

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 4

[Docket ID OCC–2009–0008]

RIN 1557–AD22

Freedom of Information Act

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend its regulations governing the disclosure of information pursuant to requests made under the Freedom of Information Act (FOIA) to reflect recent changes to the FOIA made by the Openness Promotes Effectiveness in Our National Government Act of 2007 (OPEN Government Act) and to make other changes that update the OCC's FOIA regulations.

DATES: Comments must be received by June 23, 2009.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or e-mail, if possible. Please use the title "Freedom of Information Act Regulations" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—"Regulations.gov":* Go to <http://www.regulations.gov>, under the "More Search Options" tab click next to the "Advanced Docket Search" option where indicated, select "Comptroller of the Currency" from the agency drop-down menu, then click "Submit." In the "Docket ID" column, select "OCC–2009–0008" to submit or view public comments and to view supporting and related materials for this notice of proposed rulemaking. The "How to Use This Site" link on the Regulations.gov

home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- *E-mail:* regs.comments@occ.treas.gov.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.
- *Fax:* (202) 874–5274.
- *Hand Delivery/Courier:* 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.

Instructions: You must include "OCC" as the agency name and "Docket Number OCC–2009–0008" in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice of proposed rulemaking by any of the following methods:

- *Viewing Comments Electronically:* Go to <http://www.regulations.gov>, under the "More Search Options" tab click next to the "Advanced Document Search" option where indicated, select "Comptroller of the Currency" from the agency drop-down menu, then click "Submit." In the "Docket ID" column, select "OCC–2009–0008" to view public comments for this rulemaking action.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background

documents and project summaries using the methods described above.

FOR FURTHER INFORMATION CONTACT: Lee Walzer, Counsel, or Michele Meyer, Assistant Director, Legislative and Regulatory Activities Division, (202)–874–5090; or Frank Vance, Manager, Disclosure Services and Administrative Operations, Communications Division, (202)–874–5378.

SUPPLEMENTARY INFORMATION:

I. Background

The OPEN Government Act,¹ enacted on December 31, 2007, made several amendments to the FOIA. The OPEN Government Act: revised definitions contained in the FOIA; changed standards for recovering attorneys fees in FOIA litigation; revised time limits for agencies to act on FOIA requests; provided that search fees would not be charged if an agency fails to comply with time limits if no unusual or exceptional circumstances apply to the processing of the request; required agencies to establish a tracking system enabling requesters to check the status of their request; added new reporting requirements to agencies' annual FOIA reports; and required agencies to describe the FOIA disclosures relied upon in redacting records that they release to requesters. Many provisions of the OPEN Government Act took effect upon enactment; others (including some related to the proposed amendments to Part 4 in this NPRM) were effective as of December 31, 2008. The legislation did not require implementing regulations.

Twelve CFR part 4, subpart B, sets forth OCC policies regarding the availability of information under the FOIA and procedures for requesters to follow when seeking such information. The OCC is proposing to amend subpart B of 12 CFR part 4 to reflect the changes to the FOIA made by the OPEN Government Act and to make additional changes to subpart B that would update or simplify existing regulations.

II. Description of the Proposal

Required Description of FOIA Exemptions Used To Justify Non-Disclosure

The FOIA requires agencies to indicate the amount of information

¹ Public Law 110–175, 110th Cong., 1st Sess., 121 Stat. 2524 (2007).

deleted from any material released pursuant to a FOIA request, unless that disclosure would harm an interest protected by one of the enumerated exemptions under which the deletion was initially made.² Prior to the OPEN Government Act, the FOIA required agencies, when technically feasible, to indicate the amount of information deleted at the place in the record where the deletion was made.

The OPEN Government Act amended the FOIA by adding the requirement that an agency detail the specific FOIA exemption under which material is deleted from information sought by a FOIA requester. If technically feasible, the agency should indicate the exemption under which the deletion was made at the place in the record where the agency deleted the material, and should indicate the amount of material that has been deleted.³ This provision took effect upon enactment of the OPEN Government Act.

The OCC is therefore proposing to amend its FOIA regulation at 12 CFR 4.12(d) to provide that the OCC will list any exemption under which material was deleted, unless doing so would harm an interest protected by an exemption under § 4.12(b). Where technically feasible, the OCC will indicate the amount of information redacted and the exemption relied upon for the redaction.

Time Period for Responding to a FOIA Request

The FOIA provides that an agency must determine whether to comply with a FOIA request within 20 days (not including Saturdays, Sundays, and legal holidays) of receipt of the request.⁴ The OPEN Government Act further provides that the 20-day period may not be tolled, except that an agency may make one request to the requester for additional information. An agency also may toll the 20-day period to clarify issues related to the fees being charged for a FOIA request. The OPEN Government Act states that the tolling period ends once an agency has received the requested information or resolved any fee issues. Finally, the OPEN Government Act provides that an agency may not assess search or duplication fees if the agency fails to comply with FOIA time limits, if no “unusual or exceptional circumstances” apply to the processing of the request.

