access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 24, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–13568 Filed 5–30–00; 8:45 am]

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DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Parts 4, 4a and 4b

[Docket No. 990723201–9201–01]

RIN 0605–AA14

Public Information, Freedom of Information and Privacy

AGENCY: Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth proposed revisions of Department of Commerce (Department) regulations regarding the Freedom of Information Act (FOIA), Privacy Act (PA), and declassification and public availability of national security information. It contains new provisions implementing the Electronic Freedom of Information Act (EFOIA) Amendments of 1996, reflects the principles established by President Clinton and Attorney General Reno in their FOIA Policy Memoranda of October 4, 1993, incorporates updated cost figures to be used in charging fees, and streamlines and clarifies the regulations. The proposed PA revisions update and clarify certain provisions, and make technical changes. The proposed revisions of the regulations regarding declassification and public availability of national security information implement Executive Order 12958, and streamline and clarify the regulations.

DATES: Comments must be received on or before June 30, 2000.

ADDRESSES: Address all comments concerning this proposed rule to Andrew W. McCready, Attorney-Advisor, U.S. Department of Commerce, Office of the Assistant General Counsel for Administration, Room 5875, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Andrew W. McCready, 202–482–8044.

SUPPLEMENTARY INFORMATION: The Department issued a proposed rule to revise its FOIA and PA regulations on February 21, 1996 (61 FR 6585–6587), but will not issue that rule in final form because of the subsequent passage of the Electronic Freedom of Information Act (EFOIA) Amendments of 1996 (Pub. L. 104–231). Relevant portions of that proposed rule are incorporated into the proposed rule below.

The proposed amendment to 15 CFR part 4 adds new provisions to implement the EFOIA Amendments of 1996. New provisions implementing the amendments are found at § 4.2(b) (electronic reading rooms), § 4.6(b) (timing of responses), § 4.6(d) (multitrack processing), § 4.6(e) (expedited processing), § 4.7(a), (b)(3) (deletion marking and estimation of volume of information withheld), § 4.11(b)(3) (format of disclosure), and § 4.11(b)(8) (electronic searches).

Proposed revisions of the Department's fee schedule are at § 4.11. The duplication charge will increase from $.07 to $.15 per page. Section 4.1(a) includes a new statement of discretionary disclosure policy, which reflects the principles established by President Clinton and Attorney General Reno in their FOIA Memoranda of October 4, 1993.

The Department proposes to remove part 4b, which contains the Department's PA regulations, and to incorporate revised PA provisions as a new subpart B to part 4. The proposed subpart B expands the list of PA officers to include all FOIA officers; changes the official responsible for adjudicating PA appeals of denials of requests for access, correction, and amendment from the General Counsel to the Assistant General Counsel for Administration; and streamlines and clarifies the regulations.

Appendix A to part 4 is being removed. Appendix B and C are being redesignated as appendices A and B to part 4, and are being revised to include updated addresses and telephone numbers of public inspection facilities, and updated addresses for requests for records under the FOIA and PA. Appendices A and C to part 4b are being removed, and appendix B is being redesignated as appendix C to part 4.

The proposed amendment to 15 CFR part 4a implements Executive Order 12958; eliminates the requirement that the Department's Office of Security coordinate with the Office of the Assistant General Counsel for Administration with respect to declassification and FOIA matters; and streamlines and clarifies the regulations.

It has been determined that this rule is significant under Executive Order 12866.

This rule does not contain a ''collection of information'' as defined by the Paperwork Reduction Act.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chief Counsel for Regulation has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, the fees the Department assesses are ordinarily nominal. Further, the number of ''small entities'' that make FOIA requests is relatively small compared to the number of individuals who make such requests.

List of Subjects

15 CFR Part 4

Administrative practice and procedure, Freedom of Information, Privacy, Public information.

15 CFR Part 4a

Administrative practice and procedure, Classified information.

15 CFR Part 4b

Privacy.

For the reasons stated in the preamble, the Department of Commerce proposes to amend 15 CFR Subtitle A as set forth below:

1. Revise Part 4 to read as follows:

PART 4—DISCLOSURE OF GOVERNMENT INFORMATION

Subpart A—Freedom of Information Act

Sec.

4.1 General.
4.2 Public reference facilities.
4.3 Records under the FOIA.
4.4 Requirements for making requests.
4.5 Responsibility for responding to requests.

4.6 Time limits and expedited processing.
4.7 Responses to requests.
4.8 Classified information.
4.9 Business Information.
4.10 Appeals from initial determinations or untimely delays.
4.11 Fees.

Subpart B—Privacy Act

4.21 Purpose and scope.
4.22 Definitions.
4.23 Procedures for making inquiries.
4.24 Procedures for making requests for records.
4.25 Disclosure of requested records to individuals.
4.26 Special procedures: Medical records.
4.27 Procedures for making requests for correction or amendment.
4.28 Agency review of requests for correction or amendment.
4.29 Appeal of initial adverse agency determination on correction or amendment.
4.30 Disclosure of record to person other than the individual to whom it pertains.
4.31 Fees.
4.32 Penalties.
4.33 General exemptions.
4.34 Specific exemptions.
Appendix A to Part 4—Freedom of Information Public Inspection Facilities, and Addresses for Requests for Records Under the Freedom of Information Act and Privacy Act, and Requests for Correction or Amendment Under the Privacy Act
Appendix B to Part 4—Officials Authorized to Deny Requests for Records Under the Freedom of Information Act and Requests for Correction or Amendment under the Privacy Act
Appendix C to Part 4—Systems of Records Noticed by Other Federal Agencies and Applicable to Records of the Department, and Applicability of this Part Thereto

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 553; 44 U.S.C. 3101, 3717; Reorganization Plan No. 5 of 1950.

Subpart A—Freedom of Information Act

§ 4.1 General.

