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By order of the Board of Governors of the Federal Reserve System, March 30, 1998.

William W. Wiles,

Secretary of the Board.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 309

RIN 3064-AC10

Disclosure of Information

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations governing the public disclosure of information to reflect recent changes to the Freedom of Information Act (FOIA) as a result of the enactment of the Electronic Freedom of

Information Act Amendments of 1996 (E-FOIA). Among other things, this final rule implements expedited and "multitrack" FOIA processing procedures; implements the processing deadlines and appeal rights created by E-FOIA; and directs the public to the expanded range of records available through the FDIC's Internet World Wide Web (www) page.

EFFECTIVE DATE: May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Valerie J. Best, Assistant Executive Secretary, Office of the Executive Secretary, (202) 898-3812; Linda Rego, Senior Attorney, (202) 898-7408, Legal Division.

SUPPLEMENTARY INFORMATION:**The Proposed Rule**

Part 309 of the FDIC's rules and regulations implements the Freedom of Information Act (FOIA), 5 U.S.C. 552. On December 9, 1997 (63 FR 29, January 2, 1998), the FDIC Board of Directors (Board) issued for public comment a proposed rule amending part 309 in order to incorporate the provisions of the Electronic Freedom of Information Act Amendments of 1996 (E-FOIA), Public Law 104-231.

The proposed rule provided for the expedited processing of certain categories of requesters as mandated by E-FOIA; proposed "multitrack" processing requirements as permitted by E-FOIA; incorporated new processing deadlines and appeal rights as mandated by E-FOIA; implemented provisions requiring agencies to generally provide records in the form or format requested, as required by E-FOIA; implemented the E-FOIA provisions requiring agencies to make available for public access via electronic means agency materials previously available only through inspection and copying; clarified that FOIA and Part 309 of the FDIC's rules and regulations apply to records maintained in electronic format; and incorporated the electronic-search requirements specified by E-FOIA. The proposed rule advised the public that the FDIC's World Wide Web page (or the "FDIC's www page") is a primary source of FDIC information and further noted that extensive materials are available for inspection or copying at the FDIC's reading room or "Public Information Center" or "PIC."

The FDIC received three comment letters in response to the proposed rule, one from a trade association representing news editors and reporters, and two, which were largely identical in content, from community groups involved in community housing issues.

The community groups urged the FDIC to publish current lists of pending applications involving the Community Reinvestment Act (CRA) on the FDIC's www page. The community groups also indicated that FOIA requests seeking pending applications subject to the CRA should be entitled to expedited treatment and that, in this regard, the 10-day response period specified in E-FOIA for expedited FOIA requests should be shortened to three business days for such FOIA requests. Finally, the community groups asked the FDIC

to incorporate provisions that would waive FOIA fees for non-profit or low income community groups.

In response to the community groups' request that the FDIC publish a list of pending applications on the FDIC's www page, we are pleased to advise that the FDIC's Division of Supervision (DOS) and Division of Compliance and Consumer Affairs (DCA) is currently developing just such a site in conjunction with a separately adopted proposed rule to revise the FDIC's regulations governing applications, notice and request procedures, and delegations of authority, published for public comment at 62 FR 52810 (Oct. 9, 1997). The page under development will promptly list those applications open for comment. It is anticipated that the page listing applications subject to CRA comment will be made available for public review this year.

For the present, however, it should be noted that the FDIC's regional offices maintain distribution lists of groups who have expressed an interest in receiving notice of pending applications involving CRA. Depository institutions seeking the FDIC's approval file their initial application with the appropriate regional office, and most routine agency orders are issued at the regional office level under guidelines adopted by the Board. Consequently, it is expected that the most current source of information regarding the initial filing of a pending application involving CRA will generally be at the regional office level. The DOS regional offices make every effort to send, via facsimile, a notice of pending applications to groups included on the distribution list. The FDIC's DCA works closely with community and banking groups in each region to advise them of the laws and regulations governing fair lending and community reinvestment, but community groups who have not already done so may contact the regional offices and ask that their group be added to the distribution lists.