All of these amendments are effective as of December 31, 2008.

The OCC is proposing to revise 12 CFR 4.15 to provide for the 20-day response period permitted by the statute and to specify that the 20-day period does not include Saturdays, Sundays, and holidays. The OCC is also proposing to amend 12 CFR 4.15 to provide for the 20-day time period to be tolled when the OCC: (1) makes a one-time request for additional information from the requester; or (2) needs to clarify a fee-related issue with the requester. The tolling period would end upon receipt of the requested information or resolution of the fee issue, as the case may be.⁵

Finally, the OCC is proposing to amend 12 CFR 4.17 to clarify that a requester will not be required to pay any otherwise applicable search or duplication fees if the OCC fails to comply with applicable time limits, if no “unusual” or “exceptional” circumstances, as described in the FOIA and set forth in OCC regulations, apply to the processing of the FOIA request.⁶

Definition of “Representative of the News Media”

The OCC is proposing to amend 12 CFR 4.17(a)(8) to amend the definition of “representative of the news media” to comport with the new definition in FOIA, as amended by the OPEN Government Act, that took effect upon the legislation’s enactment. Prior to enactment of the OPEN Government Act, the FOIA allowed an agency to assess “reasonable standard charges”⁷ for document duplication when a FOIA request is made by a representative of the media,⁸ but the statute did not define what it meant to be a “representative of the news media,” particularly with respect to freelance journalists who might be working independently.

The OCC’s current definition of “requester who is a representative of the news media” defines such a person as one “who seeks records for the purpose of gathering news (*i.e.*, information about current events or of current interest to the public) on behalf of, or a

freelance journalist who reasonably expects to have his or her work product published or broadcast by, an entity organized and operated to publish or broadcast news to the public.”⁹

The OPEN Government Act amended FOIA to add a definition of “representative of the news media” and clarifies that a freelance journalist should be deemed as working for the media if the journalist can demonstrate a “solid basis” for expecting publication.¹⁰ The OPEN Government Act further permitted an agency to consider the past publication history of a requester in determining whether the requester in fact qualifies as a “representative of the news media.” The OPEN Government Act also recognized that such representatives could work in new forms of media, including electronic dissemination of news through telecommunications providers.

The NPRM would amend the existing definition to clarify the circumstances in which a freelance writer is deemed to be working as a representative of the news media. Consistent with the OPEN Government Act, freelance writers would be regarded as representatives of the news media if they can demonstrate a “solid basis” for expecting publication. The revised definition furthermore would permit the OCC to consider a requester’s publication history in assessing whether the requester should be deemed a representative of the news media. The OCC invites comment on whether the new regulatory definition could be enhanced or clarified with, for example, additional examples of bases for expecting publication that would satisfy the standard for a requester to be recognized as a representative of a media outlet.

Tracking and Contact Information

The OPEN Government Act requires agencies to provide tracking numbers for requesters to follow the progress of their FOIA requests.¹¹ To facilitate the ability of requesters to determine the progress of their FOIA requests, the OPEN Government Act likewise required agencies to establish by December 31, 2008, a telephone line or Internet service providing information about the status of a FOIA request to the person using the assigned tracking number.¹²

The OCC has developed an Internet Web site at <https://appsec.occ.gov/>

⁵ The OPEN Government Act did not amend or repeal the FOIA provisions permitting agencies to extend the time for replying to FOIA requests in unusual circumstances. *Id.* at 552(a)(6)(B) and (C). Therefore the OCC’s rules continue to extend the time in such cases for up to an additional 10 business days. 12 CFR 4.15(f)(3).

⁶ *See id.* at 552(a)(6)(B)–(C); 12 CFR 4.15(f)(3).

⁷ For commercial FOIA requesters, in contrast, an agency can assess document search and review charges, in addition to the duplication fees. 5 U.S.C. 552(a)(4)(A)(ii)(I).

⁸ *Id.* at 552(a)(4)(A)(ii)(II) (2006), amended by OPEN Government Act, § 3.

⁹ 12 CFR 4.17(a)(8).

¹⁰ *See* OPEN Government Act, § 3, amending 5 U.S.C. 552(a)(4)(A).

¹¹ *Id.*, § 7, amending 5 U.S.C. 552(a).

¹² *Id.*

² 5 U.S.C. 552(b) (2007).