(a) The information in this part is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552). This part sets forth the procedures the Department of Commerce (Department) and its components follow to make publicly available the materials and indices specified in 5 U.S.C. 552(a)(2) and records requested under 5 U.S.C. 552(a)(3). Information routinely provided to the public as part of a regular Department activity (for example, press releases issued by the Office of Public Affairs) may be provided to the public without following this part. The Department's policy is to make discretionary disclosures of records or information exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

(b) As used in this subpart, *component* means any office, division, bureau or other unit of the Department listed in Appendix A to this part.

§ 4.2 Public reference facilities.

(a) The Department maintains public reference facilities (listed in Appendix A to this part) that contain the records the FOIA requires to be made regularly available for public inspection and copying; furnish information and otherwise assist the public concerning Department operations under the FOIA; and receive and process requests for records under the FOIA. Each component of the Department is responsible for determining which of its records are required to be made available for public inspection and copying, and for making those records available either in its own public reference facility or in the Department's Central Reference and Records Inspection Facility. Each component shall maintain and make available for public inspection and copying a current subject-matter index of its public inspection facility records. Each index shall be updated regularly, at least quarterly, with respect to newly included records. In accordance with 5 U.S.C. 552(a)(2), the Department has determined that it is unnecessary and impracticable to publish quarterly or more frequently and distribute copies of the index and supplements thereto.

(b) Components shall also make public inspection facility records created by the Department on or after November 1, 1996 available electronically through the Department's World Wide Web site (http://www.doc.gov). Information available at the site shall include:

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

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

(c) The Department maintains and makes available for public inspection and copying:

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

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

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

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

(5) Those statements of policy and interpretations that have been adopted by the component and are not published in the **Federal Register**; and

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

§ 4.3 Records under the FOIA.

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

(b) There is no obligation to create, compile, or obtain from outside the Department a record to satisfy a FOIA request. With regard to electronic data, the issue of whether records are created or merely extracted from an existing database is not always apparent. When responding to FOIA requests for electronic data where creation of a record or programming becomes an issue, the Department shall undertake reasonable efforts to search for the information in electronic format.

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

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

§ 4.4 Requirements for making requests.

(a) A request for records of the Department which are not customarily made available to the public as part of the Department's regular informational services must be in writing, and shall be

processed under the FOIA, regardless whether the FOIA is mentioned in the request. Requests should be sent to the Department component identified in Appendix A to this part that maintains those records (records the FOIA requires to be made regularly available for public inspection and copying are addressed in § 4.2(c)). If the proper component cannot be determined, the request should be addressed to the central facility identified in Appendix A to this part. The central facility will forward the request to the component(s) it believes most likely to have the requested records. For the quickest handling, the request letter and envelope should be marked ''Freedom of Information Act Request.'' For requests for records about oneself, § 4.24 contains additional requirements. For requests for records about another individual, either a written authorization signed by that individual permitting disclosure of those records to the requester or proof that that individual is deceased (for example, a copy of a death certificate or an obituary) facilitates processing the request.

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

§ 4.5 Responsibility for responding to requests.

(a) *In general.* Except as stated in paragraph (b) of this section, the proper component of the Department to respond to a request for records is the component that first receives the request and has responsive records, or the component to which the central facility identified in Appendix A to this part assigns responsibility for responding to the request, based on which component it believes has the majority of responsive records. In determining records responsive to a request, a component shall include only those records within the component's possession and control as of the date it receives the request.

(b) *Consultations and referrals.* If a component receives a request for a record in its possession in which another Federal agency subject to the FOIA has the primary interest, the component shall refer the record to that agency for direct response to the requester. A component shall consult with another Federal agency before responding to a requester if the component receives a request for a record in which another Federal agency subject to the FOIA has a significant interest, but not the primary interest; or another Federal agency not subject to the FOIA has the primary interest or a significant interest. Ordinarily, the agency that originated a record will be presumed to have the primary interest in it (see § 4.8 for additional information about referrals of classified information).

(c) *Notice of referral.* Whenever a component refers a document to another Federal agency for direct response to the requester, it ordinarily shall notify the requester in writing of the referral and inform the requester of the name of the agency to which the document was referred.

(d) *Timing of responses to consultations and referrals.* All consultations and referrals shall be handled according to the date the FOIA request was received by the first Federal agency.

(e) *Agreements regarding consultations and referrals.* Components may make agreements with other Federal agencies to eliminate the need for consultations or referrals for particular types of records.

§ 4.6 Time limits and expedited processing.

(a) *In general.* Components ordinarily shall respond to requests according to their order of receipt.

(b) *Initial response and appeal.* Subject to paragraph (c)(1) of this section, an initial response shall be made within 20 working days (i.e., excluding Saturdays, Sundays, and days on which Federal offices are closed) of the receipt of a request for a record under this part by the proper component identified in accordance with § 4.5(a), and an appeal shall be decided within 20 working days of its receipt by the Office of the General Counsel.

(c) *Unusual circumstances.* (1) In unusual circumstances as specified in paragraph (c)(2) of this section, an official listed in Appendix B to this part may extend the time limits in paragraph (b) of this section by notifying the requester in writing as soon as practicable of the unusual circumstances and of the date by which processing of the request is expected to be completed. Extensions of time for the initial determination and extensions on appeal may not exceed a total of ten working days, unless the requester agrees to a longer extension, or the component provides the requester with an opportunity either to limit the scope of the request so that it may be processed within the applicable time limit, or to arrange an alternative time frame for processing the request or a modified request.

(2) As used in this section, *unusual circumstances* means, but only to the extent reasonably necessary to properly process the particular request:

(i) The need to search for and collect the requested records from field facilities or other establishments separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are the subject of a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another component or Federal agency having a substantial interest in the determination of the request.

(3) Unusual circumstances do not include a delay that results from a predictable agency workload of requests, unless the Department demonstrates reasonable progress in reducing its backlog of pending requests. Refusal to reasonably modify the scope of a request or arrange an alternate time frame may affect a requester's ability to obtain judicial review.

(4) If a component reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, the component may aggregate them. Multiple requests involving unrelated matters will not be aggregated.

(d) *Multitrack processing.* (1) A component may use two or more processing tracks by distinguishing

between simple and more complex requests based on the number of pages involved, or some other measure of the amount of work and/or time needed to process the request, and whether the request qualifies for expedited processing as described in paragraph (e) of this section.

