

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4141; facsimile: (816) 329-4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Pilatus Service Bulletin No. 71-004, dated December 22, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Pilatus Aircraft Ltd., Customer Liaison Manager, CH-6371 Stans, Switzerland. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on December 15, 2000.

Note 2: The subject of this AD is addressed in Swiss AD Number HB 2000-007, dated January 17, 2000.

Issued in Kansas City, Missouri, on October 17, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00-27222 Filed 10-26-00; 8:45 am]

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OVERSEAS PRIVATE INVESTMENT CORPORATION

22 CFR Part 706

RIN 3420-ZA00

Freedom of Information; Final Rule

AGENCY: Overseas Private Investment Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises the Overseas Private Investment Corporation's ("OPIC," or "the Corporation") Freedom of Information Act ("FOIA") regulations by making substantive and administrative changes. These revisions supersede OPIC's current FOIA regulations, located at this Part. The final rule incorporates the FOIA revisions contained in the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104-231) ("EFOIA"), conforms OPIC's regulations to current OPIC FOIA practices, and converts the regulations to a plain English format. The final rule also reflects the disclosure principles established by President Clinton and Attorney General Reno in their FOIA Policy Memorandum of October 4, 1993, and reiterated in Attorney General Reno's September 3, 1999 FOIA Memorandum to the heads of federal departments and agencies. Finally, the final rule adds a notice to OPIC's business submitters concerning access to OPIC records that have been transferred to the legal custody and control of the National Archives of the United States ("National Archives").

DATES: This rule is effective November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Laura A. Naide, FOIA Director, (202) 336-8426, or Eli H. Landy, FOIA Counsel, (202) 336-8418.

SUPPLEMENTARY INFORMATION: This revision of part 706 incorporates changes to the language and structure of the regulations and adds new provisions to implement the EFOIA. New provisions implementing the amendments are found at § 706.12 (defining "search" to include electronic searches), § 706.21 (electronic reading room), § 706.31 (format of disclosure), § 706.32 (timing of responses and expedited processing), and § 706.33 (material withheld). OPIC is already complying with these statutory requirements; this final rule serves as OPIC's formal codification of the applicable law and its practice.

Under the EFOIA, an agency may provide by regulation for multiple "tracks" in responding to FOIA requests depending upon the amount of time and work involved in responding to different kinds of requests ("multitrack processing"). OPIC will not implement multitrack processing. Because OPIC receives a limited number of FOIA requests each year and is able to respond to the great majority of them on a timely basis, OPIC does not need to provide separate processing tracks for more complicated versus simpler FOIA requests.

Revisions to OPIC's fee schedule can be found at § 706.34. The duplication charge will remain fifteen cents per page, while the document search and review charges will increase to \$16 and \$35 per hour, respectively. The amount at or below which OPIC will not charge a fee is set at \$15.

This revision also notifies OPIC's business submitters of the requirement that OPIC transfer legal custody and control of certain records to the National Archives pursuant to applicable federal records schedules.

OPIC published a proposed rule at 65 FR 30369, May 11, 2000, and invited interested parties to submit comments. OPIC received one set of comments and made several changes to its proposed rule based on the commentator's suggestions.

OPIC adopted the following suggestions. First, OPIC revised § 706.31(b)(1) to describe more clearly how the Corporation handles FOIA requests that do not reasonably describe the records sought. The commentator stated that OPIC's proposed regulation did not "adequately guarantee that requesters whose requests need to be clarified will be contacted in a timely and effective manner so that their requests can be processed quickly." The final rule specifies in more detail OPIC's procedures for treatment of ambiguous requests.

Second, OPIC modified § 706.34(e) concerning special service charges to clarify that requesters will be provided advance notice of the actual cost of any requested service(s) that OPIC has agreed to provide. OPIC provides special services such as certification of documents and rapid delivery methods as a convenience to its FOIA requesters. FOIA requesters are not required to use special services and may withdraw a request for special services if they do not wish to pay the stated cost.

OPIC considered, but did not adopt the following suggestions. First, OPIC did not adopt the suggestion that the Corporation include in its regulations a provision granting expedited processing to records that are subject to multiple (*i.e.*, five or more) pending FOIA requests. OPIC could establish this discretionary category of "expedited processing" under FOIA subsection 5 U.S.C. 552(a)(6)(E)(i)(II), but the Corporation does not believe it would serve a useful purpose to do so. OPIC's FOIA program is flexible enough to accommodate multiple requests and respond to them in a timely manner without giving such requests expedited status.