³ OPEN Government Act, § 12, amending 5 U.S.C. 552(b).

⁴ 5 U.S.C. 552(a)(6)(A)(i).

publicaccesslink/ designed to provide tracking services to FOIA requesters so that they can monitor the status of their requests. This rulemaking proposes to establish a new section 4.18 that provides the Internet address and explains that a tracking number will be assigned to every FOIA request. The new section 4.18 also addresses how individuals without Internet access could continue to receive status updates about their FOIA requests. To facilitate the operation of the new tracking service, the OCC is also proposing to amend 12 CFR 4.15(c) to include a request for an electronic mail address in the requester's contact information, where such information is available and the requester chooses to provide it.

The OCC invites comments on any aspect of the proposed rule.

III. Solicitation of Comments on Use of Plain Language

The OCC also requests comment on whether the proposed rule is written clearly and is easy to understand. On June 1, 1998, the President issued a memorandum directing each agency in the Executive branch to write its rules in plain language. This directive applies to all new proposed and interim rulemaking documents issued on or after January 1, 1999. In addition, Public Law 106–102 requires each Federal agency to use plain language in all proposed and interim rules published after January 1, 2000. The OCC invites comments on how to make this rule clearer. For example, you may wish to discuss:

(1) Whether we have organized the material to suit your needs;

(2) Whether the requirements of the rule are clear; or

(3) Whether there is something else we could do to make the rule easier to understand.

IV. Regulatory Analysis

Regulatory Flexibility Act

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under Section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule. The proposed rule would not have such an impact on small entities because the changes being proposed affect mainly the OCC and its processing of FOIA requests, and impose no costs on filers of these requests. Accordingly, pursuant

to Section 605(b) of the RFA, the OCC hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed.

Executive Order 12,866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12,866. We have concluded that the changes made by this rule will not have an annual effect on the economy of \$100 million or more. The OCC further concludes that this proposal does not meet any of the other standards for a significant regulatory action set forth in Executive Order 12866.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), we have reviewed the proposed rule to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may 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. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this proposed rule will not result in expenditures by State, local, and Tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, this proposal is not subject to Section 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 1

Banks, Banking, National banks.

12 CFR Part 4

National banks, Reporting and recordkeeping requirements, Administrative practice and procedure, Freedom of Information Act, Records.

For the reasons set forth in the preamble, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 4—ORGANIZATION AND AVAILABILITY OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

1. The authority citation for part 4 continues to read as follows:

Authority: 12 U.S.C. 93a. Subpart A also issued under 5 U.S.C. 552; Subpart B also issued under 5 U.S.C. 552; E.O. 12600 (3 CFR 1987 Comp., p. 235). Subpart C also issued under 5 U.S.C. 301, 552; 12 U.S.C. 161, 481, 482, 484(a), 1442, 1817(a)(3), 1818(u) and (v), 1820(d)(6), 1820(k), 1821(c), 1821(t), 1821(t), 1831m, 1831p–1, 1831o, 1867, 1951 *et seq.*, 2601 *et seq.*, 2801 *et seq.*, 2901 *et seq.*, 3101 *et seq.*, 3401 *et seq.*; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510. Subpart D also issued under 12 U.S.C. 1833e.

2. Amend § 4.12(d) by adding two sentences at the end of the paragraph to read as follows:

§ 4.12 Information available under the FOIA.

* * * * *

(d) *Segregability.* * * * The OCC will note the location and extent of any deletion, and identify the FOIA exemption under which material has been redacted, unless doing so would harm an interest protected by the exemption under paragraph (b) of this section pursuant to which the redaction was made. Where technically feasible, the amount of information redacted and the exemption pursuant to which the redaction was made will be indicated at the site(s) of the redaction.

3. Amend § 4.15 by:

a. Revising the section heading, paragraph (c)(1) introductory text, paragraph (c)(1)(i), and paragraph (f)(1); and

b. Removing the word “or” at the end of paragraph (f)(3)(ii), removing the period at the end of paragraph (f)(3)(iii) and by adding in lieu thereof “; or”, and adding paragraph (f)(3)(iv).

The revisions and addition read as follows.

§ 4.15 How to request records.

* * * * *

(c) *Request for records*—(1) *Contact information and what the request for records must include.* A person requesting records under this section must state, in writing:

(i) The requester's full name, address, telephone number and, at the requester's option, electronic mail address.

* * * * *

(f) *Time limits for responding to FOIA requests.* — (1) *Request.* The OCC makes an initial determination to grant or deny a request for records within 20 days

(excluding Saturday, Sundays, and holidays) after the date of receipt of the request, as described in paragraph (g) of this section, except as stated in paragraph (f)(3) of this section.

