I want to commend my colleague, the gentleman from Arkansas, Mr. TOMMY ROBINSON, for working so hard on that particular amendment.

Mr. PEPPER. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from New York (Mr. GILMAN).

(Mr. GILMAN asked and was given permission to revise and extend his remarks.)

Mr. TRAFFICANT. Mr. Speaker, I rise today in support of the rule, but I have a word of caution for the Congress. As we look back historically over the drug issue, it was basically confined to the poverty sections of this country and basically Congress had overlooked it. Once it hit the suburban areas, everybody took the fanciful issue of drugs to heart and now today we are going to do something.

What we are doing today certainly is not perfect, but it is much better.

My final word is basic to this. As we rise and the penalties rise in this Congress today, so will the profits so will many more people who continue to traffic in drugs. Let us not kid ourselves.

The thing I am concerned about is that we are not going to stop drug abuse and this tremendous problem with legislation alone. We have to start dealing with the cause that bring drug abuse to the forefront: unemployment, poverty, those specific issues of illiteracy and the situation now where many people have no financial opportunity in this country.

I want to believe that we are going to wave out smoke and today we have to take this drug problem and stamp out drugs is not true. So I am hoping that today we will set ourselves on a course where we will look at the holistic problem and develop programs that will have an impact on unemployment and poverty. Without doing that, we will have failed, because for every action there is an equal and opposite reaction.

We are taking the penalties up and we are making the profits go up. Let us not kid ourselves.

We have to stop that ground swell and deal with the rudimentary problems that I believe have much to do with the overall situation with drugs.

I am hoping that we make that commitment, the select committee will continue to deal with those areas and look into those areas of national industrial policy, unemployment, that have much to do with these social problems, and our services targeting with specific legislation.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let us make no mistake about it. This is a tough antidrug bill and the message is crystal clear to all the traffickers, all the dealers, all those people who participate. We must end the drug trade for the benefit of all the American people and this is a beginning and a good beginning and we will succeed.

Mr. Speaker, I yield 4 minutes to the gentleman from New York (Mr. GILMAN).

(Mr. GILMAN asked and was given permission to revise and extend his remarks.)

Mr. GILMAN. Mr. Speaker, I rise in strong support of the rule governing the House amendment to the Senate amendment to H.R. 5484, the Omnibus Drug Enforcement, Education, and Control Act of 1986, which represents a practical compromise between the House and Senate versions to combat narcotics trafficking and drug abuse.

We are all aware of the severity of the impact of narcotics trafficking and drug abuse on our Nation—a narcotics affliction which has reached epidemic proportions both here in our Nation and overseas. Drug trafficking just in the United States alone has reached a staggering $120 billion activity in unexcised drugs.

The drug cancer confronting our Nation has afflicted every city, town, and school district in our Nation, jeopardizing the health of men, women, and children from every walk of life: the young and the elderly, the rich and the poor; no racial, ethnic, or religious group has been unscathed; no geographic area is immune to the drug traffickers.

As the ranking minority member of the House Select Committee on Narcotics Abuse and Control and as a senior member of our Foreign Affairs Committee, I can report that every foreign leader that we have met with has contended that if the United States did not have a drug problem, the producing nations would not be supplying deadly drugs to our citizens. But, in reality that assertion is without foundation. For producing nations have become victim nations and victim nations have become producing nations.

Under the omnibus drug bill for the first time, we are proposing to provide significant resources to help reduce the demand for drugs. For example, out of a budget of $18 billion, the Department of Education currently devotes a pittance: $3 million to drug education. Under this omnibus drug bill, $250 million would be authorized in grants to the States to help to more effectively educate our citizens to the dangers of drug abuse; $324 million would be authorized to the Department of Health and Human Services for treatment and rehabilitation efforts. On the supply side, $350 million would be authorized to assist State and local law enforcement agencies to combat the drug trade; $140 million to construct Federal prison facilities. Additional funds would be authorized for our international narcotics control effort and for our Federal law enforcement.