The commentator was concerned that OPIC's response to multiple requests for

identical records could be delayed if OPIC developed a FOIA backlog and such requests were not granted expedited status. Based on OPIC's experience processing FOIA requests, this concern is unfounded. OPIC does not adhere to a strict first-in, first-out regimen. OPIC begins processing each FOIA request upon receipt and handles each request as quickly as possible based on the complexity of the request. For example, a request for publicly-available information can be processed rapidly, often within one or two business days of receipt. By contrast, a request for confidential or financial information takes longer to process because OPIC must contact the business submitter for comments pursuant to Executive Order 12600 and this Part.

OPIC also notes that most multiple requests for OPIC records are requests for commercial or financial information. Because of the notice requirements described above, it would be extremely difficult to respond to such requests in fewer than 20 business days. Finally, as the commentator noted, OPIC's most recent Annual FOIA Report indicates that OPIC responds to FOIA requests in a timely manner.

Second, OPIC did not adopt the suggestion that the Corporation notify requesters of their right under 5 U.S.C. 552(a)(6)(C) to seek immediate review by a court when the Corporation fails to respond to a FOIA request within twenty business days of receipt. The commentator suggested that OPIC provide such notice in its responses to FOIA requests. For such notification to be meaningful, however, OPIC would have to provide the notice prior to processing the FOIA request. This would place a burden on OPIC's limited FOIA resources and impose a requirement on OPIC that is not found in the FOIA.

Third, OPIC will not modify 1A706.11(c), which states: "In responding to requests for information, OPIC will consider only those records within its possession or control as of the date of the request." The commentator considers this "date-of-request cut-off," to be an inappropriate exclusion of more recently-created responsive records. OPIC will retain its practice of using a date-of-request cut-off because there is no other practical way for the Corporation to process FOIA requests and because this practice is consistent with FOIA case law.

The commentator suggests that OPIC adopt a date-of-processing cut-off. Because OPIC begins processing FOIA requests upon receipt, there is no meaningful distinction for the Corporation between the date of receipt

and the date of processing. Further, without a cut-off date, OPIC would never be able to complete its response to a FOIA request for an active matter because new records could be created on a continual basis. In spite of this basic practice, however, the Corporation may make occasional exceptions to the date-of-request cut-off depending upon the circumstances of the request. Any such exception is within OPIC's sole discretion. This determination is consistent with recent FOIA case law. *See, e.g., Public Citizen v. Dep't of State*, 100 F.Supp. 2d 10 (D.D.C. 2000).

Finally, OPIC did not adopt the commentator's suggested language regarding referrals of documents to other agencies, although it did amend 1A706.33(b) as described below. The commentator suggested regulatory language that would require OPIC, prior to referring a record to another agency for review and release pursuant to a FOIA request, to identify an intention on the part of the originating agency to retain control over the record. OPIC believes this requirement would create an undue burden on its FOIA program.

To address the commentator's concerns, OPIC amended 1A706.33(b) to state that OPIC will not make a referral if OPIC can make a determination concerning release either by examining the document and/or by informal consultation with the originating agency. OPIC also amended the section to state that any necessary referrals will be made promptly upon OPIC's receipt of the FOIA request. As the commentator noted, OPIC has only made one referral to another agency within the last two years. Accordingly, OPIC does not believe that referrals within its FOIA program have resulted in delays to its FOIA requesters.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the head of OPIC has certified that this regulation, as promulgated, will not have a significant economic impact on a substantial number of small entities. The regulation implements the FOIA, a statute concerning the release of federal records, and does not economically impact Federal Government relations with the private sector. Further, under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Based on OPIC's experience, these fees are nominal.

Executive Order 12866

OPIC incorrectly stated that its proposed rule (65 FR 30369, May 11,

2000) was drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Office of Management and Budget ("OMB"), by memorandum dated October 12, 1993, exempted OPIC from the requirements of this Executive Order. Accordingly, OMB did not review this final rule or its predecessor proposed rule. OPIC did, however, incorporate the general principles stated in section 1(b) of the Executive Order in drafting its proposed and final rules.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 22 CFR Part 706

Freedom of Information.

For the reasons stated in the summary, OPIC revises 22 CFR Part 706 to read as follows:

PART 706—FREEDOM OF INFORMATION

Subpart A—General

Sec.

