office sends to the requester." The language of § 801.60(a) in the NPRM had directed requesters to pay fees via check or money order. In the interest of ensuring that changes in banking technology, resources, and the like do not compel the NTSB to continually amend provisions of part 801, the final rule will advise requesters to refer to the payment instructions on each invoice that they receive.

#### Statutory and Regulatory Evaluation

This rule provides current, accurate information to the public regarding how the public may obtain NTSB records and information. This rule will serve to inform and assist the public with regard to obtaining NTSB records and information.

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of the potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under Executive Order 12866. Likewise, this rule does not require an analysis under the Unfunded Mandates Reform Act, 2 U.S.C. 1501–1571, or the National Environmental Policy Act, 42 U.S.C. 4321–4347.

In addition, the NTSB has considered whether this rule would have a significant economic impact on a substantial number of small entities, under the Regulatory Flexibility Act (5 U.S.C. 601–612). The NTSB certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule requests no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Furthermore, the NTSB does not anticipate that this rule will have a substantial, direct effect on State or local governments; as such, this rule does not have implications for federalism under Executive Order 13132, Federalism. This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

In addition, the NTSB has evaluated this rule under: Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights; Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks; Executive Order 13175, Consultation and Coordination with

Indian Tribal Governments; Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use; and the National Technology Transfer and Advancement Act, 15 U.S.C. 272 note. The NTSB has concluded that this rule does not contravene any of the requirements set forth in these Executive Orders or statutes, nor does this rule prompt further consideration with regard to such requirements.

#### List of Subjects in 49 CFR Part 801

Archives and records, Freedom of information, Privacy.

■ For the reasons discussed in the preamble, the NTSB revises 49 CFR part 801 to read as follows:

### PART 801—PUBLIC AVAILABILITY OF INFORMATION

#### Subpart A—Applicability and Policy

Sec.

- 801.1 Applicability.
- 801.2 Policy.
- 801.3 Definitions.

#### Subpart B—Administration

- 801.10 General.
- 801.11 Segregability of records.
- 801.12 Protection of records.

#### Subpart C—Time Limits

- 801.20 Processing of records.
- 801.21 Initial determination.
- 801.22 Final determination.
- 801.23 Extension.

#### Subpart D—Accident Investigation Records

- 801.30 Records from accident investigations.
- 801.31 Public hearings regarding investigations.
- 801.32 Accident reports.

#### Subpart E—Other Board Documents

- 801.40 The Board's rules.
- 801.41 Reports to Congress.

#### Subpart F—Exemption from Public Disclosure

- 801.50 Exemptions from disclosure.
- 801.51 National defense and foreign policy secrets.
- 801.52 Internal personnel rules and practices of the NTSB.
- 801.53 Records exempt by statute from disclosure.
- 801.54 Trade secrets and commercial or financial information.
- 801.55 Interagency and intra-agency exchanges.
- 801.56 Unwarranted invasion of personal privacy.
- 801.57 Records compiled for law enforcement purposes.
- 801.58 Records for regulation of financial institutions.
- 801.59 Geological records.

#### Subpart G—Fee Schedule

- 801.60 Fee schedule.

801.61 Appeals of fee determinations.

**Authority:** Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101–1155); 5 U.S.C. 551(2); Freedom of Information Act (5 U.S.C. 552); 18 U.S.C. 641 and 2071; 31 U.S.C. 3717 and 9701; Federal Records Act, 44 U.S.C. Chapters 21, 29, 31, and 33.

#### Subpart A—Applicability and Policy

##### § 801.1 Applicability.

(a) This part contains the rules that the National Transportation Safety Board (NTSB) follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. These rules should be read together with the FOIA, which provides additional information about public access to records maintained by the NTSB.

(b) This part also provides for document services and the fees for such services, pursuant to 31 U.S.C. 9701.

(c) This part applies only to records existing when the request for the information is made. The NTSB is not required to create records for the sole purpose of responding to a FOIA request.

(d) Sections 801.51 through 801.59 of this chapter describe records that are exempt from public disclosure.

