

## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 9 CFR Part 93

[Docket No. 98-070-1]

## Harry S Truman Animal Import Center

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Cancellation of lottery for HSTAIC.

**SUMMARY:** In anticipation that the Harry S Truman Animal Import Center (HSTAIC) in Fleming Key, FL, may be closed, we are giving notice that we do not plan to hold a lottery in December 1998 for exclusive use of HSTAIC in calendar year 1999. In addition, we do not intend to enter into any more cooperative-service agreements with prospective importers for exclusive use of the facility unless it is certain the animals can enter HSTAIC on or before December 31, 1998. Ensuring that no animals enter HSTAIC after this date would allow us to close HSTAIC before the end of fiscal year 1999 if a decision is made to close the facility.

**EFFECTIVE DATE:** July 13, 1998.

**FOR FURTHER INFORMATION CONTACT:** Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737-1231; (301) 734-3276; or e-mail gcolgrove@aphis.usda.gov.

**SUPPLEMENTARY INFORMATION:** The regulations in 9 CFR part 93 (referred to below as the regulations) govern the importation of animals into the United States to prevent the introduction of serious communicable diseases of livestock and poultry. Under the regulations, certain animals may only be imported into the United States if, among other things, they are quarantined upon arrival at the Harry S Truman Animal Import Center (HSTAIC), a Federal facility in Fleming Key, FL, that provides maximum biosecurity.

Importers pay the costs of using HSTAIC while their animals are in the facility. However, the Animal and Plant Health Inspection Service (APHIS) must pay for staff, electricity, telephone, and other overhead costs when the facility is not occupied, as well as for general maintenance and repairs. HSTAIC has been consistently underutilized since it opened in 1979, and demand for use of the facility has been falling. Consequently, APHIS is losing an average of \$220,000 annually keeping

HSTAIC available to importers. In addition, HSTAIC urgently needs approximately \$4.5 million worth of repairs and upgrades for which APHIS does not have an appropriation. This would significantly increase the already substantial fees for use of HSTAIC if the cost of the repairs and upgrades were to be recovered from users. In addition, the purpose for a facility such as HSTAIC, to import new bloodlines from countries with exotic diseases such as foot-and-mouth disease and rinderpest, can now be accomplished more cheaply and more easily by importing germplasm, such as semen and embryos.

Under these circumstances, we are considering closing HSTAIC and plan to publish a proposed rule in the **Federal Register** for public comment on this issue in the near future. If we decide to close the facility following this rulemaking, we would like to do so before the end of fiscal year 1999 to minimize expenses we are incurring to keep the facility operating. To close by then, all animals would have to be out of the facility by about April of 1999. Even if a decision is made to try to keep HSTAIC open for use, and funding can be obtained for the needed repairs and upgrades, it will take many months to complete the needed repairs and upgrades. To allow for these possible actions, we are announcing that we do not plan to hold a lottery in December 1998 for exclusive use of HSTAIC in calendar year 1999. (Under § 93.430 of the regulations, APHIS enters into a cooperative agreement with only one importer at a time for use of HSTAIC. We refer to this arrangement as "exclusive use.") This notice also announces our intention not to enter into any more cooperative agreements with prospective importers for exclusive use of the facility unless it is certain the animals can enter HSTAIC on or before December 31, 1998.

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 6th day of July 1998.

**Charles P. Schwalbe,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 98-18436 Filed 7-10-98; 8:45 am]

**BILLING CODE 3410-34-P**

## FEDERAL HOUSING FINANCE BOARD

## 12 CFR Part 904

[No. 98-26]

RIN 3069-AA71

## Revisions to the Freedom of Information Act Regulation

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is revising its Freedom of Information Act (FOIA) regulation to comply with new statutory requirements. The Finance Board is also reorganizing and streamlining the FOIA regulation to clarify the Finance Board's practices and procedures in responding to requests for information.

**DATES:** The interim final rule will become effective on July 13, 1998. The Finance Board will accept comments on the interim final rule in writing on or before September 11, 1998.

**ADDRESSES:** Mail comments to Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006. Comments will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** Elaine L. Baker, Secretary to the Board and Associate Director, Executive Secretariat, Office of the Managing Director, 202/408-2837, or Janice A. Kaye, Attorney-Advisor, Office of General Counsel, 202/408-2505, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:****I. Statutory and Regulatory Background**

Congress amended FOIA by enacting the Electronic Freedom of Information Act Amendments of 1996 (EFOIA). See 5 U.S.C. 552, *as amended by* Pub. L. 104-231, 110 Stat. 3048 (Oct. 2, 1996). Among other procedural changes, EFOIA increases the time for responding to a FOIA request from 10 to 20 days, specifically applies FOIA disclosure requirements to electronic records, and adds frequently requested records as a category of reading room records. EFOIA also requires an agency to promulgate regulations that provide for the expedited processing of FOIA requests.

In addition to amending its FOIA regulation, codified at 12 CFR part 904, to comply with these statutory changes, the Finance Board is reorganizing and streamlining the regulation to clarify its practices and procedures in responding

to requests for information. The reorganization is technical and procedural in nature and will have no substantive effect on the operation of the Finance Board's FOIA process.

## II. Analysis of the Interim Final Rule

### A. Elimination of Obsolete Provisions

In order to streamline the FOIA regulation, the Finance Board is removing two provisions that restate statutory requirements, § 904.1, purpose and scope, and § 904.3(a), published information. See 12 CFR 904.1, 904.3(a); 5 U.S.C. 552(a). The Finance Board is also eliminating § 904.10 in its entirety. 12 CFR 904.10. Section 904.10(a), which concerns service of process under FOIA, is unnecessary because service of process under FOIA is governed by the Federal Rules of Civil Procedure. *Id.* § 904.10(a); Fed. R. Civ. P. 4(i). Section 904.10 (b) and (c), which concerns disclosure of Finance Board records by persons other than Finance Board employees, is being deleted because the Finance Board does not have the authority to enforce the stated restrictions. 12 CFR 904.10(b)–(c).

### B. Implementation of New Statutory Requirements and Clarification of the Current Regulation

#### 1. Definitions

The interim final rule restates the definitions of the terms "Finance Board," "FOIA," "requester," and "search" without substantive change. To reflect an internal agency reorganization, the term "Secretary to the Board" replaces the term "Executive Secretary." The address for the Secretary to the Board is now included in the definition of that term. The definitions of the terms that relate to the assessment and collection of FOIA fees, *i.e.*, "commercial use request," "direct costs," "educational institution," and "representative of the news media," are relocated without substantive change to § 904.8, the fees section of the interim final rule.

To include changes made by EFOIA, the Finance Board has amended the definition of the term "unusual circumstances" and added specific references to records maintained in an electronic format in the definitions of the terms "duplication" and "record." See 5 U.S.C. 552(a)(3)(B)–(C), (6)(B)(iii), (f)(2). To ensure consistency with FOIA, the interim final rule includes a definition of the term "agency" with the same meaning as under FOIA. *Id.* 552(f)(1).

To broaden the coverage of the regulatory provisions concerning financial regulatory agency records, the

definition of the term "financial regulatory agency" now includes the Farm Credit Administration and any state officer, agency, supervisor, or other entity that has regulatory authority over, or is empowered to institute enforcement action against, a financial institution, including an insurance company. To avoid repetition within the FOIA regulation, the term "working day" is defined to exclude Saturdays, Sundays, and legal public holidays.

#### 2. Records Available to the Public

Section 904.2 of the interim final rule restates § 904.3(b)–(d), § 904.4, and § 904.7(c)(1) of the current rule with minor changes required by EFOIA. See 12 CFR 904.3(b)–(d); 904.4; 904.7(c)(1). The EFOIA changes include a separate paragraph, designated as § 904.2(b), which clarifies the types of records that are available for public inspection in the Finance Board's reading room. In addition to the records listed in § 904.4(b) of the current rule, the Finance Board considers the following records to be reading room records: (1) records previously disclosed to any requester pursuant to FOIA which, because of the nature of their subject matter, the Finance Board has determined will likely be the subject of subsequent requests for substantially the same records, and a general index thereof; (2) current indices that provide identifying information about all matters issued, adopted, or promulgated by the Finance Board; and (3) the FOIA report the Finance Board submits to the Attorney General pursuant to 5 U.S.C. 552(e). See 5 U.S.C. 552(a)(2). As required by EFOIA, the Finance Board is making each reading room record created on or after November 1, 1996 available by computer telecommunications or other electronic means, such as on computer diskettes or on the Finance Board's Internet Web site, found at <http://www.fhfb.gov>. *Id.* To maximize the availability of records to the public, the Finance Board will provide copies of reading room records in response to a FOIA request in accordance with the procedures and fee schedule in its FOIA regulation.

#### 3. Requests For Records

Section 904.3 of the interim final rule is a restatement of § 904.5(a) and (b)(1) and (2) of the current rule. See 12 CFR 904.5(a), (b)(1)–(2). Like the current rule, the interim final rule describes the information a requester must provide in order for the Finance Board to process a FOIA request and requires a requester to submit the request in writing to the Secretary to the Board. *Id.* § 904.5(a), (b)(1). A new provision in the interim

final rule provides that if a request is incomplete, the Secretary to the Board may advise the requester that additional information is needed. If the requester submits a corrected request, the Finance Board will treat the corrected request as a new request. *Id.* § 904.5(b)(2). This provision will allow the Secretary to the Board to close out its FOIA files. If the Secretary to the Board notifies a requester that the request is incomplete, the requester is free to initiate a new request that includes the necessary information.

#### 4. Responses to Requests for Records

Section 904.4 of the interim final rule, which concerns the Finance Board's initial response to a FOIA request, restates § 904.5(b)(4)–(5) and (f) and § 904.6(d), (k), and (m) of the current rule and adds a new provision concerning expedited processing. See *id.* § 904.5(b)(4)–(5), (f); 904.6(d), (k), (m). EFOIA increases the time limit for initial FOIA responses from 10 to 20 days. See 5 U.S.C. 552(a)(6)(A)(i). Accordingly, § 904.4(a) of the interim final rule requires the Secretary to the Board to grant or deny each complete request within 20 working days of receipt.

Section 904.4(c), which concerns extensions of this 20-day time limit, includes a revision required by EFOIA allowing a requester to narrow a request so that it may be processed within the 20-day time limit or arrange an alternative time frame for processing the request. *Id.* 552(a)(6)(B)(i)–(ii).

EFOIA also requires an agency to promulgate regulations providing for expedited processing of FOIA requests. *Id.* 552(a)(6)(E). The Finance Board has included an expedited processing provision that conforms to the statutory requirements in § 904.4(d) of the interim final rule.

Section 904.4(e) of the interim final rule combines provisions appearing in § 904.6(d), (k), and (m) of the current rule. See 12 CFR 904.6(d), (k), (m). It provides that the Finance Board will furnish one copy of a record to a requester in any form or format requested if the record is readily reproducible by the Finance Board in that form or format. The record will be provided by regular U.S. mail to the address indicated in the request unless other arrangements are made, such as taking delivery at the Finance Board or an agreement by the requester to pay additional fees for transmission by facsimile or other express delivery methods.

If the Finance Board denies a request in whole or in part, the requester may appeal under § 904.8 of the interim final

rule. As under § 904.5(c), (e), and (f) of the current rule, § 904.8(a) permits a requester to file an appeal within 30 days of the initial determination and requires a response from the Finance Board within 20 working days, or in unusual circumstances, within 30 working days, of receipt of an application for appeal. *Id.* § 904.5(c), (e), (f). Section 904.8(b), which concerns administrative appeals during judicial review, is a restatement of § 904.5(d) of the current rule. *Id.* § 904.5(d).

#### 5. FOIA Exemptions

Section 904.5(a) of the interim final rule incorporates all of the disclosure exemptions provided by FOIA. *See* 5 U.S.C. 552(b); 12 CFR 904.7(a). Consistent with § 904.7(b) of the current rule, under § 904.5(b) of the interim final rule the Finance Board will provide a requester with any reasonably segregable portion of a record after redacting the portion that is exempt from disclosure. *See* 5 U.S.C. 552(b); 12 CFR 904.7(b). As required by EFOIA, the Finance Board will make a reasonable effort to estimate the volume of redacted information and provide that information to the requester unless providing the estimate would harm an interest protected by the exemption under which the redaction is made. *See* 5 U.S.C. 552(a)(6)(F). The Finance Board also will indicate the estimated volume of redacted information on the released portion of the record, and, if technically feasible, will make the indication at the place in the record where the redaction is made unless the indication would harm an interest protected by the exemption under which the redaction is made. *Id.* 552(b).

Like § 904.4(a) of the current rule, § 904.5(c) permits the Finance Board to disclose otherwise exempt records if disclosure is in the public interest. *See* 12 CFR 904.4(a).

#### 6. Disclosure of Examination Reports and Other Records of Financial Regulatory Agencies

Section 904.6 of the interim final rule, which concerns disclosure of Federal Home Loan Bank examination reports to financial regulatory agencies, is a restatement of § 904.8 of the current rule. *Id.* § 904.8. The only change other than reorganizing the provision, is replacement of a reference to the Finance Board's former District Banks Directorate with a reference to the Finance Board.

Section 904.7 of the interim final rule, which prohibits the Finance Board from disclosing records of other financial regulatory agencies, is a restatement of

§ 904.9 of the current rule without substantive change. *Id.* § 904.9.

#### 7. Fees

Section 904.9 of the interim final rule concerns the assessment and collection of fees for providing FOIA services. Other than modestly increasing the amount of the charges the Finance Board will assess for certain services, this provision is not substantively different than the current FOIA fee provision. *Id.* § 904.6.

#### III. Notice and Public Participation

The Finance Board is promulgating these technical, procedural changes as an interim final rule in order to conform its FOIA regulation to the EFOIA amendments that have already taken effect. However, because FOIA requires notice and receipt of public comment, the Finance Board will accept written comments on the interim final rule on or before September 11, 1998.

#### IV. Effective Date

For the reasons stated in part III above, the Finance Board for good cause finds that the interim final rule should become effective on July 13, 1998. *See* 5 U.S.C. 553(d)(3).

#### V. Regulatory Flexibility Act

The Finance Board is adopting the amendments to part 904 in the form of an interim final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act do not apply. *See* 5 U.S.C. 601(2), 603(a).

#### VI. Paperwork Reduction Act

The interim final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

#### List of Subjects in Part 904

Confidential business information, Federal home loan banks, Freedom of information. For the reasons stated in the preamble, the Finance Board hereby revises 12 CFR part 904 to read as follows:

#### PART 904—FREEDOM OF INFORMATION ACT REGULATION

##### Sec.

- 904.1 Definitions.
  - 904.2 Records available to the public.
  - 904.3 Requests for records.
  - 904.4 Finance Board response to requests for records.
  - 904.5 Records not disclosed.
  - 904.6 Disclosure of Federal Home Loan Bank examination reports.
  - 904.7 Records of financial regulatory agencies held by the Finance Board.
  - 904.8 Appeals.
  - 904.9 Fees.
- Authority:** 5 U.S.C. 552; 52 FR 10012 (Mar. 27, 1987).
- § 904.1 Definitions.**
- For purposes of this part:
- (a) *Agency* has the same meaning as in 5 U.S.C. 552(f)(1).
  - (b) *Duplication* means the process of making a copy of a record in order to respond to a FOIA request, including paper copies, microfilm, audio-video materials, and computer diskettes or other electronic copies.
  - (c) *Finance Board* means the agency established as the Federal Housing Finance Board.
  - (d) *Financial regulatory agency* means the Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Farm Credit Administration, or a state officer, agency, supervisor, or other entity that has regulatory authority over, or is empowered to institute enforcement action against, a financial institution, including an insurance company.
  - (e) *FOIA* means the Freedom of Information Act, as amended (5 U.S.C. 552).
  - (f) *Record* means information or documentary material the Finance Board maintains in any form or format, including an electronic form or format, which the Finance Board:
    - (1) Made or received under federal law or in connection with the transaction of public business;
    - (2) Preserved or determined is appropriate for preservation as evidence of Finance Board operations or activities or because of the value the information it contains; and
    - (3) Controls at the time it receives a request.
  - (g) *Requester* means any person, including an individual, corporation, firm, organization, or other entity, who makes a request to the Finance Board under FOIA for records.
  - (h) *Review* means the process of examining a record to determine whether all or part of the record may be withheld, and includes redacting or otherwise processing the record for disclosure to a requester. It does not include time spent:
    - (1) Resolving legal or policy issues regarding the application of exemptions to a record; or
    - (2) At the administrative appeal level, unless the Finance Board determines that the exemption under which it

withheld records does not apply and the records are reviewed again to determine whether a different exemption may apply.

(i) *Search* means the time spent locating records responsive to a request, manually or by electronic means, including page-by-page or line-by-line identification of responsive material within a record.

(j) *Secretary to the Board* means the Secretary to the Board of Directors of the Finance Board. The address for the Secretary to the Board is Executive Secretariat, Office of the Managing Director, Federal Housing Finance Board, 1777 F Street NW, Washington, DC 20006.

(k) *Unusual circumstances* means the need to:

(1) Search for and collect records from establishments that are separate from the office processing the request;

(2) Search, review, and duplicate a voluminous amount of separate and distinct records in order to process a single request; or

(3) Consult with another agency or among two or more components of the Finance Board that have a substantial interest in the determination of a request.

(l) *Working days* do not include Saturdays, Sundays, and legal public holidays.

#### **§ 904.2 Records available to the public.**

(a) *General.* (1) It is the policy of the Finance Board to respond promptly to all FOIA requests.

(2) The Finance Board may disclose records that were previously published or disclosed or are customarily furnished to the public in the course of the performance of official duties without complying with this part. These records include, but are not limited to, the annual report the Finance Board submits to Congress pursuant to section 2B(d) of the Federal Home Loan Bank Act (12 U.S.C. 1422b(d)), press releases, Finance Board forms, and materials published in the **Federal Register**.

(3) Except as provided in the Privacy Act (5 U.S.C. 552a), the Finance Board's Privacy Act regulation (12 CFR part 909), or paragraph (a)(2) of this section, the Finance Board shall not disclose records except in accordance with the requirements of this part.

(b) *Reading room.* (1) Subject to §§ 904.5 through 904.7, the following records shall be available for public inspection and copying in the Finance Board reading room from 9:00 a.m. to 4:00 p.m. each working day:

(i) Final opinions or orders of the Finance Board in the adjudication of cases.

(ii) A record of the final votes of each member of the Board of Directors in every Finance Board proceeding.

(iii) Statements of policy and interpretations adopted by the Finance Board that are not published in the **Federal Register**.

(iv) Administrative staff manuals and instructions to staff that affect a member of the public.

(v) Records previously disclosed to any requester pursuant to this part which, because of the nature of their subject matter, the Finance Board has determined will likely be the subject of subsequent requests for substantially the same records, and a general index thereof.

(vi) Current indices that provide identifying information about all matters issued, adopted, or promulgated by the Finance Board.

(vii) The report the Finance Board submits to the Attorney General pursuant to 5 U.S.C. 552(e).

(2) The Finance Board shall make each reading room record created on or after November 1, 1996 available by computer telecommunications or other electronic means, such as on computer diskettes or on the Finance Board's Internet Web site, found at <http://www.fhfb.gov>.

(3) The Finance Board shall assess fees for searching, reviewing, or duplicating reading room records in accordance with § 904.9.

#### **§ 904.3 Requests for records.**

(a) *Request requirements.* Requests for access to, or copies of, Finance Board records shall be in writing and addressed to the Secretary to the Board. Each request shall include the following:

(1) A description of the requested record that provides sufficient detail to enable the Finance Board to locate the record with a reasonable amount of effort;

(2) The requester's full name, mailing address, and a telephone number where the requester can be reached during normal business hours;

(3) A statement that the request is made pursuant to FOIA; and

(4) At the discretion of the requester, a dollar limit on the fees the Finance Board may incur to respond to the request for records. The Finance Board shall not exceed such limit.

(b) *Incomplete requests.* If a request does not meet all of the requirements of paragraph (a) of this section, the Secretary to the Board may advise the requester that additional information is needed. If the requester submits a corrected request, the Finance Board shall treat the corrected request as a new request.

#### **§ 904.4 Finance Board response to requests for records.**

(a) *Response deadline.* Subject to § 904.9(f), within 20 working days of receipt of a request meeting the requirements of § 904.3(a) and any extensions of time under paragraph (c) of this section, the Secretary to the Board shall:

(1) Determine whether to grant or deny the request in whole or in part;

(2) Notify the requester in writing of the determination and the reasons therefor; and

(3) Make the records, if any, available to the requester.

(b) *Denials.* If the Secretary to the Board denies the request in whole or in part, the notice required under paragraph (a)(2) of this section shall state that the Secretary to the Board is the person responsible for the denial, the denial is not a final agency action, and the requester may appeal the denial under § 904.8.

(c) *Extensions of time.* In unusual circumstances, the Secretary to the Board may extend the time limit in paragraph (a) of this section for a period not to exceed 10 working days by notifying the requester in writing of:

(1) The reasons for the extension;

(2) The date on which a determination is expected; and

(3) The opportunity for the requester to either limit the scope of the request so that the Finance Board may process it in accordance with paragraph (a) of this section, or arrange an alternative time frame for processing the request or a modified request.

(d) *Expedited processing.* (1) The Finance Board shall process a request for records as soon as practicable if it determines that expedited processing is appropriate or the requester demonstrates a compelling need. To demonstrate a compelling need, a requester shall submit a written application certified to be true and correct to the best of the requester's knowledge and belief to the Secretary to the Board. The application shall state that:

(i) The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) With respect to a requester who is primarily engaged in disseminating information, such as a representative of the news media as defined in § 904.9(a)(4)(iv), there is urgency to inform the public concerning actual or alleged Finance Board activity.

(2) Within 10 working days of receipt of an application for expedited processing that meets the requirements

of paragraph (c)(1) of this section, the Secretary to the Board shall determine whether to grant or deny the application and notify the requester in writing of the determination.

(3) A requester may appeal the denial of an application for expedited processing by submitting a written application stating the grounds for the appeal to the Secretary to the Board. The Finance Board shall expeditiously determine whether to grant or deny the appeal and shall notify the requester in writing of the determination, the name and title or position of the person responsible for the determination, and of the provisions for judicial review of this final action under 5 U.S.C. 552(a)(4) and (6).

(e) *Providing responsive records.* The Finance Board shall provide one copy of a record to a requester in any form or format requested if the record is readily reproducible by the Finance Board in that form or format by regular U.S. mail to the address indicated in the request unless other arrangements are made, such as taking delivery of the document at the Finance Board. At the option of the requester and upon the requester's agreement to pay fees in accordance with § 904.9, the Finance Board shall provide copies by facsimile transmission or other express delivery methods.

#### § 904.5 Records not disclosed.

(a) *Records exempt from disclosure.* Except as otherwise provided in this part, the Finance Board shall not disclose records that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

(2) Related solely to the Finance Board's internal personnel rules and practices.

(3) Specifically exempted from disclosure by a statute other than FOIA if such statute requires the record to be withheld from the public in such a manner as to leave no discretion on the issue, establishes particular criteria for withholding, or refers to particular types of records to be withheld.

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(5) Inter- or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the Finance Board.

(6) Personnel, medical, or similar files the disclosure of which would

constitute a clearly unwarranted invasion of personal privacy.

(7) Compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority, any private institution, or a Federal Home Loan Bank, which furnished information on a confidential basis, and, in the case of a record compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Finance Board, a Federal Home Loan Bank, or a financial regulatory agency.

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) *Reasonably segregable portions.* (1) The Finance Board shall provide a requester with any reasonably segregable portion of a record after redacting the portion that is exempt from disclosure under paragraph (a) of this section.

(2) The Finance Board shall make a reasonable effort to estimate the volume of redacted information and provide that information to the requester unless providing the estimate would harm an interest protected by the exemption under which the redaction is made.

(3) The Finance Board shall indicate the estimated volume of redacted information on the released portion of the record unless providing the estimate would harm an interest protected by the exemption under which the redaction is made. If technically feasible, the Finance Board shall make the indication

at the place in the record where the redaction is made.

(c) *Public interest.* The Finance Board may disclose records it has authority to withhold under paragraph (a) of this section upon a determination that disclosure would be in the public interest.

#### § 904.6 Disclosure of Federal Home Loan Bank examination reports.

The Finance Board may disclose an examination, operating, or condition report of a Federal Home Loan Bank or a related record to a financial regulatory agency upon a determination that:

(a) The person requesting the record on behalf of the financial regulatory agency has the authority to make such request;

(b) The financial regulatory agency is requesting the record for a legitimate regulatory purpose; and

(c) The financial regulatory agency making the request agrees that it shall not disclose the record pursuant to FOIA, the agency's regulations, or any other authority.

#### § 904.7 Records of financial regulatory agencies held by the Finance Board.

The Finance Board shall not disclose an examination, operating, or condition report, or other record prepared by, on behalf of, or for the use of a financial regulatory agency. Upon a receipt of a request for such records, the Finance Board shall promptly refer the request to the appropriate agency and notify the requester of the referral.

#### § 904.8 Appeals.

(a) *Procedure.* (1) If the Secretary to the Board has denied a request in whole or in part, the requester may appeal the denial by submitting a written application to the Secretary to the Board stating the grounds for the appeal within 30 working days of the date of the Finance Board's determination under § 904.4.

(2) Subject to § 904.9(f), within 20 working days of receipt of an application for appeal meeting the requirements of paragraph (a)(1) of this section and any extensions of time under paragraph (a)(3) of this section, the Finance Board shall determine whether to grant or deny the appeal and notify the requester in writing of the determination, the name and title or position of the person responsible for the determination, and the provisions for judicial review of this final action under 5 U.S.C. 552(a)(4).