706.11 General Provisions.

706.12 Definitions.

Subpart B—Procedures for Obtaining Publicly Available Records

706.21 What types of OPIC records are publicly available, and how do I obtain access to or copies of these records?

Subpart C—Procedures for Obtaining Records under the FOIA

706.31 How do I request copies of or access to OPIC records that are not otherwise available to the public?

706.32 When will I receive a response to my FOIA request?

706.33 How will OPIC respond to my FOIA request?

- 706.34 What, if any, fees will I be charged?
 706.35 When will OPIC reduce or waive fees?
 706.36 How may I appeal a partial or total denial of records?

Subpart D—Rights of Submitters of Confidential Business Information

- 706.41 How should business submitters designate business information in materials submitted to OPIC?
 706.42 When will OPIC notify business submitters of a pending FOIA request?
 706.43 Who will OPIC notify if a FOIA lawsuit is filed?
 706.44 What happens to business information contained in OPIC records transferred to the National Archives of the United States?

Authority: 5 U.S.C. 552, as amended; Executive Order 12600; 44 U.S.C. 2901, *et seq.*

PART 706—FREEDOM OF INFORMATION

Subpart A—General

§ 706.11 General Provisions.

(a) *Purpose.* The purpose of this part is to help interested parties obtain access to OPIC records. Many OPIC records may be accessed by the public without filing a formal request under the FOIA. Records that are not routinely available, however, must be requested under the FOIA. This part also informs OPIC's business submitters of their right to be notified of a request for disclosure of business information and to object to such disclosure. Finally, this part provides information about access to records that OPIC has transferred to the National Archives.

(b) *Policy.* OPIC's policy is to make its records available to the public to the greatest extent possible, in keeping with the spirit of the FOIA. This policy includes providing reasonably segregable information from records that also contain information that may be withheld under the FOIA. However, implementation of this policy also reflects OPIC's view that the soundness and viability of many of its programs depend in large measure upon full and reliable commercial, financial, technical and business information received from applicants for OPIC assistance and that the willingness of those applicants to provide such information depends on OPIC's ability to hold it in confidence. Consequently, except as provided by law and this part, information provided to OPIC in confidence will not be disclosed without the submitter's consent.

(c) *Scope.* This regulation applies to all agency records in OPIC's possession and control. This regulation does not compel OPIC to create records or to ask

outside parties to provide documents in order to satisfy a FOIA request. OPIC may, however, in its discretion and in consultation with a FOIA requester, create a new record as a partial or complete response to a FOIA request. In responding to requests for information, OPIC will consider only those records within its possession and control as of the date of the request. This regulation does not apply to requests for records under the Privacy Act, 5 U.S.C. 552a. OPIC's regulations governing Privacy Act requests are located at 22 CFR part 707.

(d) *OPIC Internet Site.* OPIC maintains an Internet site at www.opic.gov. This site contains information on OPIC functions, activities, programs, and transactions. OPIC encourages all prospective requesters of information, whether under FOIA or otherwise, to visit its Internet site prior to submitting a request.

(e) *OPIC address.* OPIC is located at 1100 New York Avenue, NW., Washington, DC 20527. All correspondence should be sent to this address.

§ 706.12 Definitions.

For purposes of this subpart, the following definitions apply:

All other requesters—Requesters other than commercial use requesters, educational and non-commercial scientific requesters, or representatives of the news media.

Business information—Trade secrets and confidential or privileged commercial or financial information obtained from any person, including, but not necessarily limited to, information contained in individual case files relating to such activities as insurance, loans, and loan guaranties.

Business submitter—Any person that provides business information to OPIC.

Educational institution—A preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, or an institution of professional or vocational education.

FOIA—The Freedom of Information Act, as amended, 5 U.S.C. 552.

National Archives—The National Archives of the United States.

Non-commercial scientific institution—An institution that is operated for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry, and that is not operated solely for purposes of furthering a business, trade, or profit interest.

OPIC—The Overseas Private Investment Corporation.

Person—An individual, partnership, corporation, association, or organization, other than a federal government agency.

Record—All papers, memoranda, or other documentary material, or copies thereof, regardless of physical form or characteristics, created or received by OPIC and within OPIC's possession and control. "Record" does not include publications that are available to the public through the **Federal Register**, by sale or through free distribution.

Redaction—The process of removing non-disclosable material from a record so that the remainder may be released.

