

[FR Doc. 99-4169 Filed 2-18-99; 8:45 am]  
BILLING CODE 4910-13-M

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 157**

[Docket No. RM81-19-000]

**Project Cost and Annual Limits**

Issued February 11, 1999.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the authority delegated by 18 CFR 375.307(e)(1), the Director of the Office of Pipeline Regulation computes and publishes the project cost and annual limits specified in Table I of § 157.208(d) and Table II of § 157.215(a) for each calendar year.

**EFFECTIVE DATE:** January 1, 1999.

**FOR FURTHER INFORMATION, CONTACT:** Michael J. McGehee, Division of Pipeline Certificates, OPR, (202) 208-2257.

**SUPPLEMENTARY INFORMATION:**

**United States of America**

*Federal Energy Regulatory Commission*

Publication of Project Cost Limits Under Blanket Certificates

Docket No. RM81-19-000

**Order of the Director, OPR**

Issued February 11, 1999.

Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶ 61,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the "limits specified in Tables I and II shall be adjusted each calendar year to reflect the 'GNP implicit price deflator' published by the Department of Commerce for the previous calendar year."

Pursuant to § 375.307(e)(1) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Pipeline Regulation. The cost limits for calendar

year 1998, as published in Table I of § 157.208(d) and Table II of § 157.215(a), are hereby issued.

Note that these inflation adjustments are based on the Gross Domestic Product (GDP) Implicit Price Deflator, rather than the Gross National Product (GNP) Implicit Price Deflator which is not yet available for 1998. The Commerce Department advises that in recent years the annual change has been virtually the same for both indices. Further adjustments will be made, if necessary.

**List of subjects in 18 CFR Part 157**

Natural Gas.

**Marilyn L. Rand,**

*Director, Division of Pipeline Certificates, Office of Pipeline Regulation.*

Accordingly, 18 CFR Part 157 is amended as follows:

**PART 157—[AMENDED]**

1. The authority citation for Part 157 continues to read as follows:

**Authority:** 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352.

**§ 157.208 [Amended]**

2. Table I in § 157.208(d) is revised to read as follows:

TABLE I

Year	Limit	
	Auto. proj. cost limit (col. 1)	Prior notice proj. cost limit (col. 2)
1982 .....	\$4,200,000	\$12,000,000
1983 .....	4,500,000	12,800,000
1984 .....	4,700,000	13,300,000
1985 .....	4,900,000	13,800,000
1986 .....	5,100,000	14,300,000
1987 .....	5,200,000	14,700,000
1988 .....	5,400,000	15,100,000
1989 .....	5,600,000	15,600,000
1990 .....	5,800,000	16,000,000
1991 .....	6,000,000	16,700,000
1992 .....	6,200,000	17,300,000
1993 .....	6,400,000	17,700,000
1994 .....	6,600,000	18,100,000
1995 .....	6,700,000	18,400,000
1996 .....	6,900,000	18,800,000
1997 .....	7,000,000	19,200,000
1998 .....	7,100,000	19,600,000
1999 .....	7,200,000	19,800,000

**§ 157.215 [Amended]**

3. Table II in § 157.215(a) is revised to read as follows:

TABLE II

Year	Limit
1982 .....	\$2,700,000
1983 .....	2,900,000
1984 .....	3,000,000

TABLE II—Continued

Year	Limit
1985 .....	3,100,000
1986 .....	3,200,000
1987 .....	3,300,000
1988 .....	3,400,000
1989 .....	3,500,000
1990 .....	3,600,000
1991 .....	3,800,000
1992 .....	3,900,000
1993 .....	4,000,000
1994 .....	4,100,000
1995 .....	4,200,000
1996 .....	4,300,000
1997 .....	4,400,000
1998 .....	4,500,000
1999 .....	4,550,000

[FR Doc. 99-4202 Filed 2-18-99; 8:45 am]

BILLING CODE 6717-01-P

**OVERSEAS PRIVATE INVESTMENT CORPORATION**

**22 CFR Parts 706, 713**

RIN 3420-AA02

**Production of Nonpublic Records and Testimony of OPIC Employees in Legal Proceedings**

**AGENCY:** Overseas Private Investment Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes rules regarding subpoenas seeking nonpublic records or the testimony of current or former OPIC employees in legal proceedings. The final rule facilitates access to records in OPIC's custody by centralizing agency decision-making with respect to demands for records or testimony in such legal proceedings. The final rule provides procedures, requirements and information on how OPIC will handle these matters, and expressly prohibits any disclosure or testimony except as provided by the rule. The effect of this final rule will be, among other benefits, to ensure an efficient use of OPIC resources, promote uniformity in decisions, protect confidential information, maintain agency control over the release of official information, protect the interests of the United States, and provide guidance to parties. The final rule also amends the current rule regarding release of OPIC records which are exempt from disclosure under the Freedom of Information Act (FOIA), to conform with the procedures provided in this final rule.