With regard to the community groups' request that the FOIA regulations be revised to waive processing fees for certain groups and to implement a three-day response period for FOIA requests involving pending applications, it should be noted that the FDIC very seldom receives FOIA requests for pending applications. This is likely because such information is readily available without the necessity of filing a FOIA request. More

specifically, 12 CFR 303.6(g) currently provides that any person may inspect the nonconfidential portions of an application file and that, for a period extending until 180 days after final disposition of an application, the nonconfidential portions of the file will be available for inspection in the regional office of the FDIC in which the application has been filed. No charge is imposed for the search for or review of the application file. Since the nonconfidential portions of an application are already available without charge (except for duplication costs), and in light of the fact that the FDIC seldom receives a FOIA request for such files, the FDIC believes that the regulations as proposed are appropriate.

Other issues raised by the community groups have been considered by FDIC staff but do not involve implementation of the FOIA or E-FOIA and are thus outside the scope of the current rulemaking.

The comment received from the association of news editors and reporters noted their general approval of the FDIC's proposal; noted their appreciation for the FDIC's embrace of electronic access in preparing its www page; endorsed the FDIC's initiative to accept FOIA requests electronically; and endorsed the FDIC's willingness to exercise its discretion in granting expedited review to requesters on its own initiative in addition to granting expedited review when a requester meets the standard of "compelling need."

The trade association did ask, however, that the FDIC incorporate a provision similar to that adopted by the Department of Justice in its FOIA regulations with regard to the formality of certifications needed to obtain expedited treatment. More specifically, and consistent with E-FOIA, the FDIC's proposed rule provided that a requester is entitled to expedited treatment only where failure to obtain the records expeditiously could pose an imminent threat to the life or physical safety of a person, or where the requester is a person primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged agency activity. A requester seeking expedited processing must submit a certified statement describing the basis for requesting expedited treatment.

The Department of Justice regulations, however, provide that the formality of the certification may be waived as a matter of administrative discretion. The trade association asks the FDIC to incorporate a similar waiver provision. They express concern that not all eligible requesters will know that they must submit a certification at the time the initial request is filed. They fear that eligible requesters will therefore experience delays even though they are operating under the extraordinary circumstances found to merit expedited treatment under the law.

The certification required by the FDIC is straightforward and, consequently, we do not expect that it will be burdensome for eligible requesters to submit a certification with their initial request. In order to fully respond to the concerns raised by the trade association, however, the FDIC is adopting in this final rule a provision similar to that found in the Department of Justice's regulations. Consequently, under the FDIC's final rule, the formality of the certification required to obtain expedited treatment may be waived by the FDIC as a matter of administrative discretion.

In the case of a defective FOIA request, the trade association asks that the FDIC contact the requester by telephone in order to facilitate clarification and correction of the request instead of engaging in an extended exchange of letters. The FDIC generally does contact requesters to clarify deficient or vague requests and will continue to do so, consistent with sound administrative practice. Consequently, we do not find it necessary or helpful to mandate such a requirement through the regulation.

The Final Rule

The provisions of the final rule are summarized below. The final rule tracks the proposed rule in all material respects. As described in the proposed rule, § 309.1 has been expanded to clarify the purpose and scope of the various sections found within part 309. Section 309.4 has been streamlined by eliminating the lengthy list of various offices to contact for different categories of publicly available records and, instead, directing the public to FDIC's www page, found at: <http://www.fdic.gov>, as a primary source of FDIC information. The FDIC is continually working to increase the resources available over the Internet on

the FDIC's www page, and the public is encouraged to explore the wealth of information available from the FDIC through the Internet. For example, the FDIC has elected to publish various consumer aids, such as pamphlets explaining deposit insurance coverage; information of interest to the banking industry, such as statistical and call report data and institution forms; information concerning the FDIC's responsibilities and structure, such as the pamphlet entitled "Symbol of Confidence," which lists sources to contact for additional information about the FDIC; and asset information for those interested in purchasing owned real estate (ORE) held by the FDIC.

Section 309.4 also describes the categories of information available through the FDIC's public reading room, or "Public Information Center" or "PIC." The PIC maintains facilities for receiving and storing public documents and information which the FDIC generates in performing its mission. The PIC provides reference services and referrals, and certain documents are available for inspection or sale, such as the final orders issued in enforcement actions.