Mr. Speaker, I want to commend our distinguished leaders from both sides of the aisle: Speaker O'NEILL, Majority Leader WRIGHT; our Republican leader, Mr. MICHELE; the distinguished gentleman from California, Mr. Lewis, Chairman of our Republican Drug Task Force; the Chairman of our Narcotics Select Committee, the Chairman from New York, Mr. RANGER, the chairmen and ranking minority members of the 12 standing committees and all of my colleagues on both sides of the aisle for their hard work, dedication, and efforts in helping us enact legislation that will send a strong message to the drug traffickers, that this Congress truly intends to provide adequate resources to our front line troops with daily combat narcotics trafficking and drug abuse.

Mr. Speaker, let us not adjourn this Congress without enacting an omnibus drug bill. We have worked too hard and too long on this legislation to let it slip through our fingers during the closing days of this Congress. Moreover, the health of our citizens and the security of our institutions demand that we take legislative action to control this drug cancer on all mankind. Accordingly, I urge my colleagues to fully support this rule.

Mr. PEPPER. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from Oklahoma (Mr. EISSLER).

(Mr. ENGLISH asked and was given permission to revise and extend his remarks, and to include extraneous matter.)

Mr. ENGLISH. Mr. Speaker, there are several sections in the bill that are now considering that amend the Freedom of Information Act. I was somewhat surprised several days ago when I learned that the Senate had chosen that method of amending the FOIA. We had hoped for the development of an acceptable set of FOIA amendments and have been unable to reach any agreement.

I would not have chosen this time of the day for these amendments, but am pleased to say that, on the other hand, the changes proposed by the Senate represent an overall improved version of the FOIA.

There are two major sets of changes in the Senate bill. The first relates to law enforcement. The changes to the seventh exemption relating to law enforcement records are based on proposals in S. 774 from the 98th Congress. The three so-called Glomar provisions are taken from a bill negotiated by my subcommittee staff with the Justice Department.

Together, these law enforcement amendments make only modest changes to the FOIA. For the most part, they are attempts to codify existing law. Except for a slight relaxation of exemptions (7)(E) and (7)(F), no information that is subject to disclosure will be withheld under the revised seventh exemption.

The three so-called Glomar exclusions will expand the amount of infor-
In order to clarify the intent and purpose of the amendments for the benefit of our colleagues in the House, Tom Kean; Representative Newcomb; Government Information, Justice, and Agriculture Subcommittee—and I have jointly put together written explanatory materials that would have been included in a commitment to the House report. My statement includes an explanation of the fee waiver provisions.

**Summary of House Changes to the Freedom of Information Act Amendments in the Anti-Drug Abuse Act of 1986**

(1) The two Freedom of Information Act sections have been reorganized into four sections (§§ 1901-1904), including a short title, wording, cross references, and typographical errors have been corrected.

(2) An effective date provision has been added as section 1904. The law enforcement provisions become effective upon enactment and are fully applicable to all requests in process or in litigation. The fee and fee waiver provisions become effective 90 days after enactment. Other fee provisions are fully applicable to all requests in process or in litigation, except that no review costs can be charged to any requests made under the new regulations on or after the effective date.

(3) The exclusion for foreign intelligence, counterintelligence and international terrorism references have been removed. Although these references are unnecessary or inappropriate and have been deleted.

(4) A limitation on "review costs" has been added to clarify that only direct costs incurred during the initial examination can be charged but that review costs may not include any costs in resolving issues of law or policy.

**Analysis of the Fee and Fee Waivers Amendments to the Freedom of Information Act Included in the Anti-Drug Abuse Act of 1986 (H.R. 5484)**

H.R. 5484 includes several provisions amending the Freedom of Information Act. The new language changes the rules governing fees and fee waivers for requests made under the FOIA.

