

(e) If the Postal Service is unable to provide adequate explanations during the public hearing, supplementary written or oral responses may be required.

(f) Following the conclusion of the public hearings and submission of any supplementary materials interested persons will be given the opportunity to submit written comments on:

(1) The sufficiency of the justification for an exigent rate increase;

(2) The adequacy of the justification for increases in the amounts requested by the Postal Service; and

(3) Whether the specific rate adjustments requested are reasonable and equitable.

(g) An opportunity to submit written reply comments will be given to the Postal Service and other interested persons.

§ 3010.66 Deadline for Commission decision.

The Commission will act expeditiously on the Postal Service request, taking into account all written comments. In every instance a Commission decision will be issued within 90 days of the filing of an exigent request.

[FR Doc. 2013-08805 Filed 4-15-13; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-R09-OAR-2013-0104; FRL-9802-5]

Designation of Areas for Air Quality Planning Purposes; State of Nevada; Total Suspended Particulate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to delete certain area designations for total suspended particulate within the State of Nevada because the designations are no longer necessary. These designations relate to the attainment or unclassifiable areas for total suspended particulate in Clark County as well as the following nonattainment areas for total suspended particulate elsewhere within the State of Nevada: Carson Desert, Winnemucca Segment, Lower Reese Valley, Fernley Area, Mason Valley, and Clovers Area. EPA is proposing this action under the Clean Air Act.

DATES: Written comments must be received on or before May 16, 2013.

ADDRESSES: Submit comments, identified by docket number EPA-R09-

OAR-2013-0104, by one of the following methods:

1. *Federal eRulemaking Portal:* www.regulations.gov: Follow the on-line instructions for submitting comments.

2. *Email:* occonnor.karina@epa.gov.

3. *Mail or deliver:* Karina O'Connor (AIR-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or email.

www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, EPA Region IX, (775) 434-8176, occonnor.karina@epa.gov.

SUPPLEMENTARY INFORMATION: This proposal relates to deletions of certain area designations for total suspended particulate (TSP) in the State of Nevada. Specifically, EPA proposes to delete the attainment or unclassifiable areas for total suspended particulate in Clark County as well as the following nonattainment areas for total suspended particulate elsewhere within the State of Nevada: Carson Desert, Winnemucca Segment, Lower Reese Valley, Fernley Area, Mason Valley, and Clovers Area. EPA is proposing this action under

section 107(d)(4)(B) of the Clean Air Act based on the Agency's determination that the TSP designations for these areas are no longer necessary.

In the Rules and Regulations section of this **Federal Register**, EPA is deleting these area designations in a direct final rule without prior proposal because the Agency views this as a non-controversial action and anticipates no adverse comments. A detailed rationale for the deletions is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** to notify the public that the direct final rule will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, please see the direct final rule of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Dated: April 1, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2013-08840 Filed 4-15-13; 8:45 am]

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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

45 CFR Part 1184

RIN 3137-AA22

Implementing the Freedom of Information Act

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Proposed rule.

SUMMARY: This rule proposes to implement IMLS's regulations under the Freedom of Information Act (FOIA). The regulations both describe how IMLS processes requests for records under FOIA and reaffirm the agency's commitment to providing the fullest possible disclosure of records to the

public. The agency is implementing the regulations to replace its existing joint regulations as part of the National Foundation on the Arts and the Humanities, and to update, clarify, and streamline the language of several procedural provisions, while incorporating changes brought about by amendments to the FOIA.

DATES: Comments are invited and must be received by no later than May 16, 2013.

ADDRESSES: Address all comments concerning this proposed rule to Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036. Email: nweiss@imls.gov. Telephone: (202) 653-4787. Facsimile: (202) 653-4625.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036. Email: nweiss@imls.gov. Telephone: (202) 653-4787. Facsimile: (202) 653-4625.

SUPPLEMENTARY INFORMATION: IMLS operates as part of the National Foundation on the Arts and the Humanities under the National Foundation on the Arts and Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*). The corresponding regulations published at 45 CFR Chapter XI, Subchapter A apply to the entire Foundation, while the regulations published at 45 CFR Chapter XI, Subchapter E apply only to the institute.

This proposed rule implements IMLS' FOIA regulations in Subchapter E (45 CFR part 1184), replacing the existing regulations in Subchapter A (45 CFR part 1100) with regard to IMLS. The proposed rule provides additional detail concerning several provisions of the Freedom of Information Act, and is intended to increase understanding of IMLS' FOIA policies. IMLS is authorized to propose these regulations under 5 U.S.C. 552.