Finally, § 309.4 describes those categories of information that are required to be made available for inspection or copying, either in the FDIC's reading room or via computer telecommunications, as required by E-FOIA. The FDIC has also established an Electronic FOIA Office to provide information concerning the FDIC's FOIA program and to facilitate the filing of FOIA requests via the Internet. The regulatory text of the final rule has been clarified to explain that information on the FDIC's World Wide Web page is available to the public without charge. If, however, information available on the FDIC's World Wide Web page is provided pursuant to a FOIA request processed under § 309.5, then the fees prescribed by FOIA apply and will be assessed pursuant to § 309.5(f).

The final rule revises § 309.5, which describes the FDIC's procedures for processing FOIA requests, to incorporate the changes required by E-FOIA. The final rule provides for multitrack processing of FOIA requests, and explains that fast-track processing will apply to records that are easily identifiable by the Freedom of Information office staff (FOIA/PA Unit) and that have already been cleared for

release to the public. Further, fast-track requests will be handled as expeditiously as possible, in the order in which they are received.

The final rule provides that all information requests that do not meet the fast-track processing standards will be handled under regular processing procedures. A requester who desires fast-track processing but whose request does not meet those standards may contact the FOIA/PA Unit staff to narrow the request so that it will qualify for fast-track processing. The statutory time limit for regular-track processing would be extended to twenty business days, pursuant to E-FOIA, from the previous ten business days.

Expedited processing may be provided where a requester has demonstrated a compelling need for the records, or where the FDIC has determined to expedite the response. The time limit for expedited processing is set at ten business days, with expedited procedures available for an appeal of the FDIC's determination not to provide expedited processing. Under E-FOIA, there are only two types of circumstances that can meet the compelling need standard: Where failure to obtain the records expeditiously could pose an imminent threat to the life or physical safety of a person, or where the requester is a person primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged agency activity. For ease of administration and consistency, the proposal uses the term "representative of the news media," to describe a person primarily engaged in disseminating information, because this term is used for the FOIA fee schedule, and thus, is known to those familiar with FOIA and the FDIC's FOIA rules. To demonstrate a compelling need, a requester must submit a certified statement, a sample of which may be obtained from the FOIA/PA Unit. As discussed above, the formality of the certification may be waived as a matter of administrative discretion.

Section 309.5(h) contains the FOIA fee schedules and the standards for waiver of fees. The fee schedule provisions have been revised to clarify that the processing time of a FOIA request does not begin in cases (1) where advance payment is required until payment is received, or (2) where

a person has requested a waiver of the fees and has not agreed to pay the fees if the waiver request is denied.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities. These amendments simplify some of the procedures regarding release of information and require disclosure of information in certain instances in accordance with law. The requirements to disclose apply to the FDIC; therefore, they should not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act Analysis

The Office of Management and Budget (OMB) has determined that no information collection is contained in this final rule.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Title II, Pub. L. 104-121) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when a federal agency issues a final rule. Accordingly, the FDIC will file the appropriate reports with Congress as required by SBREFA.

The OMB has determined that this final rule amending 12 CFR Part 309 is not a "major rule" as defined by SBREFA.

List of Subjects in 12 CFR Part 309

Banks, banking, Credit, Freedom of information, Privacy.

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation is amending title 12, chapter III, of the Code of Federal Regulations as follows:

PART 309—DISCLOSURE OF INFORMATION

1. The authority citation for part 309 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1819 "Seventh" and "Tenth".

2. Section 309.1 is revised to read as follows:

§ 309.1 Purpose and scope.

This part sets forth the basic policies of the Federal Deposit Insurance Corporation regarding information it maintains and the procedures for obtaining access to such information.

Section 309.2 sets forth definitions applicable to this part 309. Section 309.3 describes the types of information and documents typically published in the **Federal Register**. Section 309.4 explains how to access public records maintained on the Federal Deposit Insurance Corporation's World Wide Web page and in the Federal Deposit Insurance Corporation's Public Information Center or "PIC", and describes the categories of records generally found there. Section 309.5 implements the Freedom of Information Act (5 U.S.C. 552). Section 309.6 authorizes the discretionary disclosure of exempt records under certain limited circumstances. Section 309.7 outlines procedures for serving a subpoena or other legal process to obtain information maintained by the FDIC.

3. Section 309.2(e) is revised to read as follows:

§ 309.2 Definitions.

