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§ 1.5 Signature to constitute certificate.

When an individual who appears in a representative capacity signs a paper in practice before the Department, his signature shall constitute his certificate:

(a) That under the provisions of this part and the law, he is authorized and qualified to represent the particular party in the matter;

(b) That, if he is the partner of a present or former officer or employee, including a special Government employee, the matter in respect of which he intends to practice is not a matter in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise and that the matter is not the subject of such partner's official Government responsibility;

(c) That, if he is a former officer or employee, including a special Government employee, the matter in respect of which he intends to practice is not a matter in which he participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed and, if a period of one year has not passed since the termination of his employment with the Government, that the matter was not under his official responsibility as an officer or employee of the Government; and

(d) That he has read the paper; that to the best of his knowledge, information, and belief there is good ground to support its contents; that it contains no scandalous or indecent matter; and that it is not interposed for delay.

§ 1.6 Disciplinary proceedings.

(a) Disciplinary proceedings may be instituted against anyone who is practicing or has practiced before the Department on grounds that he is incompetent, unethical, or unprofessional, or that he is practicing without authority under the provisions of this part, or that he has violated any provisions of the laws and regulations governing practice before the Department, or that he has been disbarred or suspended by any court or administrative agency. Individuals practicing before the Department should observe the Canons of Professional Ethics of the American Bar Association and those of the Federal Bar Association, by which the Department will be guided in disciplinary matters.

(b) Whenever in the discretion of the Solicitor the circumstances warrant consideration of the question whether disciplinary action should be taken against an individual who is practicing or has practiced before the Department, the Solicitor shall appoint a hearing officer to consider and dispose of the case. The hearing officer shall give the individual adequate notice of, and an opportunity for a hearing on, the specific charges against him. The hearing shall afford the individual an opportunity to present evidence and cross-examine witnesses. The hearing officer shall render a decision either (1) dismissing the charges, or (2) reprimanding the individual or suspending or excluding him from practice before the Department.

(c) Within 30 days after receipt of the decision of the hearing officer reprimanding, suspending, or excluding an individual from practice before the Department, an appeal may be filed with the Solicitor, whose decision shall be final.

PART 2—RECORDS AND TESTIMONY; FREEDOM OF INFORMATION ACT

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AUTHORITY: 5 U.S.C. 301, 552 and 552a; 31 U.S.C. 9701 and 43 U.S.C. 1460–1461. Appendix F to Part 2 also is issued under 30 U.S.C. 201–209; 30 U.S.C. 351–360.

SOURCE: 40 FR 7305, Feb. 19, 1975, unless otherwise noted.

Subpart A—General Information

SOURCE: 67 FR 64530, Oct. 21, 2002, unless otherwise noted.

§ 2.1 What do the regulations cover?

(a) The regulations implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, and contain the procedures by which the public may inspect and obtain copies of Department of the Interior (DOI or Department) records through the FOIA or by other means.

(b) They apply to all agency records as defined in § 2.3(c).

(c) The policy and procedures set forth in these regulations apply to all bureaus and offices of the Department.

(d) Nothing in the regulations will entitle you to any service or any record that is not required to be provided under the FOIA.

(e) These regulations do not apply to records that fall under the law enforcement exclusions contained in 5 U.S.C. 552(c).

§ 2.2 What is DOI's policy regarding release of records under the FOIA?

It is our policy to make records of the Department available to the public consistent with the spirit of the FOIA and the Privacy Act.

§ 2.3 What terms do I need to know?

For the purposes of this part, the following definitions apply:

(a) *Act* and *FOIA* mean the Freedom of Information Act, 5 U.S.C. 552, as amended.

(b) *Agency* means any executive department, military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency.

(c) *Agency record* means any documentary material which is either created or obtained by an agency in the transaction of agency business and under agency control. See §§ 2.21 and 2.25.

(1) Agency records include:

(i) Books, papers, maps, charts, plats, plans, architectural drawings, photographs, and microfilm;

(ii) Machine-readable materials such as magnetic tape and disks;

(iii) Electronic records (including e-mail messages);

(iv) Audiovisual material such as still pictures, sound and video recordings; and

(v) All other documentary materials, regardless of physical form, format or characteristics.

(2) This definition generally does not cover records of an individual which are:

(i) Created and maintained primarily for an individual's convenience;

(ii) Not subject to agency creation or retention requirements; and

(iii) Not distributed to other agency employees for their official use.

(d) *Bureau* means any major component of the Department administering its own FOIA program. A list of these

components is contained in Appendix A to this part.

(e) *Commercial-use request* means a request from or on behalf of a person who seeks information 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 requester falls into this category, the bureau will consider the identity of the requester and intended use of the records in addition to any other available information about the requester.

(f) *Direct costs* means those expenses that a bureau actually incurs in searching for and duplicating (and in the case of commercial-use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary and benefits of the employee performing the work and the cost of operating duplicating equipment. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(g) *Duplication* means making a copy of a record, or the information contained in it, to respond to a FOIA request. Copies can take the form of paper, microform, photographs, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others.

(h) *Educational institution* means a preschool, a public or private elementary or secondary school, or an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, which operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(i) *Expedited processing* means giving a FOIA request priority, and processing it ahead of other requests pending in the bureau because a requester has shown an exceptional need or urgency for the records (see §2.14).

(j) *FOIA request* means a written request (this includes facsimile (fax) and electronic mail (e-mail)) made by any member of the public for Federal agency records.

(k) *Free-lance journalist* means a representative of the news media who is able to demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by it. A publication contract or past record of publication, or evidence of a specific free-lance assignment from a news organization may indicate a solid basis for expecting publication.

(l) *Frequently requested documents* means documents that have been requested at least three times under the FOIA. It also includes documents the agency anticipates would likely be the subject of three or more requests.

(m) *Multitrack processing* means placing simple requests, requiring relatively minimal review, in one processing track and more voluminous and complex requests in one or more other tracks. Requests in each track are processed on a first-in/first-out basis.

(n) *Noncommercial scientific institution* means an institution that is not operated for commerce, trade or profit, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

(o) *Privacy Act* request means a written request (paper copy with an original signature) made by an individual for information about himself or herself that is contained in a Privacy Act system of records. The Privacy Act applies only to U.S. citizens and aliens lawfully admitted for permanent residence. Therefore, only those individuals may make Privacy Act requests.

(p) *Published research findings* means research findings that are either:

(1) Published in a peer-reviewed scientific or technical journal; or

(2) Publicly and officially cited by a Federal agency in support of an agency action that has the force and effect of law.

(q) *Reading room materials* means records (paper or electronic) that are required to be made available to the public under 5 U.S.C. 552(a)(2), as well as other records that a bureau, at its discretion, makes available to the public for inspection and copying without requiring the filing of a FOIA request.

(r) *Representative of the news media* means any person actively gathering news for 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 is (or would be) of current interest to the public. Examples of news media entities include, but are not limited to, newspapers, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. To be in this category, a requester must not be seeking the requested records for a commercial use. Further, a bureau normally will not consider requests for records involving news dissemination to be commercial-use requests.

(s) *Research data* means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not such things as trade secrets, commercial information, personnel and medical information and any similar information which is protected under law.

(t) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes the deletion of exempt material or other processing necessary to prepare the record(s) for disclosure, including routine consultation among bureau staff and attorneys regarding the applicability of exemptions; and time spent considering any formal objection to disclosure made by a submitter under § 2.23(f).

(u) *Search* means the process of looking for and retrieving agency records and information responsive to a request (manually or by automated means).

(v) *Submitter* means any person or entity outside the Federal Government from whom the Department directly or indirectly obtains commercial or financial information. The term includes, but is not limited to individuals, corporations, and state, local, tribal, and foreign governments.

(w) *Workday* means a regular Federal workday. It does not include Saturdays, Sundays, or Federal legal public holidays.

Subpart B—Information Routinely Available to the Public without Filing a FOIA Request

SOURCE: 67 FR 64530, Oct. 21, 2002, unless otherwise noted.

§ 2.4 How do I obtain information routinely available to the public?

A great deal of information is available to the public without filing a FOIA request. Examples are Departmental policies, procedures, and organizational descriptions. The following guidance will help you obtain this information. [NOTE: For copies of records that are not routinely available, you must submit a FOIA request to the DOI office where the records are located. Procedures for requesting records under the FOIA are provided in Subpart C of this part.]

(a) *General.* (1) General information about DOI or one of its bureaus may be obtained by visiting DOI's home page (see Appendix B to this part for a list of Internet addresses) or by contacting the Office of Public Affairs/Communications for the appropriate bureau (see Appendix A to this part for a list of DOI contacts). Many documents are made available to the public through DOI's reading rooms. Some documents also may be available in DOI's electronic reading rooms on the Internet.

(2) Information on DOI's FOIA Program and a Reference Guide to assist you in obtaining various types of information are available in DOI's reading rooms, through the FOIA home page, or by contacting the Departmental FOIA Officer.

(3) To obtain information about specific records in DOI, you also may refer to:

(i) The index of documents frequently requested under the FOIA, which is available in DOI's reading rooms,

through the FOIA home page, or by contacting one of the bureau FOIA Officers; and

(ii) The index and description of DOI's major information and record locator systems, which are available in DOI's reading rooms, through the FOIA home page, or by contacting one of the bureau FOIA Officers.

(4) Another source of information is DOI's Library, which contains over one million holdings dealing with a broad range of matters pertaining to the Department's mission. You may wish to visit the Library, which is located at the C Street entrance of the Main Interior Building, 1849 C Street, NW., Washington, DC 20240 (see Appendix A to this part). The Library is open to the public for on-site reference use from 7:45 a.m.–5:00 p.m., Monday–Friday (excluding Federal legal public holidays). Additional information regarding the Library's holdings and services may be obtained by visiting its home page (see Appendix B to this part).

(b) *Published information and rules.* Under 5 U.S.C. 552(a)(1), bureaus are required to publish certain information in the FEDERAL REGISTER for the guidance of the public, such as descriptions of their central and field organizations, functions, procedures, substantive rules, and statements of general policy.

(c) *Reading room materials.* (1) Under 5 U.S.C. 552(a)(2), each bureau is responsible for making the information listed in paragraphs (c)(1)(i) through (v) of this section available for public inspection and copying unless the materials are promptly published and copies offered for sale. Bureaus must make any such records created on or after November 1, 1996, available by the Internet or by other computer telecommunication methods or electronic means as quickly as practicable.

(i) Final opinions rendered in the adjudication of cases.

(ii) Policy statements and interpretations which have been adopted by DOI and are not published in the FEDERAL REGISTER.

(iii) Administrative staff manuals and instructions affecting the public.

(iv) Copies of records that have been or are likely to become the subject of frequent FOIA requests and an index of those documents.

(v) A subject-matter index of its reading room records (see §2.5).

(2) Bureaus may, at their discretion, make other records available for inspection and copying in reading rooms or via their home pages.

(d) *Inspection and copying of reading room materials.* (1) Reading room materials are available for inspection and copying at the locations listed in Appendix A to this part and, in some cases, through the Internet; however, not all records may be available in all locations.

(i) If you need assistance in determining the location and availability of the records you are seeking, contact the appropriate reading room or FOIA Contact listed in Appendix A to this part.

(ii) If you file a FOIA request for reading room materials and the information you request is available on the Internet, the FOIA Contact should refer you to the appropriate Web site. If the reading room materials are not available electronically, the FOIA Contact may either send you the materials, or forward your request to the appropriate reading room and provide the name and telephone number of a staff member you may contact. You may, nevertheless, ask the bureau to process your request as any other FOIA request.

(2) A bureau may delete exempt information from some records before making them available for inspection and copying in a reading room. (See §2.21(c)). You may not appeal a bureau's decision to delete exempt information from a document it places in a public reading room. If you would like access to the entire record, you must submit a FOIA request under the procedures in Subpart C of this part. However, this does not guarantee that the entire record will be released. If you submit such a FOIA request and are not satisfied with the response, you may file an appeal as described in §2.28.

(3) There is no charge to inspect reading room materials. Copying services will be provided at the fees specified in Appendix C to this part. However, other fees may apply where a bureau has a statute that specifically requires the bureau to set fees for particular types of records.

(4) If you submit a fee waiver request for information in a reading room, it will be processed under the procedures in § 2.19.

§ 2.5 Does DOI maintain an index of its reading room materials?

Each bureau will maintain and make available for public inspection and copying a current subject-matter index of its reading room materials (5 U.S.C. 552(a)(2)). The index will be available in the bureau's reading room(s) and in their electronic reading rooms on the Internet. Each index will be updated regularly.

§ 2.6 Will the Department accept written requests, including fax, e-mail, or telephone requests, for routinely available information?

Yes. Although a request for this type of information is not a FOIA request, the bureau will send you the requested information and charge you for the copies, according to the fee schedule in Appendix C to this part. While the bureau will attempt to respond to oral requests (those made by telephone or otherwise) for routinely available information, you should submit complex requests in writing to avoid any risk of misunderstanding.

Subpart C—Requests for Records under the FOIA

SOURCE: 67 FR 64530, Oct. 21, 2002, unless otherwise noted.

§ 2.7 What do I need to know before filing a FOIA request?

(a) If the records you are seeking are not routinely available as described in Subpart B of this part, you must submit a FOIA request to the FOIA Contact at the bureau office where you believe the records are maintained (see Appendix A to this part). FOIA requests must be submitted in writing (this includes fax and e-mail)—DOI does not accept oral FOIA requests. Before submitting a request, you may find it useful to contact the appropriate bureau FOIA Contact or the Departmental FOIA Officer for additional information concerning DOI's FOIA Program. You may find the Department's Reference Guide, which is available electronically through the FOIA home page and in paper form as well, helpful in making your request.

(b) The FOIA requires that we release records unless they are protected by one of nine exemptions (see Appendix E to this part).

(c) The Act does not require a bureau to answer questions that may be asked in a FOIA request.

(d)(1) In order for a record to be considered subject to your FOIA request, it must be in the bureau's possession and control at the time the bureau begins its search for responsive records. There is no obligation for the bureau to create or compile a record to satisfy a FOIA request (for example, by combining or compiling selected items from manual files, preparing a new computer program, calculating proportions, percentages, frequency distributions, trends and comparisons, or creating maps). Normally if a bureau is extracting information from an existing computer database, this would not constitute the creation of a new record. However, a bureau has the option of creating a new record if—

(i) Doing so will provide a more useful response to the requester,

(ii) It is less burdensome than providing the existing records, and

(iii) The newly created record is fully responsive to the request.

(2) The fee in this case will not be more than the fee for the individual records. Fees will be charged consistent with the schedule in Appendix C to this part.

§ 2.8 What information do I include in my request?

(a) Description of records.

(1) You must describe the requested records in enough detail to enable an employee familiar with the subject area of the request to locate the record(s) with a reasonable amount of effort. Be as specific as possible in describing the records you are seeking. For example, whenever possible:

(i) Identify the date, title or name, author, recipient, and the subject of the record; the office that created it, the present custodian of the record and the geographical location (*e.g.*, headquarters or a regional/field office); the timeframe for which you are seeking

records; and any other information that will assist the bureau in locating the material.

(ii) If the request involves a matter in litigation, state the case name and docket number as well as the court in which the case was filed.

(2) The bureau will not begin processing your request until any issues regarding the scope or nature of your request are resolved. When a request is overly broad, unclear, involves an extremely voluminous amount of records, or a burdensome search, the bureau will contact you to identify and clarify the records you are seeking. It will work with you to define the subject matter, clarify terms that are used, or narrow the scope of your request.

(3) The time limit for responding to your request will not start until the bureau receives a request reasonably describing the records or clarifying the initial request. If the bureau asks you for additional clarification and does not hear from you within 20 workdays, it will assume that you are no longer interested in pursuing your request and will close the file on your request.

(b) Fee information.

(1) Unless you request a fee waiver (see paragraph (b)(2) of this section), you should state that you are willing to pay all fees associated with processing your request or that you are willing to pay up to a specified amount. The bureau will not begin processing your request until this written assurance has been received. If the bureau anticipates that the fees for processing your request exceed the amount you have indicated you are willing to pay, the bureau will notify you that it needs your assurance of payment of fees as high as are anticipated, or an advance payment (see §2.18(b) and (c)). If the bureau does not hear from you within 20 workdays, it will assume that you are no longer interested in this matter and will close the file on your request.

(2) You may request a fee waiver. If you are seeking a fee waiver, you must provide sufficient justification to support your fee waiver request (see the criteria in §2.19 and in Appendix D to this part). Failure to provide adequate justification will result in a denial of your fee waiver request. Remember that if you are requesting a fee waiver, the burden is on you to demonstrate in your request that you are entitled to it. The bureau will not begin processing your request until the fee issues are resolved. As an option, at the same time you request a fee waiver you may state your willingness to pay regardless of whether a fee waiver is granted. This will permit the bureau to process your request for records at the same time it is considering the fee waiver request. If you are required to pay a fee, and it is later determined on appeal that you are entitled to a full or partial fee waiver, an appropriate refund will be made.

(3) You should indicate what fee category you are in, *i.e.*, if you are a commercial-use requester, news media, educational institution/noncommercial scientific institution, or other requester (see §§2.3 and 2.17(a)). If you submit a FOIA request on behalf of another person or organization (for example, if you are an attorney submitting a request on behalf of a client), it is the underlying requester's identity and intended use that determines the fee category. If your fee category is unclear to the bureau, the 20-workday statutory time limit for processing your request will not begin to run (see §2.12(b)) until this matter has been resolved. If the bureau requests additional clarification and does not hear from you within 20 workdays, it will assume that you are no longer interested in this matter and will close the file on your request.

(c) Mailing address information: Your postal address is required for the bureau to mail any responsive documents to you.

(d) The following information will assist the bureau in processing your request:

(1) The words "FOIA REQUEST" (prominently displayed) on the request letter and the envelope, or subject line of a request sent via e-mail or fax, or "PRIVACY ACT REQUEST" when requesting records pertaining to yourself that you believe are covered by the Privacy Act, as well as citing the appropriate act in your letter;

(2) Your telephone number (where you can be reached during normal business hours), e-mail address and fax

number, if available, in case the bureau, or the Department needs to communicate with you about your request. This information is very important.

(3) A list of all the bureau FOIA Contacts to which you are sending your request. For the quickest possible handling, you should address a separate copy of your request to each bureau FOIA Contact where you believe the records are maintained.