**DATES:** Effective March 22, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mitchel Neurock, Counsel for

Administrative Affairs, at (202) 336-8400.

**SUPPLEMENTARY INFORMATION:** This final rule implements, with minor technical changes, the proposed rule published on December 10, 1998. 63 FR 68213. More than 60 government agencies and departments have promulgated regulations governing the circumstances and manner in which an employee may respond to demands for testimony or production of documents. These regulations, issued under the authority of 5 U.S.C. 301, the so-called "housekeeping statute," are separate from FOIA regulations. In addition, OPIC has statutory authority to "take such actions as may be necessary or appropriate to carry out the powers" granted it by Congress. 22 U.S.C. 2199(d).

The housekeeping statute expressly states that it does not provide a basis for withholding information or limiting the availability of records, but authorizes a head of an executive agency to issue "regulations for the government of his department, the conduct of its employees, the distribution and performance of its business and the custody, use and preservation of its records, papers, and property." 5 U.S.C. 301. These regulations are known as "Touhy regulations," thanks to a landmark Supreme Court decision, *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

OPIC receives subpoenas and requests for OPIC employees to provide evidence in legal proceedings. Typically, subpoenas are for OPIC records which are not available to the public under the Freedom of Information Act (FOIA), 5 U.S.C. 552. Also, OPIC receives subpoenas and requests for OPIC employees to appear as witnesses in legal proceedings in conjunction with requests for nonpublic records or to provide testimony.

In recent years, the number of requests has averaged 3 to 4 per year. Often, these subpoenas and requests relate to litigation involving projects financed and/or insured in whole or in part by OPIC, where one or more parties want to use nonpublic records, such as OPIC financing documents, in the case. In addition, parties to litigation frequently wish to have an OPIC employee, often a finance or insurance officer, testify to establish the authenticity of the records or to explain the information contained in those records. If OPIC provides these records and an OPIC employee appears as a witness, this will cause a significant disruption in the employee's work schedule. Moreover, instead of

producing a witness to testify as to the authenticity of documents, OPIC could provide documents under its corporate seal, the authenticity of which must be judicially noted. See 22 U.S.C. 2199(d).

Additionally, in many cases parties wish to use an OPIC employee as an expert witness on matters such as the fundamentals of project finance or other issues involving opinion evidence. OPIC's experience has been that, in practically all cases, the parties can address these issues by eliciting the testimony of other witnesses, including the testimony of their own independent expert witnesses. They may also use their own records.

OPIC's prior regulations failed to inform parties about any matter concerning submission of subpoenas. There was no guidance for parties seeking to submit subpoenas addressing when parties should submit a request for nonpublic documents or testimony, the time period for OPIC's review of such a request, potential fees, or, if a request is granted, any restrictions which OPIC might place upon the disclosure of records or the appearance of an OPIC employee as a witness. There was also no guidance for parties about the factors OPIC will consider in making its determination in response to such requests.

This final rule fills in these gaps in OPIC's regulations. The final rule, in brief: prohibits disclosure of nonpublic records or testimony by OPIC employees, as defined, absent compliance with the rule; lets the public know what information to submit and what factors OPIC will consider; and sets out filing fees, deadlines and potential restrictions on disclosure of nonpublic documents and testimony of OPIC employees. The charges for witnesses are the same as those provided by the federal courts, and the fees relating to the production of records are the same as those charged under FOIA.

A few simple definitions clarify that this final rule applies to a broad range of cases (not just matters before courts). The final rule applies to former as well as to current OPIC employees. Former OPIC employees remain prohibited from testifying about specific matters for which they had responsibility during their OPIC employment, unless permitted to testify as provided in this final rule. They are not, however, barred from appearing on general matters or otherwise employing their expertise (as expert witnesses, for example).