I. Why We're Publishing This Rule and What It Does

The Institute of Museum and Library Services (IMLS) is proposing regulations to implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. FOIA requires Federal agencies to make official documents and other records available to the public upon request, unless the material requested falls under one of several statutorily prescribed exemptions. FOIA also requires agencies to publish rules stating the time, place, fees, and procedures to apply in making such records available. Further, Section 1803

of the Freedom of Information Reform Act of 1986 requires each agency to establish a system for recovering costs associated with responding to requests for information under FOIA. The Office of Management and Budget (OMB) has issued guidelines that set standard government-wide definitions for assessing and collecting FOIA fees (OMB Fee Guidelines). These proposed regulations describe the ways in which records may be requested by the public, and explain how IMLS will respond to such requests and assess fees in connection with the agency's response.

The proposed regulations also incorporate the policies expressed in the President's January 21, 2009, Executive Memorandum on the Freedom of Information Act, and the Attorney General's March 19, 2009, Memorandum for Heads of Executive Departments and Agencies. These policies, however, do not create any legally enforceable rights.

By implementing the provisions of the January 21, 2009, Executive Memorandum and Attorney General Holder's March 19, 2009, Memorandum to the Heads of Executive Departments and Agencies, these regulations will improve IMLS's FOIA-related service and performance, thereby strengthening the agency's compliance with the law. Accordingly, IMLS proposes these regulations implementing FOIA and submits them for public comment pursuant to 5 U.S.C. 552(a)(4)(A), (a)(6)(B)(iv), (a)(6)(D), (a)(6)(E), and 5 U.S.C. 553.

II. Compliance With Laws and Executive Orders

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that

the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Paperwork Reduction Act

IMLS has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply because these regulations do not contain any information collection requirements subject to approval by OMB.

Civil Justice Reform (Executive Order 12988)

These regulations meet the applicable standards set forth in Executive Order 12988, Civil Justice Reform.

Federalism (Executive Order 13132)

These regulations will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, IMLS has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Regulatory Flexibility Act

IMLS, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed these proposed regulations and certifies that they will not have a significant economic impact on a substantial number of small entities because they pertain to administrative matters affecting the agency.

Unfunded Mandates Reform Act of 1995

These regulations will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501, *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

These regulations are not major regulations as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. They will not result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or

the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

National Environmental Policy Act of 1969

IMLS has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, and has determined that this action will not have a significant effect on the human environment.

Takings (E.O. 21630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in Executive Order 13175, we have evaluated this proposed rule and determined that it has no potential effects on federally recognized Indian tribes. This proposed rule does not have tribal implications that impose substantial direct compliance costs on Indian Tribal governments.

Effects on the Energy Supply (E.O. 13211)

This proposed rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required. This proposed rule will not have a significant effect on the nation's energy supply, distribution, or use.

Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must: (a) Be logically organized; (b) use the active voice to address readers directly; (c) use clear language rather than jargon; (d) be divided into short sections and sentences; and (e) use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects in 45 CFR Part 1184

Administrative practice and procedure, Freedom of Information.

For the reasons stated in the preamble, IMLS proposes to amend 45 CFR Subchapter E to add part 1184 as follows:

PART 1184—IMPLEMENTATION OF THE FREEDOM OF INFORMATION ACT

Sec.

- 1184.1 What is the purpose and scope of these regulations?
- 1184.2 What are IMLS's general policies with respect to FOIA?
- 1184.3 How do I request records?
- 1184.4 When will I receive a response to my request?
- 1184.5 How will my request be processed?
- 1184.6 How can I appeal a denial of my request?
- 1184.7 How will fees be charged?
- 1184.8 What are IMLS' policies regarding disclosure of business information?
- 1184.9 Disclaimer

Authority: 5 U.S.C. 552.

§ 1184.1 What is the purpose and scope of these regulations?

These regulations describe how the Institute of Museum and Library Services (IMLS) processes requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552 as amended. The regulations apply only to records that are both:

- (a) Created or obtained by IMLS; and
- (b) Under the agency's control at the time of the FOIA request.

These rules should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Act Schedule and Guidelines published by the Office of Management and Budget at 52 FR 10012 (Mar. 27, 1987) (the "OMB Guidelines"). Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under part 1182 of 45 CFR as well as under this part.

§ 1184.2 What are IMLS's general policies with respect to FOIA?

(a) *Non-exempt records available to the public.* Except for records exempt or excluded from disclosure by 5 U.S.C. 552 or published in the **Federal Register** under 5 U.S.C. 552(a)(1), IMLS records subject to the FOIA are available to any person who requests them in accordance with these regulations.