##### § 801.2 Policy.

(a) In implementing 5 U.S.C. 552, it is the policy of the NTSB to make information available to the public to the greatest extent possible, consistent with the mission of the NTSB. Information the NTSB routinely provides to the public as part of a regular NTSB activity (such as press releases and information disclosed on the NTSB's public Web site) may be provided to the public without compliance with this part. In addition, as a matter of policy, the NTSB may make discretionary disclosures of records or information otherwise exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption; however, this policy does not create any right enforceable in court.

(b) Given the NTSB's stated policy of providing as much information as possible regarding general NTSB operations and releasing documents involving investigations, the NTSB strongly encourages requesters seeking information to check the NTSB's Web site for such information before submitting a FOIA request. For every investigation in which the NTSB has determined the probable cause of an accident, the NTSB's docket management system will include a "public docket" containing

documentation that the investigator-in-charge deemed pertinent to the investigation. Requesters may obtain these public dockets without submitting a FOIA request. The NTSB encourages all requesters to review the public docket materials *before* submitting a FOIA request.

### § 801.3 Definitions.

The following definitions shall apply in this part:

(a) "Record" includes any writing, drawing, map, recording, tape, film, photo, or other documentary material by which information is preserved. In this part, "document" and "record" shall have the same meaning.

(b) "Redact" refers to the act of making a portion of text illegible by placing a black mark on top of the text.

(c) "Public Docket" includes a collection of records from an accident investigation that the investigator who oversaw the investigation of that accident has deemed pertinent to determining the probable cause of the accident.

(d) "Non-docket" items include other records from an accident that the investigator who oversaw the investigation of that accident has deemed irrelevant or not directly pertinent to determining the probable cause of the accident.

(e) "Chairman" means the Chairman of the NTSB.

(f) "Managing Director" means the Managing Director of the NTSB.

(g) "Requester" means any person, as defined in 5 U.S.C. 551(2), who submits a request pursuant to the FOIA.

### Subpart B—Administration

#### § 801.10 General.

(a) The NTSB's Chief, Records Management Division, is responsible for the custody and control of all NTSB records required to be preserved under the Federal Records Act, 44 U.S.C. Chapters 21, 29, 31, and 33.

(b) The NTSB's FOIA Officer shall be responsible for the initial determination of whether to release records within the 20-working-day time limit, or the extension specified in the Freedom of Information Act.

(c) The NTSB's Chief, Records Management Division, shall:

(1) Maintain for public access and commercial reproduction all accident files containing aviation and surface investigators' reports, factual accident reports or group chairman reports, documentation and accident correspondence files, transcripts of public hearings, if any, and exhibits; and

(2) Maintain a public reference room, also known as a "Reading Room," in accordance with 5 U.S.C. 552(a)(2). The NTSB's public reference room is located at 490 East L'Enfant Plaza, SW., Washington, DC. Other records may be available in the NTSB's Electronic Reading Room, which is located on the NTSB's Web site, found at <http://www.ntsb.gov>.

(d) Requests for documents must be made in writing to: National Transportation Safety Board, Attention: FOIA Officer CIO-40, 490 L'Enfant Plaza, SW., Washington, DC 20594-2000. All requests:

(1) Must reasonably identify the record requested. For requests regarding an investigation of a particular accident, requesters should include the date and location of the accident, as well as the NTSB investigation number. In response to broad requests for records regarding a particular investigation, the FOIA Office will notify the requester of the existence of a public docket, and state that other non-docket items may be available, or may become available, at a later date. After receiving this letter and reviewing the items in the public docket, requesters should notify the FOIA office if the items contained in the public docket suffice to fulfill their request.

(2) Must be accompanied by the fee or agreement (if any) to pay the reproduction costs shown in the fee schedule at § 801.60 of this title, and

(3) Must contain the name, address, and telephone number of the person making the request. Requesters must update their address and telephone number in writing should this information change.

(e) The envelope in which the requester submits the request should be marked prominently with the letters "FOIA." If a request fails to include a citation to the FOIA, the NTSB FOIA Office will attempt to contact the requester immediately to rectify the omission and/or clarify the request. However, the 20-working-day time limit for processing shall not commence until the FOIA Office receives a complete request.