(2) A component 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. A component doing so shall contact the requester by telephone or by letter, whichever is most efficient in each case.

(e) *Expedited processing.* (1) Requests and appeals shall be taken out of order and given expedited treatment whenever it is determined they involve:

(i) 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;

(ii) The loss of substantial due process rights;

(iii) A matter of widespread and exceptional media interest in which there exist questions about the Government's integrity which affect public confidence; or

(iv) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing should be sent to the component listed in Appendix A to this part that maintains the records requested.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category described in paragraph (e)(1)(iv) 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 or her sole occupation. A requester within the category described in paragraph (e)(1)(iv) of this section must also establish a particular urgency to inform the public about the Government activity involved in the request, beyond the public's right to know about Government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(4) Within ten calendar days of its receipt of a request for expedited processing, the proper component shall decide whether to grant it and shall notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

§ 4.7 Responses to requests.

(a) *Grants of requests.* If a component makes a determination to grant a request in whole or in part, it shall notify the requester in writing. The component shall inform the requester in the notice of any fee charged under § 4.11 and disclose records to the requester promptly upon payment of any applicable fee. Records disclosed in part shall be marked or annotated to show the applicable FOIA exemption(s) and the amount of information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the record, if feasible.

(b) *Adverse determinations of requests.* If a component makes an adverse determination regarding a request, it shall notify the requester of that determination in writing. An adverse determination is a denial of a request in any respect, namely: a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA (except that a determination under § 4.11(j) that records are to be made available under a fee statute other than the FOIA is not an adverse determination); a determination against the requester on any disputed fee matter, including a denial of a request for a fee waiver; or a denial of a request for expedited treatment. Each denial letter shall be signed by an official listed in Appendix B to this part, and shall include:

(1) The name and title or position of the denying official;

(2) A brief statement of the reason(s) for the denial, including applicable FOIA exemption(s);

(3) An estimate of the volume of records or information withheld, in number of pages or some other reasonable form of estimation. This estimate need not be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable FOIA exemption; and

(4) A statement that the denial may be appealed, and a list of the requirements for filing an appeal under § 4.10(b).

§ 4.8 Classified information.

In processing a request for information classified under Executive Order 12958 or any other executive order concerning the classification of records, the information shall be reviewed to determine whether it should remain classified. Ordinarily the component or other Federal agency that classified the information should conduct the review, except that if a record contains information that has been derivatively classified by a component because it contains information classified by another component or agency, the component shall refer the responsibility for responding to the request to the component or agency that classified the underlying information. Information determined to no longer require classification shall not be withheld on the basis of FOIA Exemption 1 (5 U.S.C. 552(b)(1)). Appeals involving classified information shall be processed in accordance with § 4.10(c).

§ 4.9 Business information.

(a) *In general.* Business information obtained by the Department from a submitter will be disclosed under the FOIA only under this section.

(b) *Definitions.* For the purposes of this section:

(1) *Business information* means commercial or financial information, obtained by the Department from a submitter, which may be protected from disclosure under FOIA exemption 4 (5 U.S.C. 552(b)(4)).

(2) *Submitter* means any person or entity outside the Federal Government from whom the Department obtains business information, directly or indirectly. The term includes corporations; state, local and tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information should designate by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under FOIA exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* A component shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information whenever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity under paragraph (f) of this section to object to disclosure of any specified portion of that information. Such written notice shall be sent via certified mail, return receipt request, or similar means. The notice shall either describe the business information requested or include copies of the requested records containing the information. When notification of a large number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish notification.

(e) *When notice is required.* Notice shall be given to the submitter whenever:

(1) The information has been designated in good faith by the submitter as protected from disclosure under FOIA exemption 4; or

(2) The component has reason to believe that the information may be protected from disclosure under FOIA exemption 4.

(f) *Opportunity to object to disclosure.* A component shall allow a submitter seven working days (i.e., excluding Saturdays, Sundays, and days on which Federal offices are closed) from the date of receipt of the written notice described in paragraph (d) of this section to provide the component with a detailed statement of any objection to disclosure. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to disclosure of the information. Information a submitter provides under this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* A component shall consider a submitter's objections and specific grounds under the FOIA for nondisclosure in deciding whether to disclose business information. If a component decides to disclose business information over the objection of a submitter, the component shall give the submitter written notice via certified mail, return receipt requested, or similar means, which shall include:

(1) A statement of reason(s) why the submitter's objections to disclosure were not sustained;

(2) A description of the business information to be disclosed; and

(3) A statement that the component intends to disclose the information seven working days from the date the submitter receives the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section shall not apply if:

(1) The component determines that the information should not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with Executive Order 12600; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous, in which case the component shall provide the submitter written notice of any final decision to disclose the information seven working days from the date the submitter receives the notice.

(i) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the component shall promptly notify the submitter.

(j) *Corresponding notice to requesters.* Whenever a component provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the component shall also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the component shall notify the requester(s).

§ 4.10 Appeals from initial determinations or untimely delays.

(a) If a request for records is initially denied in whole or in part, or has not been timely determined, or if a requester receives an adverse initial determination regarding any other matter under this subpart (as described in § 4.7(b)), the requester may file a written appeal, which must be received by the Office of General Counsel within thirty calendar days of the date of the written denial or, if there has been no determination, may be submitted anytime after the due date, including the last extension under § 4.6(c), of the determination.

(b) Appeals shall be decided by the Assistant General Counsel for Administration (AGC-Admin), except that appeals for records which were initially denied by the AGC-Admin shall be decided by the General Counsel. Appeals should be addressed to the AGC-Admin, or the General Counsel if the records were initially denied by the AGC-Admin. The address of both is: U.S. Department of Commerce, Office of General Counsel, Room 5875, 14th and Constitution Avenue NW, Washington, DC 20230. Both the letter and the appeal envelope should be clearly marked ''Freedom of Information Appeal''. The appeal must include a copy of the original request and the initial denial, if any, and may include a statement of the reasons why the records requested should be made available and why the initial denial, if any, was in error. No opportunity for personal appearance, oral argument or hearing on appeal is provided.