(b) *Records available at the IMLS FOIA Electronic Reading Room.* IMLS makes records available on its Web site in accordance with 5 U.S.C. 552(a)(2), as amended, and other documents that, because of the nature of their subject matter, are likely to be the subject of FOIA requests. To save time and money, IMLS strongly urges you to review documents available at the IMLS FOIA

Electronic Reading Room before submitting a FOIA request.

(c) *Definitions.* For purposes of this part, all of the terms defined in the Freedom of Information Act, and the OMB Guidelines apply, unless otherwise defined in this part.

(1) *Commercial use request.* A request by or on behalf of anyone who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation.

(2) *Direct costs.* Those expenses that IMLS actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16.1 percent of that rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) *Duplication.* The making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others.

(4) *Educational institution.* Any school that operates a program of scholarly research. A requester in this category must show that the request is authorized by, and is made under the auspices of, a qualifying institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research.

(5) *Non-commercial scientific institution.* An institution that is not operated on a "commercial" basis, as defined in paragraph (c)(1) of this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and not for a commercial use.

(6) *Representative of news media.* Any person or entity organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience. The term "news" means information

that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast news to the public at large and publishers of periodicals that disseminate news and make their products available through a variety of means to the general public. A request for records that supports the news-dissemination function of the requester will not be considered to be for a commercial use. "Freelance" journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as working for that entity. A publishing contract would provide the clearest evidence that publication is expected; however, IMLS will also consider a requester's past publication record in making this determination.

(7) *Review.* 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 time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a business information submitter under § 1184.8 but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search.* The process of looking for and retrieving records or information responsive to a FOIA request. Search time includes page-by-page or line-by-line identification of information within records; and the reasonable efforts expended to locate and retrieve information from electronic records.

(9) *Working day.* A regular Federal working day. It does not include Saturdays, Sundays, or legal Federal holidays.

§ 1184.3 How do I request records?

(a) *Where to send a request.* You may make a FOIA request for IMLS records by writing directly to the FOIA Officer, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036–5802. Requests may also be sent by facsimile to the FOIA Officer at (202) 653–4625 or by email to foia@imls.gov. You may also submit your FOIA request online through the IMLS FOIA Request Form located at: http://www.imls.gov/about/foia_request_form.aspx.

(b) *Form of request.* Your FOIA request need not be in any particular format, but it must be in writing, include your name and mailing address, and be clearly identified as a Freedom of Information Act or "FOIA" request. You must describe the records sought with sufficient specificity to enable the agency to identify and locate the records, including, if possible, dates, subjects, titles, or authors of the records requested. If IMLS determines that your request does not reasonably describe the requested records, the agency will advise you what additional information is required to perfect your request, or why your request is otherwise insufficient. You should also indicate if you have a preferred form or format in which you would like to receive the requested records.

(c) *Electronic format records.* IMLS will provide the responsive records in the form or format you request if the records are readily reproducible by IMLS in that form or format. IMLS will make reasonable efforts to maintain its records in forms or formats that are reproducible for the purpose of disclosure. IMLS may disclose records in electronic format if the records can be downloaded or transferred intact through electronic media currently in use by the agency. In responding to a request for records, IMLS will make reasonable efforts to search for the records in electronic form or format, except where such efforts would significantly interfere with the operation of the agency's automated information system(s).

(d) *Date of receipt.* IMLS considers a request that complies with paragraphs (a) and (b) of this section to be a perfected request. The agency considers a request to be received on the date that the request is perfected.

§ 1184.4 When will I receive a response to my request?

(a) *Responses within 20 working days.* IMLS will ordinarily grant, partially grant, or deny your request for records within 20 working days after receiving a perfected request.

(b) *Extensions of response time in "unusual circumstances".* (1) Where the time limits for processing a request cannot be met because of "unusual circumstances," as defined in the FOIA, the FOIA Officer will notify you as soon as practicable in writing of the unusual circumstances and may extend the response period for up to ten (10) working days. (2) Where the extension is for more than ten (10) working days, the FOIA Officer will provide you with an opportunity either to modify the request so that it may be processed

within the time limits or to arrange an agreed upon alternative time period for processing the request or a modified request.

§ 1184.5 How will my request be processed?

(a) *Acknowledgment of requests.* IMLS will assign a tracking number to your request and will advise you in writing of this tracking number.

(b) *Grants of requests.* If IMLS decides to grant your request in whole or in part, the agency will notify you in writing. The notice will include any applicable fee and the agency will disclose records to you promptly upon payment of applicable fees. IMLS will mark or annotate any records disclosed in part to show the amount, the location, and the FOIA exemptions under which the redaction is made, unless doing so would harm an interest protected by an applicable exemption.