(f) The field offices of the NTSB shall not maintain, for public access, records maintained by the Chief, Records Management Division. Requests mailed to NTSB field offices will not satisfy the NTSB's requirements for submitting a FOIA request.

(g) The NTSB may work with a commercial reproduction firm to accommodate requests for reproduction of accident records from the public docket. The reproduction charges may be subject to change. The NTSB will

update its FOIA Web site to reflect any such changes. Section 801.60 of this title contains a current fee schedule.

(h) The NTSB will not release records originally generated by other agencies or entities. Instead, the NTSB will refer such requests for other agencies' records to the appropriate agency, which will make a release determination upon receiving and processing the referred request.

(i) Where a requester seeks a record on behalf of another person, and the record contains that person's personal information protected by Exemption 6 of the FOIA (see section 801.56 of this title), the NTSB requires the requester to submit a notarized statement of consent from the person whose personal information is contained in the record, before the NTSB releases the record.

(j) In general, the NTSB will deny requests for records concerning a pending investigation, pursuant to appropriate exemptions under the FOIA. The FOIA Office will notify the requester of this denial, and will provide the requester with information regarding how the requester may receive information on the investigation once the investigation is complete. The NTSB discourages requesters from submitting multiple FOIA requests in a continuing effort to obtain records before an investigation is complete.

#### § 801.11 Segregability of records.

The initial decision of the FOIA Officer will include a determination of segregability. If it is reasonable to do so, the exempt portions of a record will be segregated and, where necessary, redacted, and the nonexempt portions will be sent to the requester.

#### § 801.12 Protection of records.

(a) No person may, without permission, remove from the place where it is made available any record made available for inspection or copying under § 801.10(c)(2) of this part. Stealing, altering, mutilating, obliterating, or destroying, in whole or in part, such a record shall be deemed a criminal offense.

(b) Section 641 of title 18 of the United States Code provides, in pertinent part, as follows: "Whoever \* \* \* steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record \* \* \* or thing of value of the United States or of any department or agency thereof \* \* \* shall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property in the aggregate, combining amounts from all the counts for which the

defendant is convicted in a single case, does not exceed the sum of \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.”

(c) Section 2071(a) of title 18 of the United States Code provides, in pertinent part, as follows:

Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited \* \* \* in any public office, or with any \* \* \* public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both.

### Subpart C—Time Limits

#### § 801.20 Processing of requests.

(a) The NTSB processes FOIA requests upon receipt. The NTSB FOIA Office may notify the requester that the NTSB has received the request. The FOIA Office will then place each request on one of three tracks:

(1) Track 1: Requests for which there are no records, requests that meet the criteria for expedited processing, or requests that seek records that have been produced in response to a prior request.

(2) Track 2: Requests that do not involve voluminous records or lengthy consultations with other entities.

(3) Track 3: Requests that involve voluminous records and for which lengthy or numerous consultations are required, or those requests which may involve sensitive records.

(b) Regarding expedited processing, if a requester states that he or she has a compelling need for the expedited treatment of their request, then the NTSB FOIA Office will determine whether to expedite the request and, where appropriate, do so.

#### § 801.21 Initial determination.

The NTSB FOIA Officer will make an initial determination as to whether to release a record within 20 working days (excluding Saturdays, Sundays, and legal public holidays) after the request is received. This time limit may be extended up to 10 additional working days in accordance with § 801.23 of this part. The person making the request will be notified immediately in writing of such determination. If a determination is made to release the requested record(s), such record(s) will be made available promptly. If the FOIA Officer determines not to release the record(s), the person making the request will, when he or she is notified of such determination, be advised of:

(a) The reason for the determination,

(b) the right to appeal the determination, and

(c) the name and title or positions of each person responsible for the denial of the request.

#### § 801.22 Final determination.

Requesters seeking an appeal of the FOIA Officer's initial determination must send a written appeal to the NTSB's Managing Director within 20 days. The NTSB's Managing Director will determine whether to grant or deny any appeal made pursuant to § 801.21 within 20 working days (excluding Saturdays, Sundays, and legal public holidays) after receipt of such appeal, except that this time limit may be extended for as many as 10 additional working days, in accordance with § 801.23.