This final rule solves some problems which have arisen in the past. It should eliminate or reduce eleventh hour requests for nonpublic documents or

testimony of OPIC employees. The procedures and criteria will ensure a more efficient use of OPIC resources, will minimize the possibility of involving OPIC in issues unrelated to its responsibilities, will promote uniformity in responding to such requests and subpoenas, and will maintain the necessary impartiality of OPIC in matters between private litigants. The final rule will serve OPIC's interest in protecting sensitive, confidential and privileged information and records generated by its work.

This final rule is procedural, not substantive. It does not confer a benefit upon anyone. It does not create a right to obtain OPIC records or the testimony of any OPIC employee, past or present, nor does it create any additional right or privilege not already available to OPIC to deny such a request. OPIC makes no waiver of its sovereign immunity by implementing this rule. Failure to comply with the rule, however, constitutes grounds for OPIC's denial of any request. Requesters may be able to seek judicial review of any final determination by OPIC under the Administrative Procedure Act, 5 U.S.C. 702.

This final rule is not intended to restrict access to records under FOIA, the Privacy Act (5 U.S.C. 552a), or any other authority. At the same time, nothing in this final rule would permit disclosure of information by OPIC or its employees except as provided by statute or other applicable law.

During the comment period provided by the notice of proposed rulemaking, OPIC received no formal comments.

## Regulatory Procedures

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires OPIC to prepare an analysis to describe any significant economic impact any proposed regulation may have on any small business or other small entity. 5 U.S.C. 602, 603. OPIC has determined and certifies that this final rule, if adopted, will not have a significant economic impact on any entity. The reasons for this determination are that the copying and witness fees to be charged to persons and entities submitting requests under the regulation are not large, and will not create a financial burden. The final rule will not create any significant demand for legal, accounting or consulting expenditures. Accordingly, OPIC has determined that a Regulatory Flexibility Analysis is not required.

*Paperwork Reduction Act*

OPIC has determined that this rulemaking is not subject to the Paperwork Reduction Act, because OPIC averages fewer than 10 requests per year, and expects this level of activity to remain below this threshold. 5 CFR 1320.3(c).

*Executive Order 12612*

OPIC has determined that this final rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.

**List of Subjects***22 CFR Part 706*

Freedom of information.

*22 CFR Part 713*

Administrative practice and procedure, Confidential business information, Freedom of Information Act, Government employees, Reporting and recordkeeping requirements, Subpoenas.

For the reasons set forth in the preamble, 22 CFR Chapter VII is amended as follows:

**PART 706—[AMENDED]**

1. The authority citation for Part 706 is revised to read as follows:

**Authority:** The Freedom of Information Act, as amended, 5 U.S.C. 552; 5 U.S.C. 301; 22 U.S.C. 2199(d).

2. In § 706.22, designate the introductory text as paragraph (a) and redesignate the previous paragraphs (a) through (f) as paragraphs (a)(1) through (a)(6). Add paragraph (b) to read as follows:

**§ 706.22 Information and records not generally available to the public.**

\* \* \* \* \*

(b) *Prohibition against disclosure.* Except as provided in Part 713 of this Chapter or by other law or regulation, no officer, employee or agent of OPIC shall disclose or permit the disclosure of any exempt records of OPIC or of any information described in paragraph (a) of this section to any person other than those OPIC officers, employees or agents properly entitled to such information for the performance of their official duties.

3. Part 713 is added to read as follows:

**PART 713—PRODUCTION OF NONPUBLIC RECORDS AND TESTIMONY OF OPIC EMPLOYEES IN LEGAL PROCEEDINGS**

Sec.

713.1 What does this part prohibit?

713.2 When does this part apply?

713.3 How do I request nonpublic records or testimony?

713.4 What must my written request contain?

713.5 When should I make my request?

713.6 Where should I send my request?

713.7 What will OPIC do with my request?

713.8 If my request is granted, what fees apply?

713.9 If my request is granted, what restrictions may apply?

713.10 Definitions.

**Authority:** 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 702; 18 U.S.C. 207; 18 U.S.C. 641; 22 U.S.C. 2199(d); 28 U.S.C. 1821.

**§ 713.1 What does this part prohibit?**

This part prohibits the release of nonpublic records for legal proceedings or the appearance of an OPIC employee to testify in legal proceedings except as provided in this part. Any person possessing nonpublic records may release them or permit their disclosure or release only as provided in this part.