- Each request is required to promulgate regulations specifying the schedule of fees and establishing procedures and guidelines for determining when such fees should be waived or not. Any fee schedules must conform to guidelines promulgated by OMB.

There are three categories of requests for purposes of assessing fees. First, when records are requested for commercial use, fees shall be limited to reasonable standard charges for duplicating, searching, and reviewing. This provision allows the charging of review costs for the first time under the FOIA, but review costs may only be charged two years after the enactment of this law on September 30, 1986. I fully concur in the direction given by Senator Leahy in the Committee on Government Operations.

I consider that Senator Leahy's statement—and the statement made here today by Mr. Kindness and myself—reflect the intent of the Congress in making these changes to the FOIA. It is unnecessary, therefore, to amend the text of the bill since the intent has been so clearly stated.

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**October 8, 1986**

In Congress, House of Representatives, 100th Congress, 1st Session, Thursday, October 8, 1986. Pursuant to the provisions established by the Congress in the Anti-Drug Abuse Act of 1986 (H.R. 5484), the Freedom of Information Act is hereby amended to include procedures whereby a requester can determine its status for purposes of fee categories and can supply adequate justification at the time of the request to avoid the assessment of fees. The standards, procedures, and requirements must be simple, reasonable, and limited. Sworn or capitalized statements may not be routinely required. An agency must provide an opportunity to determine the status of a requester. Double should be resolved in favor of the requester. If there are multiple requesters, the status of the requester favoring the resolution of the request should be resolved in favor of the requester. Whenever possible, processing of a request should continue while the proper fee determination is made.

The House amendment adds a provision limiting review costs to the direct costs incurred during the initial examination of a request for the purpose of deciding whether the documents must be disclosed. Also, the House version provides that review costs may not include any costs incurred in resolving issues of law or policy.

The amendment also includes a provision that the bill (S. 754) that passed the Senate in the 99th Congress, and in a draft bill that was then sent to the House of Representatives by the Justice Department earlier this year. See the discussion of review costs in Senate Report 98-786. The omission of the review cost limitation on the Senate bill was probably inadvertent.

Second, when records are not sought for commercial use and are requested by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, or (b) a representative of the news media, fees shall be limited to reasonable standard charges for duplication of information by any other entity in the business of publishing or otherwise disseminating information to the public qualifies under this provision.

When a requester who is a representative of the news media has provided basic identifying information as part of his or her request filed on news media letterhead; display of press credentials; or reasonable assurance that the information is being used for commercial purposes, the request must be treated under the second fee...
category. Free-lance writers and book authors who can demonstrate that their work is likely to be published also qualify under the second fee category.

No definition of "news media" has been included in the bill. It is difficult to write a comprehensive definition. "News media" obviously includes traditional newspapers such as the New York Times, the Christian Science Monitor, and the Wall Street Journal. It probably also includes such periodicals as the Saturday Review, the Nation, the New Republic, the Yale Law Review, the Catholic Digest, and others. It might also include such national radio and television programs as the Daily Oklahoman, and Journal of Commerce. Similarly, magazines, newsletters, television, radio and other broadcasters; and people who regularly write articles for newspapers or magazines would probably qualify as traditional news media. Reporters, columnists, and writers whose work is published in any of these outlets also qualify.

The purpose of low fees for the news media is to further the availability of non-exempt information in government files to the public. Therefore, other vendors of information from agency files to public users also qualify as news media, even though the means of dissemination may not include standard newspaper or magazine formats.

For example, a computerized information service that sells information to consumers and to businesses and to the general public would be considered news media even if the information was abstracted, compiled, or otherwise transformed. The purpose of the fee is to provide a financial incentive to those who disseminate the information to the public in the same way that a traditional newspaper does.

The electronic dissemination of information is a primary function of the news media. The fact that a newspaper, publisher, information vendor, or author seeks to make a profit through publication does not affect the public interest nature of the dissemination.

The republication or dissemination of government information by a private concern is in its own right a public service. The original distribution by the agency that prepared the information. The public benefits directly from broader availability of the information.