* * * * *

(e) The term *record* includes records, files, documents, reports, correspondence, books, and accounts, or any portion thereof, in any form the FDIC regularly maintains them.

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4. Section 309.4 is revised to read as follows:

§ 309.4 Publicly available records.

(a) *Records available on the FDIC's World Wide Web page.*—(1) *Discretionary release of documents.* The FDIC encourages the public to explore the wealth of resources available on the FDIC's World Wide Web page, located at: <http://www.fdic.gov>. The FDIC has elected to publish a broad range of materials on its World Wide Web page, including consumer guides; financial and statistical information of interest to the banking industry; and information concerning the FDIC's responsibilities and structure.

(2) *Documents required to be made available via computer telecommunications.* (i) The following types of documents created on or after November 1, 1996, and required to be made available through computer telecommunications, may be found on the FDIC's World Wide Web page located at: <http://www.fdic.gov>:

(A) Final opinions, including concurring and dissenting opinions, as well as final orders and written agreements, made in the adjudication of cases;

(B) Statements of policy and interpretations adopted by the Board of Directors that are not published in the **Federal Register**;

(C) Administrative staff manuals and instructions to staff that affect the public;

(D) Copies of all records released to any person under § 309.5 that, because of the nature of their subject matter, the FDIC has determined are likely to be the subject of subsequent requests;

(E) A general index of the records referred to in paragraph (a)(2)(i)(D) of this section.

(ii) To the extent permitted by law, the FDIC may delete identifying details when it makes available or publishes a final opinion, final order, statement of policy, interpretation or staff manual or instruction. If redaction is necessary, the FDIC will, to the extent technically feasible, indicate the amount of material deleted at the place in the record where such deletion is made unless that indication in and of itself will jeopardize the purpose for the redaction.

(b) *Public Information Center.* The FDIC maintains a Public Information Center or "PIC" that contains Corporate records that the Freedom of Information Act requires be made available for regular inspection and copying, as well as any records or information the FDIC, in its discretion, has regularly made available to the public. The PIC has extensive materials of interest to the public, including many Reports, Summaries and Manuals used or published by the Corporation that are available for inspection and copying. The PIC is open from 9:00 AM to 5:00 PM, Monday through Friday, excepting federal holidays. It is located at 801 17th Street, NW, Washington, DC 20006. The PIC may be reached during business hours by calling (800) 276-6003.

(c) *Applicable fees.* (i) If applicable, fees for furnishing records under this section are as set forth in § 309.5(f) except that all categories of requesters shall be charged duplication costs.

(ii) Information on the FDIC's World Wide Web page is available to the public without charge. If, however, information available on the FDIC's World Wide Web page is provided pursuant to a Freedom of Information Act request processed under § 309.5, then fees apply and will be assessed pursuant to § 309.5(f).

5. Section 309.5 is revised to read as follows:

§ 309.5 Procedures for requesting records.

(a) *Definitions.* For purposes of this section:

(1) *Commercial use request* means a request from or on behalf of a requester 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. In determining whether a request falls within this category, the FDIC will determine the use to which a requester will put the records requested and seek additional information as it deems necessary.

(2) *Direct costs* means those expenditures the FDIC actually incurs in searching for, duplicating, and, in the case of commercial requesters, reviewing records in response to a request for records.

(3) *Duplication* means the process of making a copy of a record necessary to respond to a request for records or for inspection of original records that contain exempt material or that cannot otherwise be directly inspected. Such copies can take the form of paper copy, microfilm, audiovisual records, or machine readable records (e.g., magnetic tape or computer disk).

(4) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(5) *Noncommercial scientific institution* means an institution that is not operated on a commercial basis as that term is defined in paragraph (a)(1) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(6) *Representative of the news media* means any person primarily engaged in gathering news for, or a free-lance journalist who can demonstrate a reasonable expectation of having his or her work product published or broadcast by, an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the general public.

(7) *Review* means the process of examining records located in response to a request for records to determine whether any portion of any record is permitted to be withheld as exempt information. It includes processing any record for disclosure, e.g., doing all that is necessary to excise them or otherwise prepare them for release.

(8) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. Searches may be done manually and/or by computer using existing programming.