(c) *Denials of requests.* Denials of your FOIA request, either whole or in part, will be made in writing by the FOIA Officer. IMLS will inform you of the reasons for the denial, including any FOIA exemption(s) applied by the agency in denying the request, and notify you of your right to appeal the determination as described in § 1184.6.

§ 1184.6 How can I appeal a denial of my request?

(a) *Submission of an appeal.* If your FOIA request has been denied in whole or in part, you may file an appeal no later than thirty (30) calendar days following the date of the notification of denial. Your appeal must include a description of the initial request, the reason for the appeal, and why you believe the agency's response was incorrect. Your appeal must be in writing, signed, and filed with the IMLS Director, c/o Office of the General Counsel, 1800 M Street NW., 9th Floor, Washington, DC 20036–5802. Appeals may also be sent by facsimile to (202) 653–4625.

(b) *Decisions on appeal.* The Director of IMLS will make a determination with respect to your appeal within twenty (20) working days after the agency has received the appeal, except as provided in § 1184.4(b). If the decision on appeal is favorable to you, the Director of IMLS will take action to assure prompt dispatch of the records to you. If the decision on appeal is adverse to you, in whole or in part, you will be informed by the Director of IMLS of the reasons for the decision and of the provisions for judicial review set forth in the FOIA.

§ 1184.7 How will fees be charged?

(a) *In general.* IMLS will use the most efficient and least costly methods to

comply with FOIA requests. IMLS will charge fees to recover all allowable direct costs incurred, and may charge fees for searching for and reviewing requested records even if the records are determined to be exempt from disclosure or cannot be located. IMLS will charge fees in accordance with the category of the FOIA requester.

(1) *Commercial use requests.* IMLS will assess charges to recover the full direct cost of searching for, reviewing and duplicating the requested records. IMLS may recover the cost of searching for and reviewing records even if there is ultimately no disclosure.

(2) *Requests from educational and non-commercial scientific institutions.* IMLS will charge for duplication costs.

(3) *Requests by representatives of the news media.* IMLS will charge for duplication costs.

(4) *All other requests.* IMLS will assess charges to recover the full direct cost for searching for and duplicating the requested records.

(5) *Status of Requester.* IMLS' decision regarding the categorization of a requester will be made on a case-by-case basis based upon the requester's intended use of the requested records.

(b) *General fee schedule.* The following fees will be charged in accordance with paragraph (a) of this section.

(1) *Manual search fee.* The fee charged will be the salary rate(s) (i.e., basic pay plus 16.1 percent) of the employee(s) conducting the search.

(2) *Computer search fee.* The fee charged will be the actual direct cost of providing the service including the cost of operating the central processing unit for the operating time that is directly attributed to searching for records responsive to a request and the operator/programmer salary apportionable to the search.

(3) *Review fee.* The fee charged will equal the salary rate(s) (i.e., basic pay plus 16.1 percent) of the employee(s) conducting the review.

(4) *Duplication fee.* Copies of records photocopied on an 8½ x 11 inch sheet of paper will be provided at \$.10 per page. For duplication of other materials, the charge will be the direct cost of duplication.

(c) *Restrictions on charging fees.*

(1) Except for records provided in response to a commercial use request, the first 100 pages of duplication and the first two (2) hours of search time will be provided at no charge.

(2) Fees will not be charged to any requester, including commercial use requesters, if the total amount calculated under this section is less than \$25.

(d) *Fees likely to exceed \$25.* If the total fee charges are likely to exceed \$25, IMLS will notify you of the estimated amount of the charges, unless you have indicated in advance that you are willing to pay higher fees and will offer you an opportunity to confer with the FOIA Public Liaison to revise the request to meet your needs at a lower cost.

(e) *Waiver or reduction of fees.*

(1) IMLS will disclose records without charge or at a reduced charge if the agency determines that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) IMLS will use the following factors to determine whether a fee will be waived or reduced:

(i) *The subject of the request.* Whether the subject of the requested records concerns the "operations or activities of the government";

(ii) *The informative value of the information to be disclosed.* Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(iii) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* Whether disclosure of the requested information will contribute to "public understanding";

(iv) *The significance of the contribution to public understanding.* Whether disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(v) *The existence and magnitude of a commercial interest.* Whether you have a commercial interest that would be furthered by the disclosure; and if so

(vi) *The primary interest in disclosure.* Whether the magnitude of your commercial interest is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the your commercial interest.

(f) *Assessment and collection of fees.*

(1) If you fail to pay your bill within thirty (30) days, interest will accrue from the date the bill was mailed, and will be assessed at the rate prescribed in 31 U.S.C. 3717.