#### § 801.23 Extension.

In unusual circumstances as specified in this section, the time limits prescribed in either § 801.21 or § 801.22, may be extended by written notice to the person making a request and setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. Such notice will not specify a date that would result in an extension for more than 10 working days. As used in this paragraph, “unusual circumstances,” as they relate to any delay that is reasonably necessary to the proper processing of the particular request, means—

(a) The need to search for and collect the requested records from field facilities or other establishments;

(b) The need to search for, collect, and appropriately examine and process a voluminous amount of records which are the subject of a single request; or

(c) The need to consult with another agency that has a substantial interest in the disposition of the request or with two or more components of the agency having substantial subject-matter interest therein.

### Subpart D—Accident Investigation Records

#### § 801.30 Records from accident investigations.

Upon completion of an accident investigation, each NTSB investigator (or “group chairman,” depending on the investigation) shall complete a factual report with supporting documentation and include these items in the public docket for the investigation. The Chief, Records Management Division, will then make the records available to the public for inspection or production by an order for commercial copying.

#### § 801.31 Public hearings regarding investigations.

Within approximately four (4) weeks after a public hearing concerning an investigation, the Chief, Records Management Division, will make available to the public the hearing transcript. On or before the date of the hearing, the Chief, Records Management Division, will make the exhibits introduced at the hearing available to the public for inspection or commercial copy order.

#### § 801.32 Accident reports.

(a) The NTSB will report the facts, conditions, and circumstances, and its determination of the probable causes of U.S. civil transportation accidents, in accordance with 49 U.S.C. 1131(e).

(b) These reports may be made available for public inspection in the NTSB's public reference room and/or on the NTSB's Web site, at <http://www.nts.gov>.

### Subpart E—Other Board Documents

#### § 801.40 The Board's rules.

The NTSB's rules are published in the Code of Federal Regulations as Parts 800 through 850 of Title 49.

#### § 801.41 Reports to Congress.

The NTSB submits its annual report to Congress each year, in accordance with 49 U.S.C. 1117. The report will be available on the NTSB's Web site, found at <http://www.nts.gov>. Interested parties may purchase the report from the Government Printing Office or review it in the NTSB's public reference room. All other reports or comments to Congress will be available in the NTSB's public reference room for inspection or by ordering a copy after issuance.

### Subpart F—Exemption From Public Disclosure

#### § 801.50 Exemptions from disclosure.

Title 5, United States Code section 552(a) and (b) exempt certain records from public disclosure. As stated in § 801.2 of this title, the NTSB may choose to make a discretionary release of a record that is authorized to be withheld under 5 U.S.C. 552(b), unless it determines that the release of that record would be inconsistent with the purpose of the exemption concerned. Examples of records given in §§ 801.51 through 801.58 included within a particular statutory exemption are not necessarily illustrative of all types of records covered by the applicable exemption.

**§ 801.51 National defense and foreign policy secrets.**

Pursuant to 5 U.S.C. 552(b)(1), national defense and foreign policy secrets established by Executive Order, as well as properly classified documents, are exempt from public disclosure. Requests to the NTSB for such records will be transferred to the source agency as appropriate, where such classified records are identified. (See, e.g., Executive Order 12,958, as amended on March 25, 2003.)

**§ 801.52 Internal personnel rules and practices of the NTSB.**

Pursuant to 5 U.S.C. 552(b)(2), the following records are exempt from disclosure under FOIA:

(a) Records relating solely to internal personnel rules and practices, including memoranda pertaining to personnel matters such as staffing policies, and procedures for the hiring, training, promotion, demotion, or discharge of employees, and management plans, records, or proposals relating to labor-management relations.

(b) Records regarding:

(1) Internal matters of a relatively trivial nature that have no significant public interest, and

(2) Predominantly internal matters, the release of which would risk circumvention of a statute or agency regulation.

**§ 801.53 Records exempt by statute from disclosure.**

Pursuant to 5 U.S.C. 552(b)(3), the NTSB will not disclose records specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), provided that such statute:

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

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

**§ 801.54 Trade secrets and commercial or financial information.**

Pursuant to 5 U.S.C. 552(b)(4), trade secrets and items containing commercial or financial information that are obtained from a person and are privileged or confidential are exempt from public disclosure.