It is not the role of the government to police the private sector, to ensure that the private sector actually saves the government effort and money that would otherwise be expended in providing the information to the public, or to prevent the dissemination of information to the public not intended to be a commercial use under the bill.

The definition of "news media" will allow information to be readily disclosed by an agency whenever a newspaper, or other media has determined that there is an interest in the information in the public.

The FOIA is intended to foster the free market in ideas and information. Non-exempt government information cannot be systematically taken from the public domain and resold in the private sector, or held, used, or withheld by the government simply because it is not in the government's interest. This would stifle the free exchange of ideas and information.

It is not the role of government agencies to determine whether information is newsworthy. That function is performed by the news media. In the long run, it will be better and more efficient if agencies provide discolable information to the news media without charge.

The policy set forth in some section 8(c) of the new FOIA standard will also qualify under the new language.

The purpose of the fee is to provide a financial incentive to those who disseminate the information to the public in the same way that a traditional newspaper does.

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Fourth, on agency may require advance prepayment of fees because a requestor has previously failed to pay fees in the past. This is a problem in fashion unless the agency has determined that the fee will exceed $250. This is to prevent the agency from incurring the cost of payment requirement to base hazards or discourage requesters.

The fee schedules in the FOIA do not specify fees for all requests under a statute that specifically provides for setting of a level of fees for particular records of this type. This provision would allow a federal agency to dictate a qualitatively different fee, the new language simply clarifies that statutes setting specific alternative bases for recovering communication fees can supersede FOIA fees charged under the statute, 44 U.S.C. § 1070 (1982) which allows the Public Printer to set charges at cost plus a fifty percent surcharge to recover indirect costs. However, the User Fee Statement, 31 U.S.C. § 7071 does not qualify under new subparagraph (4)(A)(vi) of the FOIA because it is not a stipulated level of fees. Similarly, the statute governing the National Library of Medicine, 42 U.S.C. § 370 et. seq. (1982), is too general to qualify under FOIA; FOIA paragraphs require an extensive discussion of fees for government information, can be found in House Report 97-1013, incorporated here in its entirety by reference.

In any action brought by a requestor regarding the waiver of fees, the court shall determine whether the requestor's noncompliance with the terms of the fee schedule or the court's requirement of the matter shall be limited to the record before the agency. The purpose of this provision is to allow the requestor to provide adequate information on the issue of whether a requester is entitled to a fee waiver.

Finally, it is apparent that the effect of the changes in fee and fee waiver policies will be to increase use of the FOIA by the press and by public interest and other non-profit organizations as well. An increase in government oversight by these groups with less interference in the disclosure process by the political or bureaucratic processes of government is desired. It also seems likely that the use of the FOIA by businesses for purely commercial purposes may decrease as a result of the higher fees. If this happens, it will be an unintended side effect of higher charges.

Mr. KINDNESS. Mr. Speaker, I was naturally suspicious—but not surprised—when I learned that the other body had included amendments to the Freedom of Information Act in the omnibus amendment of the antidrug legislation. Nevertheless, I believe that those amendments—as amended in the version of the bill before us today—maintain an appropriate balance between disclosure and confidentiality necessary for the proper fulfillment of Government functions.

I have served since 1979 as ranking minority member of the Government Operations Subcommittee on Government Information, which has legislative jurisdiction over the Freedom of Information Act. During that time, the subcommittee has reviewed several particular concerns about the operation of the act, including the handling of requests for information held by Federal law enforcement agencies and for information submitted by private businesses to federal agencies, as well as the assessment and waiver of fees upon disclosure of Government information.