(4) When making a request for personal records about another individual, a written authorization from that individual and any other information required by the Privacy Act system of records notice; or proof that the individual is deceased (for example, a copy of a death certificate or an obituary) as the Privacy Act does not apply to a deceased individual. (NOTE: Information about a deceased individual may be subject to protection under exemption (6) of the FOIA if the release of the information could result in an invasion of the privacy of a living individual.)

§ 2.9 May I specify the form or format of disclosure?

Generally, you may choose the form or format of disclosure for records that you request under the FOIA (5 U.S.C. 552(a)(3)(B)). Bureaus must provide the record in the requested form/format if the office responding to the request can readily reproduce the record in that form/format with reasonable efforts. However, if the process of providing the information in the requested format would damage or destroy an original document, it may not be possible to honor your format request. Bureaus must make reasonable efforts to maintain their records in forms or formats that are reproducible. You may be charged the direct costs involved in converting information to the requested format if the bureau normally does not maintain the information in that format.

§ 2.10 Where do I send my request?

(a) DOI does not have a central location where you may submit your FOIA request nor does it maintain a central index or database of documents in its possession. DOI's files are decentralized and are maintained by various bureau offices throughout the country.

(b) Submit your request in writing to the FOIA Contact at the bureau office where you believe the records are maintained. If it is unclear where to send your request, seek assistance from the FOIA Contact of the bureau that manages the programs whose records you are requesting or the Departmental FOIA Officer. You may have to do a little research to find the proper office to handle your inquiry, but you will save time in the long run if you send your request directly to the FOIA Contact at the appropriate bureau office. The bureau will process your request as follows:

(1) A request to a bureau headquarters office may be presumed to seek only records from the headquarters office, unless the request specifies otherwise.

(2) A request to a regional/field office of a bureau may be presumed to seek only records at that office, unless the request specifies otherwise.

(3) If a request to a bureau states that it seeks records located at another specific office of the same bureau, the appropriate FOIA Contact will refer the request to the other office. If the request states that it seeks records from other unspecified offices within the same bureau, the FOIA Contact will send the request to the Bureau FOIA Officer who will refer it to those offices that, to the best of his/her knowledge, have or are likely to have responsive records.

(4) If a request to a bureau states that it seeks records of another specified bureau, the bureau will refer the request to the appropriate bureau for response. If the request states that it seeks records from other unspecified bureaus, the FOIA Contact will send the request to the Bureau FOIA Officer who will ensure that the request is referred to those bureaus which, to the best of his/her knowledge, have or are likely to have responsive records. In either case, the Bureau FOIA Officer will notify you of the referral in writing and provide the name of a contact in the other bureau(s) to which the referral was made.

§2.11 Why is it important to send my request to the right office?

The bureau and office FOIA Contacts listed in Appendix A to this part have primary responsibility for responding to FOIA requests. Failure to send your request to the FOIA Contact at the appropriate bureau office may delay processing, because the time limit for the bureau to respond will not begin to run until a request complying with §§2.8 and 2.10 is received by the bureau office where the records are maintained. The processing of your request may be delayed if you send it to the Secretary of the Interior (or other high-level officials), the Office of Public Affairs/Communications, the DOI FOIA Officer, or the Department/bureau's webmaster.

§2.12 When can I expect the response?

(a) *Basic time limit.* Ordinarily, a bureau has 20 workdays from the date of receipt to determine whether to grant or deny your FOIA request (see paragraph (b) of this section). The bureau will notify you immediately upon reaching its decision. If you have not received a response within 20 workdays, or 30 workdays if an extension has been taken (see §2.13) (be sure to allow for mailing time), you may contact the bureau to ask about the delay (see Appendix A to this part). You also have the right to consider any nonresponse within these time limits as a denial of records and file a formal appeal (see §2.28(a)(3)) or lawsuit. These time limits do not apply to requests for expedited processing (see §2.14).

(b) *Running of basic time limit.* The 20 workday time limit begins to run when a request complying with the procedures in §§2.8 and 2.10 is received by the FOIA contact at the bureau office that has the records you are seeking. This means that all issues regarding fees and the scope of your request must be resolved before the bureau will begin processing your request.

§2.13 When may the bureau take a time extension to respond to my request?

(a) The bureau may extend the 20-workday time limit for 10 more workdays when it needs to:

(1) Search for and collect the requested records from multiple offices; or

(2) Search for, collect, and examine a voluminous amount of separate and distinct records sought in a single request; or

(3) Consult with another agency having a substantial interest in the determination of the request or with one or more bureaus of the Department having substantial subject-matter interest in the request.

(b) If the bureau intends to take an extension under this subsection, it will notify you in writing and provide the reason for the extension and the date it expects to make a determination on your request.

(c) If an extension is necessary and the bureau is unable to respond to your request within 30 workdays, it will notify you in writing when you may expect a final response and advise you of your appeal rights. If an extension is taken and you have not received a response in 30 workdays, you may consider the request denied and file an appeal under §2.28(a)(3) or file a lawsuit.

(d) A bureau may not take an extension of time to decide whether to grant a request for a fee waiver.

§2.14 When can I get expedited processing?

(a) When requested, a bureau will provide expedited processing if you demonstrate to the satisfaction of the bureau that the request involves:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) An urgency to inform the public about an actual or alleged Federal Government activity if the request is made by a person primarily engaged in disseminating information. In most situations, a person primarily engaged in disseminating information will be a representative of the news media. The requested information must be the type of information which has particular value that will be lost if not disseminated quickly, and ordinarily

refers to a breaking news story of general public interest. However, information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media deadline unrelated to breaking news; or

(3) The loss of substantial due process rights.

(b) A request for expedited processing should be submitted with your FOIA request. For a prompt determination, you must submit a request complying with the requirements of §§2.8 and 2.10 to the FOIA Contact at the bureau office that maintains the records you are seeking.

(c) If you are seeking expedited processing, you must submit a statement explaining in detail the basis for your request. You must certify in your letter that your need for expedited processing is true and correct to the best of your knowledge and belief. For example, a requester within the category of paragraph (a)(2) of this section, if not a full time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his/her sole occupation.

(d) Within 10 calendar days of receipt of your request, the bureau will notify you whether it will grant expedited processing. If expedited processing is granted, the bureau will give priority to that FOIA request and process the request as soon as practicable. If expedited processing is denied, the bureau will notify you of your right to appeal the decision on expedited processing. Appeals of denials of requests for expedited processing will be processed ahead of other appeals (see §2.32(b)). If the bureau has not responded to your request for expedited processing within 10 calendar days, you have a right to file an appeal for nonresponse (see §2.28(a)(7)).

§2.15 Will I be charged fees?

Bureaus will charge fees consistent with the provisions in §§2.16 and 2.17. The fee schedule in Appendix C to this part applies to all bureaus of the Department.

§2.16 How are fees determined?

(a) *Authority*. Bureaus are authorized to charge fees to recover the direct costs of searching for, reviewing (commercial-use requesters only) and duplicating documents to respond to a FOIA request. However, nothing in this subsection will supersede any statutory authority which requires the bureau to charge specific fees for certain types of records.

(b) *Policy*. (1) Unless waived under the criteria in §§2.19 or 2.20, bureaus will charge fees for responding to FOIA requests consistent with the provisions of this section and the fee schedule in Appendix C.

(2) A bureau normally will not charge a fee where the fee would be $30 or less. However, if the bureau has a reasonable basis to conclude that a requester or group of requesters has divided a request into a series of requests on a single subject or related subjects to avoid fees, the requests may be aggregated and fees charged accordingly. Bureaus may presume that multiple requests of this type that are made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, bureaus will aggregate them only where there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(3) Where a bureau responds to a request on behalf of more than one bureau, the fees that would be chargeable by all bureaus involved will be considered in determining whether the total FOIA processing fee is $30 or less. If a bureau is responding on behalf of more than one bureau, and you fall under one of the fee categories in §2.17(a)(2) or (a)(3), you will be entitled to receive up to a total of 100 pages of duplication without charge (there is no charge for searching for responsive records). If a bureau is responding on behalf of more than one bureau, and you fall under the fee category in §2.17(a)(4), you will be entitled to receive up to a total of 100 pages of duplication and two hours of search time without charge.

(4) If a bureau obtains research data solely in response to your FOIA request, it may charge you a reasonable

fee equaling the full cost of obtaining the research data from the recipient.

(c) *Searches.* Searches will be conducted in the most efficient and least expensive manner, so as to minimize costs for both you and the bureau. Except where provided in §§2.17(a)(2) and (a)(3), bureaus will charge for time spent in the following search activities:

(1) Time spent in trying to locate records which come within the scope of the request, whether or not documents responsive to the request are located or the records located are exempt from disclosure; and

(2) Direct costs involving the use of computer time to locate requested records.

(d) *Reviews (Commercial-use requests only).* (1) Bureaus will charge commercial-use requesters (see §2.17(a)(1)) for time spent by bureau staff and attorneys in reviewing requested records for releasability. (See §2.3(e).)

(2) Review costs will be assessed even if a record ultimately is not disclosed.

(e) *Duplication.* Bureaus will charge duplication fees according to the fee schedule in Appendix C to this part.

(f) *Categories of requesters.* There are four categories of requesters for the purposes of determining fees—commercial-use, educational and noncommercial scientific institutions, news media, and all others. (See §§2.3 and 2.17.)

§2.17 How will my requester category affect the fees that I am charged?

(a) When you submit a FOIA request, you must specify your fee category. Based on the information you provide, the bureau office processing your request will decide your fee category and charge as follows:

(1) Commercial-use requesters are charged fees for costs incurred in document search, review, and duplication.

(2) Educational/noncommercial scientific institutions are charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) will be provided without charge. The bureau will not charge such requesters for document search and review.

(3) News media requesters are charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) will be provided without charge. The bureau will not charge such requesters for document search and review.

(4) Requesters not covered by paragraphs (a)(1) through (a)(3) of this section—"other requesters" are charged fees for document search and duplication, except that they are entitled to the first two hours of search time and the first 100 pages of paper copies without charge (or the equivalent cost thereof if the records are in some other form). The bureau will not charge such requesters for document review.

(b) If you do not submit sufficient information in your FOIA request for the bureau to determine your fee category (see paragraphs (a)(1) through (a)(4) of this section), the bureau may ask you to provide additional clarification. This applies to all requesters. The bureau will notify you promptly when additional information is needed. In these circumstances, the 20-workday statutory time limit for responding to your request will not begin to run until you provide sufficient information. If the bureau requests additional clarification and does not hear from you within 20 workdays, it will assume that you are no longer interested in this matter and will close the file on your request.

(c) The following table summarizes the chargeable fees for each category of requester.

Category	Search fees	Review fees	Duplication fees
Commercial Use	Yes	Yes	Yes.
Educational Institution	No	No	Yes (100 pages free).
Non-Commercial Sciencific Institution	No	No	Yes (100 pages free).
News Media	No	No	Yes (100 pages free).
All other	Yes (2 hours free)	No	Yes (100 pages free).

[67 FR 64530, Oct. 21, 2002, as amended at 69 FR 58324, Sept. 30, 2004]

§ 2.18 How are fees assessed and collected?

(a) *Threshold for charging fees.* Except in those situations covered by § 2.16(b)(2), the bureau will not charge you if the fee is $30 or less.

(b) *Notice of anticipated fees.* (1) Unless you have been granted a fee waiver or have previously agreed to pay all the fees associated with your request, or the anticipated fee is $30 or less, the bureau will:

(i) Promptly notify you of the estimated costs and ask you to provide written assurance of payment of all fees or fees up to a designated amount; and

(ii) Give you an opportunity to modify your request at that time to reduce the fee.

(2) After the bureau begins processing your request, if it finds that the actual cost will exceed the amount you previously agreed to pay, the bureau will:

(i) Stop processing your request;

(ii) Promptly notify you of the higher amount and ask you to provide written assurance of payment; and

(iii) Give you an opportunity to modify your request to reduce the fee.

(c) *Advance payment.* (1) The bureau will require advance payment when the estimated fee is over $250 and—

(i) You have never made a FOIA request to DOI requiring you to pay fees; or

(ii) You did not pay a previous FOIA fee promptly.

(2) If you have previously failed to pay a fee within 30 calendar days of the date of billing, the bureau will require you to:

(i) Pay the full amount owed plus any applicable interest penalties (see paragraph (g) of this section) and to make an advance payment of the full amount of the estimated fee of the new request; or

(ii) Demonstrate that you have, in fact, paid the prior fee.

(3) At the same time the bureau notifies you that an advance payment is due, it will give you an opportunity to modify your request to reduce the fee.

(d) *Resolving the fee issue.* The bureau will not start processing your request until the fee issue has been resolved (see §§ 2.8(b) and 2.12(b)). If the bureau seeks clarification from you about a fee issue and does not hear from you within 20 workdays, it will assume that you are no longer interested in this matter and will close the file on your request.

(e) *Billing procedures.* If you are required to pay a fee associated with your request, the bureau that processes your request will send you a bill for collection.

(f) *Form of payment.* You should submit a check or money order made payable to the "Department of the Interior" or the bureau furnishing the information. The term United States or the initials "U.S." should not be included on the check or money order. Where appropriate, the official responsible for handling a request may require that payment by check be made in the form of a certified check. Some bureaus accept payment by credit card. Contact the bureau to determine what forms of payment it accepts.

(g) *Failure to pay fees.* The bill for collection or the response letter will include a statement that interest will be charged in accordance with 31 U.S.C. 3717 and implementing regulations, if the fees are not paid within 30 calendar days of the date of the bill. This requirement does not apply if the requester is a State, local, or tribal government. The Debt Collection Improvement Act of 1996 will be used, as appropriate, to collect the fees (see Public Law 104–134).

[67 FR 64530, Oct. 21, 2002, as amended at 69 FR 58324, Sept. 30, 2004]

§ 2.19 When will bureaus waive fees?

(a) Fees for processing your request may be waived if you meet the criteria listed in paragraph (b) of this section and Appendix D to this part. The burden is on you to justify entitlement to a fee waiver. Requests for fee waivers are decided on a case-by-case basis. The fact that you have received a fee waiver in the past does not mean you are automatically entitled to a fee waiver for every request you may submit, because the essential element of any fee waiver determination is whether the release of the particular documents sought in the request will likely

contribute significantly to public understanding of the operations or activities of the Government. The bureau will rely on the fee waiver justification you have submitted in your request letter. If you do not submit sufficient justification, your fee waiver request will be denied. The bureau may, at its discretion, communicate with you to request additional information if necessary. However the bureau must make a determination on the fee waiver request within the statutory time limit, even if the agency has not received such additional information. In certain circumstances, a partial fee waiver may be appropriate, if some, but not all, of the requested records are likely to contribute significantly to public understanding of the operations and activities of the Government.

(b) Bureaus will waive fees (in whole or part) if disclosure of all or part of the information is in the public interest because its release—

(1) Is likely to contribute significantly to public understanding of the operations or activities of the Government; and

(2) Is not primarily in the commercial interest of the requester.

(c) If a bureau denies your request for a fee waiver, it will notify you, in writing, of the following:

(1) The basis for the denial, including a full explanation of why your fee waiver request did not meet DOI's fee waiver criteria (see paragraph (b) of this section and Appendix D to this part);

(2) The name(s) and title(s) or position(s) of each person responsible for the denial;

(3) The name and title of the Office of the Solicitor attorney consulted; and

(4) A statement that the denial may be appealed within 30 workdays after the date of the denial letter to the FOIA Appeals Officer (see Appendix A to this part) under the procedures in §2.30.

§2.20 When will bureaus grant discretionary fee waivers?

(a) A bureau may waive fees at its discretion if a request involves:

(1) Furnishing a copy of a document that the bureau has reproduced for free distribution;

(2) Furnishing one copy of a personal document (*e.g.*, a birth certificate) to a person who has been required to furnish it for retention by the Department;

(3) Furnishing one copy of the transcript of a hearing before a hearing officer in a grievance or similar proceeding to the employee for whom the hearing was held;

(4) Furnishing records to donors with respect to their gifts;

(5) Furnishing records to individuals or private nonprofit organizations having an official, voluntary or cooperative relationship with the Department to assist the individual or organization in working with the Department;

(6) Furnishing a reasonable number records to members of the U.S. Congress, state, local, and foreign governments, public international organizations, and Indian tribes, when to do so without charge is an appropriate courtesy, or when the recipient is carrying on a function related to that of the Department and to do so will help to accomplish the work of the Department;

(7) Furnishing records when to do so is in conformance with generally established business custom (*e.g.*, furnishing personal reference data to prospective employers of former Department employees); or

(8) Furnishing one copy of a single record in order to assist the requester in obtaining financial benefits to which he or she may be entitled (*e.g.*, veterans or their dependents, employees with Government employee compensation claims).

(b) You cannot appeal the denial of a discretionary fee waiver.

§2.21 How will the bureau respond to my request?

(a) After all the criteria in §§2.8 and 2.10 have been met, the bureau will make a reasonable effort to search for records responsive to your request. In determining which records are responsive to your request, the bureau will include any records in its possession and control as of the date it begins its search. This will include searching for records in an electronic form/format, except where it would interfere significantly with the bureau's automated information systems.

(b) In response to your request, the bureau will do one of two things:

(1) Include the requested records with the response letter or notify you of how, when, and where the records will be made available; or

(2) Deny part or all of your request, except that the bureau may, consistent with Departmental policy, determine that a discretionary release is appropriate under the particular circumstances. Your request will be denied or partially denied only if one of the nine statutory exemptions listed in Appendix E to this part applies to all or part of the records you have requested.

(c) Where a document contains both exempt and nonexempt material, the bureau will generally separate and release the nonexempt information. When disclosing a record in part, the bureau will indicate on the released portion of the record how much information was deleted, unless doing so would harm an interest protected by the exemption used to withhold the information. Further, if technically feasible, the amount of information deleted and the exemption used to withhold the information will be indicated where the deletion is made. If the nonexempt material is so intertwined with the exempt material that disclosure of it would leave only meaningless words and phrases, the entire portion may be withheld.