**§ 801.55 Interagency and intra-agency exchanges.**

(a) Pursuant to 5 U.S.C. 552(b)(5), any record prepared by an NTSB employee for internal Government use is exempt from public disclosure to the extent that it contains—

(1) Opinions made in the course of developing official action by the NTSB

but not actually made a part of that official action, or

(2) Information concerning any pending NTSB proceeding, or similar matter, including any claim or other dispute to be resolved before a court of law, administrative board, hearing officer, or contracting officer.

(b) The purpose of this section is to protect the full and frank exchange of ideas, views, and opinions necessary for the effective functioning of the NTSB. These resources must be fully and readily available to those officials upon whom the responsibility rests to take official NTSB action. Its purpose is also to protect against the premature disclosure of material that is in the developmental stage, if premature disclosure would be detrimental to the authorized and appropriate purposes for which the material is being used, or if, because of its tentative nature, the material is likely to be revised or modified before it is officially presented to the public.

(c) Examples of materials covered by this section include, but are not limited to, staff papers containing advice, opinions, or suggestions preliminary to a decision or action; preliminary notes; advance information on such things as proposed plans to procure, lease, or otherwise hire and dispose of materials, real estate, or facilities; documents exchanged in preparation for anticipated legal proceedings; material intended for public release at a specified future time, if premature disclosure would be detrimental to orderly processes of the NTSB; records of inspections, investigations, and surveys pertaining to internal management of the NTSB; and matters that would not be routinely disclosed in litigation but which are likely to be the subject of litigation.

**§ 801.56 Unwarranted invasion of personal privacy.**

Pursuant to 5 U.S.C. 552(b)(6), any personal, medical, or similar file is exempt from public disclosure if its disclosure would harm the individual concerned or would be a clearly unwarranted invasion of the person's personal privacy.

**§ 801.57 Records compiled for law enforcement purposes.**

Pursuant to 5 U.S.C. 552(b)(7), any records compiled for law or regulatory enforcement are exempt from public disclosure to the extent that disclosure would interfere with enforcement, would be an unwarranted invasion of privacy, would disclose the identity of a confidential source, would disclose investigative procedures and practices,

or would endanger the life or security of law enforcement personnel.

**§ 801.58 Records for regulation of financial institutions.**

Pursuant to 5 U.S.C. 552(b)(8), records compiled for agencies regulating or supervising financial institutions are exempt from public disclosure.

**§ 801.59 Geological records.**

Pursuant to 5 U.S.C. 552(b)(9), records concerning geological wells are exempt from public disclosure.

**Subpart G—Fee Schedule****§ 801.60 Fee schedule.**

(a) *Authority.* Pursuant to 5 U.S.C. 552(a)(4)(i) and 52 FR 10,012 (Mar. 27, 1987), the NTSB may charge certain fees 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 (e) of this section. The NTSB may collect all applicable fees before sending copies of requested records to a requester. A requester must pay fees in accordance with the instructions provided on the invoice the FOIA Office sends to the requester.

(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. This includes the furtherance of commercial interests through litigation. When it appears that the requester will use the requested records for a commercial purpose, either because of the nature of the request or because the NTSB has reasonable cause to doubt a requester's stated use, the NTSB shall provide the requester with a reasonable opportunity to submit further clarification.

(2) *Direct costs* means those expenses that an agency actually incurs in searching for, reviewing, and duplicating records in response to a FOIA request. This includes the salaries of employees performing the work, as listed below, but does not include overhead expenses such as the costs of office space.

(3) *Duplication* means the copying of a record, or of the information contained in a record, in response to a FOIA request.

(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. In order for a requester to demonstrate that their request falls within the category of an "educational institution," the requester must show that the request is authorized by the qualifying institution and that the requester does not seek the records for commercial use, but only to further scholarly research.

(5) *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. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization (for example, a journalist may submit a copy of a publication contract for which the journalist needs NTSB records).

(6) *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. "Review" also includes processing the record(s) for disclosure, which includes redacting and otherwise preparing releasable records for disclosure. The NTSB may require review costs even if the NTSB ultimately does not release the record(s).