(c) Appeals involving records initially denied on the basis of FOIA exemption 1 (5 U.S.C. 552(b)(1)) shall be forwarded to the Deputy Assistant Secretary for Security (DAS) for a declassification review. The DAS may overrule previous classification determinations in whole or in part when, in his judgment, continued protection in the interest of national security is no longer required, or no longer required at the same level. The DAS shall advise the AGC-Admin, or the General Counsel, as appropriate, of his decision.

(d) If an appeal is granted, the person making the appeal shall be immediately notified and copies of the releasable documents shall be made available promptly thereafter upon receipt of appropriate fees determined in accordance with § 4.11.

(e) If no determination of an appeal has been sent to the requester within the twenty working day period specified in § 4.6(b) or the last extension thereof, the requester is deemed to have exhausted his administrative remedies with respect to the request, giving rise to a right of judicial review under 5 U.S.C. 552(a)(6)(C). If the person making a request initiates a court action against the Department based on the provision in this paragraph, the administrative appeal process may continue.

(f) A determination on appeal shall be in writing and, when it denies records in whole or in part, the letter to the requester shall include:

(1) A brief explanation of the basis for the denial, including a list of applicable FOIA exemptions and a description of how the exemptions apply;

(2) A statement that the decision is final for the Department;

(3) Notification that judicial review of the denial is available in the district in which the requester resides or has his

principal place of business, the district in which the agency records are located, or the District of Columbia; and

(4) The name and title or position of the official responsible for denying the appeal.

§ 4.11 Fees.

(a) *In general.* Components shall charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except when fees are limited under paragraph (d) of this section or when a waiver or reduction of fees is granted under paragraph (k) of this section. A component shall collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

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

(1) *Commercial use request* means a request from or on behalf of a person who seeks information for a use of purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. Components shall determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because a component has reasonable cause to doubt a requester's stated use, the component shall provide the requester a reasonable opportunity to submit further clarification.

(2) *Direct costs* means those expenses a component 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 labor costs of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits). 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.

(3) *Duplication* means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies may take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others. A component shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format by the component responding to the request.

(4) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that 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 sought to further scholarly research rather than for a commercial use.

(5) *Noncommercial scientific institution* means an institution that is not operated on a ''commercial'' basis, as that term is defined in paragraph (b)(1) of this section, 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 sought to further scientific research rather than for a commercial use.

(6) *Representative of the news media, or news media requester* 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 would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only if they can qualify as disseminators of ''news'') that make their products available for purchase or subscription by the general public. For ''freelance'' journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but components shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

(7) *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 processing any record for disclosure—for example, doing all that is necessary to redact it and prepare it for disclosure. Review costs are recoverable even if a record ultimately is not disclosed. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Components shall ensure that searches are done in the most efficient and least expensive manner reasonably possible.

(c) *Fees.* In responding to FOIA requests, components shall charge the fees summarized in chart form in paragraphs (c)(1) and (c)(2) of this section and explained in paragraphs (c)(3) through (c)(5) of this section, unless a waiver or reduction of fees has been granted under paragraph (k) of this section.

(1) The four categories and chargeable fees are:

Category	Chargeable fees
(i) Commercial Use Requesters	Search, Review, and Duplication.
(ii) Educational and Non-commercial Scientific Institution Requesters	Duplication (excluding the cost of the first 100 pages).
(iii) Representatives of the News Media	Duplication (excluding the cost of the first 100 pages).
(iv) All Other Requesters	Search and Duplication (excluding the cost of the first 2 hours of search and 100 pages).

(2) Uniform fee schedule.

Service	Rate
(i) Manual search	Actual salary rate of employee involved, plus 16 percent of salary rate.
(ii) Computerized search	Actual direct cost, including operator time.
(iii) Duplication of records:	
(A) Paper copy reproduction	$.15 per page.
(B) Other reproduction (*e.g.,* computer disk or printout, microfilm, microfiche, or microform).	Actual direct cost, including operator time.
(iv) Review of records (includes preparation for release, *i.e.*, excising)	Actual salary rate of employee conducting review, plus 16 percent of salary rate.

(3) *Search.* (i) Search fees shall be charged for all requests—other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media—subject to the limitations of paragraph (d) of this section. Components shall charge for time spent searching even if they do not locate any responsive record or if they withhold the record(s) located as entirely exempt from disclosure. Search fees shall be the direct costs of conducting the search by the involved employees.

(ii) For computer searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (d)(1) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (d)(3) of this section) are entitled to the cost equivalent of two hours of manual search time without charge. These direct costs include the costs, attributable to the search, of operating a central processing unit and operator/programmer salary.

(4) *Duplication.* Duplication fees will be charged to all requesters, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be $.15 cents per page. For copies produced by computer, such as tapes or printouts, components shall charge the direct costs, including operator time, of producing the copy. For other forms of duplication, components will charge the direct costs of that duplication.

(5) *Review.* Review fees shall be charged to requesters who make a commercial use request. Review fees shall be charged only for the initial record review—the review done when a component determines whether an exemption applies to a particular record at the initial request level. No charge will be made for review at the administrative appeal level for an exemption already applied. However, records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies, and the costs of that review are chargeable. Review fees shall be the direct costs of conducting the review by the involved employees.

(d) *Limitations on charging fees.*

(1) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(3) Except for requesters seeking records for a commercial use, components will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent); and

(ii) The first two hours of search (or the cost equivalent).

(4) Whenever a total fee calculated under paragraph (c) of this section is $20.00 or less for any request, no fee will be charged.

(5) The provisions of paragraphs (d)(3) and (4) of this section work together. This means that for requesters other than those seeking records for a commercial use, no fee will be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than $20.00.