(d) If a bureau denies your request for records in whole or in part, the bureau's response will include:

(1) A reference to the specific exemption or exemptions authorizing the withholding;

(2) An explanation of the reason(s) for the denial;

(3) An estimate of the volume of information being withheld. The bureau will make a reasonable effort to estimate the volume of any records denied, or portions of records (*e.g.,* 100 pages, 4 Federal Record Center boxes, 1,000 kilobytes, etc.), unless such an estimate would harm an interest protected by the exemption used to withhold the information.

(4) The name(s) and title(s) of the person(s) responsible for the denial;

(5) The name and title of the Office of the Solicitor attorney consulted; and

(6) A statement that the denial may be appealed to the FOIA Appeals Officer (see Appendix A to this part), within 30 workdays of the date of the denial letter or 30 workdays after the records have been released under the procedures in § 2.30.

(e) If records do not exist within DOI, cannot be located, are not reasonably described, or if a procedural issue remains unresolved (*e.g.,* a fee issue), the bureau will respond to you in writing, including the following information, as applicable:

(1) An explanation of the basis of the decision;

(2) The name(s) and title(s) of the person(s) responsible for the decision; and

(3) A statement that the matter may be appealed within 30 workdays of the date of the response, to the FOIA Appeals Officer under the procedures in § 2.30.

(f) The bureau must consult with the Office of the Solicitor if it is considering withholding a requested record or denying a fee waiver.

(g) If any fees are due, the bureau will notify you in writing of the amount.

(h) All bureau responses will include the name and telephone number of a contact person in case you have questions concerning the response.

(i) Requests for information concerning coal under the Mineral Leasing Act or the Mineral Leasing Act for Acquired Lands are subject to special rules (see Appendix F to this part).

§ 2.22 What happens if a bureau receives a request for records it does not have or did not create?

(a) *Consultations/referrals within DOI.* (1) If a bureau receives a request for records not in its possession, but which it knows another bureau has or is likely to have, it will refer the request to that bureau(s) for response. It also will notify you of the referral in writing and provide the name of a contact in the other bureau(s) to which the referral was made. The time limit for responding to your request starts when the request reaches the bureau office that has the records.

(2) If a bureau (other than the Office of Inspector General) receives a request

for records in its possession that another bureau created or is substantially concerned with, it will consult with the other bureau before deciding whether to release or withhold the records. As an alternative, the bureau may refer the request along with the records to that bureau for direct response. It will notify you of the referral in writing and provide the name of a contact in the other bureau(s) to which the referral was made. Such a referral does not restart the statutory time limit for responding to your request.

(b) *Consultations/referrals with agencies outside DOI.* (1) If a bureau receives a request for records not in its possession, but which the bureau believes may be in the possession of another Federal agency, the bureau will return your request and advise you to submit it directly to the other agency. If you still believe that the records exist within DOI, you should notify the bureau FOIA contact of any additional information which leads you to believe the records exist and where they might be found. Alternatively, you may treat such a response as a denial of records and file an appeal.

(2) If, in response to a request, a bureau locates documents that originated with another Federal agency, it will refer the request, along with any responsive document(s), to that agency for a release determination and direct response. If the bureau refers the documents to another agency, it will notify you of the referral in writing and provide the name of a contact at the other agency. You may treat such a response as a denial of records and file an appeal. However, in the following situations, the bureau will make the release determination, after consulting with the originating agency.

(i) When the record is of primary interest to DOI (a record is of primary interest to DOI if it was developed or prepared according to DOI regulations or directives, or in response to a DOI request);

(ii) If DOI is in a better position than the originating agency to assess whether the record is exempt from disclosure;

(iii) If the originating agency is not subject to the FOIA; or

(iv) When it is more efficient or practical depending on the circumstances.

(3) If a bureau receives a request for records which have been classified by another agency under Executive Order 12958, Classified National Security Information, or superseding Executive order, it must refer the request to that agency for response.

[67 FR 64530, Oct. 21, 2002, as amended at 69 FR 58324, Sept. 30, 2004]

§ 2.23 How will a bureau handle a request for commercial or financial information that it has obtained from a person or entity outside the Federal Government?

(a) If a bureau receives a FOIA request for records containing commercial or financial information submitted by a person or entity outside the Federal Government, under Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, or superseding Executive order, the bureau must provide the submitter with prompt written notice of the request, except as provided in paragraph (h) of this section, whenever:

(1) The submitter has designated the information as confidential commercial or financial information, or

(2) The bureau has reason to believe that the information may be protected under exemption (4).

(b) The notice to the submitter will—

(1) Include a copy of the FOIA request.

(2) Describe the information requested or include copies of the pertinent records.

(3) Advise the submitter of the procedures for objecting to the release of the requested material and specify the time limit for responding.

(4) Give the submitter no less than 10 workdays, from receipt (or publication as set forth in paragraph (c) of this section) of the bureau's notice, to object to the release and to explain the basis for the objection, if any.

(5) Advise the submitter that:

(i) Information contained in his/her objections may be subject to disclosure under the FOIA if the bureau receives a FOIA request for it; and

(ii) If the submitter's objections contain commercial or financial information and a requester asks for the objections under the FOIA, the notification procedures of this subsection will apply.

(6) Advise the submitter that it is the bureau, rather than the submitter, that is responsible for deciding whether the information will be released or withheld.

(7) If the submitter designated the material as confidential commercial or financial information 10 or more years before the request, request the submitter's views on whether he/she still considers the information to be confidential.

(c) Where a large number of submitters is involved, the bureau may, rather than providing written notice to each submitter, publish a notice in a manner reasonably calculated to reach the attention of the submitters (*e.g.*, in newspapers/newsletters, the bureau's Web site, or the FEDERAL REGISTER).

(d) Whenever a bureau notifies a submitter that it may be required to disclose information in response to a FOIA request, the bureau also will notify you that it is giving the submitter an opportunity to review and comment on the material.

(e) If the submitter has any objection to disclosure he/she must submit a detailed written statement including the following:

(1) The justification for withholding any portion of the information under any exemption of the FOIA. In the case of exemption (4), there must be a specific and detailed discussion of:

(i) Whether the Government required the information in question to be submitted, and if so, how substantial competitive or other business harm would likely result from release; or

(ii) Whether the submitter provided the information voluntarily and, if so, how the information in question fits into a category of information that the submitter customarily does not release to the public.

(2) A certification that the information is confidential, has not been disclosed to the public by the submitter, and is essentially non-public because it is not routinely available to the public from other sources.

(3) If not already provided, a telephone number (where the submitter can be reached during normal business hours), an e-mail address, and a fax number (if available) is important information that will help the bureau or Department communicate with the submitter.

(f) The bureau will review and consider all objections to release that are received within the time specified in the notice to the submitter. However, it is the bureau, rather than the submitter, that is responsible for deciding whether the information should be released or withheld. If a submitter fails to respond to the bureau within the time limits specified in the notice, the bureau will presume that the submitter has no objection to disclosure of the information.

(g) If the bureau decides to release records over the submitter's objections, it will inform the submitter and you in writing. The notice to the submitter will be sent by certified mail, return receipt requested, to the submitter's last known address and will include copies of the records the bureau intends to release and the bureau's reasons for deciding to release them. The notice also will inform the submitter that it intends to release the records 10 workdays after receipt of the notice by the submitter.

(h) The bureau will not consult with the submitter if:

(1) The bureau responsible for the decision determines that the information is exempt from disclosure;

(2) The information has been lawfully published or otherwise made available to the public, such as in response to an earlier FOIA request or if the submitter has made the information public;

(3) Disclosure of the information is required by statute (other than the FOIA) or regulation (other than this subpart);

(4) Disclosure of the information is prohibited by statute; or

(5) The designation of confidentiality made by the submitter appears obviously frivolous. However, the bureau will notify the submitter of any final decision to disclose the information 15 workdays prior to releasing it.

(i) The bureau will inform the submitter within 10 workdays of the Department's receipt of a court complaint if you file a lawsuit for access to any of the withheld records. Similarly, the bureau will notify you within 10 workdays of the Department's receipt of a court complaint if the submitter files a lawsuit to prohibit the bureau from disclosing the records.

(j) If the bureau determines that the requested information is protected from release by exemption (4) of the FOIA, the bureau has no discretion to release the information as doing so would violate the Trade Secrets Act, a criminal provision found at 18 U.S.C. 1905.

[67 FR 64530, Oct. 21, 2002, as amended at 69 FR 58325, Sept. 30, 2004]

§ 2.24 Is a submitter required to designate information that is commercially or financially sensitive?

No. If in the course of responding to a FOIA request, a bureau cannot readily determine whether the information obtained from a person is commercially or financially sensitive information, the bureau will obtain and consider the views of the submitter of the information and provide the submitter an opportunity to object to any decision to disclose the information.

§ 2.25 How will a bureau handle a request for Federally-funded research data in the possession of a private entity?

In accordance with OMB Circular A–110, when published research findings are produced under a grant or other Federal assistance awarded to institutions of higher education, public and private hospitals, and other quasi-public and private nonprofit organizations, and the findings are used by a bureau in developing an agency action, *e.g.*, a policy or regulation, research data related to such findings are considered agency records. This applies even if the bureau's data are in the possession of the recipient of the Federal financial assistance (recipient).

(a) If you submit a FOIA request for such research data, the bureau will require the recipient to provide the information to it within a reasonable amount of time, so the bureau can consider the data for release to the public under the FOIA.

(b) The bureau will notify you that it may charge you for any additional fees incurred as a result of obtaining the research data from the recipient. This fee is in addition to any fees the bureau may charge to process your request under the FOIA.

(c) The bureau will forward a copy of the request to the recipient, who is responsible for searching for and reviewing the requested information in accordance with DOI's FOIA regulations (43 CFR part 2). The recipient will forward a copy of any responsive records that are located, along with his/her recommendations concerning the releasability of the data, and the total cost incurred in searching for, reviewing, and providing the data to the appropriate bureau FOIA contact.

(d) The bureau will review and consider the recommendations of the recipient regarding the releasability of the requested data. However, it is the bureau, rather than the recipient, that is responsible for deciding whether the information will be released or withheld.

[67 FR 64530, Oct. 21, 2002, as amended at 69 FR 58325, Sept. 30, 2004]

§ 2.26 Does the bureau provide multitrack processing of FOIA requests?

(a) A bureau may use two or more processing tracks to distinguish between simple and complex requests based on the amount of work and/or time needed to process the request, including the number of pages involved.

(b) If a bureau uses multitrack processing, it will advise requesters in its slower track(s) of the criteria of its faster track(s). For example, a bureau using multitrack processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the bureau's faster track(s). A bureau doing so will contact the requester by telephone or in writing, whichever is more efficient in each case.

§ 2.27 How will a bureau handle a request for information that is contained in a Privacy Act system of records? (See DOI's Privacy Act regulations (Subpart G of this part) for additional information.)

(a) When you request information pertaining to yourself that is contained in a Privacy Act system of records applicable to you (*i.e.,* the information contained in the system of records is retrieved by the bureau using your name or other personal identifier), the request will be processed under both the FOIA and the Privacy Act. If you request information about yourself, you must submit certain identifying information, usually an original signature (see the appropriate Privacy Act system notice and, Subpart G of this part) before the bureau will process your request. (Note: If you request information about yourself that is not covered by the Privacy Act, *e.g.,* the information may be filed under another subject, such as an organization, activity, event, or an investigation not retrievable by a name or personal identifier, the request will be treated only as a FOIA request.)

(b) The Privacy Act never prohibits disclosure of material that the FOIA requires to be released. Both a Privacy Act and a FOIA exemption must apply to withhold information from you if the information you seek is contained in a Privacy Act system of records applicable to you.

(c) Sometimes a request for Privacy Act information is submitted by a "third party" (an individual other than the person who is the subject of the Privacy Act record). If you request Privacy Act information about another individual, the material will not be disclosed without prior written approval by that individual unless—

(1) The release is provided for under one of the Privacy Act conditions of disclosure (5 U.S.C. 552a(b)), one of which is that Privacy Act information is releasable if it is required to be released under the FOIA, or

(2) In most circumstances, if the individual is deceased. See § 2.8(d)(4).

(d) In handling a request covered by paragraph (a) of this section, the fee provisions and time limits under the FOIA will apply, except that with regard to information that is subject to the Privacy Act, the bureau will charge only for duplication and not for search and review time (see Appendix C to this part). There will be no charge if the fee for processing the request is $30 or less.

Subpart D—FOIA Appeals

SOURCE: 67 FR 64530, Oct. 21, 2002, unless otherwise noted.

§ 2.28 When may I file an appeal?

(a) You may file an appeal when:

(1) Records or parts of records have been withheld;

(2) The bureau informs you that you have not adequately described the records you are seeking, or that it does not possess responsive records and you have reason to believe it does or you question the adequacy of the bureau's search for responsive records;

(3) A decision has not been made on your request within the time limits provided in § 2.12;

(4) The bureau did not address all aspects of your request for records;

(5) You believe there is a procedural deficiency (*e.g.,* fees are improperly calculated);

(6) A fee waiver has been denied; or

(7) A request for expedited processing has been denied or not responded to on time. (Special procedures apply to this type of appeal (see §§ 2.14, 2.29(c), and 2.32(b)). An appeal of this type relates only to the request for expedited processing and does not constitute an appeal of your underlying request for records.

(b) Before filing an appeal, you may wish to communicate with the contact person listed in the FOIA response or the bureau's FOIA Officer to see if the issue can be resolved informally. Informal resolution of your concerns may be appropriate where the bureau has not responded to your request or where you believe the search conducted was not adequate. In this latter instance, you may be able to provide additional information that may assist the bureau in locating records. However, if you wish to file an appeal, it must be received by the FOIA Appeals Officer within the time limits in § 2.29.

§2.29 How long do I have to file an appeal?

(a) Appeals covered by §§2.28(a)(1), (2), and (4) thru (6). Your appeal must be received by the FOIA Appeals Officer no later than 30 workdays after the date of the final response or 30 workdays after receipt of any records that are provided to you.

(b) Appeals covered by §2.28(a)(3). You may file an appeal any time after the time limit for responding to your request has passed.

(c) Appeals covered by §2.28(a)(7). You should file an appeal as soon as possible.

§2.30 How do I file an appeal?

(a) You must submit your appeal in writing, *i.e.*, by mail, fax or e-mail, to the FOIA Appeals Officer, U.S. Department of the Interior (see Appendix A for the address). Your appeal must include the information specified in paragraph (b) of this section. Failure to send your appeal directly to the FOIA Appeals Officer may result in a delay in processing.

(b) Your appeal must contain copies of all correspondence between you and the bureau, including your request and the bureau's response (if there is one). DOI will not begin processing your appeal and the time limits for responding to your appeal will not begin to run until these documents are received.

(c) You also should include in as much detail as possible any reason(s) why you believe the bureau's response was in error.

(d) Include your name and daytime telephone number (or the name and telephone number of an appropriate contact), e-mail address and fax number (if available), in case DOI needs additional information or clarification of your appeal.

(e) If you file an appeal concerning a fee waiver denial or a denial of expedited processing, you should, in addition to complying with paragraph (b) of this section, demonstrate fully how the criteria in §2.19(b) (see Appendix D) or §2.14(a) are met. You also should state in as much detail as possible why you believe the initial decision was incorrect.

(f) All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL."

§2.31 How will DOI respond to my appeal?

(a) Appeals will be decided by the FOIA Appeals Officer. When necessary, the FOIA Appeals Officer will consult other appropriate offices, including the Office of the Solicitor (in the case of all denials of information and fee waivers, and other technical issues as necessary).

(b) The final decision on an appeal will be in writing and will state the basis for DOI's decision as follows:

(1) *Decision to release or withhold records.* (i) If the FOIA Appeals Officer decides to release the withheld records or portions thereof, he/she will make the records available or instruct the appropriate bureau to make them available as soon as possible.

(ii) If the FOIA Appeals Officer decides to uphold in whole or part the denial of a request for records, he/she will advise you of your right to obtain judicial review.

(2) *Non-possession of records.* If the FOIA Appeals Officer decides that the requested records exist, the bureau that has the records will issue a response to you promptly and the FOIA Appeals Officer will close the file on your appeal. If the FOIA Appeals Officer decides that the requested records cannot be located or do not exist, he/she will advise you of your right to treat the decision as a denial and seek judicial review.

(3) *Non-response to a FOIA request.* If a bureau has not issued an appropriate response to your FOIA request within the 20-workday statutory time limit, the FOIA Appeals Officer will direct the bureau to issue a response directly to you as soon as possible. If the bureau responds to your request within 20-workdays after receipt of the appeal, the FOIA Appeals Officer will close the file on your appeal. Otherwise, the FOIA Appeals Officer will advise you that you may treat the lack of a response by the bureau as a denial of your appeal and seek judicial review.

(4) *Incomplete response to a FOIA request.* If a bureau has not issued a complete response to your FOIA request, the FOIA Appeals Officer will direct

the bureau to issue a complete response directly to you as soon as possible, and provide you with the name and telephone number of a contact person. The FOIA Appeals Officer will close your FOIA appeal and advise you that you may treat the incomplete response by the bureau as a denial of your appeal and seek judicial review.

(5) *Procedural deficiencies.* If the FOIA Appeals Officer decides that the bureau was in error, he/she will instruct the bureau to correct the error and advise you accordingly. If the FOIA Appeals Officer decides that the bureau acted properly, he/she will deny your appeal and advise you of your right to seek judicial review.

(6) *Fee waiver denials.* If the decision is to grant your request for a fee waiver, the FOIA Appeals Officer will advise the appropriate bureau of the Department's decision and instruct the bureau to proceed with processing the request or to refund any monies you have paid. If the decision is to deny the fee waiver request, the Department will advise you of your right to seek judicial review. You also should contact the bureau office to make further arrangements to process your request if you still wish to obtain the records.

(7) *Denial of expedited processing.* If the FOIA Appeals Officer decides to grant expedited processing, he/she will direct the bureau to process your request as soon as practicable. If your request for expedited processing is denied on appeal, the FOIA Appeals Officer will advise you of your right to seek judicial review of the denial of expedited processing.

§ 2.32 How long does DOI have to respond to my appeal?

(a) The statutory time limit for responding to an appeal is 20 workdays after receipt of an appeal meeting the requirements of § 2.30.

(b) If you request expedited processing of your appeal, you must demonstrate to the Department's satisfaction that the appeal meets one of the criteria under § 2.14(a). The FOIA Appeals Officer will advise you whether the Department will grant expedited processing within 10 calendar days of its receipt of your appeal. If the FOIA Appeals Officer decides to grant expedited processing, he/she will give your appeal priority and process it ahead of other pending appeals.