(7) *Search* means the process of looking for and retrieving records or information within the scope of a request. "Search" 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. The NTSB will make an effort to conduct such searches in the least expensive manner.

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

(1) *Search*.

(i) The NTSB will charge search fees for all requests, unless an educational institution, a noncommercial scientific institution, or a news media representative submits a request containing adequate justification for obtaining a fee waiver. These fees, however, are subject to the limitations of paragraph (d) of this section. The NTSB may charge for time spent searching even if the NTSB does not locate any responsive record or if the NTSB withholds the record(s) located because such record(s) are exempt from disclosure.

(ii) The NTSB will charge \$4.00 for each quarter of an hour spent by clerical personnel in searching for and retrieving a requested record. Where clerical personnel cannot entirely perform a search and retrieval (for example, where the identification of records within the scope of a request requires the assistance of professional personnel), the applicable fee will instead be \$7.00 for each quarter hour of search time spent by professional personnel. Where a request requires the time of managerial personnel, the fee will be \$10.25 for each quarter hour of time spent by these personnel.

(2) *Duplication*. The NTSB will charge duplication fees, subject to the limitations of paragraph (d) of this section.

(i) The NTSB utilizes the services of a commercial reproduction facility for requests for duplicates of NTSB public dockets and publications.

(ii) Regarding the reproduction of non-public records in response to a FOIA request, the NTSB will charge \$0.10 per page for the duplication of a standard-size paper record. For other forms of duplication, the NTSB will charge the direct costs of the duplication.

(iii) Where the NTSB certifies records upon request, the NTSB will charge the direct cost of certification.

(3) *Review*. The NTSB will charge fees for the initial review of a record to determine whether the record falls within the scope of a request, or whether the record is exempt from disclosure. Such fees will be charged to requesters who make a request for commercial purposes. The NTSB will not charge for subsequent review of the request and responsive record; for example, in general, the NTSB will not charge additional fees for review at the administrative appeal level when the NTSB has already applied an exemption. The NTSB will charge review fees at the same rate as those charged for a search under paragraph (c)(1)(ii), above.

(c) *Limitations on charging fees*. For purposes of this section:

(1) The NTSB will not charge a fee for notices, decisions, orders, etc. provided to persons acting as parties in the investigation, or where required by law to be served on a party to any proceeding or matter before the NTSB. Likewise, the NTSB will not charge fees for requests made by family members of accident victims, when the NTSB has investigated the accident that is the subject of the FOIA request.

(2) The NTSB will not charge a search fee for requests from educational

institutions or representatives of the news media.

(3) The NTSB will not charge a search fee or review fee for a quarter-hour period unless more than half of that period is required for search or review.

(4) Except for requesters seeking records for commercial use, the NTSB will provide the following items *without* charge:

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

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

(5) Whenever the total fee calculated under paragraph (c) of this section is \$14.00 or less for any request, the NTSB will not charge a fee.

(6) When the NTSB's FOIA Office determines or estimates that fees to be charged under this section will amount to more than \$25.00, the Office 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 the FOIA Office is able to estimate only a portion of the expected fee, the FOIA Office will advise the requester that the estimated fee may be only a portion of the total fee. Where the FOIA Office notifies a requester that the actual or estimated fees will exceed \$25.00, the NTSB will not expend additional agency resources on the request until the requester agrees in writing to pay the anticipated total fee. In circumstances involving a total fee that will exceed \$250.00, the NTSB may require the requester to make an advance payment or deposit of a specific amount before beginning to process the request.

(7) The NTSB 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 at 31 U.S.C. 3717 and will accrue from the date of the billing until the NTSB receives payment. The NTSB shall 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.

(8) Where a requester has previously failed to pay a properly charged FOIA fee to the NTSB within 30 days of the date of billing, the NTSB 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 the NTSB begins to process a new request or continues to process a pending request from that requester.

(9) Where the NTSB reasonably believes that a requester or group of requesters acting together is attempting to divide a request into multiple series of requests for the purpose of avoiding fees, the NTSB may aggregate those requests and charge accordingly.

(d) *Requirements for waiver or reduction of fees.* For fee purposes, the NTSB will determine, whenever reasonably possible, the use to which a requester will put the requested records.