(b) *Making a request for records.* (1) The request shall be submitted in writing to the Office of the Executive Secretary:

(i) By completing the online request form located on the FDIC's World Wide Web page, found at: <http://www.fdic.gov>;

(ii) By facsimile clearly marked Freedom of Information Act Request to (202) 898-8778; or

(iii) By sending a letter to the Office of the Executive Secretary, ATTN: FOIA/PA Unit, 550 17th Street, NW, Washington, DC 20429.

(2) The request shall contain the following information:

(i) The name and address of the requester, an electronic mail address, if available, and the telephone number at which the requester may be reached during normal business hours;

(ii) Whether the requester is an educational institution, noncommercial scientific institution, or news media representative;

(iii) A statement agreeing to pay the applicable fees, or a statement identifying a maximum fee that is acceptable to the requester, or a request for a waiver or reduction of fees that satisfies paragraph (f)(1)(x) of this section; and

(iv) The preferred form and format of any responsive information requested, if other than paper copies.

(3) A request for identifiable records shall reasonably describe the records in a way that enables the FDIC's staff to identify and produce the records with reasonable effort and without unduly burdening or significantly interfering with any of the FDIC's operations.

(c) *Defective requests.* The FDIC need not accept or process a request that does not reasonably describe the records requested or that does not otherwise comply with the requirements of this part. The FDIC may return a defective request, specifying the deficiency. The requester may submit a corrected request, which will be treated as a new request.

(d) *Processing requests.*—(1) *Receipt of requests.* Upon receipt of any request that satisfies paragraph (b) of this section, the FOIA/PA Unit, Office of the Executive Secretary, shall assign the request to the appropriate processing track pursuant to this section. The date of receipt for any request, including one that is addressed incorrectly or that is referred by another agency, is the date the Office of the Executive Secretary actually receives the request.

(2) *Multitrack processing.* (i) The FDIC provides different levels of processing for categories of requests under this part. Requests for records that are

readily identifiable by the Office of the Executive Secretary and that have already been cleared for public release may qualify for fast-track processing. All other requests shall be handled under normal processing procedures, unless expedited processing has been granted pursuant to paragraph (d)(3) of this section.

(ii) The FDIC will make the determination whether a request qualifies for fast-track processing. A requester may contact the FOIA/PA Unit to learn whether a particular request has been assigned to fast-track processing. If the request has not qualified for fast-track processing, the requester will be given an opportunity to refine the request in order to qualify for fast-track processing. Changes made to requests to obtain faster processing must be in writing.

(3) *Expedited processing.* (i) Where a person requesting expedited access to records has demonstrated a compelling need for the records, or where the FDIC has determined to expedite the response, the FDIC shall process the request as soon as practicable. To show a compelling need for expedited processing, the requester shall provide a statement demonstrating that:

(A) 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

(B) The requester can establish that they are primarily engaged in information dissemination as their main professional occupation or activity, and there is urgency to inform the public of the government activity involved in the request; and

(C) The requester's statement must be certified to be true and correct to the best of the person's knowledge and belief and explain in detail the basis for requesting expedited processing.

(ii) The formality of the certification required to obtain expedited treatment may be waived by the FDIC as a matter of administrative discretion.

(4) A requester seeking expedited processing will be notified whether expedited processing has been granted within ten (10) working days of the receipt of the request. If the request for expedited processing is denied, the requester may file an appeal pursuant to the procedures set forth in paragraph (h) of this section, and the FDIC shall respond to the appeal within ten (10) working days after receipt of the appeal.

(5) *Priority of responses.* Consistent with sound administrative process the FDIC processes requests in the order they are received in the separate processing tracks. However, in the

agency's discretion, or upon a court order in a matter to which the FDIC is a party, a particular request may be processed out of turn.

(6) *Notification.* (i) The time for response to requests will be twenty (20) working days except:

(A) In the case of expedited treatment under paragraph (d)(3) of this section;

(B) Where the running of such time is suspended for the calculation of a cost estimate for the requester if the FDIC determines that the processing of the request may exceed the requester's maximum fee provision or if the charges are likely to exceed \$250 as provided for in paragraph (f)(1)(v) of this section;

(C) Where the running of such time is suspended for the payment of fees pursuant to the paragraphs (d)(6)(i)(B) and (f)(1) of this section; or

(D) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B) and further described in paragraph (d)(6)(iii) of this section.