(c) If you have not received a decision on your appeal within 20 workdays, you have the right to seek review in a District Court of the United States (see 5 U.S.C. 552(a)(4) and (6)). In the event that the Department is unable to reach a decision within the given time limits, the FOIA Appeals Officer will notify you of the reason for the delay and the right to seek judicial review.

§ 2.33 How will the Department notify you and the submitter of commercial or financial information when it makes an appeal decision concerning such information?

(a) *Notice of appeal decision.* If the Department decides on appeal to release records over the objections of a submitter who has advised DOI that the information is protected from release by exemption (4), the Department will advise you and the submitter that it intends to release the records 10 workdays after the notice to the submitter regarding the appeal decision.

(b) *Notice of litigation.*

(1) The Department will notify the submitter within 10 workdays of receipt of the court complaint if you file a lawsuit seeking access to any records found on appeal to be protected from release by exemption (4).

(2) The Department will notify you within 10 workdays of receipt of the court complaint if the submitter files a lawsuit requesting the court to prohibit the Department from releasing information it alleges qualifies for protection under exemption (4).

Subpart E—FOIA Annual Report

SOURCE: 67 FR 64530, Oct. 21, 2002, unless otherwise noted.

§ 2.34 Where can I get a copy of DOI's FOIA annual report?

Under 5 U.S.C. 552(e), DOI is required to prepare an annual report regarding its FOIA activities. The report includes information about FOIA requests, appeals, and litigation against the Department. Copies of DOI's annual FOIA

report may be obtained from the Departmental FOIA Officer or by contacting DOI's Library which is located at the C Street entrance of the Main Interior Building (MIB), 1849 C Street, NW., Washington, DC 20240 (see Appendix A to this part). You may access the annual reports electronically by visiting DOI's FOIA home page (see Appendix B to this part for the Internet address).

Subpart F—Declassification of Classified Documents

SOURCE: 40 FR 7305, Feb. 19, 1975, unless otherwise noted. Redesignated at 67 FR 64530, Oct. 21, 2002.

§2.41 Declassification of classified documents.

(a) *Request for classification review*. (1) Requests for a classification review of a document of the Department of the Interior pursuant to section 5(c) of Executive Order 11652 (37 FR 5209, March 10, 1972) and section III B of the National Security Council Directive Governing Classification, Downgrading, Declassification and Safeguarding of National Security Information (37 FR 10053, May 1972) shall be made in accordance with the procedures established by this section.

(2) Any person desiring a classification review of a document of the Department of the Interior containing information classified as National Security Information by reason of the provisions of Executive Order 12065 (or any predecessor executive order) and which is more than 10 years old, should address such request to the Chief, Division of Enforcement and Security Management, Office of Administrative Services, U.S. Department of the Interior, Washington, DC 20240.

(3) Requests need not be made on any special form, but shall, as specified in the executive order, describe the document with sufficient particularity to enable identification of the document requested with expenditure of no more than a reasonable amount of effort.

(4) Charges for locating and reproducing copies of records will be made when deemed applicable in accordance with appendix A to this part and the requester will be notified.

(b) *Action on requests for classification review*. (1) The Chief, Division of Enforcement and Security Management, shall, unless the request is for a document over 30 years old, assign the request to the bureau having custody of the requested records for action. In the case of requests for declassification of records in the custody of the Office of the Secretary and less than 30 years old, the request shall be processed by the Chief, Division of Enforcement and Security Management. Requests for declassification of documents over 30 years shall be referred directly to the Archivist of the United States. The bureau which has been assigned the request, or the Chief, Division of Enforcement and Security Management, in the case of requests assigned to him, shall immediately acknowledge the request in writing. Every effort will be made to complete action on each request within thirty (30) days of its receipt. If action cannot be completed within thirty (30) days, the requester shall be so advised.

(2) If the requester does not receive a decision on his request within sixty (60) days from the date of receipt of his request, or from the date of his most recent response to a request for more particulars, he may apply to the Department of the Interior Oversight Committee for Security, U.S. Department of the Interior, Washington, DC 20240, for a decision on his request. The Committee must render a decision within thirty (30) days.

(c) *Form of decision and appeal to Oversight Committee for Security*. In the event that the bureau to which a request is assigned or the Chief, Division of Enforcement and Security Management, in the case of a request assigned to him, determines that the requested information must remain classified by reason of the provisions of Executive Order 11652, the requester shall be given prompt notification of that decision and, whenever possible, shall be provided with a brief statement as to why the information or material cannot be declassified. He shall also be advised that if he desires he may appeal the determination to the Chairman, Department of the Interior Oversight Committee for Security, U.S. Department of the Interior, Washington, DC 20240. An appeal shall include a brief

statement as to why the requester disagrees with the decision which he is appealing. The Department Oversight Committee for Security shall render its decision within thirty (30) days of receipt of an appeal. The Departmental Committee shall be authorized to overrule previous determinations in whole or in part when, in its judgement, continued protection is no longer required.

(d) *Appeal to Interagency Classification Review Committee.* Whenever the Department of the Interior Oversight Committee for Security confirms a determination for continued classification, it shall so notify the requester and advise him that he is entitled to appeal the decision to the Interagency Classification Review Committee established under section 8(A) of the Executive Order 11652. Such appeals shall be addressed to the Interagency Classification Review Committee, the Executive Office Building, Washington, DC 20500.

(e) *Suggestions and complaints.* Any person may also direct suggestions or complaints with respect to the administration of the other provisions of Executive Order 11652 and the NSC Directive by the Department of the Interior to the Department of the Interior Oversight Committee for Security, U.S. Department of the Interior, Washington, DC 20240.

[40 FR 7305, Feb. 19, 1975, as amended at 47 FR 38327, Aug. 31, 1982]

Subpart G—Privacy Act

SOURCE: 40 FR 44505, Sept. 26, 1975, unless otherwise noted. Redesignated at 67 FR 64530, Oct. 21, 2002.

§ 2.45 Purpose and scope.

This subpart contains the regulations of the Department of the Interior implementing section 3 of the Privacy Act. Sections 2.47 through 2.57 describe the procedures and policies of the Department concerning maintenance of records which are subject to the Act. Sections 2.60 through 2.66 describe the procedure under which individuals may determine whether systems of records subject to the Act contain records relating to them and the procedure under which they may seek access to existing records. Sections 2.70 through 2.77 describe the procedure under which individuals may petition for amendment of records subject to the Act relating to them. Section 2.79 lists records systems that have been exempted from certain requirements of the Act.

[48 FR 56583, Dec. 22, 1983]

§ 2.46 Definitions.

(a) *Act.* As used in this subpart, "Act" means section 3 of the Privacy Act, 5 U.S.C. 552a.

(b) *Bureau.* For purposes of this subpart, a "bureau" is any constituent bureau or office of the Department, including the Office of the Secretary and any other Departmental office.

(c) *Individual.* As used in this subpart, "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(d) *Maintain.* As used in this subpart, the term "maintain" includes maintain, collect, use or disseminate.

(e) *Record.* As used in this subpart, "record" means any item, collection, or grouping of information about an individual that is maintained by the Department or a bureau thereof, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, or a photograph.

(f) *System of records.* As used in this subpart, "System of records" means a group of any records under the control of the Department or a bureau thereof from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(g) *Medical records.* As used in this subpart, "medical records" means records which relate to the identification, prevention, cure or alleviation of any disease, illness or injury including psychological disorders, alcoholism and drug addiction.

(h) *Office of Personnel Management personnel records.* As used in the subpart, "Office of Personnel Management personnel records" means records maintained for the Office of Personnel Management by the Department and used

for personnel management programs or processes such as staffing, employee development, retirement, and grievances and appeals.

(i) *Statistical records.* As used in this subpart, "statistical records" means records in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual.

(j) *Routine use.* As used in this subpart, "routine use" means a use of a record for a purpose which is compatible with the purpose for which it was collected.

(k) *System notice.* As used in this subpart, "system notice" means the notice describing a system of records required by 5 U.S.C. 552a(e)(4) to be published in the FEDERAL REGISTER upon establishment or revision of the system of records.

(l) *System manager.* As used in this subpart, "system manager" means the official designated in a system notice as having administrative responsibility for a system of records.

(m) *Departmental Privacy Act Officer.* As used in this subpart, "Departmental Privacy Act Officer" means the official in the Office of the Assistant Secretary—Policy, Budget and Administration charged with responsibility for assisting the Assistant Secretary—Policy, Budget and Administration in carrying out the functions assigned in this subpart and for coordinating the activities of the bureaus of the Department in carrying out the functions which they are assigned in this subpart.

(n) *Bureau Privacy Act Officer.* As used in this subpart, "Bureau Privacy Act Officer" means the official within each bureau assigned responsibility for bureau implementation of the Act and the regulations of this subpart.

(o) *Working day.* As used in this subpart, "working day" means a regular Federal work day. It does not include Saturdays, Sundays or public legal holidays.

[40 FR 44505, Sept. 26, 1975, as amended at 47 FR 38327, Aug. 31, 1982; 48 FR 56583, Dec. 22, 1983; 53 FR 3749, Feb. 9, 1988]

§2.47 Records subject to Privacy Act.

The Privacy Act applies to all "records," as that term is defined in §2.46(e), which the Department maintains in a "system of records," as that term is defined in §2.46(f).

§2.48 Standards for maintenance of records subject to the Act.

(a) *Content of records.* Records subject to the Act shall contain only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive Order of the President.

(b) *Standards of accuracy.* Records subject to the Act which are used in making any determination about any individual shall be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making the determination.

(c) *Collection of information.* (1) Information which may be used in making determinations about an individual's rights, benefits, and privileges under Federal programs shall, to the greatest extent practicable, be collected directly from that individual.

(2) In deciding whether collection of information from an individual, as opposed to a third party source, is practicable, the following factors, among others, may be considered:

(i) Whether the nature of the information sought is such that it can only be obtained from a third party;

(ii) Whether the cost of collecting the information from the individual is unreasonable when compared with the cost of collecting it from a third party;

(iii) Whether there is a risk that information collected from third parties, if inaccurate, could result in an adverse determination to the individual concerned;

(iv) Whether the information, if supplied by the individual, would have to be verified by a third party; or

(v) Whether provisions can be made for verification, by the individual, of information collected from third parties.

(d) *Advice to individuals concerning uses of information.* (1) Each individual who is asked to supply information about him or herself which will be

added to a system of records shall be informed of the basis for requesting the information, how it may be used, and what the consequences, if any, are of not supplying the information.

(2) At a minimum, the notice to the individual must state:

(i) The authority (whether granted by statute or Executive Order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(ii) The principal purpose or purposes for which the information is intended to be used;

(iii) The routine uses which may be made of the information; and

(iv) The effects on the individual, if any, of not providing all or any part of the requested information.

(3)(i) When information is collected on a standard form, the notice to the individual shall be provided on the form, on a tear-off sheet attached to the form, or on a separate sheet, whichever is most practical.

(ii) When information is collected by an interviewer, the interviewer shall privide the individual with a written notice which the individual may retain. If the interview is conducted by telephone, however, the interviewer may summarize the notice for the individual and need not provide a copy to the individual unless the individual requests a copy.

(iii) An individual may be asked to acknowledge, in writing, that the notice required by this section has been provided.

(e) *Records concerning activity protected by the First Amendment.* No record may be maintained describing how any individual exercises rights guaranteed by the First Amendment to the Constitution unless the maintenance of the record is (1) expressly authorized by statute or by the individual about whom the record is maintained or (2) pertinent to and within the scope of an authorized law enforcement activity.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56583, Dec. 22, 1983]

§ 2.49 [Reserved]

§ 2.50 Federal Register notices describing systems of records.

(a) The Privacy Act requires publication of a notice in the FEDERAL REGISTER describing each system of records subject to the Act. Such notice will be published prior to the establishment or a revision of the system of records. 5 U.S.C. 552a(e)(4).

(b) Each bureau shall notify the Departmental Privacy Act Officer promptly of any modifications or amendments which are required in the then-current notice describing a system of records for which it is responsible.

(c) A bureau desiring to establish a new system of records or a new use for an existing system of records shall notify the Departmental Privacy Act Officer, no fewer than ninety (90) calendar days in advance.

[48 FR 56583, Dec. 22, 1983]

§ 2.51 Assuring integrity of records.

(a) *Statutory requirement.* The Privacy Act requires that records subject to the Act be maintained with appropriate administrative, technical and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarassment, inconvenience, or unfairness to any individual on whom information is maintained, 5 U.S.C. 552a(e)(10).

(b) *Records maintained in manual form.* When maintained in manual form, records subject to the Privacy Act shall be maintained in a manner commensurate with the sensitivity of the information contained in the system of records. The following minimum safeguards, or safeguards affording comparable protection, are applicable to Privacy Act systems of records containing sensitive information:

(1) Areas in which the records are maintained or regularly used shall be posted with an appropriate warning stating that access to the records is limited to authorized persons. The warning also shall summarize the requirements of § 2.52 and state that the

Privacy Act contains a criminal penalty for the unauthorized disclosure of records to which it applies.

(2) During working hours, (i) the area in which the records are maintained or regularly used shall be occupied by authorized personnel or (ii) access to the records shall be restricted by their storage in locked metal file cabinets or a locked room.

(3) During non-working hours, access to the records shall be restricted by their storage in locked metal file cabinets or a locked room.

(4) Where a locked room is the method of security provided for a system, the bureau responsible for the system shall supplement that security by (i) providing lockable file cabinets or containers for the records or (ii) changing the lock or locks for the room so that they may not be opened with a master key. For the purposes of this paragraph, a master key is a key which may be used to open rooms other than the room containing records subject to the Privacy Act, unless those rooms are utilized by officials or employees authorized to have access to the records subject to the Privacy Act.

(c) *Records maintained in computerized form.* When maintained in computerized form, records subject to the Privacy Act shall be maintained, at a minimum, subject to safeguards based on those recommended in the National Bureau of Standard's booklet "Computer Security Guidelines for Implementing the Privacy Act of 1974" (May 30, 1975), and any supplements thereto, which are adequate and appropriate to assuring the integrity of records in the system.

(d) *Office of Personnel Management personnel records.* A system of records made up of Office of Personnel Management personnel records shall be maintained under the security requirements set out in 5 CFR 293.106 and 293.107.

(e) *Bureau responsibility.* (1) The bureau responsible for a system of records shall be responsible for assuring that specific procedures are developed to assure that the records in the system are maintained with security meeting the requirements of the Act and this section.

(2) These procedures shall be in writing and shall be posted or otherwise periodically brought to the attention of employees working with the records contained in the system.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56583, Dec. 22, 1983]

§2.52 Conduct of employees.

(a) *Handling of records subject to the Act.* Employees whose duties require handling of records subject to the Privacy Act shall, at all times, take care to protect the integrity, security and confidentiality of these records.

(b) *Disclosure of records.* No employee of the Department may disclose records subject to the Privacy Act unless disclosure is permitted under §2.56 or is to the individual to whom the record pertains.

(c) *Alteration of records.* No employee of the Department may alter or destroy a record subject to the Privacy Act unless (1) such alteration or destruction is properly undertaken in the course of the employee's regular duties or (2) such alteration or destruction is required by a decision under §§2.70 through 2.75 or the decision of a court of competent jurisdiction.

(d) *Bureau responsibility.* The bureau responsible for a system of records shall be responsible for assuring that employees with access to the system are made aware of the requirements of this section and of 5 U.S.C. 552a(i)(1), which imposes criminal penalties for knowingly and willfully disclosing a record about an individual without the written request or consent of that individual unless disclosure is permitted under one of the exceptions listed in §2.56 (b) and (c).

§2.53 Government contracts.

(a) *Required contract provisions.* When a contract provides for the operation by or on behalf of the Department of a system of records to accomplish a Department function, the contract shall, consistent with the Department's authority, cause the requirements of 5 U.S.C. 552a and the regulations contained in this subpart to be applied to such system.

(b) *System manager.* The head of the bureau responsible for the contract shall designate a regular employee of

the bureau to be the manager for a system of records operated by a contractor.

§§ 2.54–2.55 [Reserved]

§ 2.56 Disclosure of records.

(a) *Prohibition of disclosure.* No record contained in a system of records may be disclosed by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(b) *General exceptions.* The prohibition contained in paragraph (a) does not apply where disclosure of the record would be:

(1) To those officers or employees of the Department who have a need for the record in the performance of their duties; or

(2) Required by the Freedom of Information Act, 5 U.S.C. 552.

(c) *Specific exceptions.* The prohibition contained in paragraph (a) of this section does not apply where disclosure of the record would be:

(1) For a routine use as defined in § 2.46(j) which has been described in a system notice published in the FEDERAL REGISTER;

(2) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13, U.S. Code.

(3) To a recipient who has provided the system manager responsible for the system in which the record is maintained with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(4) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(5) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Department specifying the particular portion desired and the law enforcement activity for which the record is sought;

(6) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(7) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(8) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(9) Pursuant to the order of a court of competent jurisdiction; or

(10) To a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(f)).

(d) *Reviewing records prior to disclosure.* (1) Prior to any disclosure of a record about an individual, unless disclosure is required by the Freedom of Information Act, reasonable efforts shall be made to assure that the records are accurate, complete, timely and relevant for agency purposes.

(2) When a record is disclosed in connection with a Freedom of Information request made under subpart B of this part and it is appropriate and administratively feasible to do so, the requester shall be informed of any information known to the Department indicating that the record may not be fully accurate, complete, or timely.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56584, Dec. 22, 1983; 50 FR 45114, Oct. 30, 1985]

§ 2.57 Accounting for disclosures.

(a) *Maintenance of an accounting.* (1) Where a record is disclosed to any person, or to another agency, under any of the specific exceptions provided by § 2.56 (c), an accounting shall be made.

(2) The accounting shall record (i) the date, nature, and purpose of each disclosure of a record to any person or to another agency and (ii) the name and address of the person or agency to whom the disclosure was made.

(3) Accountings prepared under this section shall be maintained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(b) *Access to accountings.* (1) Except for accountings of disclosures made under §2.56(c)(5), accountings of all disclosures of a record shall be made available to the individual to whom the record relates at the individual's request.