Representative of the news media—A person actively gathering information on behalf of an entity organized and operated to publish or broadcast news to the public. Freelance journalists qualify as representatives of the news media when they can demonstrate that a request is reasonably likely to lead to publication.

Request—Any request made to OPIC under the FOIA.

Requester—Any person making a request.

Review—The examination of a record located in response to a request in order to determine whether any portion of the record is exempt from disclosure. Review also includes processing any record for disclosure—for example, redacting and preparing the record for disclosure. Review also includes time spent considering any formal objection to disclosure made by a business submitter, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

Search—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.

Working days—All calendar days excluding Saturdays, Sundays, Federal Government holidays, and any other day on which OPIC is not open for business.

Working days—All calendar days excluding Saturdays, Sundays, Federal Government holidays, and any other day on which OPIC is not open for business.

Subpart B—Procedures for Obtaining Publicly Available Records

§ 706.21 What types of OPIC records are publicly available, and how do I obtain access to or copies of these records?

(a) *Electronic Access.*

(1) Many OPIC records are readily available to the public by electronic access, including OPIC's Annual Report,

OPIC's Program Handbook, OPIC press releases, and application forms for OPIC assistance. Persons seeking information are encouraged to visit OPIC's Internet site at: www.opic.gov.

(2) Records relating to OPIC's FOIA program, including records required by the FOIA to be made available electronically, records which have been the subject of frequent FOIA requests, and OPIC's annual FOIA Report are available in OPIC's Electronic Reading Room. OPIC's Electronic Reading Room may be accessed through the "FOIA" link on OPIC's Internet site at: www.opic.gov. The Electronic Reading Room also contains an index of records available electronically. Generally, only records created after November 1, 1996 are available electronically.

(b) *Offline Access.* Publicly-available OPIC materials are readily available on OPIC's Internet site at www.opic.gov. If you do not have access to the Internet, you may obtain many of the same materials by contacting one or more of the sources listed below.

(1) *General information.* General information (e.g., OPIC's Annual Report, OPIC's Program Handbook, and application forms for OPIC assistance) are available from OPIC's Information Officer. To obtain access to or copies of these records, call (202) 336-8400 and ask to be connected with the Information Officer, or write to the Information Officer. You may also obtain general information by calling the OPIC InfoLine at (202) 336-8799 and you may obtain documents by facsimile by calling the OPIC FactsLine at (202) 336-8700.

(2) *Claims information.* OPIC's Department of Legal Affairs maintains public information files relating to the determination of claims filed under OPIC's political risk insurance contracts and a list of all claims resolved by cash settlements or guaranties. To obtain access to or copies of these records, call (202) 336-8400 and ask to be connected with the Claims Assistant in Legal Affairs or write to the Claims Assistant, Department of Legal Affairs.

(3) *Materials concerning OPIC's Board of Directors.* The Corporate Secretary maintains public information files containing the minutes of the public portions of Board of Directors meetings, as well as publicly-releasable Board resolutions. To obtain access to or copies of these records, call (202) 336-8400 and ask to be connected with the Corporate Secretary or write to the Corporate Secretary.

(4) *Press Releases.* OPIC's Press Office maintains copies of OPIC's press releases. To obtain access to or copies of these records, call (202) 336-8400 and

ask to be connected with the Press Office or write to the Press Office.

(5) *Reading room material.* Pursuant to the FOIA, OPIC maintains certain records for public inspection and photocopying, including records that have been the subject of frequent FOIA requests. To obtain access to or copies of these records, call (202) 336-8400 and ask to be connected with the FOIA Office or write to the FOIA Office. OPIC maintains an index of FOIA reading room records, which is updated regularly.

Subpart C—Procedures for Obtaining Records Under the FOIA

§ 706.31 How do I request copies of or access to OPIC records that are not otherwise available to the public?

(a) *Submitting a request.* To request records that are not otherwise available to the public, submit a written request to OPIC's FOIA Office either by mail, by hand delivery, by facsimile transmission to (202) 408-0297, or by electronic mail to FOIA@opic.gov. You must state that you are requested records under the FOIA. Your request is considered received by OPIC upon actual receipt by OPIC's FOIA Office.

