

and threshold of regulation exemption requests for the same uses. The rule therefore imposes no additional costs on producers or consumers.

B. Small Entity Analysis

FDA has examined the economic implications of this companion proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect on the rule on small entities. The agency certifies that this companion proposed rule will not have a significant impact on a substantial number of small entities.

This companion proposed rule will permit notifiers under the new notification process for FCS to claim the same categorical exclusions from the requirement of an EA that are currently applicable for food additive petitions and threshold of regulation exemption requests for the same uses. The proposed rule will not result in any additional costs to any firm. Therefore, this proposed rule will not have a significant impact on a substantial number of small entities.

IV. Paperwork Reduction Act of 1995

FDA tentatively concludes that this companion proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Comments

Interested persons may, by July 24, 2000, submit to the Dockets Management Branch (address above) written comments regarding this proposal. This comment period runs concurrently with the comment period for the direct final rule. Two copies of any comment are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. All received comments

will be considered as comments regarding the direct final rule and this proposed rule. In the event the direct final rule is withdrawn, all comments received will be considered comments on this proposed rule.

List of Subjects in 21 CFR Part 25

Environmental impact statements, Foreign relations, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 25 be amended as follows:

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

1. The authority citation for 21 CFR part 25 continues to read as follows:

Authority: 21 U.S.C. 321–393; 42 U.S.C. 262, 263b–264; 42 U.S.C. 4321, 4332; 40 CFR parts 1500–1508; E.O. 11514, 35 FR 4247, 3 CFR, 1971 Comp., p. 531–533 as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1978 Comp., p. 123–124 and E.O. 12114, 44 FR 1957, 3 CFR, 1980 Comp., p. 356–360.

2. Section 25.20 is amended by revising paragraph (i) to read as follows:

§ 25.20 Actions requiring preparation of an environmental assessment.

* * * * *

(i) Approval of food additive petitions and color additive petitions, approval of requests for exemptions for investigational use of food additives, the granting of requests for exemption from regulation as a food additive under § 170.39 of this chapter, and allowing notifications submitted under 21 U.S.C. 348(h) to become effective, unless categorically excluded in § 25.32(b), (c), (i), (j), (k), (l), (o), (q), or (r).

* * * * *

3. Section 25.32 is amended by revising paragraphs (i), (j), (k), (q), and (r) to read as follows:

§ 25.32 Foods, food additives, and color additives.

* * * * *

(i) Approval of a food additive petition or GRAS affirmation petition, the granting of a request for exemption from regulation as a food additive under § 170.39 of this chapter, or allowing a notification submitted under 21 U.S.C. 348(h) to become effective, when the substance is present in finished food-packaging material at not greater than 5 percent-by-weight and is expected to remain with finished food-packaging material through use by consumers or when the substance is a component of a coating of a finished food-packaging material.

(j) Approval of a food additive petition or GRAS affirmation petition, the granting of a request for exemption from regulation as a food additive under § 170.39 of this chapter, or allowing a notification submitted under 21 U.S.C. 348(h) to become effective, when the substance is to be used as a component of a food-contact surface of permanent or semipermanent equipment or of another food-contact article intended for repeated use.

(k) Approval of a food additive petition, color additive petition, or GRAS affirmation petition, or allowing a notification submitted under 21 U.S.C. 348(h) to become effective, for substances added directly to food that are intended to remain in food through ingestion by consumers and that are not intended to replace macronutrients in food.

* * * * *

(q) Approval of a food additive petition, the granting of a request for exemption from regulation as a food additive under § 170.39 of this chapter, or allowing a notification submitted under 21 U.S.C. 348(h) to become effective for a substance registered by the Environmental Protection Agency under FIFRA for the same use requested in the petition, request for an exemption, or notification.

(r) Approval of a food additive petition, color additive, GRAS affirmation petition, or allowing a notification submitted under 21 U.S.C. 348(h) to become effective for a substance that occurs naturally in the environment, when the action does not alter significantly the concentration or distribution of the substance, its metabolites, or degradation products in the environment.

Dated: January 24, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–11750 Filed 5–10–00; 8:45 am]

BILLING CODE 4160–01–F

OVERSEAS PRIVATE INVESTMENT CORPORATION

22 CFR Part 706

RIN 3420–ZA00

Information Disclosure

AGENCY: Overseas Private Investment Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the Overseas Private Investment Corporation's ("OPIC") Freedom of Information Act ("FOIA") regulations by

making substantive and administrative changes. These revisions are intended to supersede OPIC's current FOIA regulations, located at this Part. The proposed rule incorporates the FOIA revisions contained in the Electronic Freedom of Information Act Amendments of 1996 ("EFOIA"), conforms OPIC's regulations to current OPIC FOIA practices, and converts the regulations to a plain English format. The proposed rule also reflects the disclosure principles established by the President and the Attorney General in their FOIA Policy Memorandum of October 4, 1993. Finally, the proposed 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: Comments must be received by June 12, 2000; however, late filed comments will be considered to the extent practicable.