(2) An individual desiring access to an accounting of disclosures of a record pertaining to the individual shall submit a request by following the procedures of §2.63.

(c) *Notification of disclosure.* When a record is disclosed pursuant to §2.56(c)(9) as the result of the order of a court of competent jurisdiction, reasonable efforts shall be made to notify the individual to whom the record pertains as soon as the order becomes a matter of public record.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56584, Dec. 22, 1983]

§§2.58–2.59 [Reserved]

§2.60 Request for notification of existence of records: Submission.

(a) *Submission of requests.* (1)(i) Individuals desiring to determine under the Privacy Act whether a system of records contains records pertaining to them shall address inquiries to the system manager having responsibility for the system unless the system notice describing the system prescribes or permits submission to some other official or officials.

(ii) If a system notice describing a system requires individuals to contact more than two officials concerning the existence of records in the system, individuals desiring to determine whether the system contains records pertaining to them may contact the system manager for assistance in determining which official is most likely to be in possession of records pertaining to those individuals.

(2) Individuals desiring to determine whether records pertaining to them are maintained in two or more systems shall make a separate inquiry concerning each system.

(b) *Form of request.* (1) An inquiry to determine whether a system of records contains records pertaining to an individual shall be in writing.

(2) To insure expeditious handling, the request shall be prominently marked, both on the envelope and on the face of the request, with the legend "PRIVACY ACT INQUIRY."

(3) The request shall state that the individual is seeking information concerning records pertaining to him or herself and shall supply such additional identifying information, if any, as is called for in the system notice describing the system.

(4) Individuals who have reason to believe that information pertaining to them may be filed under a name other than the name they are currently using (e.g., maiden name), shall include such information in the request.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56584, Dec. 22, 1983]

§2.61 Requests for notification of existence of records: Action on.

(a) *Decisions on request.* (1) Individuals inquiring to determine whether a system of records contains records pertaining to them shall be promptly advised whether the system contains records pertaining to them unless (i) the records were compiled in reasonable anticipation of a civil action or proceeding or (ii) the system of records is one which has been excepted from the notification provisions of the Privacy Act by rulemaking (§2.79).

(2) If the records were compiled in reasonable anticipation of a civil action or proceeding or the system of records is one which has been excepted from the notification provisions of the Privacy Act by rulemaking, the individuals will be promptly notified that they are not entitled to notification of whether the system contains records pertaining to them.

(b) *Authority to deny requests.* A decision to deny a request for notification of the existence of records shall be

made by the system manager responsible for the system of records concerning which inquiry has been made and shall be concurred in by the bureau Privacy Act officer for the bureau which maintains the system, provided, however that the head of a bureau may, in writing, require (1) that the decision be made by the bureau Privacy Act officer and/or (2) that the bureau head's own concurrence in the decision be obtained.

(c) *Form of decision.* (1) No particular form is required for a decision informing individuals whether a system of records contains records pertaining to them.

(2) A decision declining to inform an individual whether or not a system of records contains records pertaining to him or her shall be in writing and shall:

(i) State the basis for denial of the request.

(ii) Advise the individual that an appeal of the declination may be made to the Assistant Secretary—Policy, Budget and Administration pursuant to §2.65 by writing to the Privacy Act Officer, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, DC 20240.

(iii) State that the appeal must be received by the foregoing official within twenty (20) working days of the date of the decision.

(3) If the decision declining a request for notification of the existence of records involves Department employee records which fall under the jurisdiction of the Office of Personnel Management, the individual shall be informed in a written response which shall:

(i) State the reasons for the denial.

(ii) Include the name, position title, and address of the official responsible for the denial.

(iii) Advise the individual that an appeal of the declination may be made only to the Assistant Director for Workforce Information, Personnel Systems Oversight Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(4) Copies of decisions declining a request for notification of the existence of records made pursuant to paragraphs (c)(2) and (c)(3) of this section shall be provided to the Departmental and Bureau Privacy Act Officers.

[48 FR 56584, Dec. 22, 1983, as amended at 53 FR 3749, Feb. 9, 1988]

§ 2.62 Requests for access to records.

The Privacy Act permits individuals, upon request, to gain access to their records or to any information pertaining to them which is contained in a system and to review the records and have a copy made of all or any portion thereof in a form comprehensive to them. 5 U.S.C. 552a(d)(1). A request for access shall be submitted in accordance with the procedures in this subpart.

[48 FR 56584, Dec. 22, 1983]

§ 2.63 Requests for access to records: Submission.

(a) *Submission of requests.* (1)(i) Requests for access to records shall be submitted to the system manager having responsibility for the system in which the records are maintained unless the system notice describing the system prescribes or permits submission to some other official or officials.

(ii) If a system notice describing a system requires individuals to contact more than two officials concerning access to records in the system, individuals desiring to request access to records pertaining to them may contact the system manager for assistance in determining which official is most likely to be in custody of records pertaining to that individual.

(2) Individuals desiring access to records maintained in two or more separate systems shall submit a separate request for access to the records in each system.

(b) *Form of request.* (1) A request for access to records subject to the Privacy Act shall be in writing.

(2) To insure expeditious handling, the request shall be prominently marked, both on the envelope and on the face of the request, with the legend "PRIVACY ACT REQUEST FOR ACCESS."

(3) Requesters shall specify whether they seek all of the records contained in the system which relate to them or only some portion thereof. If only a portion of the records which relate to

the individual are sought, the request shall reasonably describe the specific record or records sought.

(4) If the requester seeks to have copies of the requested records made, the request shall state the maximum amount of copying fees which the requester is willing to pay. A request which does not state the amount of fees the requester is willing to pay will be treated as a request to inspect the requested records. Requesters are further notified that under §2.64(d) the failure to state willingness to pay fees as high as are anticipated by the Department will delay processing of a request.

(5) The request shall supply such identifying information, if any, as is called for in the system notice describing the system.

(6) Requests failing to meet the requirements of this paragraph shall be returned to the requester with a written notice advising the requester of the deficiency in the request.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56585, Dec. 22, 1983]

§2.64 Requests for access to records: Initial decision.

(a) *Decisions on requests.* A request made under this subpart for access to a record shall be granted promptly unless (1) the record was compiled in reasonable anticipation of a civil action or proceeding or (2) the record is contained in a system of records which has been excepted from the access provisions of the Privacy Act by rulemaking (§2.79).

(b) *Authority to deny requests.* A decision to deny a request for access under this subpart shall be made by the system manager responsible for the system of records in which the requested record is located and shall be concurred in by the bureau Privacy Act officer for the bureau which maintains the system, provided, however, that the head of a bureau may, in writing, require (1) that the decision be made by the bureau Privacy Act officer and/or (2) that the bureau head's own concurrence in the decision be obtained.

(c) *Form of decision.* (1) No particular form is required for a decision granting access to a record. The decision shall, however, advise the individual requesting the record as to where and when the record is available for inspection or, as the case may be, where and when copies will be available. If fees are due under §2.64(d), the individual requesting the record shall also be notified of the amount of fees due or, if the exact amount has not been determined, the approximate amount of fees due.

(2) A decision denying a request for access, in whole or part, shall be in writing and shall:

(i) State the basis for denial of the request.

(ii) Contain a statement that the denial may be appealed to the Assistant Secretary—Policy, Budget and Administration pursuant to §2.65 by writing to the Privacy Act Officer, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, DC 20240.

(iii) State that the appeal must be received by the foregoing official within twenty (20) working days of the date of the decision.

(3) If the decision denying a request for access involves Department employee records which fall under the jurisdiction of the Office of Personnel Management, the individual shall be informed in a written response which shall:

(i) State the reasons for the denial.

(ii) Include the name, position title, and address of the official responsible for the denial.

(iii) Advise the individual that an appeal of the denial may be made only to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(4) Copies of decisions denying requests for access made pursuant to paragraphs (c)(2) and (c)(3) of this section will be provided to the Departmental and Bureau Privacy Act Officers.

(d) *Fees.* (1) No fees may be charged for the cost of searching for or reviewing a record in response to a request made under §2.63.

(2) Fees for copying a record in response to a request made under §2.63 shall be charged in accordance with the

schedule of charges contained in Appendix A to this part, unless the official responsible for processing the request determines that reduction or waiver of fees is appropriate.

(3) Where it is anticipated that fees chargeable in connection with a request will exceed the amount the person submitting the request has indicated a willingness to pay, the official processing the request shall notify the requester and shall not complete processing of the request until the requester has agreed, in writing, to pay fees as high as are anticipated.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56585, Dec. 22, 1983; 53 FR 3749, Feb. 9, 1988]

§ 2.65 Requests for notification of existence of records and for access to records: Appeals.

(a) *Right of appeal.* Except for appeals pertaining to Office of Personnel Management records, individuals who have been notified that they are not entitled to notification of whether a system of records contains records pertaining to them or have been denied access, in whole or part, to a requested record may appeal to the Assistant Secretary—Policy, Budget and Administration.

(b) *Time for appeal.* (1) An appeal must be received by the Privacy Act Officer no later than twenty (20) working days after the date of the initial decision on a request.

(2) The Assistant Secretary—Policy, Budget and Administration may, for good cause shown, extend the time for submission of an appeal if a written request for additional time is received within twenty (20) working days of the date of the initial decision on the request.

(c) *Form of appeal.* (1) An appeal shall be in writing and shall attach copies of the initial request and the decision on the request.

(2) The appeal shall contain a brief statement of the reasons why the appellant believes the decision on the initial request to have been in error.

(3) The appeal shall be addressed to Privacy Act Officer, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, DC 20240.

(d) *Action on appeals.* (1) Appeals from decisions on initial requests made pursuant to §§ 2.61 and 2.63 shall be decided for the Department by the Assistant Secretary—Policy, Budget and Administration or an official designated by the Assistant Secretary after consultation with the Solicitor.

(2) The decision on an appeal shall be in writing and shall state the basis for the decision.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56585, Dec. 22, 1983; 53 FR 3749, Feb. 9, 1988]

§ 2.66 Requests for access to records: Special situations.

(a) *Medical records.* (1) Medical records shall be disclosed to the individual to whom they pertain unless it is determined, in consultation with a medical doctor, that disclosure should be made to a medical doctor of the individual's choosing.

(2) If it is determined that disclosure of medical records directly to the individual to whom they pertain could have an adverse effect on that individual, the individual may designate a medical doctor to receive the records and the records will be disclosed to that doctor.

(b) *Inspection in presence of third party.* (1) Individuals wishing to inspect records pertaining to them which have been opened for their inspection may, during the inspection, be accompanied by a person of their own choosing.

(2) When such a procedure is deemed appropriate, individuals to whom the records pertain may be required to furnish a written statement authorizing discussion of their records in the accompanying person's presence.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56585, Dec. 22, 1983]

§§ 2.67–2.69 [Reserved]

§ 2.70 Amendment of records.

The Privacy Act permits individuals to request amendment of records pertaining to them if they believe the records are not accurate, relevant, timely or complete. 5 U.S.C. 552a(d)(2). A request for amendment of a record

shall be submitted in accordance with the procedures in this subpart.

[48 FR 56585, Dec. 22, 1983]

§2.71 Petitions for amendment: Submission and form.

(a) *Submission of petitions for amendment.* (1) A request for amendment of a record shall be submitted to the system manager for the system of records containing the record unless the system notice describing the system prescribes or permits submission to a different official or officials. If an individual wishes to request amendment of records located in more than one system, a separate petition must be submitted to each system manager.

(2) A petition for amendment of a record may be submitted only if the individual submitting the petition has previously requested and been granted access to the record and has inspected or been given a copy of the record.

(b) *Form of petition.* (1) A petition for amendment shall be in writing and shall specifically identify the record for which amendment is sought.

(2) The petition shall state, in detail, the reasons why the petitioner believes the record, or the objectionable portion thereof, is not accurate, relevant, timely or complete. Copies of documents or evidence relied upon in support of these reasons shall be submitted with the petition.

(3) The petition shall state, specifically and in detail, the changes sought in the record. If the changes involve rewriting the record or portions thereof or involve adding new language to the record, the petition shall propose specific language to implement the changes.

[48 FR 56585, Dec. 22, 1983]

§2.72 Petitions for amendment: Processing and initial decision.

(a) *Decisions on petitions.* In reviewing a record in response to a petition for amendment, the accuracy, relevance, timeliness and completeness of the record shall be assessed against the criteria set out in §2.48. In addition, personnel records shall be assessed against the criteria for determining record quality published in the Federal Personnel Manual and the Departmental Manual addition thereto.

(b) *Authority to decide.* An initial decision on a petition for amendment may be made only by the system manager responsible for the system of records containing the challenged record. If the system manager declines to amend the record as requested, the bureau Privacy Act officer for the bureau which maintains the system must concur in the decision, provided, however, that the head of a bureau may, in writing, require (1) that the decision be made by the bureau Privacy Act officer and/or (2) that the bureau head's own concurrence in the decision be obtained.

(c) *Acknowledgement of receipt.* Unless processing of a petition is completed within ten (10) working days, the receipt of the petition for amendment shall be acknowledged in writing by the system manager to whom it is directed.

(d) *Inadequate petitions.* (1) If a petition does not meet the requirements of §2.71, the petitioner shall be so advised and shall be told what additional information must be submitted to meet the requirements of §2.71.

(2) If the petitioner fails to submit the additional information within a reasonable time, the petition may be rejected. The rejection shall be in writing and shall meet the requirements of paragraph (e) of this section.

(e) *Form of decision.* (1) A decision on a petition for amendment shall be in writing and shall state concisely the basis for the decision.

(2) If the petition for amendment is rejected, in whole or part, the petitioner shall be informed in a written response which shall:

(i) State concisely the basis for the decision.

(ii) Advise the petitioner that the rejection may be appealed to the Assistant Secretary—Policy, Budget and Administration by writing to the Privacy Act Officer, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, DC 20240.

(iii) State that the appeal must be received by the foregoing official within twenty (20) working days of the decision.

(3) If the petition for amendment involves Department employee records which fall under the jurisdiction of the Office of Personnel Management and is rejected, in whole or part, the petitioner shall be informed in a written response which shall:

(i) State concisely the basis for the decision.

(ii) Advise the petitioner that an appeal of the rejection may be made pursuant to 5 CFR 297.306 only to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(4) Copies of rejections of petitions for amendment made pursuant to paragraphs (e)(2) and (e)(3) of this section will be provided to the Departmental and Bureau Privacy Act Officers.

(f) *Implementation of initial decision.* If a petition for amendment is accepted, in whole or part, the bureau maintaining the record shall:

(1) Correct the record accordingly and,

(2) Where an accounting of disclosures has been made pursuant to § 2.57, advise all previous recipients of the record that the correction was made and the substance of the correction.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56585, Dec. 22, 1983; 53 FR 3750, Feb. 9, 1988]

§ 2.73 Petitions for amendments: Time limits for processing.

(a) *Acknowledgement of receipt.* The acknowledgement of receipt of a petition required by § 2.72(c) shall be dispatched not later than ten (10) working days after receipt of the petition by the system manager responsible for the system containing the challenged record, unless a decision on the petition has been previously dispatched.

(b) *Decision on petition.* A petition for amendment shall be processed promptly. A determination whether to accept or reject the petition for amendment shall be made within thirty (30) working days after receipt of the petition by the system manager responsible for the system containing the challenged record.

(c) *Suspension of time limit.* The thirty (30) day time limit for a decision on a petition shall be suspended if it is necessary to notify the petitioner, pursuant to § 2.72(d), that additional information in support of the petition is required. Running of the thirty (30) day time limit shall resume on receipt of the additional information by the system manager responsible for the system containing the challenged record.

(d) *Extensions of time.* (1) The thirty (30) day time limit for a decision on a petition may be extended if the official responsible for making a decision on the petition determines that an extension is necessary for one of the following reasons:

(i) A decision on the petition requires analysis of voluminous record or records;

(ii) Some or all of the challenged records must be collected from facilities other than the facility at which the official responsible for making the decision is located.

(iii) Some or all of the challenged records are of concern to another bureau of the Department or another agency of the Federal Government whose assistance and views are being sought in processing the request.

(2) If the official responsible for making a decision on the petition determines that an extension is necessary, the official shall promptly inform the petitioner of the extension and the date on which a decision is expected to be dispatched.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56586, Dec. 22, 1983; 53 FR 3750, Feb. 9, 1988]

§ 2.74 Petitions for amendment: Appeals.

(a) *Right of appeal.* Except for appeals pertaining to Office of Personnel Management records, where a petition for amendment has been rejected in whole or in part, the individual submitting the petition may appeal the denial to the Assistant Secretary—Policy, Budget and Administration.

(b) *Time for appeal.* (1) An appeal must be received no later than twenty (20) working days after the date of the decision on a petition.

(2) The Assistant Secretary—Policy, Budget and Administration may, for good cause shown, extend the time for

submission of an appeal if a written request for additional time is received within twenty (20) working days of the date of the decision on a petition.

(c) *Form of appeal.* (1) An appeal shall be in writing and shall attach copies of the initial petition and the decision on that petition.

(2) The appeal shall contain a brief statement of the reasons why the appellant believes the decision on the petition to have been in error.

(3) The appeal shall be addressed to Privacy Act Officer, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, DC 20240.

[40 FR 44505, Sept. 26, 1975, as amended at 47 FR 38328, Aug. 31, 1982; 53 FR 3750, Feb. 9, 1988]

§2.75 Petitions for amendment: Action on appeals.

(a) *Authority.* Appeals from decisions on initial petitions for amendment shall be decided for the Department by the Assistant Secretary—Policy, Budget and Administration or an official designated by the Assistant Secretary, after consultation with the Solicitor.

(b) *Time limit.* (1) A final determination on any appeal shall be made within thirty (30) working days after receipt of the appeal.

(2) The thirty (30) day period for decision on an appeal may be extended, for good cause shown, by the Secretary of the Interior. If the thirty (30) day period is extended, the individual submitting the appeal shall be notified of the extension and of the date on which a determination on the appeal is expected to be dispatched.

(c) *Form of decision.* (1) The final determination on an appeal shall be in writing and shall state the basis for the determination.