Because those concerns reflected the tendency of the Government Operations Committee to address each of these several concerns. I had hoped that the Government Operations Committee would be able to present such legislation to the House this year. The chairman and I requested that our staff work with representatives of the Department of Justice, the press, and public interest groups. A draft bill was developed from those negotiations which contained provisions similar to those before us today in the Anti-Drug Abuse Act of 1986. The draft bill encountered opposition from other executive branch agencies to the bill and the subcommittee decided not to proceed with a comprehensive reform bill. Instead, it recommended and the Government Operations Committee reported to the House a bill reviewing the provisions by which agencies handle requests for confidential business information. That bill, H.R. 4862, was passed by the House under suspension of the rules on September 22, 1986, and, I remain hopeful that the other body will pass it before the end of this session.

The Freedom of Information Act amendments contained in the Anti-Drug Abuse Act before the House today are addressed to the handling of requests for law enforcement information and are a limited set of waiver of fees on any FOIA request. These amendments have been derived from House and Senate proposals developed over the past 5 years. In brief summary, the provisions contained in the bill before us, and their legislative sources, are as follows.

Section 1801 states that these amendments may be cited as the "Freedom of Information Reform Act of 1986."

Section 1802 contains two subsections: Subsection (a) revises the law enforcement provisions of section 10 after realizing that the exemption—to bring its terms more into conformity with original congressional intent and accurate judicial interpretations of its terms. Subsection (a) was passed by the other body in the 98th Congress as section 10 of S. 774 and, a slightly modified version was included in the draft bill developed earlier this year by the Government Information Subcommittee.

Section 1803 revises existing law on the assessment and waiver of fees. Current law permits agencies to charge fees for the search for and duplication of records responsive to a FOIA request and, it requires a waiver of those fees when disclosure of the information is specifically requested by the public. Section 1803 would provide that current law extends to all types of fees that can be charged to particular requesters and, it contains a specific test for waiver of fees. Through these provisions, it is hoped that longstanding controversy over the assessment of fees and the grant of fee waivers may be resolved. The source of section 1803 is the fee and waiver provision of H.R. 4614, a bill I cosponsored with subcommittee Chairman Enischich which was introduced at the end of the 98th Congress.

Section 1804 provides two effective dates: one for law enforcement agencies and the other for non-agencies. This section will apply to all pending requests and litigation. Section 1805 will take effect 90 days after enactment except that the authority to issue regulations will be effective upon enactment and all such regulations must be promul- gated within 90 days. In addition, section 1803 will apply to all requests and litigation pending 90 days after enactment, except that review charges may not be applied before the effective date or before the agencies have finally issued its regulations.

The chairman of the Subcommittee on Government Information, the gentleman from Oklahoma [Mr. Enischich], has already provided to the House a detailed explanation of section 1803, the new fee and fee waiver provisions. Before continuing with a detailed explanation of the law enforcement reform provisions contained in section 1802, I would like to commend and congratulate him for his good work on the Anti-Drug Abuse Act generally. For the past 4 years, he has, in addition to overseeing the operation of the Freedom of Information Act, conducted oversight of the executive branch's efforts to interdict drug smugglers. Like the Freedom of Information Act, the effort to interdict drug smugglers raises a number of controversial issues. At times we have disagreed on how best to address and resolve those controversies; but his ultimate goals have been worthy of support. So, I congratulate him and I hope that the Congress will enact this legislation.

ANALYSIS OF THE LAW ENFORCEMENT RECORDS AMENDMENTS TO THE FREEDOM OF INFORMATION ACT INCLUDED IN THE ANTI-DRUG ABUSE ACT OF 1986 (H.R. 5484)

Much of the impetus for adjustment of the provisions of the Freedom of Information Act which affect the handling of requests for information maintained by law enforcement agencies comes from the concerns expressed by Federal Bureau of Investigation Director William Webster in congressional testimony that the act is exploited by organized crime figures appearing to learn sensitive information in the targeted investigative law enforcement activities, as well as the identities of informants.

While some have disputed the extent of such activity, it is clear that strict compliance with the terms of the act can, in certain limited circumstances, create problems for law enforcement agencies in terms of their ability to conduct investigations and protect the identity of informants. The amendments to the Freedom of Information Act contained in the Anti-Drug Abuse Act are designed to deal with these particularized law enforcement problems.