ADDRESSES: Mail or hand-deliver comments to Laura A. Naide, FOIA Director, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527, fax them to Ms. Naide at (202) 408-0297, or send them by electronic mail to lnaide@opic.gov. Please send comments by only one method. Comments will be available for review upon request.

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 (Pub. L. 104-231). 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 § 706.33 (material withheld). OPIC is already complying with these statutory requirements; this proposed revision 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 entailed in responding to different kinds of requests ("multitrack processing"). OPIC has decided not to propose 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.

Proposed revisions of 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 Federal Records Act requirement that OPIC transfer legal custody and control of certain records to the National Archives pursuant to applicable federal records schedules.

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 proposed rule 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

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Office of Management and Budget has determined that this proposed rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and, accordingly, that Office has reviewed this rule.

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 proposed rule 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

Confidential business information, Freedom of information.

For the reasons stated in the preamble, OPIC proposes to revise 22 CFR Part 706 to read as follows:

PART 706—INFORMATION DISCLOSURE

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 civil 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; 44 U.S.C. 2901, *et seq.*; Executive Order 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

Subpart A—General

§ 706.11 General provisions.

(a) *Purpose.* The purpose of this part is to help interested parties obtain access to the Overseas Private Investment Corporation's (OPIC's)

records. Many OPIC records may be accessed by the public without filing a formal request under the Freedom of Information Act (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 FOIA requests for records that OPIC has transferred to the National Archives of the United States (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 documents 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 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 applicable law and this part, information provided to OPIC in confidence will not be disclosed without the submitter's consent.

(c) *Scope.* This part applies to all agency records in OPIC's possession and control. This part 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 regulations governing such 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, N.W., Washington, D.C. 20527. All

correspondence should be sent to this address.

§ 706.12 Definitions.

For purposes of this part, the following definitions shall 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.

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**, sale or 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 shall 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, doing all that is necessary to redact and prepare 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.

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 electronically available, 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 as follows:

(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.

(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 public-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 documents for public inspection and photocopying, including documents 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 Director or write to the FOIA Director. 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 Director either by mail, by hand delivery, or by facsimile transmission to (202) 408-0297. You must sign your request, or it must be signed on your behalf, and the request must state that you are requesting records under the FOIA. Your request is considered received by OPIC upon actual receipt by OPIC's FOIA Director.

(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 to locate the records with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. Any request that does not reasonably describe the records sought will not be considered received by OPIC until the request is clarified. OPIC will make reasonable efforts to contact you to clarify your request, as necessary.

(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 don't 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.

(4) You must state your willingness to pay all costs chargeable 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, you should request a waiver and provide justification as required by § 706.35. If your request does not contain a fee statement or a request for a fee waiver, OPIC will advise you of the requirements of this paragraph (b)(4). If you fail to respond within ten working days of such notification, OPIC will not continue to process 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 Director 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: the need to search for and collect requested records from storage facilities located outside 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) Where 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, they may be aggregated for purposes of this section.

(d) *Expedited processing.* (1) OPIC will expedite processing of your FOIA request if you provide information indicating that one of the following factors is present:

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

(ii) An 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.

(2) 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 there are fees owing, OPIC will respond to you once 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 document meaningless, however, 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 § 706.36; and

(iv) If entire documents or document pages 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, your request will be referred to that agency for direct response to you. OPIC will notify you of any such referral.

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

(a) *General policy.* You will generally 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 all costs chargeable under this section will be paid or, alternatively, that they will be paid 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 generate 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.

(f) *Advance payments.* Where OPIC estimates that allowable 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, except for commercial use requesters. For example, for a request that would involve two hours and ten minutes of search time and results in 105 pages of documents, OPIC will determine the cost of only 10 minutes of search time and only five pages of reproduction. If this cost is equal to or less than the cost of collecting the fee, there will be no charge to the requester.

(h) *Failure to pay fees.* (1) OPIC will begin assessing interest charges on the 31st 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 processes a new FOIA request from you.

(3) When OPIC acts under paragraph (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 appeals plus permissible extensions) will begin only after OPIC has received full payment of all applicable fees and interest.

§ 706.35 When will OPIC waive or reduce fees?

(a) In accordance with the FOIA's fee waiver provisions, OPIC will furnish documents 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 search, review, and/or duplication fees which are otherwise payable.

(d) *Other provisions.* (1) *Aggregating requesters.* 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 requesters and charge accordingly.

(2) *Remittances.* All payments under this section should be in the form of a check or a bank draft drawn on a bank located in the United States. Remittances shall be made payable to the order of United States Treasury and mailed to the OPIC FOIA Director.

§ 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 in accordance with the procedures set forth in § 706.32. 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 should use good-faith efforts to designate, by appropriate markings, either at the time of submission or within a reasonable amount of time thereafter, 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 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 paragraphs (c) and (e) of this section, OPIC's FOIA Director 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 on the expiration of 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)(1) The business submitter may, at any time prior to the disclosure date described in paragraph (a) of this section, submit to OPIC's FOIA Director 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 specify, to the maximum extent feasible, 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:

(i) How disclosure of the information would cause substantial competitive harm to the submitter; or

(ii) Why the information should be considered voluntarily submitted and why it is information that would not customarily be publicly released by the submitter.