(ii) In unusual circumstances as referred to in paragraph (d)(6)(i)(D) of this section, the time limit may be extended for a period of:

(A) Ten (10) working days as provided by written notice to the requester, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; or

(B) Such alternative time period as agreed to by the requester or as reasonably determined by the FDIC when the FDIC notifies the requester that the request cannot be processed in the specified time limit.

(iii) Unusual circumstances may arise when:

(A) The records are in facilities, such as field offices or storage centers, that are not located at the FDIC's Washington office;

(B) The records requested are voluminous or are not in close proximity to one another; or

(C) There is a need to consult with another agency or among two or more components of the FDIC having a substantial interest in the determination.

(7) *Response to request.* In response to a request that satisfies the requirements of paragraph (b) of this section, a search shall be conducted of records maintained by the FDIC in existence on the date of receipt of the request, and a review made of any responsive information located. The FDIC shall notify the requester of:

(i) The FDIC's determination of the request;

(ii) The reasons for the determination;

(iii) If the response is a denial of an initial request or if any information is

withheld, the FDIC will advise the requester in writing:

(A) If the denial is in part or in whole;

(B) The name and title of each person responsible for the denial (when other than the person signing the notification);

(C) The exemptions relied on for the denial; and

(D) The right of the requester to appeal the denial to the FDIC's General Counsel within 30 business days following receipt of the notification, as specified in paragraph (h) of this section.

(e) *Providing responsive records.* (1) Copies of requested records shall be sent to the requester by regular U.S. mail to the address indicated in the request, unless the requester elects to take delivery of the documents at the FDIC or makes other acceptable arrangements, or the FDIC deems it appropriate to send the documents by another means.

(2) The FDIC shall provide a copy of the record in any form or format requested if the record is readily reproducible by the FDIC in that form or format, but the FDIC need not provide more than one copy of any record to a requester.

(3) By arrangement with the requester, the FDIC may elect to send the responsive records electronically if a substantial portion of the request is in electronic format. If the information requested is made pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, it will not be sent by electronic means unless reasonable security measures can be provided.

(f) *Fees—(1) General rules.* (i) Persons requesting records of the FDIC shall be charged for the direct costs of search, duplication, and review as set forth in paragraphs (f)(2) and (f)(3) of this section, unless such costs are less than the FDIC's cost of processing the requester's remittance.

(ii) Requesters will be charged for search and review costs even if responsive records are not located or, if located, are determined to be exempt from disclosure.

(iii) Multiple requests seeking similar or related records from the same requester or group of requesters will be aggregated for the purposes of this section.

(iv) If the FDIC determines that the estimated costs of search, duplication, or review of requested records will exceed the dollar amount specified in the request, or if no dollar amount is specified, the FDIC will advise the requester of the estimated costs (if greater than the FDIC's cost of processing the requester's remittance). The requester must agree in writing to

pay the costs of search, duplication, and review prior to the FDIC initiating any records search.

(v) If the FDIC estimates that its search, duplication, and review costs will exceed \$250.00, the requester must pay an amount equal to 20 percent of the estimated costs prior to the FDIC initiating any records search.

(vi) The FDIC shall ordinarily collect all applicable fees under the final invoice before releasing copies of requested records to the requester.

(vii) The FDIC may require any requester who has previously failed to pay the charges under this section within 30 calendar days of mailing of the invoice to pay in advance the total estimated costs of search, duplication, and review. The FDIC may also require a requester who has any charges outstanding in excess of 30 calendar days following mailing of the invoice to pay the full amount due, or demonstrate that the fee has been paid in full, prior to the FDIC initiating any additional records search.

(viii) The FDIC may begin assessing interest charges on unpaid bills on the 31st day following the day on which the invoice was sent. Interest will be at the rate prescribed in section 3717 of title 31 of the United States Code and will accrue from the date of the invoice.

(ix) The time limit for the FDIC to respond to a request will not begin to run until the FDIC has received the requester's written agreement under paragraph (f)(1)(iv) of this section, and advance payment under paragraph (f)(1)(v) or (vii) of this section, or payment of outstanding charges under paragraph (f)(1)(vii) or (viii) of this section.