Section 1802(a) of H.R. 5484 amends subsection (b)(7) of the FOIA to modify the scope of the exemption for law enforcement records, codify certain judicial interpretations, and clarify circumstances under which the exemption is inapplicable to the agency's burden in demonstrating the probability of harm from disclosure.

The language of those amendments is identical with one exception explained below to that proposed in section 10 of S. 774. The proposed FOIA reform legislation which passed the Senate, but was not acted upon in the House, during the 98th Congress. The meaning and intended effect of the amendments
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was carefully explained in the report of the Senate Judiciary Committee on S. 774 (S. Rep. 98-221), the relevant portion of which is set out below:

SECTION 10: LAW ENFORCEMENT RECORDS

Section 10 of S. 774 would amend paragraph (b)(7) of the FOIA to modify the scope of the exemption for law enforcement records. Although the provision is narrow, case law, and clarify Congressional intent with respect to the agency's burden in demonstrating the probability of harm from disclosure. This amendment is well intended, but in practice it invites the (b)(7) exemption to withhold "investigatory records compiled for law enforcement purposes" on the basis of the need to deter persons from surreptitiously recording each other's conversations. This amendment is difficult to reconcile with our various case law, which makes it clear that when a record is not created in circumstances under which disclosure is deemed to be harmful, disclosure is still made.

The change in this amendment would be to make the withholding of "investigatory records" a matter of policy, making it more difficult for an agency to use the (b)(7) exemption as a blanket to withhold all law enforcement records. This amendment is intended to clarify the scope of the law enforcement exemption, which currently is quite broad. The amendment would clarify that the law enforcement exemption would be limited to records specifically identified as law enforcement records by a court or other similar body. This would result in a more limited use of the (b)(7) exemption to protect the privacy of citizens.

The Senate Judiciary Committee on S. 774 (S. Rep. 98-221) also recommended that this amendment be included in the bill. The amendment would clarify the law enforcement exemption by limiting the use of the (b)(7) exemption to records specifically identified as law enforcement records by a court or other similar body.

The Senate Judiciary Committee on S. 774 (S. Rep. 98-221) also recommended that this amendment be included in the bill. The amendment would clarify the law enforcement exemption by limiting the use of the (b)(7) exemption to records specifically identified as law enforcement records by a court or other similar body.
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Where prosecutorial guidelines are widely known among prosecutor's staffs, it will be difficult to maintain that disclosures will circumvent the law. Any assistant U.S. attorney who establishes a private practice will know the guidelines and will be able to use the otherwise nonpublic guidelines to further his private practice. Since this use by former prosecutors cannot be effectively prevented, a broad interpretation of the new exception (7)(E) will only enhance the practice of former prosecutors rather than protect any important law enforcement interest.

If none of the guidelines are changed temporarily or there are other circumstances where there is no risk of public disclosure from other sources, then exception (7)(E) may be used to withhold provided that disclosure can reasonably be expected to risk circumvention of the law.

Section 1802(b) of H.R. 5484 amends the FOIA so that criminal law enforcement agencies, in certain circumstances, are not required to acknowledge the existence of, First, records relating to the subject of an ongoing, closed criminal investigation; second, informant records maintained under an informant's name or personal identifier; or third, classified records of the FBI pertaining to foreign intelligence, counterintelligence, or international terrorism, in response to a FOIA request.

This provision provides criminal law enforcement authorities the ability to avoid confirmation of the investigatory status of specific individuals or incidents in responding to FOIA requests. It is a narrow and specific statutory authority for criminal law enforcement agencies to act on the principle that "an agency may refuse to confirm or deny the existence of records where to answer the FOIA inquiry would risk cause harm cognizable under an FOIA exemption."