* * * * *

(3) * * *

(iv) *Tolling of time limits.* (A) The OCC may toll the 20-day time period to:

(1) Make one request for additional information from the requester; or
(2) Clarify the applicability or amount of any fees, if necessary, with the requester.

(B) The tolling period ends upon the OCC's receipt of information from the requester or resolution of the fee issue.

* * * * *

4. Amend § 4.17 by:

a. Revising the section heading, and paragraph (a)(8);
b. Adding paragraph (b)(6); and
c. Removing, in the parenthetical in paragraph (d), the phrase "10 business days", and by adding in lieu thereof the phrase "20 business days".

The revisions and addition are set forth below.

§ 4.17 FOIA request fees.

(a) * * *

(8) *Requester who is a representative of the news media* means any person who, or entity that, gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. A freelance journalist shall be regarded as working for a news media entity if the person can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by that entity. A publication contract is one example of a basis for expecting publication that ordinarily would satisfy this standard. The OCC also may consider the past publication record of the requester in determining whether she or he qualifies as a "representative of the news media."

* * * * *

(b) * * *

(6) *No fee if the time limit passes and the requester has not received a response.* The OCC will not assess search and/or duplication fees, as applicable, if it fails to respond to a requester's FOIA request within the time limits specified under 12 CFR 4.15, and no "unusual" circumstances (as defined in 5 U.S.C. 552(a)(6)(B) and § 4.15(f)(3)(i)) or "exceptional" circumstances (as defined in 5 U.S.C. 552(a)(6)(C)) apply to the processing of the request

* * * * *

5. Add § 4.18 to read as follows:

§ 4.18 How to track a FOIA request.

(a) *Tracking number.* The OCC will issue a tracking number to all FOIA requesters within 5 days of the receipt of the request (as described in § 4.15(g)) in the OCC's Communications Department. The tracking number will be sent via electronic mail if the requester has provided an electronic mail address. Otherwise, the OCC will mail the tracking number to the requester's physical address, as provided in the FOIA request.

(b) *Web site.* FOIA requesters may check the status of their FOIA request(s) at <https://appsec.occ.gov/publicaccesslink/>.

(c) *If a requester does not have Internet access.* Requesters without Internet access may continue to contact the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, at (202) 874-4700 to check the status of their FOIA request(s).

Dated: April 17, 2009.

John C. Dugan,

Comptroller of the Currency.

[FR Doc. E9-9375 Filed 4-23-09; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0174; Directorate Identifier 2008-NE-03-AD]

RIN 2120-AA64

Airworthiness Directives; CFM International, S.A. CFM56-5B1/P; -5B2/P; -5B3/P; -5B3/P1; -5B4/P; -5B4/P1; -5B5/P; -5B6/P; -5B7/P; -5B8/P; -5B9/P; -5B1/3; -5B2/3; -5B3/3; -5B4/3; -5B5/3; -5B6/3; -5B7/3; -5B8/3; -5B9/3; -5B3/3B1; and -5B4/3B1 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This supplemental NPRM revises an earlier proposed airworthiness directive (AD), applicable to CFM International, S.A. CFM56-5B1/P; -5B2/P; -5B3/P; -5B3/P1; -5B4/P; -5B4/P1; -5B5/P; -5B6/P; -5B7/P; -5B8/P; and -5B9/P turbofan engines. That proposed AD would have required initial and repetitive eddy current inspections (ECIs) of certain part

number (P/N) low-pressure (LP) turbine rear frames. That proposed AD resulted from a refined lifing analysis by the engine manufacturer that shows the need to identify initial and repetitive inspection thresholds for inspecting certain LP turbine rear frames. This supplemental NPRM revises the proposed AD to add two LP turbine rear frame P/Ns to the applicability, to add 11 engine models to the applicability, and to clarify the commercial and corporate engines/LP turbine rear frames applicability. This supplemental NPRM results from CFM International, S.A. revising the service information to add LP turbine rear frame P/Ns and engine models, and from comments received on the proposed AD. This supplemental NPRM also results from a refined lifing analysis by the engine manufacturer that shows the need to identify initial and repetitive inspection thresholds for inspecting certain LP turbine rear frames. We are proposing this AD to detect low-cycle-fatigue cracks in the LP turbine rear frame, which could result in an engine separating from the airplane, causing damage to, and possibly leading to loss of control of, the airplane.

DATES: We must receive any comments on this proposed AD by June 8, 2009.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* (202) 493-2251.

You can get the service information identified in this proposed AD from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552-2800; fax (513) 552-2816.

FOR FURTHER INFORMATION CONTACT: Stephen Sheely, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: stephen.k.sheely@faa.gov; telephone (781) 238-7750; fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: