

* * * * *

PART 460—LABELING AND ADVERTISING OF HOME INSULATION

1. The authority citation for part 460 continues to read as follows:

Authority: 38 Stat. 717, as amended (15 U.S.C. 41 *et seq.*).

2. The last sentence of § 460.5(a) introductory text is revised to read as follows:

§ 460.5 R-value tests.

* * * * *

(a) * * * Copies may be inspected at the Federal Trade Commission, Consumer Response Center, Room 130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

* * * * *

3. The last sentence of § 460.5(a)(2) is revised to read as follows:

§ 460.5 R-value tests.

* * * * *

(a) * * *
(2) * * * Copies may be inspected at the Federal Trade Commission, Consumer Response Center, Room 130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

* * * * *

Donald S. Clark,

Secretary.

[FR Doc. 98-34407 Filed 12-28-98; 8:45 am]

BILLING CODE 6750-01-P

UNITED STATES INFORMATION AGENCY

22 CFR Part 503

Freedom of Information Act Regulations; Electronic Records

AGENCY: United States Information Agency.

ACTION: Final rule; amendment.

SUMMARY: This document amends the Agency's current regulations implementing the Freedom of Information Act (FOIA) in order to conform with the amendments required by the Electronic Records Act of 1996.

EFFECTIVE DATE: January 28, 1999.

ADDRESSES: Freedom of Information Office, United States Information Agency, Room M-29, 301 4th Street, SW, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT:

Lola L. Secora, Chief, FOIA/PA Unit, (202) 619-5499.

SUPPLEMENTARY INFORMATION: The United States Information Agency published a Notice of Proposed Rulemaking to amend its FOIA regulations on April 1, 1998 (63 FR 15800-15802). Pursuant to that notice, USIA received only one comment from the public. While USIA noted that electronic information was available via "computer," and meant that it was available electronically through the Internet (as this law requires), the public comment sought clarification and so the wording has been changed to denote that Agency information is available electronically through the "Internet," and not just through a computer located at USIA. The final rule is based on the proposed rule. This addition § 503.9 is required by the Electronics Records Act of 1996, as amended by Public Law 104-231, October 2, 1996, 110 Stat. 3049-3054 (5 U.S.C. 552). It has been determined that this addition is not a significant regulatory action and it will not:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof;
- (4) Have a significant economic impact on a substantial number of small entities; or
- (5) Impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

List of Subjects in 22 CFR Part 503

Freedom of information.

Accordingly, 22 CFR part 503 is amended as set forth below.

PART 503—FREEDOM OF INFORMATION ACT REGULATION

1. The authority citation for Part 503 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 13 U.S.C. 8; 22 U.S.C. 503, 2658; E.O. 10477, 18 FR 4540, 3 CFR, 1949-1953 Comp., p. 958; E.O. 10822, 24 FR 4159, 3 CFR, 1959-5963 Comp., p. 355; E.O. 12292, 46 FR 13967, 3 CFR, 1981 Comp., p. 134; E.O. 12356, 47 FR 14874 and 15557, 3 CFR, 1982 Comp., p. 166; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333.

2. Section 503.9 is added to read as follows:

§ 503.9 Electronic Records Act of 1996.

(a) *Introduction.* This section applies to all records of the United States Information Agency, including all of its foreign posts. Congress enacted the FOIA to require Federal agencies to make records available to the public through public inspections and at the request of any person for any public or private use. The increase in the Government's use of computers enhances the public's access to Government information. This section addresses and explains how records will be reviewed and released when the records are maintained in electronic format. Documentation not previously subject to the FOIA when maintained in a non-electronic format is not made subject to FOIA by this law.

(b) *Definitions—(1) Compelling need.* Obtaining records on an expedited basis because of an imminent threat to the life of physical safety of an individual, or urgently needed by an individual primarily engaged in disseminating information to the public concerning actual or alleged Federal Government activities.

(2) *Discretionary disclosure.* Records or information normally exempt from disclosure will be released whenever it is possible to do so without reasonably foreseeable harm to any interest protected by an FOIA exemption.

(3) *Electronic reading room.* The room provided which makes electronic records available.

(c) *Electronic format of records.* (1) Materials such as Agency opinions and policy statements (available for public inspection and copying) will be available electronically by accessing USIA's Home Page via the Internet at <http://www.usia.gov>. To set up an appointment to view such records in hard copy or to access the Internet via USIA computer, please contact the FOIA/PA Unit on (202) 619-5499.

(2) The Agency will make available for public inspection and copying, both electronically via the Internet and in hard copy, those records that have been previously released in response to FOIA requests, when the Agency determines the records have been or are likely to be the subject of future requests.

(3) The Agency will provide both electronically through its Internet address and in hard copy a "Guide" on how to make an FOIA request, and an Index of all Agency information systems and records that may be requested under the FOIA.

(4) The Agency may delete identifying details when it publishes or makes

available the index and copies of previously-released records to prevent a clearly unwarranted invasion of personal privacy.

(i) The Agency will indicate the extent of any deletions made from where the deletion was made, if feasible.

(ii) The Agency will not reveal information about deletions if such disclosure would harm an interest protected by an exemption.

(d) *Honoring form or format requests.* The Agency will aid requesters by providing records and information in the form requested, including electronic format, if we can readily reproduce them in that form or format. However, if we cannot accommodate the requester, we will provide responsive, nonexempt information in a reasonably accessible form.

(1) The Agency will make a reasonable effort to search for records kept in an electronic format. However, if the effort would significantly interfere with the operations of the Agency or the Agency's use of its computers, we will consider the effort to be unreasonable.

(2) The Agency need not create documents that do not exist, but computer records found in a database rather than in a file cabinet may require the application of codes of some form of programming to retrieve the information. This application of codes of programming of records will not amount to the creation of records.

(3) Except in unusual cases, the cost of computer time will not be a factor in calculating the two free hours of search time available under \$503.7 In those unusual cases, where the cost of conducting a computerized search significantly detracts from the Agency's ordinary operations, no more than the dollar equivalent of two hours of manual search time shall be allowed. For searches conducted beyond the first two hours, the Agency shall only charge the direct costs of conducting such searches.

(e) *Technical feasibility of redacting non-releasable material.* The Agency will make every effort to indicate the place on the record where a redaction of non-releasable material is made, and an FOIA citation noting the applicable exemption for the deletion will also be placed at the site. If unable to do so, we will notify you of that fact.

(f) *Ensuring timely response to request.* The Agency will make every attempt to respond to FOIA requests within the prescribed 20 working-day time limit. However, processing some requests may require additional time in order to properly screen material against

the inadvertent disclosure of material covered by the exemptions.

(1) *Multitrack first-in first-out processing.* (i) Because the Agency has been able to process its requests without a backlog of cases, USIA will not institute a multitrack system. Those cases that may be handled easily, because they require only a few documents or a simple answer, will be handled immediately by each specialist.

(ii) If you wish to qualify for processing under a faster track, you may limit the scope of your request so that we may respond more quickly.

(2) *Unusual circumstances.* (i) The Agency may extend for a maximum of ten working days the statutory time limit for responding to an FOIA request by giving notice in writing as to the reason for such an extension. The reasons for such an extension may include: the need to search for and collect requested records from multiple offices; the volume of records requested; and, the need for consultation with other components within the Agency.

(ii) If an extra ten days still does not provide sufficient time for the Agency to deal with your request, we will inform you that the request cannot be processed within the statutory time limit and provide you with the opportunity to limit the scope of your request and/or arrange with us a negotiated deadline for processing your request.

(iii) If you refuse to reasonable limit the scope of your request or refuse to agree upon a time frame, the Agency will process your case as it would have, had no modification been sought. We will make a diligent, good-faith effort to complete our review within the statutory time frame.

(3) *Aggregation of requests.* The Agency will aggregate requests that clearly involve related material that should be considered as a single request.

(i) If you make multiple or related requests for similar material for the purpose of avoiding costs, the Agency will notify you that we are aggregating your requests, and the reasons why.

(ii) Multiple or related requests may also be aggregated, such as those involving requests and schedule, but you will be notified in advance if we intend to do so.

(g) *Time periods for Agency consideration of requests—*(1) *Expedited access.* The Agency will authorized expedited access to requesters who show a compelling need for access, but the burden is on the requester to prove that expedition is appropriate. The Agency will determine within ten days whether or not to grant a request for

expedited access and will notify the requester of its decision.

(2) *Compelling need for expedited access.* Failure to obtain the records within an expedited deadline must pose an imminent threat to an individual's life or physical safety; or the request must be made by someone primarily engaged in disseminating information, and who has an urgency to inform the public about actual or alleged Federal Government activity.

(3) *How to request expedited access.* We will be required to make factual and subjective judgments about the circumstances cited by requesters to qualify them for expedited processing. To request expedited access, your request must be in writing and it must explain in detail your basis for seeking expedited access. The categories for compelling need are intended to be narrowly applied:

(i) *A threat to an individual's life or physical safety.* A threat to an individual's life or physical safety should be imminent to qualify for expedited access to the records. You must include the reason why a delay in obtaining the information could reasonably be foreseen to cause significant adverse consequences to a recognized interest.

(ii) *Urgency to inform.* The information requested should pertain to a matter of a current exigency to the American public, where delay in response would compromise a significant recognized interest. The person requesting expedited access under an "urgency to inform," must be primarily engaged in the dissemination of information. This does not include individuals who are engaged only incidentally in the dissemination of information. "Primarily engaged" requires that information dissemination be the main activity of the requester. A requester only incidentally engaged in information dissemination, besides other activities, would not satisfy this requirement. The public's right to know, although a significant and important value, would not by itself be sufficient to satisfy this standard.

(4) *Expansion of Agency response time.* The new law provides that agencies now have 20 working-days to respond to all FOIA requests. However, when possible, we will continue to respond to requests within the former 10 working-day time frame.

(5) *Estimation of matter denied.* The Agency will try to estimate the volume of any denied material and provide the estimate to the requester, unless doing so would harm an interest protected by an exemption,

(h) *Computer redaction.* The Agency will identify the location of deletions in the released portion of the records, and where technologically feasible, will show the deletion at the place on the record where the deletion was made, unless including that indication would harm an interest protected by an exemption.

(i) *Report to Congress.* In addition to the information already provided to Congress in the Agency's Annual Report on FOIA Activities, the Agency will include the following: the number of Privacy Act (PA) requests handled; the number of backlogged requests; the number of days taken to process requests; the number of staff devoted to processing FOIA requests; whether a claimed (b)(3) statute has been upheld in court; and the costs of litigation. The Agency's annual report will be available both in hard copy and through the Internet. In the past, annual reports were required based on a calendar year and were provided to Congress on or before March 1 of the following year. However, the new law has changed the annual reporting requirements now to be related to the Agency's fiscal year. Thus, the Annual Report to Congress on FOIA Activities for 1997 only encompassed the first nine months (January through September), and was reported by March 1, 1998. The FY 98 report will begin in October 1997 and conclude at the end of September 1998. This report will be presented to the Department of Justice instead of Congress, by February 1, 1999, and Justice will report all Federal agency FOIA activity through electronic means.

(j) *Reference materials and guides.* The Agency has available in hard copy, and will have electronically via the Internet, a guide for requesting records under the FOIA and an index and description of all major information systems of the Agency. The guide is a simple explanation of what the FOIA is intended to do, and how you can use it to access USIA records. The Index explains the types of records that may be requested from the Agency through FOIA requests and why some records cannot, by law, be made available by USIA.

Les Jin,

General Counsel.

[FR Doc. 98-34443 Filed 12-28-98; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8800]

RIN 1545-AW51

Consolidated Returns—Limitation on Recapture of Overall Foreign Loss Accounts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary amendments to the consolidated return regulations. The temporary amendments modify the date temporary regulations apply as published in the **Federal Register** on January 12, 1998, and modified by amendments published in the **Federal Register** on March 16, 1998, relating to a consolidated group's recapture of an overall foreign loss account arising in a separate return limitation year. The regulations affect consolidated groups that claim foreign tax credits. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective dates:* These amendments are effective December 29, 1998.

Applicability dates: For dates of applicability of these regulations, see § 1.1502-9T(b)(1)(v).

FOR FURTHER INFORMATION CONTACT: Trina Dang of the Office of Associate Chief Counsel (International), (202) 622-3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

As announced in Notice 98-40 (1998-35 I.R.B. 7), these temporary regulations permit taxpayers to elect to delay the effective date of § 1.1502-9T, published in the **Federal Register** on January 12, 1998 (TD 8751, 63 FR 1740), and modified by amendments published in the **Federal Register** on March 16, 1998 (TD 8766, 63 FR 12641).

On January 12, 1998, Treasury and the IRS published in the **Federal Register** (TD 8751, 63 FR 1740) final, temporary and proposed regulations (the January 1998 regulations) relating to limitations on the use of certain tax credits and related attributes by corporations filing consolidated income tax returns. In general, the January 1998 regulations

relate to the separate return limitation year (SRLY) provisions for general business credits, alternative minimum tax credits, foreign tax credits and overall foreign loss accounts. The January 1998 regulations were generally applicable to consolidated return years beginning on or after January 1, 1997.

On March 16, 1998, Treasury and the IRS published in the **Federal Register** (TD 8766, 63 FR 12641) final, temporary, and proposed regulations (the March 1998 regulations) modifying the effective date of the January 1998 regulations. The March 1998 regulations provide that the provisions of the January 1998 regulations will apply for consolidated return years for which the due date (without extensions) of the income tax return is after March 13, 1998. In lieu of applying this effective date, however, the March 1998 regulations permit a consolidated group to choose to apply the effective date provisions under the January 1998 regulations. The March 1998 regulations provide that taxpayers making this choice must apply all those effective date provisions for all relevant years. Thus, under the March 1998 regulations, taxpayers are not permitted to apply one provision of the January 1998 regulations (e.g., the general business credit effective date) without applying all the other provisions (e.g., the foreign tax credit effective date).

On May 7, 1998, a public hearing was held regarding the proposed January and March regulations. At the hearing and in written submissions, commentators expressed concern regarding the effective dates contained in the January 1998 and March 1998 regulations with respect to the overall foreign loss account provisions of § 1.1502-9T. The commentators' principal concern was that these effective dates resulted in adverse tax consequences not anticipated by taxpayers with respect to business transactions that occurred prior to the issuance of the January 1998 regulations. Treasury and the IRS now believe that certain of these consequences are inappropriate.

Accordingly, on August 14, 1998, Treasury and the Service issued Notice 98-40 (1998-35 I.R.B. 7), announcing their intent to issue regulations providing relief from the application of § 1.1502-9T (the overall foreign loss account provisions) for consolidated return years beginning before January 1, 1998.

Explanation of Provisions

As announced in Notice 98-40, taxpayers are permitted to elect not to apply § 1.1502-9T(b)(1)(v) to