(x) As part of the initial request, a requester may ask that the FDIC waive or reduce fees if disclosure of the records 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. Determinations as to a waiver or reduction of fees will be made by the Executive Secretary (or designee) and the requester will be notified in writing of his/her determination. A determination not to grant a request for a waiver or reduction of fees under this paragraph may be appealed to the FDIC's General Counsel (or designee) pursuant to the procedure set forth in paragraph (h) of this section.

(2) *Chargeable fees by category of requester.* (i) Commercial use requesters shall be charged search, duplication and review costs.

(ii) Educational institutions, non-commercial scientific institutions and news media representatives shall be

charged duplication costs, except for the first 100 pages.

(iii) Requesters not described in paragraph (f)(2) (i) or (ii) of this section shall be charged the full reasonable direct cost of search and duplication, except for the first two hours of search time and first 100 pages of duplication.

(3) *Fee schedule.* The dollar amount of fees which the FDIC may charge to records requesters will be established by the Chief Financial Officer of the FDIC (or designee). The FDIC may charge fees that recoup the full allowable direct costs it incurs. Fees are subject to change as costs change.

(i) *Manual searches for records.* The FDIC will charge for manual searches for records at the basic rate of pay of the employee making the search plus 16 percent to cover employee benefit costs. Where a single class of personnel (e.g., all clerical, all professional, or all executive) is used exclusively, the FDIC, at its discretion, may establish and charge an average rate for the range of grades typically involved.

(ii) *Computer searches for records.* The fee for searches of computerized records is the actual direct cost of the search, including computer time, computer runs, and the operator's time apportioned to the search. The fee for a computer printout is the actual cost. The fees for computer supplies are the actual costs. The FDIC may, at its discretion, establish and charge a fee for computer searches based upon a reasonable FDIC-wide average rate for central processing unit operating costs and the operator's basic rate of pay plus 16 percent to cover employee benefit costs.

(iii) *Duplication of records.* (A) The per-page fee for paper copy reproduction of documents is the average FDIC-wide cost based upon the reasonable direct costs of making such copies.

(B) For other methods of reproduction or duplication, the FDIC will charge the actual direct costs of reproducing or duplicating the documents.

(iv) *Review of records.* The FDIC will charge commercial use requesters for the review of records at the time of processing the initial request to determine whether they are exempt from mandatory disclosure at the basic rate of pay of the employee making the search plus 16 percent to cover employee benefit costs. Where a single class of personnel (e.g., all clerical, all professional, or all executive) is used exclusively, the FDIC, at its discretion, may establish and charge an average rate for the range of grades typically involved. The FDIC will not charge at the administrative appeal level for

review of an exemption already applied. When records or portions of records are withheld in full under an exemption which is subsequently determined not to apply, the FDIC may charge for a subsequent review to determine the applicability of other exemptions not previously considered.

(v) *Other services.* Complying with requests for special services, other than a readily produced electronic form or format, is at the FDIC's discretion. The FDIC may recover the full costs of providing such services to the requester.

(4) *Publication of fee schedule and effective date of changes.* (i) The fee schedule is made available on the FDIC's World Wide Web page, found at <http://www.fdic.gov>.

(ii) The fee schedule will be set forth in the "Notice of Federal Deposit Insurance Corporation Records Fees" issued in December of each year or in such "Interim Notice of Federal Deposit Insurance Corporation Records Fees" as may be issued. Copies of such notices may be obtained at no charge from the Office of the Executive Secretary, FOIA/PA Unit, 550 17th Street NW, Washington, D.C. 20429, and are available on the FDIC's World Wide Web page as noted in paragraph (f)(4)(i) of this section..

(iii) The fees implemented in the December or Interim Notice will be effective 30 days after issuance.

(5) *Use of contractors.* The FDIC may contract with independent contractors to locate, reproduce, and/or disseminate records; provided, however, that the FDIC has determined that the ultimate cost to the requester will be no greater than it would be if the FDIC performed these tasks itself. In no case will the FDIC contract out responsibilities which the Freedom of Information Act (FOIA) (5 U.S.C. 552) provides that the FDIC alone may discharge, such as determining the applicability of an exemption or whether to waive or reduce fees.