(3) In unusual circumstances, the Secretary to the Board may extend the time limit in paragraph (a)(2) of this section for a period not to exceed 10

working days by notifying the requester in writing of the reasons for the extension and the date on which a determination is expected.

(b) *Appeal during pendency of judicial review.* If a requester files an action in a United States district court under 5 U.S.C. 552(a)(4) concerning a request for Finance Board records before exhausting the administrative appeals process for that request under paragraph (a) of this section, the Finance Board may:

- (1) Initiate and process an administrative appeal; or
- (2) Continue to process an administrative appeal previously filed under paragraph (a) of this section.

#### § 904.9 Fees.

(a) *Fees.* Except as otherwise provided in a statute specifically providing for setting fees for particular types of records or in this section, the Finance Board shall assess against each requester the direct costs of responding to a request for records.

(1) If the records are requested for a commercial use, the direct costs are limited to the reasonable operating costs the Finance Board incurs to search, review, and duplicate records.

(2) If the records are not requested for a commercial use and the requester is an educational institution, non-commercial scientific institution, or representative of the news media, the direct costs are limited to the reasonable operating costs the Finance Board incurs to duplicate records in excess of 100 pages.

(3) If neither the request nor the requester is described in paragraphs (a) (1) or (2) of this section, the direct costs are limited to the reasonable operating costs the Finance Board incurs to search in excess of two hours and duplicate records in excess of 100 pages.

(4) For purposes of this section, the term:

(i) *Commercial use request* means a request from, or on behalf of, a person who seeks records for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(ii) *Educational institution* means a preschool, public or private elementary or secondary school, or institution of undergraduate, graduate, professional, or vocational higher education that operates a program of scholarly research.

(iii) *Non-commercial scientific institution* means a nonprofit institution operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(iv) *Representative of the news media* means a requester who is actively gathering information that is about current events or would be of current interest to the public for an entity that is organized and operated to publish or broadcast news to the public.

(b) *Fees when no records are provided.* The Finance Board may assess a fee for the direct costs of searching for a requested record the Finance Board cannot locate or if located, determines to be exempt from disclosure under § 904.5.

(c) *Interest.* The Finance Board may assess interest at the rate prescribed in 31 U.S.C. 3717 on any unpaid fees beginning 31 days after the earlier of the date of the Finance Board's determination under § 904.4 or the date a fee statement is mailed to a requester. Interest shall accrue from such date.

(d) *Exceptions.* Notwithstanding paragraphs (a) or (b) of this section, the Finance Board may determine not to assess a fee or to reduce a fee if:

(1) The routine cost of collecting and processing the fee is likely to equal or exceed the amount of the fee.

(2) The fee is equal to or less than 10 dollars.

(3) Disclosure of the record 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.

(i) A requester may apply in writing to the Secretary to the Board for a waiver of fees under this paragraph (b)(3). A fee waiver request shall include the following:

(A) The requester's interest in and proposed use of the record;

(B) Whether the requester will derive income or other benefit from the record;

(C) An explanation of how the public will benefit from disclosure, including the requester's ability and intention to disseminate the information to the public; and

(D) The requester's expertise in the subject area of the record.

(ii) In determining whether disclosure of a record is in the public interest, the

Finance Board shall consider whether the record:

(A) Concerns identifiable operations or activities of the Finance Board;

(B) Is meaningfully informative in relation to the subject matter of the request;

(C) Contributes to an understanding of the subject matter by the public at large, and the significance of that contribution; and

(D) Furthers, or is primarily in, the requester's commercial interest.

(e) *Aggregating requests.* If the Finance Board reasonably believes that a requester or a group of requesters acting in concert is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, it may aggregate such requests and assess fees in accordance with this section.

(f) *Collecting fees.* (1) The Finance Board shall deem any request for Finance Board records as an agreement by the requester to pay fees and interest assessed in accordance with this section.

(2) To pay fees and interest assessed under this section, a requester shall deliver to the Secretary to the Board a check or money order made payable to the "Federal Housing Finance Board."

(3) Prior to disclosing any record, the Finance Board may require a requester to agree in writing to pay actual fees and interest incurred in accordance with this section if the estimated fee will likely exceed \$25 but not \$250.

