AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

understanding.'' The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute ''significantly'' to public understanding of government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. Components shall not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is ''important'' enough to be made public.

(3) To determine whether the second fee waiver requirement is met, components will consider the following factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. Components shall consider any commercial interest of the requester (with reference to the definition of ''commercial use'' in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.'' A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. Components ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (k)(2) and (3) of this section, insofar as they apply to each request. Components will exercise their discretion to consider the cost-effectiveness of their investment of administrative resources in this decision-making process, however, in deciding to grant waivers or reductions of fees.

(l) *Payment of outstanding fees*. The Department shall not process a FOIA request from persons with an unpaid fee from any previous FOIA request to any Federal agency until that outstanding fee has been paid in full to the agency.

§5.12 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Subpart B—Privacy Act

§5.20 General provisions.

(a) *Purpose and scope*. (1) This subpart contains the rules that the Department of Homeland Security (Department) follows under the Privacy Act of 1974 (5 U.S.C. 552a). These rules should be read together with the Privacy Act, which provides additional information about records maintained on individuals. The rules in this subpart apply to all

records in systems of records maintained by the Department that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those by the Department. In addition, the Department processes all Privacy Act requests for access to records under the Freedom of Information Act (FOIA) (5 U.S.C. 552), following the rules contained in subpart A of this part, which gives requests the benefit of both statutes.

(2) The provisions established by this subpart shall apply to all Department components that are transferred to the Department. Except to the extent a Department component has adopted separate guidance under the Privacy Act, the provisions of this subpart shall apply to each component of the Department. Departmental components may issue their own guidance under this subpart pursuant to approval by the Department.

(b) *Definitions.* As used in this subpart:

(1) Component means each separate bureau, office, board, division, commission, service, or administration of the Department.

(2) Request for access to a record means a request made under Privacy Act subsection (d)(1).

(3) Request for amendment or correction of a record means a request made under Privacy Act subsection (d)(2).

(4) Request for an accounting means a request made under Privacy Act subsection (c)(3).

(5) Requester means an individual who makes a request for access, a request for amendment or correction, or a request for an accounting under the Privacy Act.

(c) *Authority to request records for a law enforcement purpose.* The head of a component or designee thereof is authorized to make written requests under subsection (b)(7) of the Privacy Act for records maintained by other agencies that are necessary to carry out an authorized law enforcement activity.

(d) *Notice on Departmental use of (b)(1) exemption.* As a general matter, when applying the (b)(1) exemption for disclosures within an agency on a need to know basis, the Department will consider itself a single entity, meaning that information may be disclosed between components of the Department under the (b)(1) exemption.

(e) *Interim Retention of Authorities.* As an interim solution, all agencies and components under the Department will retain the necessary authority from their original purpose in order to conduct these necessary activities. This includes the authority to maintain Privacy Act systems of records, disseminate information pursuant to existing or new routine uses, and retention of exemption authorities under sections (j) and (k) of the Privacy Act, where applicable. This retention of an agency or component's authorities and information practices will remain in effect until this regulation is promulgated as a final rule, or the Department revises all systems of records notices. This retention of authority is necessary to allow components to fulfill their mission and purpose during the transition period of the establishment of the Department. During this transition period, the Department shall evaluate with the components the existing authorities and information practices and determine what revisions (if any) are appropriate and should be made to these existing authorities and practices. The Department anticipates that such revisions will be made either through the issuance of a revised system of records notices or through subsequent final regulations.

§ 5.21 Requests for access to records.

(a) *How made and addressed.* You may make a request for access to a Department of Homeland Security record about yourself by appearing in person or by writing directly to the Department component that maintains the record. Your request should be sent or delivered to the component's Privacy Act office at the address listed in appendix A to this part. In most cases, a component's central Privacy Act office is the place to send a Privacy Act request. For records held by a field office