(2) If the determination upholds, in whole or part, the initial decision rejecting the petition for amendment, the determination shall also advise the individual submitting the appeal:

(i) Of his or her right to file a concise statement of the reasons for disagreeing with the decision of the agency;

(ii) Of the procedure established by §2.77 for the filing of the statement of disagreement;

(iii) That the statement which is filed will be made available to anyone to whom the record is subsequently disclosed together with, at the discretion of the Department, a brief statement by the Department summarizing its reasons for refusing to amend the record;

(iv) That prior recipients of the challenged record will be provided a copy of any statement of dispute to the extent that an accounting of disclosure was maintained; and

(v) Of his or her right to seek judicial review of the Department's refusal to amend the record.

(3) If the determination reverses, in whole or in part, the initial decision rejecting the petition for amendment, the system manager responsible for the system containing the challenged record shall be directed to:

(i) Amend the challenged record accordingly; and

(ii) If an accounting of disclosures has been made, advise all previous recipients of the record of the amendment and its substance.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56586, Dec. 22, 1983; 53 FR 3750, Feb. 9, 1988]

§2.76 [Reserved]

§2.77 Statements of disagreement.

(a) *Filing of statement.* If the determination of the Assistant Secretary—Policy, Budget and Administration under §2.75 rejects in whole or part, a petition for amendment, the individual submitting the petition may file with the system manager for the system containing the challenged record a concise written statement setting forth the reasons for disagreement with the determination of the Department.

(b) *Disclosure of statements.* In any disclosure of a record containing information about which an individual has filed a statement of disagreement under this section which occurs after the filing of the statement, the disputed portion of the record will be clearly noted and the recipient shall be provided copies of the statement of disagreement. If appropriate, a concise statement of the reasons of the Department for not making the requested

amendments may also be provided to the recipient.

(c) *Maintenance of statements.* System managers shall develop procedures to assure that statements of disagreement filed with them shall be maintained in such a way as to assure dissemination of the statements to recipients of the records to which the statements pertain.

[48 FR 56586, Dec. 22, 1983]

§ 2.78 [Reserved]

§ 2.79 Exemptions.

(a) *Criminal law enforcement records exempt under 5 U.S.C. 552a(j)(2).* Pursuant to 5 U.S.C 552a(j)(2) the following systems of records have been exempted from all of the provisions of 5 U.S.C. 552a and the regulations in the subpart except paragraphs (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i) of 5 U.S.C. 552a and the portions of the regulations in this subpart implementing these paragraphs:

(1) Investigative Case File System, Interior/FWS–20.

(2) Law Enforcement Services System, Interior/BIA–18.

(3) Law Enforcement Statistical Reporting System, Interior/NPS–19.

(4) Investigative Records, Interior/Office of Inspector General—2.

(b) *Law enforcement records exempt under 5 U.S.C. 552a(k)(2).* Pursuant to 5 U.S.C. 552a(k)(2), the following systems of records have been exempted from paragraphs (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these paragraphs:

(1) Investigative Records, Interior/Office of Inspector General—2.

(2) Permits System, Interior/FWS–21.

(3) Criminal Case Investigation System, Interior/BLM–18.

(4) Civil Trespass Case Investigations, Interior/BLM–19.

(5) Employee Conduct Investigations, Interior/BLM–20.

(6)–(7) [Reserved]

(8) Employee Financial Irregularities, Interior/NPS–17.

(9) Trespass Cases, Interior/Reclamation–37.

(10) Litigation, Appeal and Case Files System, Interior/Office of the Solicitor–1 to the extent that it consists of investigatory material compiled for law enforcement purposes.

(11) Endangered Species Licenses System, Interior/FWS–19.

(12) Investigative Case File, Interior/FWS–20.

(13) Timber Cutting and Trespass Claims Files, Interior/BIA–24.

(c) Investigatory records exempt under 5 U.S.C. 552a(k)(5), the following systems of records have been exempted from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these subsections:

(1) [Reserved]

(2) National Research Council Grants Program, Interior/GS–9

(3) Committee Management Files, Interior/Office of the Secretary—68.

(5 U.S.C. 301, 552a and 5 U.S.C. app. sections 9(a)(1)(D) and 9(b); 5 U.S.C. 301, 552, and 552a; 31 U.S.C. 483a; and 43 U.S.C. 1460)

[40 FR 44505, Sept. 26, 1975, as amended at 40 FR 54790, Nov. 26, 1975; 47 FR 38328, Aug. 31, 1982; 48 FR 37412, Aug. 18, 1983; 48 FR 56586, Dec. 22, 1983; 49 FR 6907, Feb. 24, 1984]

Subpart H—Legal Process: Testimony by Employees and Production of Records

SOURCE: 65 FR 46369, July 28, 2000, unless otherwise noted. Redesignated at 67 FR 64530, Oct. 21, 2002.

GENERAL INFORMATION

§ 2.80 What does this subpart cover?

(a) This subpart describes how the Department of the Interior (including all its bureaus and offices) responds to requests or subpoenas for:

(1) Testimony by employees in State, territorial or Tribal judicial, legislative or administrative proceedings concerning information acquired while performing official duties or because of an employee's official status;

(2) Testimony by employees in Federal court civil proceedings in which the United States is not a party concerning information acquired while performing official duties or because of an employee's official status;

(3) Testimony by employees in any judicial or administrative proceeding in which the United States, while not a party, has a direct and substantial interest;

(4) Official records or certification of such records for use in Federal, State, territorial or Tribal judicial, legislative or administrative proceedings.

(b) In this subpart, "employee" means a current or former Department employee, including a contract or special government employee.

(c) This subpart does not apply to:

(1) Congressional requests or subpoenas for testimony or records;

(2) Federal court civil proceedings in which the United States is a party;

(3) Federal administrative proceedings;

(4) Federal, State and Tribal criminal court proceedings;

(5) Employees who voluntarily testify, while on their own time or in approved leave status, as private citizens as to facts or events that are not related to the official business of the Department. The employee must state for the record that the testimony represents the employee's own views and is not necessarily the official position of the Department. *See* 5 CFR §§ 2635.702(b), 2635.807 (b).

(6) Testimony by employees as expert witnesses on subjects outside their official duties, except that they must obtain prior approval if required by § 2.90.

(d) This subpart does not affect the rights of any individual or the procedures for obtaining records under the Freedom of Information Act (FOIA), Privacy Act, or statutes governing the certification of official records. The Department FOIA and Privacy Act regulations are found at 43 CFR Part 2, subparts B and D.

(e) Nothing in this subpart is intended to impede the appropriate disclosure under applicable laws of Department information to Federal, State, territorial, Tribal, or foreign law enforcement, prosecutorial, or regulatory agencies.

(f) This subpart only provides guidance for the internal operations of the Department, and neither creates nor is intended to create any enforceable right or benefit against the United States.

§ 2.81 What is the Department's policy on granting requests for employee testimony or Department records?

(a) Except for proceedings covered by § 2.80(c) and (d), it is the Department's general policy not to allow its employees to testify or to produce Department records either upon request or by subpoena. However, if you request in writing, the Department will consider whether to allow testimony or production of records under this subpart. The Department's policy ensures the orderly execution of its mission and programs while not impeding any proceeding inappropriately.

(b) No Department employee may testify or produce records in any proceeding to which this subpart applies unless authorized by the Department under §§ 2.80 through 2.90 *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

RESPONSIBILITIES OF REQUESTERS

§ 2.82 How can I obtain employee testimony or Department records?

(a) To obtain employee testimony, you must submit:

(1) A written request (hereafter a "*Touhy* Request;" *see* § 2.84 and *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951)); and

(2) A statement that you will submit a check for costs to the Department of the Interior, in accordance with § 2.85, if your *Touhy* Request is granted.

(b) To obtain official Department records, you must submit:

(1) A *Touhy* Request; and

(2) A Statement that you agree to pay the costs of duplication in accordance with 43 CFR Part 2, appendix A, if your *Touhy* Request is granted.

(c) You must send your *Touhy* Request to:

(1) The employee's office address;

(2) The official in charge of the employee's bureau, division, office or agency; and

(3) The appropriate unit of the Solicitor's Office.

(d) To obtain employee testimony or records of the Office of Inspector General, you must send your *Touhy* Request to the General Counsel for the Office of Inspector General.

(e) 43 CFR Part 2, Appendix B contains a list of the addresses of the Department's bureaus and offices and the units of the Solicitor's Office. The General Counsel for the Inspector General is located at the address for the Office of the Inspector General. If you do not know the employee's address, you may obtain it from the employee's bureau or office.

§ 2.83 If I serve a subpoena duces tecum, must I also submit a Touhy request?

Yes. If you serve a subpoena for employee testimony, you also must submit a request under *United States ex rel. Touhy* v. *Regan,* 340 U.S. 462 (1951)? If you serve a subpoena *duces tecum* for records in the possession of the Department, you also must submit a *Touhy* Request.

§ 2.84 What information must I put in my Touhy Request?

Your *Touhy* Request must:

(a) Identify the employee or record;

(b) Describe the relevance of the desired testimony or records to your proceeding and provide a copy of the pleadings underlying your request;

(c) Identify the parties to your proceeding and any known relationships they have to the Department's mission or programs;

(d) Show that the desired testimony or records are not reasonably available from any other source;

(e) Show that no record could be provided and used in lieu of employee testimony;

(f) Provide the substance of the testimony expected of the employee; and

(g) Explain why you believe your *Touhy* Request complies with § 2.88.

§ 2.85 How much will I be charged?

We will charge you the costs, including travel expenses, for employees to testify under the relevant substantive and procedural laws and regulations. You must pay costs for record production under 43 CFR Part 2, Appendix A. Costs must be paid by check or money order payable to the Department of the Interior.

§ 2.86 Can I get an authenticated copy of a Department record?

Yes. We may provide an authenticated copy of a Department record, for purposes of admissibility under Federal, State or Tribal law. We will do this only if the record has been officially released or would otherwise be released under § 2.13 or this Subpart.

RESPONSIBILITY OF THE DEPARTMENT

§ 2.87 How will the Department process my Touhy Request?

(a) The appropriate Department official will decide whether to grant or deny your *Touhy* Request. Our Solicitor's Office or, in the case of the Office of Inspector General, its General Counsel, may negotiate with you or your attorney to refine or limit both the timing and content of your *Touhy* Request. When necessary, the Solicitor's Office or, in the case of the Office of Inspector General, its General Counsel, also will coordinate with the Department of Justice to file appropriate motions, including motions to remove the matter to Federal court, to quash, or to obtain a protective order.

(b) We will limit our decision to allow employee testimony to the scope of your *Touhy* Request.

(c) If you fail to follow the requirements of this Subpart, we will not allow the testimony or produce the records.

(d) If your *Touhy* Request is complete, we will consider the request under § 2.88.

§ 2.88 What criteria will the Department consider in responding to my Touhy Request?

In deciding whether to grant your *Touhy* Request, the appropriate Department official will consider:

(a) Your ability to obtain the testimony or records from another source;

(b) The appropriateness of the employee testimony and record production under the relevant regulations of procedure and substantive law, including the FOIA or the Privacy Act; and

(c) Our ability to:

(1) Conduct our official business unimpeded;

(2) Maintain impartiality in conducting our business;

(3) Minimize the possibility that we will become involved in issues that are not related to our mission or programs;

(4) Avoid spending public employee's time for private purposes;

(5) Avoid the negative cumulative effect of granting similar requests;

(6) Ensure that privileged or protected matters remain confidential; and

(7) Avoid undue burden on us.

RESPONSIBILITIES OF EMPLOYEES

§ 2.89 What must I, as an employee, do upon receiving a request?

(a) If you receive a request or subpoena that does not include a *Touhy* Request, you must immediately notify your supervisor and the Solicitor's Office, or the General Counsel of the Office of the Inspector General, as applicable, for assistance in issuing the proper response.

(b) If you receive a *Touhy* Request, you must promptly notify your supervisor and forward the request to the head of your bureau, division or office. After consulting with the Solicitor's Office or, in the case of the Office of Inspector General, its General Counsel, the official in charge will decide whether to grant the *Touhy* Request under § 2.88.

(c) All decisions granting or denying a *Touhy* Request must be in writing. The official in charge must ask the applicable unit of the Solicitor's Office or, in the case of the Office of Inspector General, its General Counsel, for advice when preparing the decision.

(d) Under 28 U.S.C. 1733, Federal Rule of Civil Procedure 44(a)(1), or comparable State or Tribal law, a request for an authenticated copy of a Department record may be granted by the person having the legal custody of the record. If you believe that you have custody of a record:

(1) Consult your delegated authority to determine if you can grant a request for authentication of records; and

(2) Consult the Solicitor's Office or, in the case of the Office of Inspector General, its General Counsel, concerning the proper form of the authentication (as authentication requirements may vary by jurisdiction).

§ 2.90 Must I get approval before testifying as an expert witness on a subject outside the scope of my official duties?

(a) You must comply with 5 CFR 2635.805(c), which details the authorization procedure for an employee to testify as an expert witness, not on behalf of the United States, in any judicial or administrative proceeding in which the United States is a party or has a direct and substantial interest. This procedure means:

(1) You must obtain the written approval of your Deputy Ethics Official;

(2) You must be in an approved leave status if you testify during duty hours; and

(3) You must state for the record that you are appearing as a private individual and that your testimony does not represent the official views of the Department.

(b) If you testify as an expert witness on a matter outside the scope of your official duties, and which is not covered by paragraph (a) of this section, you must comply with 5 CFR 2635.802 and 5 CFR 3501.105.

APPENDIX A TO PART 2—DEPARTMENT OF THE INTERIOR FOIA/PUBLIC AFFAIRS CONTACTS AND READING ROOMS

DEPARTMENTAL

Departmental FOIA Officer MS-5312-MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5342 Fax No. (202) 208-6867	Departmental FOIA Appeals Officer MS-5312-MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5339 Fax No. (202) 208-6677	Departmental Privacy Act Officer MS-5312-MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 219-0868 Fax No. (202) 501-2360
Public Affairs Office Office of Communications MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-3171 Fax No. (202) 208-3231	Reading Room - DOI's Library MIB - C Street Entrance 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5815 Fax No. (202) 208-6773	

OFFICE OF THE SECRETARY

FOIA Officer MS-1413, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-6045 Fax No. (202) 219-2374	Public Affairs Office Office of Communications MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-3171 Fax No. (202) 208-3231	Office of Trust Records 6301 Indian School Road NE Suite 300 Albuquerque, NM 87110 Telephone No. (505) 816-1671 Fax No. (505) 816-1653
	Reading Room - DOI's Library MIB - C Street Entrance 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5815 Fax No. (202) 208-6773	

NATIONAL BUSINESS CENTER - AVIATION MANAGEMENT

FOIA Officer 300 East Mallard Dr. Suite 200 Boise, ID 83706 Telephone No. (208) 433-5003 Fax No. (208) 433-5007	Public Affairs Office Office of Communications MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-3171 Fax No. (202) 208-3231	Reading Room 300 East Mallard Dr. Suite 200 Boise, ID 83706 Telephone No. (208) 433-5003 Fax No. (208) 433-5007

OFFICE OF HEARINGS AND APPEALS (OHA) HEADQUARTERS

FOIA Officer MS-QC-300 800 North Quincy St. Arlington, VA 22203 Telephone No. (703) 235-3810 Fax No. (703) 235-9014	Public Affairs Office Office of Communications MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No (202) 208-3171 Fax No. (202) 208-3231	Reading Room Office of the Director MS-QC-300 801 N. Quincy Street Arlington, VA 22203 Telephone No. (703) 235-3810 Fax No. (703) 235-9014

OHA REGIONAL/FIELD OFFICES

Oklahoma Field Office 215 Dean McGee Ave., Rm 820 Oklahoma City, OK 73102 Telephone No. (405) 231-4896 Fax No. (405) 231-5568	Minnesota Field Office Bishop Henry Whipple Federal Bldg 1 Federal Drive, Suite 3600 Ft. Snelling, MN 55111-4080 Telephone No. (612) 725-1849 Fax No. (612) 725-1855	Utah Field Office Elks Bldg. 139 East South Temple, Suite 600 Salt Lake City, UT 84111 Telephone No. (801) 524-5344 Fax No. (801) 524-5539
Arizona Field Office 401 W. Washington, Space 63 Sandra Day O'Connor Building Phoenix, AZ 85003-2150 Telephone No. (602) 364-7950 Fax No. (602) 364-7959	California Field Office 801 I St., Rm 406 Sacramento, CA 95814 Telephone No. (916) 498-6600 Fax No. (916) 498-6409	New Mexico Field Office 1700 Louisiana Blvd., NE., Suite 220 Albuquerque, NM 87110 Telephone No. (505) 346-7265 Fax No. (505) 346-7267
North Dakota Field Office 230 West Century Avenue, Suite 234 Bismarck, ND 58503-1494 Telephone No. (701) 250-4598 Fax No. (701) 250-4610	Montana Field Office 301 North 27th Street, Suite 300 Billings, MT 59101-1260 Telephone No. (406) 657-6960 Fax No. (406) 657-6966	South Dakota Field Office 990 Saint Joseph Street., Suite 201 Rapid City, SD 57701 Telephone No. (605) 342-2070 Fax No. (605) 342-9511

OFFICE OF INSPECTOR GENERAL

FOIA Officer MS-5341, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-4356 Fax No. (202) 219-1944	Public Affairs Office MS-5060, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-4599 Fax No. (202) 219-1944	Reading Room Room 5060, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-4599 Fax No. (202) 219-1944

OFFICE OF THE SOLICITOR (SOL)
HEADQUARTERS

FOIA Officer MS-7456, MIB (Room 2328 for Deliveries) 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-6503 Fax No. (202) 208-5206	Reading Room Room 2328, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-6503 Fax No. (202) 208-5206

SOL REGIONAL/FIELD OFFICES

Alaska Region Office of the Regional Solicitor 4230 University Dr., Suite 300 Anchorage, AK 99508-4626 Telephone No. (907) 271-4131 Fax No. (907) 271-4143	Northeast Region Office of the Regional Solicitor 1 Gateway Center, Suite 612 Newton, MA 02458-2802 Telephone No. (617) 527-3400 Fax No. (617) 527-6848	Pittsburgh Field Office Office of the Field Solicitor 3 Parkway Center, Suite 385 Pittsburgh, PA 15220 Telephone No. (412) 937-4000 Fax No. (412) 937-4003

Twin Cities Field Office Office of the Field Solicitor Bishop Whipple Federal Building 1 Federal Dr., Rm. 686 Fort Snelling, MN 55111 Telephone No. (612) 713-7100 Fax No. (612) 713-7121	Pacific Northwest Region Office of the Regional Solicitor 500 NE Multnomah St., Suite 607 Portland, OR 97232 Telephone No. (503) 231-2126 Fax No. (503) 231-2166	Billings Field Office Office of the Field Solicitor 316 North 26th St., Rm. 3005 Billings, MT 59101 Telephone No. (406) 247-7583 Fax No. (406) 247-7587
Boise Field Office Office of the Field Solicitor James A. McClure Federal Building U.S. Courthouse 550 West Fort St., Rm. 365 Boise, ID 83724 Telephone No. (208) 334-1911 Fax No. (208) 334-1918	Pacific Southwest Region Office of the Regional Solicitor 2800 Cottage Way, Rm. E-1712 Sacramento, CA 95825-1890 Telephone No. (916) 978-6131 Fax No. (916) 978-5694	Palm Springs Field Office Office of the Field Solicitor 901 E. Tahquitz Canyon Way Suite C-101 Palm Springs, CA 92262 Telephone No. (760) 416-8619 Fax No. (760) 416-8719
Phoenix Field Office Office of the Field Solicitor Sandra Day O'Connor U.S. Courthouse, Suite 404 401 West Washington Street, SP 44 Phoenix, AZ 85003-2151 Telephone No. (602) 364-7880 Fax No. (602) 364-7885	Intermountain Region Office of the Regional Solicitor 6201 Federal Bldg. 125 S. State St. Salt Lake City, UT 84138-1180 Telephone No. (801) 524-5677 Fax No. (801) 524-4506	San Francisco Field Office Office of the Field Solicitor 1111 Jackson Street, Suite 735 Oakland, CA 94607 Telephone No. (510) 817-1460 Fax No. (510) 419-0143
Southeast Region Office of the Regional Solicitor 75 Spring St., SW., Suite 304 Atlanta, GA 30303 Telephone No. (404) 331-4447 Fax No. (404) 730-2682	Knoxville Field Office Office of the Field Solicitor 530 Gay St., Rm. 308 Knoxville, TN 37902 Telephone No. (865) 545-4294 Fax No. (865) 545-4314	Southwest Region Office Office of the Regional Solicitor 505 Marquette Ave. NW. Suite 1800 Albuquerque, NM 87102 Telephone No. (505) 248-5600 Fax No. (505) 248-5623
Santa Fe Field Office Office of the Field Solicitor Paisano Building 2968 Rodeo Park Drive West Room 2070 Santa Fe, NM 87505 Telephone No. (505) 988-6200 Fax No. (505) 988-6217	Tulsa Field Office Office of the Field Solicitor 7906 E. 33rd Street, Suite 100 Tulsa, OK 74145 Telephone No. (918) 669-7730 Fax No. (918) 669-7736	Rocky Mountain Region Office of the Regional Solicitor 755 Parfet St., Suite 151 Lakewood, CO 80215 Telephone No. (303) 231-5353 Fax No. (303) 231-5363/60

FISH & WILDLIFE SERVICE (FWS)
HEADQUARTERS

FOIA Officer Arlington Square, Room 222 4401 North Fairfax Dr. Arlington, VA 22203 Telephone No. (703) 358-2504 Fax No. (703) 358-2269	Public Affairs Office MS-3447, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5634 Fax No. (202) 208-5850	Reading Room Arlington Square, Room 224 4401 North Fairfax Dr. Arlington, VA 22203 Telephone No. (703) 358-1730 Fax No. (703) 358-2269

FWS REGIONAL/FIELD OFFICES

Region 1 (CA, HI, ID, NV, OR, WA) Eastside Federal Complex 911 Northeast 11th Ave. Portland, OR 97232-4181 Telephone No. (503) 231-6188 Fax No. (503) 231- 6259	Region 2 (AZ, NM, OK, TX) P.O. Box 1306 500 Gold Ave., SW Albuquerque, NM 87103 Telephone No. (505) 248-6289 Fax No. (505) 248-6459	Region 3 (IA, IL, IN, MN, MO, MI, OH, WI) Bishop Henry Whipple Federal Bldg. 1 Federal Dr. Fort Snelling, MN 55111-4056 Telephone No. (612) 713-5267 Fax No. (612) 713-5281
Region 4 (AZ, FL, GA, KY, LA, MS, NC, SC, TN, VI, PR) 1875 Century Blvd. Atlanta, GA 30345 Telephone No. (404) 679-4096 Fax No. (404) 679-4093	Region 5 (CT, DC, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VA, VT, WV) 300 West Gate Center Dr. Hadley, MA 01035 Telephone No. (413) 253-8306 Fax No. (413) 253-8461	Region 6 (CO, KS, MT, ND, NE, SD, UT, WY) Asst. Regional Director P.O. Box 25486 Denver Federal Center Denver, CO 80225 Telephone No. (303) 236-7917 ext. 431 Fax No. (303) 236-6958
	Region 7 Alaska State Office 1011 East Tudor Rd. Anchorage, AK 99503 Telephone No. (907) 786-3455 Fax No. (907) 786-3847	

NATIONAL PARK SERVICE (NPS)
HEADQUARTERS

FOIA Officer Washington Administrative Program Center Org Code 2605 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 354-1925 Fax No. (202) 371-6741	Public Affairs Office P.O. Box 37127 Washington, DC 20013-7127 Telephone No. (202) 208-6843 Fax No. (202) 219-0910	Reading Room Administrative Program Center 1201 Eye St., NW. 12th Floor Washington, DC 20005 Telephone No. (202) 354-1925 Fax No. (202) 371-6741

NPS REGIONAL/FIELD OFFICES

Alaska Region 240 W. 5th Avenue, Room 114 Anchorage, AK 99501 Telephone No. (907) 644-3508 Fax No. (907) 644-3816	National Capital Region 1100 Ohio Dr., SW. Washington, DC 20242 Telephone No. (202) 619-7177 Fax No. (202) 619-7302	Pacific West Region 1111 Jackson St., Suite 700 Oakland, CA 94607 Telephone No. (510) 817-1320 Fax No. (510) 817-1325
Intermountain Region P.O. Box 25287 Denver, CO 80225 Telephone No. (303) 969-2062 Fax No. (303) 969-2002	Midwest Region 1709 Jackson St. Omaha, NE 68102 Telephone No. (402) 221-3448 Fax No. (402) 341-2039	Northeast Region U.S. Customs House, 5th Floor 200 Chestnut St. Philadelphia, PA 19106 Telephone No. (215) 597-7384 Fax No. (215) 597-0065

Southeast Region 100 Alabama St., SW 1924 Building Atlanta, GA 30303 Telephone No. (404) 562-3182 Fax No. (404) 562-3263	Denver Service Center 12795 West Alameda Pkwy. Lakewood, CO 80228 Telephone No. (303) 969-2825 Fax No. (303) 987-6658	Harpers Ferry Center P.O. Box 50 Harpers Ferry, WV 25425 Telephone No. (304) 535-6276 Fax No. (304) 535-2929

BUREAU OF LAND MANAGEMENT (BLM)
HEADQUARTERS

FOIA Officer MS-WO-560 1620 L St., NW., Room 725 Washington, DC 20240 Telephone No. (202) 452-5086 Fax No. (202) 452-5002	Public Affairs Office MS-WO-610 1620 L St., NW., Room 406 Washington, DC 20240 Telephone No. (202) 452-5125 Fax No. (202) 452-5124	Reading Room 1620 L St., NW. - Room 750 Washington, DC 20240 Telephone No. (202) 452-5193 Fax No. (202) 452-0395

BLM REGIONAL/FIELD OFFICES

Alaska State Office 222 West 7th Ave., # 13 Anchorage, AK 99513-5076 Telephone No. (907) 271-5054 Fax No. (907) 271-3624	Arizona State Office 222 North Central Ave. Phoenix, AZ 85004-2203 Telephone No. (602) 417-9364 Fax No. (602) 417-9556	California State Office Federal Building 2800 Cottage Way Sacramento, CA 95825-0451 Telephone No. (916) 978-4409 Fax No. (916) 978-4416
Colorado State Office 2850 Youngfield St. Lakewood, CO 80215-7076 Telephone No. (303) 239-3688 Fax No. (303) 239-3933	Eastern States Office 7450 Boston Blvd. Springfield, VA 22153 Telephone No. (703) 440-1634 Fax No. (703) 440-1519	Idaho State Office 1387 South Vinnell Way Boise, ID 83709-1657 Telephone No. (208) 373-3947 Fax No. (208) 373-3904
Montana State Office P.O. Box 36800 Billings, MT 59107-6800 Telephone No. (406) 896-5000 Fax No. (406) 896-5298	Nevada State Office 1340 Financial Blvd. P.O. Box 1200 Reno, NV 89520 Telephone No. (775) 861-6632 Fax No. (775) 861-6411	New Mexico State Office 1474 Rodeo Rd. P.O. Box 27115 Santa Fe, NM 87502-0115 Telephone No. (505) 438-7636 Fax No. (505) 438-7435
Oregon State Office P.O. Box 2965 Portland, OR 97208 Telephone No. (503) 808-6276 Fax No. (503) 808-6308	Utah State Office Box 45155 Salt Lake City, UT 84145-0155 Telephone No. (801) 539-4161 Fax No. (801) 539-4183	Wyoming State Office 5353 Yellowstone Rd. Cheyenne, WY 82009 Telephone No. (307) 775-6180 Fax No. (307) 775-6058
National Interagency Fire Center 3833 South Development Ave. Boise, ID 83705-5354 Telephone No. (208) 387-5483 Fax No. (208) 387-5797	Denver Area Service Center Denver Federal Center Building 50, HR-250 Denver, CO 80225-0047 Telephone No. (303) 236-6362 Fax No. (303) 236-0711	National Training Center 9828 N. 31st Ave. Phoenix, AZ 85051 Telephone No. (602) 906-5572 Fax No. (602) 906-5619

BLM READING ROOMS

Information Access Center 222 West 7th Ave. #13 Anchorage, AK 99513 Telephone No. (907) 271-5960 Fax No. (907) 271-3624	Information Access Center 222 North Central Ave. Phoenix, AZ 85004-2203 Telephone No. (602) 417-9200 Fax No. (602) 417-9556	Information Access Center 2800 Cottage Way Sacramento, CA 95825-0451 Telephone No. (916) 978-4401 Fax No. (916) 978-4416
Information Access Center 2850 Youngfield St. Lakewood, CO 80215 Telephone No. (303) 239-3600 Fax No. (303) 239-3933	Information Access Center 7450 Boston Blvd. Springfield, VA 22153 Telephone No. (703) 440-1600 Fax No. (703) 440-1609	Information Access Center 1387 S. Vinnell Way Boise, ID 83709-1657 Telephone No. (208) 373-3889 Fax No. (208) 373-3899
Information Access Center P.O. Box 36800 Billings, MT 59107-6800 Telephone No. (406) 896-5069 Fax No. (406) 896-5298	Information Access Center P.O. Box 12000 1340 Financial Blvd. Reno, NV 89520 Telephone No. (702) 861-6500 Fax No. (702) 861-6606	Information Access Center 1474 Rodeo Rd. Santa Fe, NM 87505 Telephone No. (505) 438-7400 Fax No. (505) 438-7435
Information Access Center P.O. Box 2965 333 SW First Ave. Portland, OR 97208 Telephone No. (503) 808-6001 Fax No. (503) 808-6422	Information Access Center 324 South State St. Fourth Floor Salt Lake City, UT 84145 Telephone No. (801) 539-4001 Fax No. (801) 539-4230	Information Access Center 5353 Yellowstone Road Cheyenne, WY 82009 Telephone No. (307) 775-6256 Fax No. (307) 775-6129

MINERALS MANAGEMENT SERVICE (MMS)
HEADQUARTERS

FOIA Officer 381 Elden St. MS-2200 Herndon, VA 20170-4817 Telephone No. (703) 787-1689 Fax No. (703) 787-1922/ (703) 787-1207	Public Affairs Office Office of Communications 1849 C St., NW MS-0200 Washington, DC 20240 Telephone No. (202) 208-3985 Fax No. (202) 208-3968

MMS REGIONAL/FIELD OFFICES

Minerals Revenue Management P.O. Box 25165, MS-320B2 Denver, CO 80225-0165 Telephone No. (303) 231-3316 Fax No. (303) 231-3781	Offshore Minerals Management 381 Elden St. MS-4063 Herndon, VA 20170-4817 Telephone No. (703) 787-1322 Fax No. (703) 787-1464	Gulf Of Mexico 1201 Elmwood Park Blvd., MS-5030 New Orleans, LA 70123-2394 Telephone No. (504) 736-2513 Fax No. (504) 736-2977
Alaska 949 East 36th Ave., Rm 300, MS-8001 Anchorage, AK 99508-4302 Telephone No. (907) 271-6621 Fax No. (907) 271-6805	Pacific 770 Paseo Camarillo, MS-7400 Camarillo, CA 93010-6064 Telephone No. (805) 389-7621 Fax No. (805) 389-7689	Southern Administrative Service Center 1201 Elmwood Park Blvd., MS-2620 New Orleans, LA 70123-2394 Telephone No. (504) 736-2878 Fax No. (504) 736-2478

Western Administrative Service Center P.O. Box 25165, MS-2700 Denver, CO 80225-0165 Telephone No. (303) 231-3900 Fax No. (303) 231-3908	Reading Room Public Information Office 1201 Elmwood Park Blvd. New Orleans, LA 70123-2394 Telephone No. (800) 200-GULF Fax No. (504) 736-2602

OFFICE OF SURFACE MINING (OSM)
HEADQUARTERS

FOIA Officer MS-144, SIB 1951 Constitution Ave., NW. Washington, DC 20240 Telephone No. (202) 208-2961 Fax No. (202) 219-3092	Public Affairs Office MS-262, SIB 1951 Constitution Ave., NW. Washington, DC 20240 Telephone No. (202) 208-2534 Fax No. (202) 501-0549	Reading Room Contact: OSM FOIA Officer Room 263, SIB 1951 Constitution Ave., NW. Washington, DC 20240 Telephone No. (202) 208-2961 Fax No. (202) 501-4734

OSM REGIONAL/FIELD OFFICES
Appalachian Region

FOIA Coordinator 3 Parkway Center Pittsburgh, PA 15220 Telephone No. (412) 937-2146 Fax No. (412) 937-2177	Virginia State Office Big Stone Gap Field Office 1941 Neeley Rd., Suite 201 Compartment 116 Big Stone Gap, VA 24219 Telephone No. (276) 523-0000 ext. 12 Fax No. (276) 523-5053	West Virginia State Office Charleston Field Office 1027 Virginia St., East Charleston, WV 25301 Telephone No. (304) 347-7162 Fax No. (304) 347-7170
Ohio, Maryland, Michigan State Office 4605 Morse Rd, Suite 102 Gahanna, OH 43230 Telephone No. (614) 866-0578 Fax No. (614) 469-2506	Massachusetts, Pennsylvania, Rhode Island State Office 415 Market St., Suite 3C Harrisburg, PA 17101 Telephone No. (717) 782-4036 Fax No. (717) 782-3771	Georgia, North Carolina, Tennessee State Office Knoxville Field Office 530 Gay St., Suite 500 Knoxville, TN 37902 Telephone No. (423) 545-4103 Fax No. (423) 545-4111
	Kentucky State Office Lexington Field Office 2675 Regency Rd. Lexington, KY 40503 Telephone No. (606) 233-2896 Fax No (606) 233-2895	

Mid-Continent Region

FOIA Coordinator Iowa, Kansas, Missouri State Office Alton Federal Building 501 Belle St. Alton, IL 62002 Telephone No. (618) 463-6463 Fax No. (618) 463-6470	Alabama, Mississippi State Office Birmingham Field Office 135 Gemini Circle, Suite 215 Homewood, AL 35209 Telephone No. (205) 290-7286 Fax No. (205) 290-7280	Indiana, Illinois State Office Indianapolis Field Office 575 North Pennsylvania St., Room 301 Indianapolis, IN 46204 Telephone No. (317) 226-6700 Fax No. (317) 226-6182

Arizona, Louisiana, Oklahoma, Texas State Office Tulsa Field Office 5100 East Skelly Dr., Suite 470 Tulsa, OK 74135 Telephone No. (918) 581-6430 Fax No. (918) 581-6419

Western Region

FOIA Coordinator Western Regional Office 1999 Broadway, Suite 3320 Denver, CO 80202 Telephone No (303) 844-1400 x1444 Fax No. (303) 844-1522	Arizona, California, New Mexico State Office Albuquerque Field Office 505 Marquette NW., Suite 1200 Albuquerque, NM 87102 Telephone No. (505) 248-5070 Fax No. (505) 248-5081	Idaho, Montana, North Dakota, South Dakota, Wyoming State Office Casper Field Office 100 East B St., Room 2128 Casper, WY 82601-1918 Telephone No. (307) 261-6542 Fax No. (307) 261-6552
FIELD READING ROOMS Contact: OSM FOIA Coordinators at the region/field locations		

U.S. GEOLOGICAL SURVEY (USGS)
HEADQUARTERS

FOIA Officer 12201 Sunrise Valley, Dr., MS-807 Reston, VA 20192 Telephone No. (703) 648-7313 Fax No. (703) 648-7198	Public Affairs Office Office of Communications 12201 Sunrise Valley Dr., MS-119 Reston, VA 20192 Telephone No. (703) 648-4460 Fax No. (703) 648-4466	Reading Room USGS Library 12201 Sunrise Valley Dr. Reston, VA 20192 Telephone No. (703) 648-4302 Fax No. (703) 648-6373

USGS REGIONAL/FIELD OFFICES

Eastern Regional Office 12201 Sunrise Valley Dr., MS-151 Reston, VA 20192 Telephone No. (703) 648-7209 Fax No. (703) 648-4588	Central Regional Office Denver Federal Center Building 53, MS- 201 Room H1927 P.O. Box 25046 Denver, CO 80225 Telephone No. (303) 236-9201 Fax No. (303) 236-5882	Western Regional Office 345 Middlefield Rd., MS-211 Menlo Park, CA 94025-3591 Telephone No. (650) 329-4458 Fax No. (650) 329-5095