(2) If IMLS reasonably believes that you are attempting to divide a request into a series of requests to avoid the assessment of fees, the agency may aggregate such requests and charge accordingly.

(3) *Advance payment.* Advance payment of fees will generally not be

required. IMLS may request an advance payment of the fee, however, if: (i) The charges are likely to exceed \$250; or (ii) you have failed previously to pay a fee in a timely fashion. When IMLS requests an advance payment, the time limits described in section (a)(6) of the FOIA will begin only after IMLS has received full payment.

(g) *Failure to comply.* In the absence of unusual or exceptional circumstances, IMLS will not assess fees if the agency fails to comply with any time limit set forth in these regulations.

(h) *Waivers.* IMLS may waive fees in other circumstances solely at its discretion, consistent with 5 U.S.C. 552.

§ 1184.8 What are IMLS' policies regarding disclosure of business information?

(a) *In general.* Business information obtained by IMLS from a submitter will be disclosed under FOIA only under this section.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Business information.* Commercial or financial information obtained by IMLS from a submitter that may be protected from disclosure under Exemption 4 of FOIA.

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

(c) *Designation of business information.* A submitter of business information will use good-faith efforts to designate, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* When required under paragraph (e) of this section, subject to the exceptions in paragraph (h) of this section, IMLS will provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information. The notice will either describe the business information requested or include copies of the requested records or record portions containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the

notice in a place reasonably likely to accomplish it.

(e) *Where notice is required.* IMLS will give notice to a submitter wherever:

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

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

(f) *Opportunity to object to disclosure.*

IMLS will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period within the notice. If a submitter has any objection to disclosure, it must submit a detailed written statement to IMLS. The statement must specify all grounds for withholding any portion of the information under any exemption of FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to disclosure of the information.

Information provided by the submitter that is not received by IMLS until after the agency's disclosure decision has been made will not be considered by IMLS. Information provided by a submitter under this paragraph may itself be subject to disclosure under FOIA.

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

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

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

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

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

(1) IMLS determines that the information should not be disclosed;

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

(3) Disclosure of the information is required by statute (other than FOIA) or by a regulation issued in accordance

with the requirements of Executive Order 12600; or

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

(i) *Notice of FOIA lawsuit.* If a requester files a lawsuit seeking to compel the disclosure of business information, IMLS will promptly notify the submitter of the filing of the lawsuit.

(j) *Corresponding notice to requesters.* If IMLS provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, IMLS will also notify the requester(s). If IMLS notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, IMLS will also notify the requester(s). If a submitter files a lawsuit seeking to prevent the disclosure of business information, IMLS will notify the requester(s) of the filing of the lawsuit.

§ 1184.9 Disclaimer.

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

Signed: April 9, 2013.

Nancy E. Weiss,
General Counsel.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket Nos. FWS-R2-ES-2012-0064; FWS-R2-ES-2013-0027; 4500030113]

RIN 1018-AX74; RIN 1018-AZ49

Endangered and Threatened Wildlife and Plants; Listing as Endangered and Threatened and Designation of Critical Habitat for Texas Golden Gladecress and Neches River Rose-Mallow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the September 11, 2012, proposed endangered status for the Texas golden

gladecress and threatened status for the Neches River rose-mallow under the Endangered Species Act of 1973, as amended (Act). We also announce the reopening of comment on the September 11, 2012, proposed designation of critical habitat for these species and the availability of a draft economic analysis of the proposed designation of critical habitat for both species as well as an amended required determinations section in the proposed rule. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated draft economic analysis, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will consider comments received or postmarked on or before May 16, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

Public informational session and public hearing: We will hold a public hearing on this proposed rule in Nacogdoches, Texas, on May 1, 2013, from 7 p.m. to 8:30 p.m. (see **ADDRESSES**), preceded by a public informational session beginning at 5:30 p.m.

ADDRESSES:

Document availability: You may obtain copies of the proposed rule and draft economic analysis on the internet at <http://www.regulations.gov> at Docket No. FWS-R2-ES-2012-0064 and Docket No. FWS-R2-ES-2013-0027, respectively. You may also request by mail from the Corpus Christi Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Comment submission: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Submit comments on the listing proposal to Docket No. FWS-R2-ES-2012-0064, and submit comments on the critical habitat proposal and associated draft economic analysis to Docket No. FWS-R2-ES-2013-0027. See **SUPPLEMENTARY INFORMATION** for an explanation of the two dockets.

(2) *By hard copy:* Submit comment on the listing proposal by U.S. mail or