(e) *Notice of anticipated fees over $20.00.* When a component determines or estimates that the fees to be charged under this section will be more than $20.00, the component shall notify the requester of the actual or estimated fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component shall advise the requester that the estimated fee may be only a portion of the total fee. If the component has notified a requester that actual or estimated fees are more than $20.00, the component shall not consider the request received or process it further until the requester agrees to pay the anticipated total fee. Any such agreement should be memorialized in writing. A notice under this paragraph shall offer the requester an opportunity to discuss the matter with Departmental personnel in order to reformulate the request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Apart from the other provisions of this section, components shall ordinarily charge the direct cost of special services. Such special services could include certifying that records are true copies or sending records by other than ordinary mail.

(g) *Charging interest.* Components shall charge interest on any unpaid bill starting on the 31st calendar day following the date of billing the requester. Interest charges shall be assessed at the rate provided in 31 U.S.C. 3717 and accrue from the date of the billing until payment is received by the component. Components shall follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* If a component reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the component may aggregate those requests and charge accordingly. Components may presume that multiple requests of this type made within a 30 calendar day period have been made in order to avoid fees. If requests are separated by a longer period, components shall aggregate them only if a solid basis exists for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters shall not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) and (3) of this section, a component shall not require the requester to make an advance payment: a payment made before work is begun or continued on a request. Payment owed for work already completed (i.e., a payment before copies are sent to a requester) is not an advance payment.

(2) If a component determines or estimates that a total fee to be charged under this section will be more than

$250.00, it shall require the requester to pay the entire anticipated fee before beginning to process the request, unless it receives a satisfactory assurance of full payment from a requester who has a history of prompt payment.

(3) If a requester has previously failed to pay a properly charged FOIA fee to any component or other Federal agency within 30 calendar days of the date of billing, a component shall require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the component begins to process a new request or continues to process a pending request from that requester.

(4) In cases in which a component requires payment under paragraphs (i)(2) or (3) of this section, the request shall not be considered received and further work will not be done on it until the required payment is received.

(5) Upon the completion of processing of a request, when a specific fee is determined to be payable and appropriate notice has been given to the requester, a component shall make records available to the requester only upon receipt of full payment of the fee.

(j) *Other statutes specifically providing for fees*. The fee schedule of this section does not apply to fees charged under any statute (except for the FOIA) that specifically requires an agency to set and collect fees for particular types of records. If records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, components shall inform requesters of how to obtain records from those sources.

(k) *Requirements for waiver or reduction of fees*. (1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section if a component determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government; and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) To determine whether the first fee waiver requirement is met, components shall consider the following factors:

(i) *The subject of the request*: whether the subject of the requested records concerns the operations or activities of the Government. The subject of the requested records must concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated.

(ii) *The informative value of the information to be disclosed*: whether the disclosure is ''likely to contribute'' to an understanding of Government operations or activities. The disclosable portions of the requested records must be meaningfully informative about Government operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding.

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure*: whether disclosure of the requested information will 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 satisfies this consideration. It shall be presumed that a requester who merely provides information to media sources does not 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 prior to the disclosure must be significantly enhanced by the disclosure.

(3) To determine whether the second fee waiver requirement is met, components shall 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 request'' 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 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 if the public interest standard (paragraph (k)(1)(i) of this section) is satisfied and the public interest is greater than any identified commercial interest in disclosure. Components ordinarily shall presume that if a news media requester has satisfied the public interest standard, the public interest is the primary interest 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) If only some of the records to be released satisfy the requirements for a fee waiver, 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.

Subpart B—Privacy Act

§ 4.21 Purpose and scope.

(a) The purpose of this subpart is to establish policies and procedures for implementing the Privacy Act of 1974, as amended (5 U.S.C. 552a). The main objectives are to facilitate full exercise of rights conferred on individuals under the Act and to ensure the protection of privacy as to individuals on whom the Department maintains records in systems of records under the Act. The Department accepts the responsibility to act promptly and in accordance with the Act upon receipt of any inquiry, request or appeal from a citizen of the United States or an alien lawfully admitted for permanent residence into the United States, regardless of the age of the individual. Further, the Department accepts the obligations to maintain only such information on individuals as is relevant and necessary to the performance of its lawful functions, to maintain that information with such accuracy, relevancy, timeliness, and completeness as is reasonably necessary to assure fairness in determinations made by the Department about the individual, to obtain information from the individual to the extent practicable, and to take every reasonable step to protect that information from unwarranted disclosure. The Department will maintain no record describing how an individual exercises rights guaranteed by the First Amendment unless expressly

authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity. An individual's name and address will not be sold or rented by the Department unless such action is specifically authorized by law; however, this provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(b) This subpart applies to all components of the Department. Components may promulgate supplementary orders and rules not inconsistent with this subpart.

(c) The Assistant Secretary for Administration is delegated responsibility for maintaining this subpart, for issuing such orders and directives internal to the Department as are necessary for full compliance with the Act, and for publishing all required notices concerning systems of records.

(d) Matters outside the scope of this subpart include the following:

(1) Requests for records which do not pertain to the individual making the request, or to the individual about whom the request is made if the requester is the parent or guardian of the individual;

(2) Requests involving information pertaining to an individual which is in a record or file but not within the scope of a system of records notice published in the **Federal Register**;

(3) Requests to correct a record where a grievance procedure is available to the individual either by regulation or by provision in a collective bargaining agreement with the Department or a component of the Department, and the individual has initiated, or has expressed in writing the intention of initiating, such grievance procedure. An individual selecting the grievance procedure waives the use of the procedures in this subpart to correct or amend a record; and,

(4) Requests for employee-employer services and counseling which were routinely granted prior to enactment of the Act, including, but not limited to, test calculations of retirement benefits, explanations of health and life insurance programs, and explanations of tax withholding options.

(e) Any request for records which pertains to the individual making the request, or to the individual about whom the request is made if the requester is the parent or guardian of the individual, shall be processed under the Act and this subpart and under the Freedom of Information Act and the Department's implementing regulations at subpart A of this part, regardless whether the Act or the Freedom of Information Act is mentioned in the request.

§ 4.22 Definitions.