(g) *Exempt information.* A request for records may be denied if the requested record contains information which falls into one or more of the following categories.¹ If the requested record contains both exempt and nonexempt information, the nonexempt portions which may reasonably be segregated from the exempt portions will be

¹ Classification of a record as exempt from disclosure under the provisions of this paragraph (g) shall not be construed as authority to withhold the record if it is otherwise subject to disclosure under the Privacy Act of 1974 (5 U.S.C. 552a) or other federal statute, any applicable regulation of FDIC or any other federal agency having jurisdiction thereof, or any directive or order of any court of competent jurisdiction.

released to the requester. If redaction is necessary, the FDIC will, to the extent technically feasible, indicate the amount of material deleted at the place in the record where such deletion is made unless that indication in and of itself will jeopardize the purpose for the redaction. The categories of exempt records are as follows:

(1) Records that are 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) Records related solely to the internal personnel rules and practices of the FDIC;

(3) Records specifically exempted from disclosure by statute, provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

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

(5) Interagency or intra-agency memoranda or letters that would not be available by law to a private party in litigation with the FDIC;

(6) Personnel, medical, and similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records:

(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 or any private institution which furnished records on a confidential basis;

(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) Records that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the FDIC or any agency responsible for the regulation or supervision of financial institutions; or

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

(h) *Appeals.* (1) Appeals should be addressed to the Office of the Executive Secretary, FDIC, 550 17th Street, NW, Washington, DC 20429.

(2) A person whose initial request for records under this section, or whose request for a waiver of fees under paragraph (f)(1)(x) of this section, has been denied, either in part or in whole, has the right to appeal the denial to the FDIC's General Counsel (or designee) within 30 business days after receipt of notification of the denial. Appeals of denials of initial requests or for a waiver of fees must be in writing and include any additional information relevant to consideration of the appeal.

(3) Except in the case of an appeal for expedited treatment under paragraph (d)(3) of this section, the FDIC will notify the appellant in writing within 20 business days after receipt of the appeal and will state:

(i) Whether it is granted or denied in whole or in part;

(ii) The name and title of each person responsible for the denial (if other than the person signing the notification);

(iii) The exemptions relied upon for the denial in the case of initial requests for records; and

(iv) The right to judicial review of the denial under the FOIA.

(4) If a requester is appealing for denial of expedited treatment, the FDIC will notify the appellant within 10 business days after receipt of the appeal of the FDIC's disposition.

(5) Complete payment of any outstanding fee invoice will be required before an appeal is processed.

(i) *Records of another agency.* If a requested record is the property of another federal agency or department, and that agency or department, either in writing or by regulation, expressly retains ownership of such record, upon receipt of a request for the record the FDIC will promptly inform the requester of this ownership and immediately shall forward the request to the proprietary agency or department either for processing in accordance with the latter's regulations or for guidance with respect to disposition.

§ 309.6 [Amended]

6. Section 309.6 is amended by redesignating footnotes 5 through 9 as footnotes 2 through 6.

By Order of the Board of Directors.

Dated at Washington, D.C., this 24th day of March 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98-8642 Filed 4-2-98; 8:45 am]

BILLING CODE 6714-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ANE-91]

Amendment to Class D Airspace; Westfield, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule that revises Class D airspace at Westfield, MA (KBAF).

DATES: The direct final rule published at 63 FR 8562 is effective 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT:

David T. Bayley, ANE-520.3, Air Traffic Division, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7523; fax (617) 238-7596.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 20, 1998 (63 FR 8562). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Burlington, MA, on March 26, 1998.

Bill G. Peacock,

Manager, Air Traffic Division, New England Region.

[FR Doc. 98-8741 Filed 4-2-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ANE-92]

Amendment to Class E Airspace; Laconia, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule that revises Class E airspace at Laconia, NH (KCLL).

DATES: The direct final rule published at 63 FR 8563, as corrected by 63 FR 11118, is effective 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT:

David T. Bayley, ANE-520.3, Air Traffic Division, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7523; fax (617) 238-7596.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 20, 1998 (63 FR 8563), and published a correction to the direct final rule on March 6, 1998 (63 FR 11118). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 23, 1998. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Burlington, MA, on March 26, 1998.

Bill G. Peacock,

Manager, Air Traffic Division, New England Region.

[FR Doc. 98-8740 Filed 4-2-98; 8:45 am]

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