(b) *Format.* Although FOIA requests do not need to follow a specific format, you must include the following information:

(1) You must reasonably describe the records you seek. This means that you must provide enough detail to enable OPIC personnel, using reasonable efforts, to locate the records. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter. Any request that does not reasonably describe the records sought will not be considered received by OPIC until the request is clarified. If your request does not reasonably describe the records you seek, OPIC will make reasonable efforts to contact you and tell you what additional information you need to provide in order to clarify your request. You then will have an opportunity to modify your request to meet the requirements of this section. Any time you spend clarifying your request (discussing your request with OPIC and preparing a revised request) is excluded from the 20 working-day period (or any extension of this period) that OPIC has to respond to your request.

(2) You must state the format (e.g., paper, computer disk, etc.) in which you would like OPIC to provide the requested records. If you do not state a preference, you will receive any

released records in the format most convenient to OPIC.

(3) You must include your mailing address and telephone number. You may also provide your electronic mail address, which will allow OPIC to contact you quickly to discuss your request and, in some instances, to respond to your request electronically.

(4) You must state your willingness to pay fees under this Part or, alternately, your willingness to pay fees up to a specified limit. If you believe that you qualify for a partial or total fee waiver under § 706.35(a), you should request a waiver and provide justification as required by § 706.35(b). If your request does not contain a statement of your willingness to pay fees or a request for a fee waiver, OPIC will advise you of the requirements of this paragraph. If you fail to respond within ten working days of such notification, OPIC will stop processing your request.

§ 706.32 When will I receive a response to my FOIA request?

(a) *General.* The FOIA requires OPIC to respond within twenty working days after the date on which OPIC's FOIA Office received the request.

(b) *Order of processing.* Generally, OPIC responds to FOIA requests in the order in which they are received.

(c) Extensions.

(1) In unusual circumstances, OPIC may require an extension of time in which to respond to your request. OPIC will provide written notice to you whenever such unusual circumstances exist. Unusual circumstances may include, for example: The need to search for and collect requested records from storage facilities located outside of OPIC's premises; the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are requested in a single request; or the need for consultation with another agency having a substantial interest in the request. If the extension is expected to exceed ten working days, OPIC will offer you the opportunity to:

(i) Alter your request so that processing may be accelerated; or
(ii) Propose an alternative, feasible time frame for processing the request.

(2) When OPIC reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, such requests may be aggregated for purposes of this section.

(d) *Expedited processing.* OPIC will expedite processing of your FOIA

request if you provide information indicating that one of the following factors is present: 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 an urgent need to inform the public about an actual or alleged federal government activity, if the request is made by a person primarily engaged in disseminating information. You may make a request for expedited processing at the time you submit your FOIA request or at any later time. If you make such a request, you must submit a statement, certified to be true and correct to the best of your belief, explaining in detail the basis for requesting expedited processing. OPIC will notify you of its determination concerning your request for expedited processing within ten days after the date of your request. You may appeal a denial of a request for expedited processing under the provisions at § 706.36. OPIC will grant expedited consideration to any such appeal.

§ 706.33 How will OPIC respond to my FOIA request?

(a) *OPIC response.* You will be notified in writing once OPIC makes a determination concerning your request. OPIC will respond by providing the requested records to you in whole or in part and/or by denying your request in whole or in part, or by notifying you that OPIC will produce or withhold, in whole or in part, the requested records. If you owe fees, OPIC will respond to you after you have paid the fees.

(1) *Segregable records.* If OPIC determines that part(s) of a record are exempt from disclosure under the FOIA, any reasonably segregable part of the record will be provided to you after redaction of the exempt material. OPIC will mark or annotate any such record to show both the amount and the location of the redacted information wherever practicable. If segregation would render the record meaningless, OPIC will withhold the entire record.

(2) *Denials.* A denial is a determination to withhold any requested record in whole or in part, a determination that a requested record cannot be located, or a determination that what you requested is not a record subject to the FOIA. If OPIC denies all or part of your request, you will be provided:

- (i) The name, title, and signature of the person responsible for the determination;
- (ii) The statutory basis for non-disclosure;

(iii) A statement that the denial may be appealed under § 706.36 and a brief description of the requirements of that section; and

(iv) If entire records or pages of records are withheld, an estimated volume of the amount of material withheld unless providing such an estimate would harm an interest protected by the FOIA exemption under which the denial is made.

(b) *Referrals to other government agencies.* If you request a record in OPIC's possession that was created or classified by another Federal agency, OPIC will promptly refer your request to that agency for direct response to you unless OPIC can determine by examining the record or by informal consultation with the originating agency that the record may be released in whole or part. OPIC will notify you of any such referral.

§ 706.34 What, if any, fees will I be charged?