Section 1802(b) of H.R. 5484 amends the FOIA so that criminal law enforcement agencies, in certain circumstances, are not required to acknowledge the existence of records where to answer the FOIA inquiry would risk cause harm cognizable under an FOIA exemption. Section 1802(b) of H.R. 5484 amends the FOIA so that criminal law enforcement agencies, in certain circumstances, are not required to acknowledge the existence of records where to answer the FOIA inquiry would risk cause harm cognizable under an FOIA exemption. Section 1802(b) of H.R. 5484 amends the FOIA so that criminal law enforcement agencies, in certain circumstances, are not required to acknowledge the existence of records where to answer the FOIA inquiry would risk cause harm cognizable under an FOIA exemption. 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The second circumstance which an agency is not required to acknowledge the existence of specific requested documents concern FOIA requests for informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier.

In referring to a similar provision in S. 774, the Senate Judiciary Committee noted the obvious limitations of the exception authority that is permitted: "Where the requester is the informant himself, or a third-party who describes the responsive records without reference to the informant's name or personal identifier, there is no reason for subject to ordinary consideration under the provisions of the FOIA."

The third so-called Glomar provision under section 1802 applies to classified FBI records pertaining to foreign intelligence or counterintelligence-as defined in Executive Order 12333—or international terrorism—as defined in the Foreign Intelligence Surveillance Act—but only to the extent that the fact of the existence of such records itself remains properly classified information. Like the first part of this section, subparagraph (a)(6) permits nonconfirmation of the investigatory status of specific individuals or incidents in the context of activities regarding foreign intelligence, counterintelligence or international terrorism. But it gives no new substantive withholding authority since it applies only to FBI records that are properly classified as national security information and, therefore, already exempt from disclosure pursuant to exemption (b)(1) of the FOIA.

Agency actions pursuant to these provisions, like agency determinations to withhold acknowledged records pursuant to subsection (b) of the FOIA, are subject to de novo judicial review. The manner in which the Federal courts will review agency referrals to acknowledge or deny the existence of records under these provisions has already been well-established in the leading "glomarization" case involving the CIA. Gardeles v. CIA, 689 F.2d 1100 (D.C. Cir. 1982) and Phillippi v. CIA, 548 F.2d 1009 (D.C. Cir. 1976).

In effect, to paraphrase the D.C. Circuit, the situation is as if the requester had requested and been refused permission to see a document which says either "Yes, we have records related to the subject of the request!" or "No, we don't have any such records." 546 F.2d at 1012.

When the Agency's position is that it can neither confirm nor deny the existence of the requested records, there are no relevant documents for the court to examine other than the refusal itself which explains the Agency's refusal. Therefore, the Agency's congressionally imposed obligation to make a de novo determination of the propriety of a refusal to provide information in response to a FOIA request, the district court may have to examine classified affidavits in camera and without participation by plaintiff's counsel.

Before adopting such a procedure, however, the district court should attempt to create as complete a public record as possible. This would require the Agency to provide a public affidavit explaining in as much detail as possible the basis for its refusal. The Agency would be required neither to confirm nor to deny the existence of the requested records. The Agency's arguments should then be subject to testing by the requester, who should be allowed to seek appropriate discovery when necessary to clarify the Agency's position or to identify the procedures by which that position was established. Only after the issues have been identified by this process should the district court, if necessary, consider arguments or information which the Agency is unable to make public. Id. at 1013.

If the district court should decide that the Agency's refusal to confirm or deny the existence of the requested records is unjustified, the standard Vaughn procedures, including preparation of a detailed index to the requested records, if any, would then apply (Id. at 1013-1014, n.7)

Of course, the extent to which the Agency can neither confirm nor deny the existence of particular records is limited by otherwise available provisions of law. See id. at 1014 note 7, where the facts to which this response is intended to avoid revealing. See id. at 1014 text and notes 9-12, where the Government was forced to retreat from its original refusal to confirm or deny any involved...
Mr. WRIGHT, especially the gentleman from New York [Mr. RANGEL], the chairman of this committee who has done such a superb job. I especially thank my colleague, the gentleman from New York [Mr. BEN GILMAN], who has served on this committee with me for the last 15 years or so and has rendered an absolutely outstanding level of able, dedicated,亮明, and informed service on that committee.