(4) The Finance Board may require a requester to pay an estimated fee in advance if:

(i) The Secretary to the Board determines that the fee will likely exceed \$250; or

(ii) The requester has previously failed to pay a fee assessed under this section within 30 days of the earlier of the date of the Finance Board's determination under § 904.4 or the date a fee statement was mailed to a requester.

(5) The Finance Board shall promptly refund to a requester any estimated advance fee paid under paragraph (f)(4) of this section that exceeds the actual fee. The Finance Board shall assess the requester for the amount by which the actual fee exceeds the estimated advance fee payment.

(g) *Fee schedule.* The Finance Board shall assess fees in accordance with the following schedule:

#### Search:

Manual: Supervisory/Professional Staff .....	\$34.00 per hour.
Manual: Clerical Staff .....	\$17.00 per hour.
Computer: Operator .....	\$34.00 per hour.
Computer output (PC) .....	actual cost.

Diskettes (3 1/2 x 5 1/4) .....	\$5.00 per diskette.
Review .....	\$34.00 per hour.
Duplication:	
Photocopy .....	\$.10 per page.
Computer generated .....	\$.76 per 1000 lines.
Copy of microfiche .....	\$.30 per page.
Transcription of audio tape .....	\$4.50 per page.
Certification, seal and attestation by the Secretary to the Board .....	\$5.00 per document.
Delivery:	
Facsimile transmission (long distance) .....	Long distance charges plus \$.25 per page.
Facsimile transmission (local) .....	\$.25 per call plus \$.25 per page.
Express delivery service .....	Actual cost.

Dated: May 29, 1998.

By the Board of Directors of the Federal Housing Finance Board.

**Bruce A. Morrison,**  
Chairperson.

[FR Doc. 98-18468 Filed 7-10-98; 8:45 am]

BILLING CODE 6725-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 98-AWP-11]

#### Modification of Class E Airspace; Ukiah, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This action modifies the Class E airspace area at Ukiah, CA, by lowering a portion of the base of controlled airspace from 9,500 feet mean sea level, (MSL) to 1,200 feet above ground level (AGL). This action is due to the establishment of a new federal airway (V-607) between Mendocino and Arcata, CA. The airway will have a minimum enroute altitude of 9,000 feet MSL. The intended effect of this action is to provide adequate controlled airspace extending upward from 1200 feet or more above the surface of the earth to contain aircraft flying V-607 between Mendocino and Arcata, CA.

**EFFECTIVE DATE:** 0901 UTC October 8, 1998.

**FOR FURTHER INFORMATION CONTACT:** Larry Tonish, Airspace Specialist, Airspace Branch, AWP-520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725-6539.

#### SUPPLEMENTARY INFORMATION:

#### History

On May 1, 1998, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace area at Ukiah, Ca (63 FR

24140). Additional controlled airspace extending upward from 1200 feet above the surface is needed to contain IFR aircraft flying V-607 between Mendocino and Arcata, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 1200 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

#### The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace area at Ukiah, CA. The establishment of federal airway V-607 has made this action necessary. The effect of this action will provide adequate airspace needed to contain IFR aircraft flying V-607 between Mendocino and Arcata, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

#### PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

#### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 1200 feet or more above the surface of the earth.*

\* \* \* \* \*

#### AWP CA E5 UKIAH, CA [Revised]

Ukiah Municipal Airport, CA  
(lat. 39°07'34" N, long. 123°12'03" W)  
Fortuna VORTAC (lat. 40°40'17" N, long. 124°14'04" W)  
Mendocino VORTAC (lat. 39°03'12" N, long. 123°16'27" W)  
Red Bluff VORTAC (lat. 40°05'56" N, long. 122°14'11" W)

That airspace extending upward from 1,200 feet above the surface within a 17.4 mile radius of the Mendocino VORTAC, excluding that airspace east of the western edge of V25 and that airspace bounded by a line from lat. 39°32'00" N, long 123°33'14" W; to lat. 39°32'00" N, long 123°11'34" W; to lat. 39°21'37" N, long. 123°04'54" W; to lat. 39°19'07" N, long. 123°07'22" W, thence counterclockwise via the 17.4 mile radius of the Mendocino VORTAC to lat. 39°19'04" N, long. 123°25'40" W; to lat. 39°32'00" N, long. 123°33'14" W. That airspace extending upward from 7,500 feet MSL south of the Red Bluff VORTAC between the 20.9- and 39.9-mile arcs of the Red Bluff VORTAC bounded on the northwest by the