(a) *General Policy.* You generally will be charged for costs incurred by OPIC in complying with your FOIA request, in accordance with paragraph (c) of this section and as required or permitted by law. As explained more fully in paragraph (c) of this section, fees will vary according to your requester status.

(1) Search fees are \$16 per hour.

(2) Review fees are \$35 per hour.

(3) Duplication costs are \$.15 per page for photocopying, and direct costs for all other media (including any operator time involved).

(b) *Anticipated Fees.* Your FOIA request must specifically state that you will pay all fees chargeable under this section or, alternatively, that you will pay fees up to a specified limit. If your request makes no reference to anticipated fees and your request is expected to involve fees of more than \$25, or OPIC estimates that the fees will exceed the dollar limit specified in your request, OPIC will promptly notify you of the estimated fees.

(c) *Uniform Fee Schedule.* Fees will be charged according to your requester status.

(1) *Commercial use requesters.* Commercial use requesters will be charged the cost of all time spent searching for and reviewing for release the requested records and for all duplication costs.

(2) *Educational and non-commercial scientific institution requesters.* Educational and non-commercial scientific institution requesters will be charged only the costs of duplication. No fee will be charged for the costs of photocopying the first 100 pages of documents or for the first \$15 of other

media costs. To be eligible for inclusion in this category, you must show that your request is being made under the auspices of a qualifying educational institution or non-commercial scientific institution and that the records are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(3) *Representatives of the news media.* Representatives of the news media will be charged only the costs of duplication. No fee will be charged for the costs of photocopying the first 100 pages of documents or for the first \$15 of other media costs. To be eligible for inclusion in this category, you must be a representative of the news media and your request must not be made for a commercial use. A request for records that supports the news dissemination function of the requester is not considered to be a request that is for a commercial use.

(4) *All other requesters.* All other requesters will be charged for the cost of any search time in excess of two hours, photocopying any documents in excess of 100 pages, and any costs in excess of the first \$15 of other media costs.

(d) *Fees for searches that produce no records.* Fees will be charged as provided in this section even if OPIC's search and review does not produce any disclosable records.

(e) *Special services charges.* At its discretion, OPIC may comply with requests for special services such as certification of documents or shipping methods other than regular U.S. mail. You will be charged the direct costs of any such services. OPIC will inform you of the cost of any special service(s) that you request, and you must pay this cost before OPIC will finish processing your FOIA request. If you do not wish to pay the stated cost, you may rescind your request for the special service(s).

(f) *Advance Payments.* Where OPIC estimates that fees are likely to exceed \$250, you will be required to make an advance payment of the entire fee before OPIC continues to process your request. You will be provided an opportunity to narrow the scope of your request if you do not want to pay the entire amount of the estimated fees.

(g) *Restrictions on Assessing Fees.* With the exception of commercial use requesters, the FOIA requires agencies to provide the first 100 pages of photocopying and the first two hours of search time to requesters without charge. Moreover, the FOIA prohibits agencies from charging fees to any requester, including commercial use

requesters, if the cost of collecting the fee would be equal to or greater than the fee itself. OPIC has determined that its cost of collecting a FOIA fee is \$15. In implementing these provisions, OPIC will not begin to assess fees until after providing the free search and reproduction described above, except for commercial use requesters. For example, for a request involving four hours of search time and results in 105 pages of documents, OPIC will determine the cost of only 2 hours of search time and only five pages of duplication.

(h) *Failure to pay fees.*

(1) OPIC will begin assessing interest charges on the 31st calendar day following the date of billing. Interest will be at the rate prescribed in section 3717 of Title 31 of the United States Code.

(2) If you previously failed to pay a FOIA fee to OPIC in a timely fashion, you must pay the full amount owed plus any applicable interest as provided above and make an advance payment of the full amount of the estimated fee before OPIC will process a new FOIA request from you.

(3) When OPIC acts under paragraphs (h)(1) or (2) of this section, the administrative time limits for processing FOIA requests (*i.e.*, 20 working days from receipt of initial request and 20 working days from receipt of an appeal plus permissible extensions) will begin only after OPIC has received full payment of all applicable fees and interest.

§ 706.35 When will OPIC reduce or waive fees?