BUREAU OF RECLAMATION (BOR)
HEADQUARTERS

FOIA Officer P.O. Box 25007, D-2230 Denver, CO 80225-0007 Telephone No. (303) 445-2048 Fax No. (303) 445-6575	Public Affairs Office P.O. Box 25007, D-1540 Denver, CO 80225-0007 Telephone No. (303) 445-2797 Fax No. (720) 544-4014/4013	Reading Room Reclamation Library P.O. Box 25007, D-7925 Denver, CO 80225-0007 Telephone No. (303) 445-2072 Fax No. (303) 445-6303

BOR REGIONAL/FIELD OFFICES

Great Plains Region P.O. Box 36900, GP-1250 Billings, MT 59107-6900 Telephone No. (406) 247-7620 Fax No. (406) 247-7741	Lower Colorado Region P.O. Box 61470, LC-5301 Boulder City, NV 89006-1470 Telephone No. (702) 293-8403 Fax No. (702) 293-8615	Mid-Pacific Region 2800 Cottage Way, MP-3000 Sacramento, CA 95825-1898 Telephone No. (916) 978-5554 Fax No. (916) 978-5176
Pacific Northwest Region 1150 North Curtis Rd., PN-7602 Boise, ID 83706-1234 Telephone No. (208) 378-5122 Fax No. (208) 378-5129	Upper Colorado Region 125 South State St., Room 6107, UC-930 Salt Lake City, UT 84138-1102 Telephone No. (801) 524-3655 Fax No. (801) 524-5499	

BUREAU OF INDIAN AFFAIRS (BIA)
HEADQUARTERS

FOIA Officer 625 Herndon Parkway Herndon, VA 20170 Telephone No. (703) 735-4415 Fax No. (703) 735-4416	Public Affairs Office MS-4542, MIB, Code 105 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-3710 Fax No. (202) 501-1516	Reading Room Contact FOIA Officer

BIA REGIONAL/FIELD OFFICES

Pacific Region (California) 2800 Cottage Way Sacramento, CA 95825 Telephone No. (916) 978-6067 Fax No. (916) 978-6099	Great Plains Region (Nebraska, North Dakota, South Dakota) 115 4th Ave., SE. Aberdeen, SD 57401 Telephone No. (605) 226-7343 Fax No. (605) 226-7446	Southwest Region (Colorado, New Mexico, Texas) 615 First St., NW. Albuquerque, NM 87125 Telephone No. (505) 346-7592 Fax No. (505) 346-7151
Southern Plains Region (Kansas, Western Oklahoma, Texas) WCD Office Complex P.O. Box 368 Anadarko, OK 73005 Telephone No. (405) 247-5059, ext. 221 Fax No. (405) 247-6989	Rocky Mountain Region (Montana, Wyoming) 316 North 26th St. Billings, MT 59101 Telephone No. (406) 247-7970 Fax No. (406) 247-7984	Eastern Region (Florida, Louisiana, Alabama, Maine, Connecticut, Massachusetts, Rhode Island, Tennessee, Mississippi, New York, North Carolina, South Carolina) 711 Stewarts Ferry Pike Nashville, TN 37214 Telephone No. (615) 467-2931 Fax No. (615) 467-2964
Alaska Region (Alaska) P.O. Box 25520 Juneau, AK 99802-5520 Telephone No. (907) 586-7444 Fax No. (907) 586-7288	Midwest Region (Iowa, Michigan, Minnesota, Wisconsin) One Federal Dr., Room 550 Ft. Snelling, MN 55111 Telephone No. (612) 713-4400, ext. 1020 Fax No. (612) 713-4453	Eastern Oklahoma Region (Eastern Oklahoma) 3100 W. Peak Blvd. Muskogee, OK 74401 Telephone No. (918) 781-4616 Fax No. (918) 781-4624

Navajo Region (Navajo Reservation only: Arizona, New Mexico, Utah) P.O. Box 1060 Gallup, NM 87305 Telephone No. (505) 863-8320 Fax No. (505) 863-8212	Western Region (Arizona, Nevada, Utah) Two Arizona Center 400 N. 5th St. Phoenix, AZ 85004 Telephone No. (602) 379-6761 Fax No. (602) 379-4057	Northwest Region (Idaho, Oregon, Washington, Metlakatla Alaska) 911 NE 11th Ave. Portland, OR 97232 Telephone No. (503) 231-2229 Fax No. (503) 872-2888

NOTE: For more information on FOIA, including the most current listing of FOIA Contacts, visit DOI's FOIA home page at *http://www.doi.gov/foia/*.

69 FR 58325, Sept. 30, 2004]

APPENDIX B TO PART 2—INTERNET ADDRESSES

1. Department of the Interior (DOI) Home Page: *http://www.doi.gov*
2. DOI FOIA Home Page: *http://www.doi.gov/foia/*
3. DOI Reference Guide for Obtaining Information: *http://www.doi.gov/foia/foitabl.htm*
4. List of DOI Public Affairs Offices: *http://www.doi.gov/foia/list.html*
5. DOI FOIA Contacts: *http://www.doi.gov/foia/contacts.html*
6. DOI FOIA Regulations (43 CFR, Part 2, Subparts A and B): *http://www.doi.gov/foia/foiaregs.html*
7. DOI FOIA Policy and Guidance: *http://www.doi.gov/foia/policy.html*
8. Electronic Reading Room: *http://www.doi.gov/foia/readroom.html*
9. Index of Frequently Requested Documents: *http://www.doi.gov/foia/freq.html*
10. DOI's Frequently Requested Documents: *http://www.doi.gov/foia/frrindex.html*
11. FOIA Annual Reports to Congress: *http://www.doi.gov/foia/report.html*
12. DOI's Library: *http://library.doi.gov*
13. General Records Schedule 14, Information Services Records: *http://ardor.nara.gov/grs/grs14.html*
14. DOI Records Management Program: *http://www.doi.gov/ocio/records/*
15. DOI Privacy Act Program: *http://www.doi.gov/ocio/privacy/*
16. DOI Privacy Act Officers: *http://www.doi.gov/ocio/privacy/doi__privacy__act__officers.htm*
17. DOI Privacy Act Regulations: *http://www.doi.gov/foia/43cfrsub.html*
18. DOI Privacy Act Systems of Records Notices: *http://www.access.gpo.gov/su__docs/aces/1999__pa.html*
19. FirstGov Portal: *http://www.firstgov.gov*

NOTE: See DOI's FOIA home page at *http://www.doi.gov/foia/* for the most current listing of FOIA-related website addresses.

[67 FR 64541, Oct. 21, 2002]

APPENDIX C TO PART 2—FEE SCHEDULE

If you submit a FOIA request, the bureau will charge you to search for, review, and duplicate the requested records according to your fee category (see §§2.16 and 2.17) and the following fee schedule. In addition, the bureau will charge you for any special handling or services performed in connection with processing your request and/or appeal under Subparts C and D of this part. The following fees will be used by all bureaus of the Department; these fees apply to services performed in making documents available for public inspection and copying under Subpart B of this part as well. The duplicating fees also are applicable to records provided in response to requests made under the Privacy Act. Fees will not be charged under either the FOIA or the Privacy Act where the total amount of fees for processing the request is $30 or less (see §2.16(b)(2)), where the requester has met the requirements for a statutory fee waiver, or where the bureau has granted a discretionary fee waiver (see §§2.19 and 2.20).

(1) *Search and review (review applies to commercial-use requesters only).* Fees are based on: the average hourly salary (base salary plus DC locality payment), plus 16 percent for benefits, of employees in the following three categories. The average grade was established by surveying the bureaus to obtain the average grade of employees conducting FOIA searches and reviews. Fees will be increased annually consistent with Congressionally approved pay increases. Fees are charged in quarter hour increments.

(a) Clerical—Based on GS–6, Step 5, pay (all employees at GS–7 and below)

(b) Professional—Based on GS–11, Step 7, pay (all employees at GS–8 through GS–12)

(c) Managerial—Based on GS–14, Step 2, pay (all employees at GS–13 and above)

NOTE: Fees for the current fiscal year are posted on DOI's FOIA home page (see Appendix B). If you do not have access to the Internet, please call the Departmental FOIA Officer (see Appendix A) for a copy of the fee schedule.

	Fee
(2) Duplication:	
Pages no larger than 8.5 × 14 inches, when reproduced by standard office copying machines.	$.13 per page ($.26 for double-sided copying)
Color copies of pages no larger than 8.5 × 11 inches	$.90 per page
Pages larger than 8.5 × 14 inches	Direct cost to DOI
Color copies of pages no larger than 11 × 17 inches	$1.50 per page
Photographs and records requiring special handling (e.g., because of age, size, or format).	Direct cost to DOI
(3) Electronic records:	

	Fee
Charges for services related to processing requests for electronic records.	Direct cost to DOI
(4) Certification	Fee
Each certificate of verification attached to authenticate copies of records	$.25
(5) Postage/Mailing:	
Charges that exceed the cost of first class postage. Examples of such charges are express mail or overnight delivery.	Postage or Delivery charge
(6) Other Services:	
Cost of special services or materials, other than those provided for by this fee schedule, when requester is notified of such costs in advance and agrees to pay them.	Direct cost to DOI

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APPENDIX D TO PART 2—FEE WAIVER CRITERIA

If you are seeking a fee waiver, it is your responsibility to provide detailed information to support your request. You must submit this information with your FOIA request. You should explain the significance of the release of the information to the public's understanding of the Government's operations and activities based on your understanding of the type of information that you are requesting. Each fee waiver request is judged on its own merit—we do not grant "blanket" fee waivers, *i.e.,* obtaining a fee waiver once does not mean you will obtain a subsequent fee waiver. Please note that inability to pay is not sufficient to justify a fee waiver.

(a) The statutory requirement for granting a fee waiver is that release of the information must be in the public interest because it—

(1) Is likely to contribute significantly to public understanding of the operations and activities of the Government; and

(2) Is not primarily in your commercial interest.

(b) In deciding whether you are entitled to a fee waiver, the bureau will consider the criteria in paragraphs (1) through (4), below. Your request for a fee waiver must address each of these criteria.

(1) How do the records concern the operations or activities of the Government?

(2) If the records concern the operations or activities of the Government, how will disclosure likely contribute to public understanding of these operations and activities?

(i) How are the contents of the records you are seeking meaningfully informative on the Department's or a bureau's operations and activities? Is there a logical connection between the content of the records and the operations or activities you are interested in?

(ii) Other than enhancing your knowledge, how will disclosure of the requested records contribute to the understanding of the public at large or a reasonably broad audience of persons interested in the subject?

(iii) Your identity, vocation, qualifications, and expertise regarding the requested information (whether you are affiliated with a newspaper, college or university, have previously published articles, books, etc.) may be relevant factors. However, merely stating that you are going to write a book, research a particular subject, or perform doctoral dissertation work, is insufficient, without demonstrating how you plan to disclose the information in a manner which will be informative to a reasonably broad audience of persons interested in the subject.

(iv) Do you have the ability and intention to disseminate the information to the general public or a reasonably broad audience of persons interested in the subject?

(A) How and to whom do you intend to disseminate the information?

(B) How do you plan to use the information to contribute to public understanding of the Government's operations or activities?

(3) If there is likely to be a contribution to public understanding, will release of the requested records contribute significantly to public understanding?

(i) Is the information being disclosed new?

(ii) Does the information being disclosed confirm or clarify data which has been released previously?

(iii) How will disclosure increase the level of public understanding of the operations or activities of the Department or a bureau that existed prior to disclosure?

(iv) Is the information already publicly available? If the Government previously has published the information you are seeking or it is routinely available to the public in a library, reading room, through the Internet, or as part of the administrative record for a particular issue (*e.g.,* the listing of the spotted owl as an endangered species), it is less likely that there will be a significant contribution from release.

(4) Would disclosure be primarily in your commercial interest?

(i) Do you have a commercial interest that would be furthered by disclosure? A commercial interest is a commercial, trade, or profit

interest as these terms are commonly understood. Your status as "profitmaking" or "nonprofitmaking" is not the deciding factor. Not only profitmaking entities, but other organizations or individuals may have a commercial interest to be served by disclosure, depending on the circumstances involved.

(ii) If you do have a commercial interest that would be furthered by disclosure, would disclosure be primarily in that interest? Would the public interest in disclosure be greater than any commercial interest you or your organization may have in the documents? If so, how would it be greater?

(iii) Your identity, vocation, and the circumstances surrounding your request are all factors to be considered in determining whether disclosure would be primarily in your commercial interest. For example:

(A) If you are a representative of a news media organization seeking information as part of the news gathering process, we will presume that the public interest outweighs your commercial interest.

(B) If you represent a business/corporation/association or you are an attorney representing such an organization, we will presume that your commercial interest outweighs the public interest unless you demonstrate otherwise.

(c) If the bureau cannot make a determination based on the information you have provided, it may ask you for additional justification regarding your request.

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APPENDIX E TO PART 2—FOIA EXEMPTIONS

Under the FOIA (5 U.S.C. 552(b)), there are *nine exemptions* which may be used to protect information from disclosure. The Department has paraphrased the exemptions, below, for your information. The paraphrases are not intended to be interpretations of the exemptions.

(1) National security information concerning national defense or foreign policy, provided that such information has been properly classified, in accordance with an Executive Order;

(2) Information related solely to the internal personnel rules and practices of an agency;

(3) Information specifically exempted from disclosure by statute (other than the Privacy Act or the Trade Secrets Act), provided that such statute:

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

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

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

(5) Inter-agency or intra-agency memorandums or letters, which would not be available by law to a party other than an agency in litigation with the agency;

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

(7) Records or information compiled for law enforcement purposes, the release of which:

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

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

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

(D) Could reasonably be expected to disclose the identity of a confidential source;

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

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

(8) Information contained in or related to examination, operating, or condition reports, prepared by, or on behalf of, or for the use of an agency responsible for regulating or supervising financial institutions; and

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

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APPENDIX F TO PART 2—MINERAL LEASING ACT AND MINERAL LEASING ACT FOR ACQUIRED LANDS—SPECIAL RULES

(a) *Definitions.* As used in the section:

(1) *Exploration license* means a license issued by the Secretary of the Interior to conduct coal exploration operations on land subject to the Mineral Leasing Act, under 30 U.S.C. 201(b), or subject to the Mineral Leasing Act for Acquired Lands, under 30 U.S.C. 351–360.

(2) *Fair-market value of coal to be leased* means the minimum amount of a bid the Secretary is willing to accept in leasing coal within leasing tracts offered in general lease sales or reserved and offered for lease to public bodies, including Federal agencies, rural electric cooperatives, or non-profit corporations controlled by any of such entities, under 30 U.S.C. 201(a)(1) or 30 U.S.C. 351–360.

(3) *Information* means data, statistics, samples and other facts, whether analyzed or processed or not, pertaining to Federal coal resources.

(b) *Applicability*. This Appendix applies to the following categories of information:

(1) *Category A*. Information provided to or obtained by a bureau under 30 U.S.C. 201(b)(3) (and corresponding information under 30 U.S.C. 351–360) from the holder of an exploration license;

(2) *Category B*. Information acquired from commercial or other sources under service contract with United States Geological Survey (USGS) under 30 U.S.C. 208–1(b) (and corresponding information under 30 U.S.C. 351–360), and information developed by USGS under an exploratory program authorized by 30 U.S.C. 208–1 (and corresponding information under 30 U.S.C. 351–360);

(3) *Category C*. Information obtained from commercial sources which the commercial source acquired while not under contract with the United States Government;

(4) *Category D*. Information provided to the Secretary by a Federal department or agency under 30 U.S.C. 208–1(e) (and corresponding information under 30 U.S.C. 351–360); and

(5) *Category E*. The fair-market value of coal to be leased and comments received by the Secretary with respect to such value.

(c) *Availability of information*. Information obtained by the Department from various sources will be made available to the public as follows:

(1) *Category A—Information*. Category A information must not be disclosed to the public until after the areas to which the information pertains have been leased by the Department, or until the Secretary determines that release of the information to the public would not damage the competitive position of the holder of the exploration license, whichever comes first.

(2) *Category B—Information*. Category B information must not be withheld from the public; it will be made available by means of and at the time of open filing or publication by USGS.

(3) *Category C—Information*. To the extent Category C information is proprietary, such information must not be made available to the public until after the areas to which the information pertains have been leased by the Department.

(4) *Category D—Information*. To the extent Category D information is proprietary, the Department will withhold the information from the public for the length of time the department or agency providing the information agreed to when it obtained the information.

(5) *Category E—Information*. Category E information must not be made public until the lands to which the information pertains have been leased, or until the Secretary has determined that its release prior to the issuance of a lease is in the public interest.

[67 FR 64541, Oct. 21, 2002]

PART 3—PRESERVATION OF AMERICAN ANTIQUITIES

Sec.
3.1 Jurisdiction.
3.2 Limitation on permits granted.
3.3 Permits; to whom granted.
3.4 No exclusive permits granted.
3.5 Application.
3.6 Time limit of permits granted.
3.7 Permit to become void.
3.8 Applications referred for recommendation.
3.9 Form and reference of permit.
3.10 Reports.
3.11 Restoration of lands.
3.12 Termination.
3.13 Report of field officer.
3.14 Examinations by field officer.
3.15 Persons who may apprehend or cause to be arrested.
3.16 Seizure.
3.17 Preservation of collection.

AUTHORITY: Secs. 3, 4, 34 Stat. 225, as amended; 16 U.S.C. 432.

SOURCE: 19 FR 8838, Dec. 23, 1954, unless otherwise noted.

§ 3.1 Jurisdiction.

Jurisdiction over ruins, archeological sites, historic and prehistoric monuments and structures, objects of antiquity, historic landmarks, and other objects of historic and scientific interest, shall be exercised under the act by the respective Departments as follows:

(a) By the Secretary of Agriculture over lands within the exterior limits of forest reserves;

(b) By the Secretary of the Army over lands within the exterior limits of military reservations;

(c) By the Secretary of the Interior over all other lands owned or controlled by the Government of the United States, *Provided*, The Secretaries of the Army and Agriculture may by agreement cooperate with the Secretary of the Interior in the supervision of such monuments and objects covered by the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431—433), as may be located on lands near or adjacent to forest reserves and military reservations, respectively.

§ 3.2 Limitation on permits granted.

No permit for the removal of any ancient monument or structure which can be permanently preserved under the control of the United States in