(1) The NTSB will furnish records responsive to a request without charge, or at a reduced charge, where the NTSB determines, based on all available information, that the requester has shown that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations of activities of the government, and

(ii) Disclosure of the requested information is not primarily in the commercial interest or for the commercial use of the requester.

(2) In determining whether disclosure of the requested information is in the public interest, the NTSB will consider the following factors:

(i) Whether the subject of the requested records concerns identifiable operations or activities of the federal government, with a connection that is direct and clear, and not remote or attenuated. In this regard, the NTSB will consider whether a requester's use of the documents would enhance transportation safety or contribute to the NTSB's programs.

(ii) Whether the portions of a record subject to disclosure are meaningfully informative about government operations or activities. The disclosure of information already in the public domain, in either a duplicative or substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) Whether disclosure of the requested information would contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. The NTSB will consider a requester's expertise in the subject area and ability to effectively convey information to the public.

(iv) Whether the disclosure is likely to enhance the public's understanding of government operations or activities.

(3) In determining whether the requester is primarily in the commercial

interest of the requester, the NTSB will consider the following factors:

(i) The existence and magnitude of any commercial interest the requester may have, or of any person on whose behalf the requester may be acting. The NTSB will provide requesters with an opportunity in the administrative process to submit explanatory information regarding this consideration.

(ii) Whether the commercial interest is greater in magnitude than any public interest in disclosure.

(4) Additionally, the NTSB may, at its discretion, waive publication, reproduction, and search fees for qualifying foreign countries, international organizations, nonprofit public safety entities, State and Federal transportation agencies, and colleges and universities, after approval by the Chief, Records Management Division.

(5) Where only some of the records to be released satisfy the requirements for a waiver of fees, the NTSB will grant a waiver for those particular records.

(6) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (e)(2) and (e)(3) of this section, insofar as they apply to each request. The NTSB will exercise its discretion to consider the cost-effectiveness of its use of administrative resources in determining whether to grant waivers or reductions of fees.

(e) Services available free of charge.

(1) The following documents are available without commercial reproduction cost until limited supplies are exhausted:

(i) Press releases;

(ii) Safety Board regulations (Chapter VIII of Title 49, Code of Federal Regulations);

(iii) Indexes to initial decisions, Board orders, opinion and orders, and staff manuals and instructions;

(iv) Safety recommendations; and

(v) NTSB Annual Reports.

(2) The NTSB public Web site, located at <http://www.nts.gov>, also includes an e-mail subscription service for press releases, safety recommendations, and other announcements.

#### **§ 801.61 Appeals of fee determinations.**

Requesters seeking an appeal of the FOIA Officer's fee or fee waiver determination must send a written appeal to the NTSB's Managing Director within 20 days. The NTSB's Managing Director will determine whether to grant or deny any appeal made pursuant to § 801.21 within 20 working days (excluding Saturdays, Sundays, and legal public holidays) after receipt of such appeal, except that this time limit

may be extended for as many as 10 additional working days, in accordance with § 801.23.

Dated: April 10, 2007.

**Vicky D'Onofrio,**

*Federal Register Liaison Officer.*

[FR Doc. E7-7103 Filed 4-13-07; 8:45 am]

**BILLING CODE 7533-01-P**

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

[Docket No. 070213033-7033-01; I.D. 040907D]

#### **Fisheries of the Economic Exclusive Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; modification of a closure.

**SUMMARY:** NMFS is opening directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using pot or hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully use the 2007 total allowable catch (TAC) of Pacific cod specified for catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), April 30, 2007, through 2400 hrs, A.l.t., December 31, 2007. Comments must be received at the following address no later than 4:30 p.m., A.l.t., April 30, 2007.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

- Mail to: P.O. Box 21668, Juneau, AK 99802;

- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;

- FAX to 907-586-7557;

- E-mail to [inseason-akr@noaa.gov](mailto:inseason-akr@noaa.gov) and include in the subject line and body of the e-mail the document identifier: bspclt60re.fo.wpd (E-mail comments, with or without attachments, are limited to 5 megabytes); or

- Webform at the Federal eRulemaking Portal: <http://www.regulations.gov>.