(2) Information provided by a business submitter pursuant to paragraph (b)(1) of this section 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 the objections are expected to be completed and shall provide reasonable justification for the extension. OPIC may, in its discretion, permit more than one extension.

(d) OPIC may sustain or deny the submitter's objections, in whole or in part. If OPIC denies 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 not to sustain 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 (1) 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 civil lawsuit is filed?

Whenever 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?

Pursuant to the Federal Records Act, 44 U.S.C. 2901, *et seq.*, OPIC transfers legal custody and control of records with permanent historical value to the National Archives. These records are transferred in accordance with OPIC's records retention schedules, which are approved by the Archivist of the United States. Transfers of project records generally occur five years after closeout of the project (e.g., most records are not transferred to the National Archives until they are at least 25 years old). If a FOIA request is made for records that have been transferred, the National Archives has the sole authority to review the records and determine whether or not to apply FOIA exemptions. The National Archives is not required to inform OPIC about the FOIA request or to seek OPIC's opinion on disclosure of the records.

Dated: May 3, 2000.

Laura A. Naide,

FOIA Director and Senior Administrative Counsel.

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DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 10

[REG-111835-99]

RIN 1545-AY05

Regulations Governing Practice Before the Internal Revenue Service

AGENCY: Office of the Secretary, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document provides advance notice of proposed rulemaking to amend the regulations governing practice before the Internal Revenue Service (IRS), which appear in the Code of Federal Regulations and in pamphlet form as Treasury Department Circular No. 230, Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the IRS. This document also invites individuals and organizations to submit comments on revising Circular No. 230 to address general standards of practice and standards of practice relating to tax shelters.

DATES: Submit comments on or before July 5, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-111835-99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-111835-99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Submit comments and data via electronic mail (email) to http://www.irs.gov/tax_regs/regslst.html.

FOR FURTHER INFORMATION CONTACT:

Concerning issues for comment, Richard Goldstein at (202) 622-7880; concerning submissions of comments and delivering comments, Guy Traynor, (202) 622-7180; (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Department and, after notice and an opportunity for a proceeding, to suspend or disbar from practice before the Department those representatives who are incompetent, disreputable, or who violate regulations prescribed under section 330. Pursuant to section 330, the Secretary has published the regulations in Circular No. 230 (31 CFR part 10). These regulations authorize the Director of Practice to act upon applications for enrollment to practice before the IRS, to institute proceedings for suspension or disbarment from practice before the IRS, to make inquiries with respect to matters under the Director's jurisdiction, and to perform such other duties as are necessary to carry out these functions.

The regulations have been amended from time to time to address various specific issues in need of resolution. For example, on February 23, 1984, the regulations were amended to provide standards for providing opinions used in tax shelter offerings (49 FR 6719). On October 17, 1985, the regulations were amended to conform to legislative changes requiring the disqualification of an appraiser who is assessed a penalty under section 6701 for aiding and abetting the understatement of a tax liability (50 FR 42014). The regulations were most recently amended on June 20, 1994 (59 FR 31523) to provide standards for tax return preparation, to limit the use of contingent fees in return or refund claim preparation, to provide

expedited rules for suspension, and to clarify or amend certain other items.

On June 15, 1999, the Director of Practice published an advance notice of proposed rulemaking (64 FR 31994) requesting comments on amendments to the regulations that would take into account legal developments, professional integrity and fairness to practitioners, taxpayer service, and sound tax administration. The Treasury Department received several comments and is currently reviewing them. The 1999 advance notice of proposed rulemaking contemplated a notice of proposed rulemaking that would make general revisions to Circular No. 230.

II. Tax Shelters

Following the release of the advance notice of proposed rulemaking, the Treasury Department issued a report on the proliferation of corporate tax shelters. See "The Problem of Corporate Tax Shelters: Discussion, Analysis and Legislative Proposals," Department of the Treasury, July 1999. In February of this year, the Treasury Department and the IRS took steps to deter abusive shelters by publishing temporary regulations requiring disclosure of certain transactions by corporate taxpayers (TD 8877, 65 FR 11205), registration of confidential corporate tax shelters (TD 8876, 65 FR 11215), and maintenance of lists of investors in certain tax shelters (TD 8875, 65 FR 11211).

In addition, practitioners and organizations, such as the Section of Taxation of the ABA, have recommended that the Treasury Department revise Circular No. 230 to raise the standards for providing advice with respect to corporate tax shelters. The Treasury Department and the IRS agree that it is appropriate to review the standards that should be followed by practitioners who provide advice with respect to such transactions.

III. Request for Comments

The Treasury Department and the IRS invite comments relating to standards of practice governing tax shelters and other general matters. The Treasury Department and the IRS are particularly interested in receiving comments on the following matters.

A. *Opinion Standards of Circular No. 230*

1. Whether the opinion standards in § 10.33 (relating to tax opinions provided for the marketing of tax shelters) should be revised.

2. Whether Circular No. 230 should establish standards for tax opinions other than those provided for in § 10.33