*(a) Duty of OPIC employees.*

(1) If you are an OPIC employee and you are served with a subpoena requiring you to appear as a witness or to produce records, you must promptly notify the Vice-president/General Counsel in the Department of Legal Affairs. The Vice-President/General Counsel has the authority to instruct OPIC employees to refuse to appear as a witness or to withhold nonpublic records. The Vice-President/General Counsel may let an OPIC employee provide testimony, including expert or opinion testimony, if the Vice-President/General Counsel determines that the need for the testimony clearly outweighs contrary considerations.

(2) If a court or other appropriate authority orders or demands from you expert or opinion testimony or testimony beyond authorized subjects contrary to the Vice-President/General Counsel's instructions, you must immediately notify the Vice-President/General Counsel of the order and then respectfully decline to comply with the order. You must decline to answer questions on the grounds that this part forbids such disclosure. You should produce a copy of this part, request an opportunity to consult with the Vice-President/General Counsel, and explain that providing such testimony without approval may expose you to disciplinary or other adverse action.

(b) *Duty of persons who are not OPIC employees.*

(1) If you are not an OPIC employee but have custody of nonpublic records, as defined at § 713.10, and you are served with a subpoena requiring you to produce records or to testify as a witness, you must promptly notify OPIC of the subpoena. Also, you must notify the issuing court or authority and the person or entity for whom the subpoena was issued of the contents of this part. Provide notice to OPIC by sending a copy of the subpoena to the Vice-President/General Counsel, OPIC, 1100 New York Avenue, NW, Washington, DC 20527. After reviewing notice, OPIC may advise the issuing court or authority and the person or entity for whom the subpoena was issued that this part applies and, in addition, may intervene, attempt to have the subpoena quashed or withdrawn, or register appropriate objections.

(2) After you notify the Vice-President/General Counsel of the subpoena, respond to the subpoena by appearing at the time and place stated in the subpoena, unless otherwise directed by the Vice President/General Counsel. Unless otherwise authorized by the Vice-President/General Counsel, decline to produce any records or give any testimony, basing your refusal on this part. If the issuing court or authority orders the disclosure of records or orders you to testify, decline to produce records or testify and advise the Vice-President/General Counsel.

(c) *Penalties.* Anyone who discloses nonpublic records or gives testimony related to those records, except as expressly authorized by OPIC or as ordered by a federal court after OPIC has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Also, former OPIC employees, in addition to the prohibition contained in this part, are subject to the restrictions and penalties of 18 U.S.C. 207.

**§ 713.2 When does this part apply?**

This part applies if you want to obtain nonpublic records or testimony of an OPIC employee for a legal proceeding. It does not apply to records that OPIC is required to release, or of which OPIC makes discretionary release, under the Freedom of Information Act (FOIA), records that OPIC releases to federal or state investigatory agencies, records that OPIC is required to release pursuant to the Privacy Act, 5 U.S.C. 552a, or records that OPIC releases under any other applicable authority.

**§ 713.3 How do I request nonpublic records or testimony?**

To request nonpublic records or the testimony of an OPIC employee, you must submit a written request to the Vice-President/General Counsel of OPIC. If you serve a subpoena on OPIC or an OPIC employee before submitting a written request and receiving a final determination, OPIC will oppose the subpoena on the grounds that you failed to follow the requirements of this part. You may serve a subpoena as long as it is accompanied by a written request that complies with this part.

**§ 713.4 What must my written request contain?**

Your written request for records or testimony must include:

(a) The caption of the legal proceeding, docket number, and name of the court or other authority involved.

(b) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance.

(c) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought.

(d) A statement as to how the need for the information outweighs the need to maintain the confidentiality of the information and outweighs the burden on OPIC to produce the records or provide testimony.

(e) A statement indicating that the information sought is not available from another source, such as the requestor's own books and records, other persons or entities, or the testimony of someone other than an OPIC employee, such as retained experts.

(f) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the records or testimony you want.

(g) The name, address, and telephone number of counsel to each party in the case.

(h) An estimate of the amount of time you anticipate that you and other parties will need with each OPIC employee for interviews, depositions, and/or testimony.

**§ 713.5 When should I make my request?**

Submit your request at least 45 days before the date you need the records or testimony. If you want your request processed in a shorter time, you must explain why you could not submit the request earlier and why you need such expedited processing. If you are requesting the testimony of an OPIC

employee, OPIC expects you to anticipate your need for the testimony in sufficient time to obtain it by deposition. The Vice-President/General Counsel may well deny a request for testimony at a legal proceeding unless you explain why you could not have used deposition testimony instead. The Vice-President/General Counsel will determine the location of a deposition, taking into consideration OPIC's interest in minimizing the disruption for an OPIC employee's work schedule and the costs and convenience of other persons attending the deposition.