(a) All terms used in this subpart which are defined in 5 U.S.C. 552a shall have the same meaning herein.

(b) As used in this subpart:

(1) *Act* means the ''Privacy Act of 1974, as amended (5 U.S.C. 552a)''.

(2) *Appeal* means a request by an individual to review and reverse an initial denial of a request by that individual for correction or amendment.

(3) *Department* means the Department of Commerce.

(4) *Inquiry* means either a request for general information regarding the Act and this subpart or a request by an individual (or that individual's parent or guardian) that the Department determine whether it has any record in a system of records which pertains to that individual.

(5) *Person* means any human being and also shall include but not be limited to, corporations, associations, partnerships, trustees, receivers, personal representatives, and public or private organizations.

(6) *Privacy Officer* means those officials, identified in Appendix B to this part, who are authorized to receive and act upon inquiries, requests for access, and requests for correction or amendment.

(7) *Request for access* means a request by an individual or an individual's parent or guardian to see a record which is in a particular system of records and which pertains to that individual.

(8) *Request for correction or amendment* means the request by an individual or an individual's parent or guardian that the Department change (either by correction, amendment, addition or deletion) a particular record in a system of records which pertains to that individual.

(9) *Component* means any office, division, bureau or other unit of the Department listed in Appendix A to this part.

§ 4.23 Procedures for making inquiries

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit an inquiry to the Department. The inquiry should be made either in person or by mail addressed to the appropriate component identified in Appendix A to this part or to the official identified in the notification procedures paragraph of the systems of records notice published in the **Federal Register.** If an individual believes the Department maintains a record pertaining to that individual but does not know which system of records might contain such a record and/or which component of the Department maintains the system of records, assistance in person or by mail will be provided at the first address listed in Appendix A to this part.

(b) Inquiries submitted by mail should include the words ''PRIVACY ACT INQUIRY'' in capital letters at the top of the letter and on the face of the envelope. If the inquiry is for general information regarding the Act and this subpart, no particular information is required. The Department reserves the right to require compliance with the identification procedures appearing at § 4.24(d) where circumstances warrant. If the inquiry is a request that the Department determine whether it has, in a given system of records, a record which pertains to the individual, the following information should be submitted:

(1) Name of individual whose record is sought;

(2) Individual whose record is sought is either a U.S. citizen or an alien lawfully admitted for permanent residence;

(3) Identifying data that will help locate the record (for example, maiden name, occupational license number, period or place of employment, etc.);

(4) Record sought, by description and by record system name, if known;

(5) Action requested (that is, sending information on how to exercise rights under the Act; determining whether requested record exists; gaining access to requested record; or obtaining copy of requested record);

(6) Copy of court guardianship order or minor's birth certificate, as provided in § 4.24(f)(3), but only if requester is guardian or parent of individual whose record is sought;

(7) Requester's name (printed), signature, address, and telephone number (optional);

(8) Date; and,

(9) Certification of request by notary or other official, but only if

(i) Request is for notification that requested record exists, for access to requested record or for copy of requested record;

(ii) Record is not available to any person under 5 U.S.C. 552; and

(iii) Requester does not appear before an employee of the Department for verification of identity.

(c) Any inquiry which is not addressed as specified in paragraph (a) of this section or which is not marked as specified in paragraph (b) of this section will be so addressed and marked

by Department personnel and forwarded immediately to the responsible Privacy Officer. An inquiry which is not properly addressed by the individual will not be deemed to have been ''received'' for purposes of measuring the time period for response until actual receipt by the Privacy Officer. In each instance when an inquiry so forwarded is received, the Privacy Officer shall notify the individual that his or her inquiry was improperly addressed and the date the inquiry was received at the proper address.

(d)(1) Each inquiry received shall be acted upon promptly by the responsible Privacy Officer. Every effort will be made to respond within ten working days (*i.e.,* excluding Saturdays, Sundays and days on which Federal offices are closed) of the date of receipt. If a response cannot be made within ten working days, the Privacy Officer shall send an acknowledgment during that period providing information on the status of the inquiry and asking for such further information as may be necessary to process the inquiry. The first correspondence sent by the Privacy Officer to the requester shall contain the Department's control number assigned to the request, as well as a note that the requester should use that number in all future contacts in order to facilitate processing. The Department shall use that control number in all subsequent correspondence.

(2) If the Privacy Officer fails to send an acknowledgment within ten working days, as provided above, the requester may ask the Assistant General Counsel for Administration to take corrective action. No failure of a Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(e) An individual shall not be required to state a reason or otherwise justify his or her inquiry.

(f) Special note should be taken of the fact that certain agencies are responsible for publishing notices of systems of records having Government-wide application to other agencies, including the Department. The agencies known to be publishing these general notices and the types of records covered therein appear in Appendix C to this part. These general notices do not identify the Privacy Officers in the Department to whom inquiries should be presented or mailed. The provisions of this section, and particularly paragraph (a) of this section, should be followed in making inquiries with respect to such records. Such records in the Department are subject to the provisions of this part to the extent indicated in Appendix C to this part. The exemptions, if any, determined by the agency publishing a general notice shall be invoked and applied by the Department after consultation, as necessary, with that other agency.

§ 4.24 Procedures for making requests for records.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit a request for access to records to the Department. The request should be made either in person or by mail addressed to the appropriate office listed in Appendix A to this part.

(b) Requests submitted by mail should include the words ''PRIVACY ACT REQUEST'' in capital letters at the top of the letter and on the face of the envelope. Any request which is not addressed as specified in paragraph (a) of this section or which is not marked as specified in this paragraph will be so addressed and marked by Department personnel and forwarded immediately to the responsible Privacy Officer. A request which is not properly addressed by the individual will not be deemed to have been ''received'' for purposes of measuring time periods for response until actual receipt by the Privacy Officer. In each instance when a request so forwarded is received, the Privacy Officer shall notify the individual that his or her request was improperly addressed and the date when the request was received at the proper address.