(a) *Waiver.* In accordance with the FOIA's fee waiver provisions, OPIC will furnish records to you without charge or at a reduced charge if disclosure of the information you request 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 your commercial interest. In determining whether a fee waiver is appropriate, OPIC will consider the following factors:

(1) Whether the subject of the requested records concerns the operations or activities of the government;

(2) Whether disclosure of the requested information is likely to contribute significantly to public understanding of government operations or activities;

(3) Whether you have the intention and ability to disseminate the information to the public;

(4) Whether the information is already in the public domain;

(5) Whether you have a commercial interest that would be furthered by the disclosure; and, if so,

(6) Whether the magnitude of your identified commercial interest is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in your commercial interest.

(b) *Justification.* In all cases, you have the burden of presenting sufficient evidence or information to justify the requested fee waiver or reduction.

(c) *Inspection.* You may come to OPIC's offices to inspect any releasable records that you requested without charge to you except for any search, review, and/or duplication fees that are otherwise payable.

(d) *Other provisions.*

(1) *Aggregating requests.* When OPIC reasonably believes that a requester or group of requesters is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, OPIC will aggregate any such requests and charge accordingly.

(2) *Remittances.* All payments under this Part must be in the form of a check or a bank draft denominated in U.S. currency. Checks should be made payable to the order of United States Treasury and mailed to the OPIC FOIA Office.

§ 706.36 How may I appeal a partial or total denial of records?

(a) *Procedure.* If your request for records has been denied in whole or in part, you may file an appeal within twenty working days following the date on which you receive OPIC's denial. Your appeal should be addressed to OPIC's Vice President and General Counsel. Your appeal is considered received by OPIC upon actual receipt by OPIC's Vice President and General Counsel. You should clearly mark your envelope and appeal letter as a "Freedom of Information Act Appeal." Your appeal letter should reasonably describe the information or records requested and any other pertinent facts and statements.

(b) *Response.* OPIC's Vice President and General Counsel or his/her designee will render a written decision within twenty working days after the date of OPIC's receipt of the appeal, unless an extension of up to ten working days is deemed necessary due to unusual circumstances. You will be notified in writing of any extension. If your appeal is denied in whole or in part, the decision will explain OPIC's rationale for upholding the denial. If your appeal

is granted in whole or in part, the information or requested records will be made available promptly, provided the requirements of § 706.34 regarding payment of fees are satisfied.

Subpart D—Rights of Submitters of Confidential Business Information

§ 706.41 How should business submitters designate business information in materials submitted to OPIC?

All business submitters may designate, by appropriate markings, either at the time of submission or at a later time, any portions of their submissions that they consider to be protected from disclosure under the FOIA. These markings will be considered by OPIC in responding to a FOIA request but such markings (or the absence of such markings) will not be dispositive as to whether the marked information is ultimately released.

§ 706.42 When will OPIC notify business submitters of a pending FOIA request?

(a) Except as provided in paragraph (e) of this section, OPIC's FOIA Office will promptly notify a business submitter in writing that a request for disclosure has been made for any business information provided by the submitter. This notification will describe the nature and scope of the request, advise the submitter of its right to submit written objections in response to the request, and inform the submitter of OPIC's intent to disclose the business information ten working days from the date of the notice. The notice will either describe the business information requested or include copies of the requested records.

(b) The business submitter may, at any time prior to the disclosure date described in paragraph (a) of this section, submit to OPIC's FOIA Office detailed written objections to the disclosure of the requested information, specifying the grounds upon which it contends that the information should not be disclosed. In setting forth such grounds, the submitter should explain the basis of its belief that the nondisclosure of any item of information requested is mandated or permitted by law. In the case of information that the submitter believes to be exempt from disclosure under subsection (b)(4) of the FOIA, the submitter shall explain why the information is considered a trade secret or commercial or financial information that is privileged or confidential and either: How disclosure of the information would cause substantial competitive harm to the submitter, or why the information should be considered voluntarily submitted and

why it is information that would not customarily be publicly released by the submitter. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(c) The period for providing OPIC with objections to disclosure of information may be extended by OPIC upon receipt of a written request for an extension from the business submitter. Such written request shall set forth the date upon which any objections are expected to be completed and shall provide reasonable justification for the extension. In its discretion, OPIC may permit more than one extension.

(d) OPIC may accept or reject the submitter's objections, in whole or in part. If OPIC rejects the submitter's objections, in whole or in part, OPIC will promptly notify the business submitter of its determination at least five working days prior to release of the information. The notification will include:

(1) A statement of the reasons for OPIC's decision to reject the business submitter's objections;

(2) A description of the information to be disclosed, or a copy thereof; and

(3) A specific disclosure date.