**§ 713.6 Where should I send my request?**

Send your request or subpoena for records or testimony to the attention of the Vice-President/General Counsel, OPIC, 1100 New York Avenue NW, Washington, DC 20527.

**§ 713.7 What will OPIC do with my request?**

(a) *Factors OPIC will consider.* OPIC may consider various factors in reviewing a request for nonpublic records or testimony of OPIC employees, including:

(1) Whether disclosure would assist or hinder OPIC in performing its statutory duties or use OPIC resources unreasonably, including whether responding to the request will interfere with OPIC employees' ability to do their work.

(2) Whether disclosure is necessary to prevent the perpetration of a fraud or other injustice in the matter.

(3) Whether you can get the records or testimony you want from sources other than OPIC.

(4) Whether the request is unduly burdensome.

(5) Whether disclosure would violate a statute, executive order, or regulation, such as the Privacy Act, 5 U.S.C. 552a.

(6) Whether disclosure would reveal confidential, sensitive or privileged information, trade secrets or similar, confidential commercial or financial information, or would otherwise be inappropriate for release and, if so, whether a confidentiality agreement or protective order as provided in § 713.9(a) can adequately limit the disclosure.

(7) Whether the disclosure would interfere with law enforcement proceedings, compromise constitutional rights, or hamper OPIC programs or other OPIC operations.

(8) Whether the disclosure could result in OPIC's appearing to favor one litigant over another.

(9) Any other factors OPIC determines to be relevant to the interests of OPIC.

(b) *Review of your request.* OPIC will process your request in the order it is

received. OPIC will try to respond to your request within 45 days, but this may vary, depending on the scope of your request.

(c) *Final determination.* the Vice-President/General Counsel makes the final determination on requests for nonpublic records or OPIC employee testimony. All final determinations are in the sole discretion of the Vice-President/General Counsel. The Vice-President/General Counsel will notify you and the court or other authority of the final determination of your request. In considering your request, the Vice-President/General Counsel may contact you to inform you of the requirements of this part, ask that the request or subpoena be modified or withdrawn, or may try to resolve the request or subpoena informally without issuing a final determination.

**§ 713.8 If my request is granted, what fees apply?**

(a) *Generally.* You must pay any fees associated with complying with your request, including copying fees for records and witness fees for testimony. The Vice-President/General Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the fees.

(b) *Fees for records.* You must pay all fees for searching, reviewing and duplicating records produced in response to your request. The fees will be the same as those charged by OPIC under its Freedom of Information Act regulations, 22 CFR Part 706, Subpart B, § 706.26.

(c) *Witness fees.* You must pay the fees, expenses, and allowances prescribed by the court's rules for attendance by a witness. If no such fees are prescribed, the local federal district court rule concerning witness fees, for the federal district court closest to where the witness appears, will apply. For testimony by current OPIC employees, you must pay witness fees, allowances, and expenses to the Vice-President/General Counsel by check made payable to the "Overseas Private Investment Corporation" within 30 days from receipt of OPIC's billing statement. For the testimony of a former OPIC employee, you must pay witness fees, allowances, and expenses directly to the former employee, in accordance with 28 U.S.C. 1821 or other applicable statutes.

(d) *Certification of records.* OPIC may authenticate or certify records to facilitate their use as evidence. If you require authenticated records, you must request certified copies at least 45 days before the date they will be needed. Send your request to the Vice-President/

General Counsel. OPIC will charge you a certification fee of \$5.00 per document.

(e) *Waiver of fees.* A waiver or reduction of any fees in connection with the testimony, production, or certification or authentication of records may be granted in the discretion of the Vice-President/General Counsel. Waivers will not be granted routinely. If you request a waiver, your request for records or testimony must state the reasons why a waiver should be granted.

**§ 713.9 If my request is granted, what restrictions may apply?**

(a) *Records.* The Vice-President/General Counsel may impose conditions or restrictions on the release of nonpublic records, including a requirement that you obtain a protective order or execute a confidentiality agreement with the other parties in the legal proceeding that limits access to and any further disclosure of the nonpublic records. The terms of a confidentiality agreement or protective order must be acceptable to the Vice-President/General Counsel. In cases where protective orders or confidentiality agreements have already been executed, OPIC may condition the release of nonpublic records on an amendment to the existing protective order or confidentiality agreement.

