

#### § 4.1

SOURCE: 66 FR 65632, Dec. 20, 2001, unless otherwise noted.

### Subpart A—Freedom of Information Act

#### § 4.1 General.

(a) The information in this part is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552). This part sets forth the procedures the Department of Commerce (Department) and its components follow to make publicly available the materials and indices specified in 5 U.S.C. 552(a)(2) and records requested under 5 U.S.C. 552(a)(3). Information routinely provided to the public as part of a regular Department activity (for example, press releases issued by the Office of Public Affairs) may be provided to the public without following this part.

(b) As used in this subpart, *component* means any office, division, bureau or other unit of the Department listed in Appendix A to this part (except that a regional office of a larger office or other unit does not constitute a separate component).

#### § 4.2 Public reference facilities.

(a) The Department maintains public reference facilities (listed in Appendix A to this part) that contain the records the FOIA requires to be made regularly available for public inspection and copying; furnishes information; receives and processes requests for records under the FOIA; and otherwise assists the public concerning Department operations under the FOIA.

(b) Each component of the Department shall determine which of its records are required to be made available for public inspection and copying, and make those records available either in its own public reference facility or in the Department's Central Reference and Records Inspection Facility. Each component shall maintain and make available for public inspection and copying a current subject-matter index of its public inspection facility records. Each index shall be updated regularly, at least quarterly, with respect to newly included records. In accordance with 5 U.S.C. 552(a)(2), the De-

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partment has determined that it is unnecessary and impracticable to publish quarterly or more frequently and distribute copies of the index and supplements thereto.

(c) Each component shall make public inspection facility records created on or after November 1, 1996 available electronically through the Department's "FOIA Home Page" link found at the Department's World Wide Web site (<http://www.doc.gov>). Information available at the site shall include:

(1) Each component's index of its public inspection facility records, which indicates which records are available electronically; and

(2) The general index referred to in paragraph (d)(3) of this section.

(d) The Department shall maintain and make available for public inspection and copying:

(1) A current index providing identifying information for the public as to any matter that is issued, adopted, or promulgated after July 4, 1997, and that is retained as a record and is required to be made available or published. Copies of the index are available upon request after payment of the direct cost of duplication;

(2) Copies of records that have been released and that the component that maintains them determines, because of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records;

(3) A general index of the records described in paragraph (d)(2) of this section;

(4) Final opinions and orders, including concurring and dissenting opinions made in the adjudication of cases;

(5) Those statements of policy and interpretations that have been adopted by a component and are not published in the FEDERAL REGISTER; and

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

#### § 4.3 Records under the FOIA.

(a) Records under the FOIA include all Government records, regardless of format, medium or physical characteristics, and include electronic records and information, audiotapes, videotapes, and photographs.

(b) Under the FOIA, the Department has no obligation to create, compile, or obtain from outside the Department a record to satisfy a request. In complying with a request for electronic data, whether the Department creates or compiles records (as by undertaking significant programming work) or merely extracts them from an existing database may be unclear. The Department shall in any case undertake reasonable efforts to search for the information in electronic format.

(c) Department officials may, upon request, create and provide new records pursuant to user fee statutes, such as the first paragraph of 15 U.S.C. 1525, or in accordance with authority otherwise provided by law. Such creation and provision of records is outside the scope of the FOIA.

(d) Components shall preserve all correspondence pertaining to the requests they receive under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by Title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Components shall not dispose of records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

#### § 4.4 Requirements for making requests.

(a) A request for records of the Department which are not customarily made available to the public as part of the Department's regular informational services must be in writing (and may be sent by mail, facsimile, or E-mail), and shall be processed under the FOIA, regardless whether the FOIA is mentioned in the request. Requests should be mailed to the Department component identified in Appendix A to this part that maintains those records, or may be sent by facsimile or E-mail to the numbers or addresses, respectively, listed at the Department's "FOIA Home Page" link found at the Department's World Wide Web site (<http://www.doc.gov>).<sup>1</sup> If the proper com-

ponent cannot be determined, the request should be sent to the central facility identified in Appendix A to this part. The central facility will forward the request to the component(s) it believes most likely to have the requested records. For the quickest handling, the request (and envelope, if the request is mailed) should be marked "Freedom of Information Act Request."

(b) For requests for records about oneself, § 4.24 contains additional requirements. For requests for records about another individual, either a written authorization signed by the individual permitting disclosure of his or her records to the requester or proof that the individual is deceased (for example, a copy of a death certificate or an obituary) facilitates processing the request.

(c) The records requested must be described in enough detail to enable Department personnel to locate them with a reasonable amount of effort. If possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record, and the name and location of the office where the record is located. Also, if records about a court case are sought, the title of the case, the court in which the case was filed, and the nature of the case should be included. If known, any file designations or descriptions of the requested records should be included. In general, the more specifically the request describes the records sought, the greater the likelihood that the Department will be able to locate those records. If a component determines that a request does not reasonably describe records, it shall inform the requester what additional information is needed or how the request is otherwise insufficient, to enable the requester to modify the request to meet the requirements of this section.

partment of Commerce, operates under its own FOIA regulations at 37 CFR part 102, subpart A. Accordingly, requests for USPTO records should be sent directly to the USPTO.

<sup>1</sup>The United States Patent and Trademark Office (USPTO), which is established as an agency of the United States within the De-