(e) OPIC will not ordinarily notify the business submitter pursuant to paragraph (a) of this section if:

(1) OPIC determines that the FOIA request should be denied;

(2) The disclosure is required by law (other than pursuant to 5 U.S.C. 552); or

(3) The information has been published or otherwise made available to the public, including material described in § 706.21.

§ 706.43 Who will OPIC notify if a FOIA lawsuit is filed?

If a requester files a lawsuit seeking to compel the disclosure of business information, OPIC will promptly notify any business submitter(s) that submitted information at issue in the lawsuit.

§ 706.44 What happens to business information contained in OPIC records transferred to the National Archives of the United States?

Under the Records Disposal Act, 44 U.S.C. Chapter 33, OPIC is required to transfer legal custody and control of records with permanent historical value to the National Archives. OPIC's Finance Project and Insurance Contract Case files generally do not qualify as records with permanent historical value. OPIC will not transfer these files except when the National Archives determines that an individual project or case is especially significant or unique. If the National Archives receives a FOIA

request for records that have been transferred it will respond to the request in accordance with its own FOIA regulations.

Dated: October 24, 2000.

Laura A. Naide,

FOIA Director and Senior Administrative Counsel.

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DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 884

RIN 0701-AA60

Delivery of Personnel to United States Civilian Authorities for Trial

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is revising 32 CFR Part 884, Delivery of Personnel to United States Civilian Authorities for Trial of the Code of Federal Regulations to reflect current policies. Part 884 is the Air Force Instruction establishing procedures for making Air Force members, civilian personnel, and family members available to U.S. civilian authorities for the trial or specified court appearances. It updates the process for delivery of personnel to civilian authorities for trial.

EFFECTIVE DATE: November 1, 2000.

ADDRESSES: Lt. Col. Tom Jaster, AFLSA/JAJM, 112 Luke Avenue, Suite 343, Bolling Air Force Base, DC 20332-8000, 202-767-1539.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Tom Jaster, AFLSA/JAJM, 202-767-1539.

SUPPLEMENTARY INFORMATION: Part 884 implements Department of Defense (DoD) Directive 5525.9, Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders, December 27, 1988 and AFPD 51-10, Making Military Personnel, Employees, and Dependents Available to Civilian Authorities.

List of Subjects in 32 CFR Part 884

Courts, Government employees, Law enforcement, Military personnel.

For the reasons set forth in the preamble, the Department of the Air Force is revising 32 CFR Part 884 as follows:

PART 884—DELIVERY OF PERSONNEL TO UNITED STATES CIVILIAN AUTHORITIES FOR TRIAL

Sec.

884.0 Purpose.

884.1 Authority.

884.2 Assigned responsibilities.

884.3 Placing member under restraint pending delivery.

884.4 Release on bail or recognizance.

884.5 Requests under the interstate agreement on Detainer's Act.

884.6 Requests by Federal authorities for military personnel stationed within the United States and its possessions.

884.7 Requests by state and local authorities when the requested member is located in that state.

884.8 Request for delivery by state authorities when the member is located in a different state.

884.9 Requests for custody of members stationed outside the United States.

884.10 Returning members, employees, and family members from overseas.

884.11 Procedures for return of an Air force member to the United States.

884.12 Delays in returning members to the United States.

884.13 Denials of a request for return of a member to the United States.

884.14 Compliance with court orders by civilian employees and family members.

884.15 Procedures involving a request by Federal or state authorities for custody of an overseas civilian employee or a command-sponsored family member.

884.16 Reporting requests for assistance and action.

884.17 Commander's instruction letter to member.

884.18 Civilian authority's acknowledgment of transfer of custody and agreement to notify member's commander.

Authority: 10 U.S.C. 814; 10 U.S.C. 8013; Sec. 721(a), Pub. L. 100-456, 102 Stat. 2001.

§ 884.0 Purpose.

This part establishes procedures for making Air Force members, civilian personnel, and family members available to U.S. civilian authorities for trial or specified court appearances. It implements 32 CFR part 146. This part does not confer any rights, benefits, privileges, or form of due process procedure upon any individuals.

§ 884.1 Authority.

A general court martial convening authority (GCMCA) may authorize delivery of a member of that command to Federal or state civil authorities. The GCMCA may delegate this authority to an installation or equivalent commander. See AFPD 51-10, Making Military Personnel, Employees, and Dependents Available to Civilian