(b) *Testimony.* The Vice-President/General Counsel may impose conditions or restrictions on the testimony of OPIC employees, including, for example, limiting the areas of testimony or requiring you and the other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal or will only be used or made available in the particular legal proceeding for which you requested the testimony. The Vice-President/General Counsel may also require you to provide a copy of the transcript of the testimony to OPIC at your expense.

**§ 713.10 Definitions.**

For purposes of this part:

*Legal proceedings* means any matter before any federal, state or foreign administrative or judicial authority, including courts, agencies, commissions, boards, grand juries, or other tribunals, involving such proceedings as lawsuits, licensing matters, hearings, trials, discovery, investigations, mediation or arbitration. When OPIC is a party to a legal proceeding, it will be subject to the applicable rules of civil procedure governing production of documents and witnesses; however testimony and/or production of documents by OPIC

employees, as defined, will still be subject to this part.

*Nonpublic records* means any OPIC records which are exempt from disclosure by statute or under Part 706, OPIC's regulations implementing the provisions of the Freedom of Information Act. For example, this may include records created in connection with OPIC's receipt, evaluation and action on actual and proposed OPIC finance projects and insurance policies (whether such projects or policies were cancelled or not), including all reports, internal memoranda, opinions, interpretations, and correspondence, whether prepared by OPIC employees or by persons under contract, as well as confidential business information submitted by parties seeking to do business with OPIC. Whether OPIC has actually chosen in practice to apply any exemption to specific documents is irrelevant to the question of whether they are "nonpublic" for the purposes of this Part.

*OPIC employee* means current and former officials, members of the Board of Directors, officers, directors, employees and agents of the Overseas Private Investment Corporation, including contract employees, consultants and their employees. This definition does not include persons who are no longer employed by OPIC and are retained or hired as expert witnesses or agree to testify about general matters, matters available to the public, or matters with which they had no specific involvement or responsibility during their employment.

*Subpoena* means any order, subpoena for records or other tangible things or for testimony, summons, notice or legal process issued in a legal proceeding.

*Testimony* means any written or oral statements made by an individual in connection with a legal proceeding, including personal appearances in court or at depositions, interviews in person or by telephone, responses to written interrogatories or other written statements such as reports, declarations, affidavits, or certifications or any response involving more than the delivery of records.

Dated: February 9, 1999.

**Michael C. Cushing,**

*Managing Director for Administration.*

[FR Doc. 99-4125 Filed 2-18-99; 8:45 am]

BILLING CODE 3210-01-M

**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

**29 CFR Part 2200**

**Rules of Procedure**

**AGENCY:** Occupational Safety and Health Review Commission.

**ACTION:** Final rule.

**SUMMARY:** The Occupational Safety and Health Review Commission has concluded that it is in the public interest to supplement the voluntary settlement judge procedure prescribed at 29 C.F.R. 2200.101 with an additional settlement process that would be mandatory for cases where the penalty proposed by the Secretary of Labor is \$200,000 or greater or other cases deemed appropriate by the Chief Administrative Law Judge. This additional procedure, to be known as the Settlement Part, would be instituted as a pilot program for a one-year trial period to ascertain whether requiring the parties to appear before a settlement judge facilitates the settlement process with respect to large and complex cases.

During and after the trial period, the Commission will evaluate the results in order to decide whether it should continue the Settlement Part procedure and, if so, what modifications should be made. The evaluation will take into account data on the rate at which settlements are achieved in large and complex cases and the length of time those cases remain on the Commission's docket before a settlement agreement is reached. The Commission will also consider the views of its judges and the parties regarding how well the process is working and how it might be improved.

**DATES:** This rule is effective from February 19, 1999 until February 22, 2000 unless extended by the

Commission by publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Earl R. Ohman, Jr., General Counsel, One Lafayette Center, 1120 20th St., N.W. 9th Floor, Washington, D.C. 20036-3419, phone 202-606-5410.

**SUPPLEMENTARY INFORMATION:**

**Development of the Final Rule**

On March 2, 1998 the Occupational Safety and Health Review Commission published in the **Federal Register** a proposal to institute, as a pilot program for a one year trial period, a new procedure to be known as the Settlement Part for the purpose of facilitating the settlement process in large and complex cases. 63 FR 10166. The notice explained the reasons why