This is a truly nonpartisan effort, a brilliant example of how well this two-party House can work when it sets its mind to it. I congratulate all concerned on both sides of the able.

I am particularly pleased that this bill represents more than an effort at enhanced law enforcement, because we have seen that can never be the whole answer. We know that eradication is helpful. We must keep up our efforts to stamp out the crops in the fields. We know that interdiction at the borders is essential. We know that control at the borders is an effort that we must continue; but the fact is that it has not solved the problem.

We know now and we have been informed by tough law enforcement officials at the federal, State, and local levels, that if we want to turn off this awful curse that has blighted our land, we have got to change behavior among the youth of America through a comprehensive drug education program.

Mr. PEPPER. Mr. Speaker, for purposes of debate only, I yield 1 minute to the able gentleman from California [Mr. PANETTA].

Mr. PANETTA. Mr. Speaker, I rise to support the rules for this bill before us. I particularly want to discuss a provision which will provide needed nutritional assistance to the homeless. Many of those whom this provision would assist are victims of drug abuse. In 1984, the Department of Health and Human Services estimated that from one-half to two-thirds of the homeless population suffered from a combination of drug or alcohol abuse and mental illness.

This amendment will allow homeless persons to give, on a voluntary, noncompulsory basis, some of their food stamps to emergency shelters and soup kitchens that provide them with meals. In addition, private food establishments would be allowed to contract with the States to provide food to the homeless at reduced prices.

To ensure that homeless persons are not restricted to contribute excessive amounts of food stamps, the voluntary payment may not exceed the average cost of the food contained in the meal provided by the shelter.

A similar provision was approved by the other body on September 27, 1986. The amendment was introduced by the chairman of the Senate Budget Committee and sponsored by a coalition of Republicans and Democrats in that body, including the majority leader. The version before us today includes several technical corrections, the most significant of which is a provision that homeless individuals cannot be required to purchase meals with food stamps.

This homeless provision is an important addition to our arsenal in the fight against drug abuse and hunger. In these days of budgetary constraints, it is a particularly welcome addition because the Congressional Budget Office estimates no cost to the provision.

By approving this, we will build on an important reform which we obtained last year in the Food Security Act of 1985—Public Law 99-198. That law required homeless persons to be allowed to apply for food stamps. Since the law was passed, many homeless individuals have obtained food stamps to prepare meals, this provision gives the homeless the option to pay for their meals at homeless centers.

This provision also shows how we can leverage public and private agencies to work together to deal with this problem, and to address the problem of substance abuse and hunger. Neither of these difficult social problems can be solved simply through Government programs or private efforts.

To the extent homeless persons are receiving food stamps to eat, they not only help the homeless shelters through their contributions but also they help themselves by participating in a community of sharing. The glue that holds us together is the commitment which we share with each other. This provision plays a small part in helping the homeless realize that they are part of that shared community.

Mr. QUILLEN. Mr. Speaker, I yield 1 minute to the gentleman from Idaho [Mr. CRAIG].

Mr. CRAIG. Mr. Speaker, I thank the gentleman for yielding time to me. I think that my colleagues here in the House today have sensed the urgency of this legislation and its importance at this time when this Nation faces what under any description has to be called a national crisis.

Many of us who live in rural Western States, rural conservative Western States, are aghast and have been thinking that we are exempt from the problems of the big city. That is simply not the case. In the past several years the kinds of drug busts that have occurred in my State of Idaho that involved heroin and cocaine have shocked the populace of that State. They did not believe that it existed in Idaho.

Mr. Speaker, it exists in Idaho, it exists in every State in the Nation, and it has to be our No. 1 social prob-