(c) If the request follows an inquiry under § 4.23 in connection with which the individual's identity was established by the Department, the individual need only indicate the record to which access is sought, provide the Department control number assigned to the request, and sign and date the request. If the request is not preceded by an inquiry under § 4.23, the procedures of this section should be followed.

(d) The requirements for identification of individuals seeking access to records are as follows:

(1) *In person.* Each individual making a request in person shall be required to present satisfactory proof of identity. The means of proof, in the order of preference and priority, are:

(i) A document bearing the individual's photograph (for example, driver's license, passport or military or civilian identification card);

(ii) A document, preferably issued for participation in a federally sponsored program, bearing the individual's signature (for example, unemployment insurance book, employer's identification card, national credit card, and professional, craft or union membership card); and,

(iii) A document bearing neither the photograph nor the signature of the individual, preferably issued for participation in a federally sponsored program (for example, Medicaid card). In the event the individual can provide no suitable documentation of identity, the Department will require a signed statement asserting the individual's identity and stipulating that the individual understands the penalty provision of 5 U.S.C. 552a(i)(3) recited in § 4.32(a). In order to avoid any unwarranted disclosure of an individual's records, the Department reserves the right to determine the adequacy of proof of identity offered by any individual, particularly when the request involves a sensitive record.

(2) *Not in person.* If the individual making a request does not appear in person before a Privacy Officer or other employee authorized to determine identity, a certification of a notary public or equivalent officer empowered to administer oaths must accompany the request under the circumstances prescribed in § 4.23(b)(9). The certification in or attached to the letter must be substantially in accordance with the following text:

City of ____

County of ____:ss

(Name of individual), who affixed (his) (her) signature below in my presence, came before me, a (title), in and for the aforesaid County and State, this ____ day of _____, 20 ____, and established (his) (her) identity to my satisfaction.

My commission expires ____.

(Signature)

(3) *Parents of minors and legal guardians.* An individual acting as the parent of a minor or the legal guardian of the individual to whom a record pertains shall establish his or her personal identity in the same manner prescribed in either paragraph (d)(1) or (d)(2) of this section. In addition, such other individual shall establish his or her identity in the representative capacity of parent or legal guardian. In the case of the parent of a minor, the proof of identity shall be a certified or authenticated copy of the minor's birth certificate. In the case of a legal guardian of an individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, the proof of identity shall be a certified or authenticated copy of the court's order. For purposes of the Act, a parent or legal guardian may represent only a

living individual, not a decedent. A parent or legal guardian may be accompanied during personal access to a record by another individual, provided the provisions of § 4.25(f) are satisfied.

(e) When the provisions of this subpart are alleged to impede an individual in exercising his or her right to access, the Department will consider, from an individual making a request, alternative suggestions regarding proof of identity and access to records.

(f) An individual shall not be required to state a reason or otherwise justify his or her request for access to a record.

§ 4.25 Disclosure of requested records to individuals.

(a)(1) The responsible Privacy Officer shall act promptly upon each request. Every effort will be made to respond within ten working days (*i.e.,* excluding Saturdays, Sundays and days on which Federal offices are closed) of the date of receipt. If a response cannot be made within ten working days due to unusual circumstances, the Privacy Officer shall send an acknowledgment during that period providing information on the status of the request and asking for any further information that may be necessary to process the request. ''Unusual circumstances'' shall include circumstances in which:

(i) A search for and collection of requested records from inactive storage, field facilities or other establishments is required,

(ii) A voluminous amount of data is involved,

(iii) Information on other individuals must be separated or expunged from the particular record, or

(iv) Consultations with other agencies having a substantial interest in the determination of the request are necessary.

(2) If the Privacy Officer fails to send an acknowledgment within ten working days, as provided above, the requester may ask the Assistant General Counsel for Administration to take corrective action. No failure of a Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(b) *Grant of access*—(1) Notification. An individual shall be granted access to a record pertaining to him or her, except where the provisions of paragraph (g)(1) of this section apply. The Privacy Officer shall notify the individual of a determination to grant access, and provide the following information:

(i) The methods of access, as set forth in paragraph (b)(2) of this section;

(ii) The place at which the record may be inspected;

(iii) The earliest date on which the record may be inspected and the period of time that the records will remain available for inspection. In no event shall the earliest date be later than thirty calendar days from the date of notification;

(iv) The estimated date by which a copy of the record could be mailed and the estimate of fees pursuant to § 4.31. In no event shall the estimated date be later than thirty calendar days from the date of notification;

(v) The fact that the individual, if he or she wishes, may be accompanied by another individual during personal access, subject to the procedures set forth in paragraph (f) of this section; and,

(vi) Any additional requirements needed to grant access to a specific record.

(2) Methods of access. The following methods of access to records by an individual may be available depending on the circumstances of a given situation:

(i) Inspection in person may be had in the office specified by the Privacy Officer granting access, during the hours indicated in Appendix A to this part;

(ii) Transfer of records to a Federal facility more convenient to the individual may be arranged, but only if the Privacy Officer determines that a suitable facility is available, that the individual's access can be properly supervised at that facility, and that transmittal of the records to that facility will not unduly interfere with operations of the Department or involve unreasonable costs, in terms of both money and manpower; and,

(iii) Copies may be mailed at the request of the individual, subject to payment of the fees prescribed in § 4.31. The Department, at its own initiative, may elect to provide a copy by mail, in which case no fee will be charged the individual.

(c) Access to medical records is governed by the provisions of § 4.26.

(d) The Department shall supply such other information and assistance at the time of access as to make the record intelligible to the individual.

(e) The Department reserves the right to limit access to copies and abstracts of original records, rather than the original records. This election would be appropriate, for example, when the record is in an automated data media such as tape or disc, when the record contains information on other individuals, and when deletion of information is permissible under exemptions (for example, 5 U.S.C. 552a(k)(2)). In no event shall original records of the Department be made available to the individual except under the immediate supervision of the Privacy Officer or his designee.

(f) Any individual who requests access to a record pertaining to that individual may be accompanied by another individual of his or her choice. ''Accompanied'' includes discussion of the record in the presence of the other individual. The individual to whom the record pertains shall authorize the presence of the other individual in writing. The authorization shall include the name of the other individual, a specific description of the record to which access is sought, the Department control number assigned to the request, the date, and the signature of the individual to whom the record pertains. The other individual shall sign the authorization in the presence of the Privacy Officer. An individual shall not be required to state a reason or otherwise justify his or her decision to be accompanied by another individual during personal access to a record.

(g) *Initial denial of access*—(1) *Grounds.* Access by an individual to a record which pertains to that individual will be denied only upon a determination by the Privacy Officer that:

(i) The record is exempt under § 4.33 or 4.34, or exempt by determination of another agency publishing notice of the system of records, as described in § 4.23(f);

(ii) The record is information compiled in reasonable anticipation of a civil action or proceeding;

(iii) The provisions of § 4.26 pertaining to medical records temporarily have been invoked; or,

(iv) The individual unreasonably has failed to comply with the procedural requirements of this part.

(2) *Notification.* The Privacy Officer shall give notice of denial of access to records to the individual in writing and shall include the following information:

(i) The Privacy Officer's name and title or position;

(ii) The date of the denial;

(iii) The reasons for the denial, including citation to the appropriate section of the Act and this part;

(iv) The individual's opportunities, if any, for further administrative consideration, including the identity and address of the responsible official. If no further administrative consideration within the Department is available, the notice shall state that the denial is administratively final; and,

(v) If stated to be administratively final within the Department, the individual's right to judicial review provided under 5 U.S.C. 552a(g)(1), as limited by 5 U.S.C. 552a(g)(5).

(3) *Administrative review.* When an initial denial of a request is issued by the Privacy Officer, the individual's opportunities for further consideration shall be as follows:

(i) As to denial under paragraph (g)(1)(i) of this section, two opportunities for further consideration are available in the alternative:

(A) If the individual contests the application of the exemption to the records, review procedures in § 4.25(g)(3)(ii) shall apply; or,

(B) If the individual challenges the exemption itself, the procedure is a petition for the issuance, amendment, or repeal of a rule under 5 U.S.C. 553(e). If the exemption was determined by the Department, such petition shall be filed with the Assistant Secretary for Administration. If the exemption was determined by another agency (as described in § 4.23(f)), the Department will provide the individual with the name and address of the other agency and any relief sought by the individual shall be that provided by the regulations of the other agency. Within the Department, no such denial is administratively final until such a petition has been filed by the individual and disposed of on the merits by the Assistant Secretary for Administration.

(ii) As to denial under paragraphs (g)(1)(ii), (g)(1)(iv) of this section or (to the limited extent provided in paragraph (g)(3)(i)(A) of this section) paragraph (g)(1)(i) of this section, the individual may file for review with the Assistant General Counsel for Administration, as indicated in the Privacy Officer's initial denial notification. The procedures appearing in § 4.28 shall be followed by both the individual and the Department to the maximum extent practicable.

(iii) As to denial under paragraph (g)(1)(iii) of this section, no further administrative consideration within the Department is available because the denial is not administratively final until expiration of the time period indicated in § 4.26(a).

(h) If a request is partially granted and partially denied, the Privacy Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

§ 4.26 Special procedures: Medical records.

(a) No response to any request for access to medical records by an individual will be issued by the Privacy Officer for a period of seven working days (i.e., excluding Saturdays, Sundays and days on which Federal offices are closed) from the date of receipt.

(b) The Department has published as a routine use, for all systems of records containing medical records, consultations with an individual's physician or psychologist if, in the sole judgment of the Department, disclosure could have an adverse effect upon the individual. The mandatory waiting period set forth in paragraph (a) of this section will permit exercise of this routine use in appropriate cases. The Department will pay no cost of any such consultation.

(c) In every case of a request by an individual for access to medical records, the Privacy Officer shall:

(1) Inform the individual of the waiting period prescribed in paragraph (a) of this section;

(2) Obtain the name and address of the individual's physician and/or psychologist, if the individual consents to give them;

(3) Obtain specific, written consent for the Department to consult the individual's physician and/or psychologist in the event that the Department believes such consultation is advisable, if the individual consents to give such authorization;

(4) Obtain specific, written consent for the Department to provide the medical records to the individual's physician or psychologist in the event that the Department believes access to the record by the individual is best effected under the guidance of the individual's physician or psychologist, if the individual consents to give such authorization; and,

(5) Forward the individual's medical record to the Department's medical officer for review and a determination on whether consultation with or transmittal of the medical records to the individual's physician or psychologist is warranted. If the consultation with or transmittal of such records to the individual's physician or psychologist is determined to be warranted, the Department's medical officer shall so consult or transmit. Whether or not such a consultation or transmittal occurs, the Department's medical officer shall provide instruction to the Privacy Officer regarding the conditions of access by the individual to his or her medical records.

(d) If an individual refuses in writing to give the names and consents set forth in paragraphs (c)(2) through (c)(4) of this section and the Department has determined that disclosure could have an adverse effect upon the individual, the Department shall give the individual access to said records by means of a copy, provided without cost to the requester, sent registered mail return receipt requested.

§ 4.27 Procedures for making requests for correction or amendment.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit a request for correction or amendment to the Department. The request should be made either in person or by mail addressed to the Privacy Officer who processed the individual's request for access to the record, and to whom is delegated authority to make initial determinations on requests for correction or amendment. The offices of Privacy Officers are open to the public between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday (excluding days on which Federal offices are closed).

(b) Requests submitted by mail should include the words ''PRIVACY ACT REQUEST'' in capital letters at the top of the letter and on the face of the envelope. Any request which is not addressed as specified in paragraph (a) of this section or which is not marked as specified in this paragraph will be so addressed and marked by Department personnel and forwarded immediately to the responsible Privacy Officer. A request which is not properly addressed by the individual will not be deemed to have been ''received'' for purposes of measuring the time period for response until actual receipt by the Privacy Officer. In each instance when a request so forwarded is received, the Privacy Officer shall notify the individual that his or her request was improperly addressed and the date the request was received at the proper address.

(c) Since the request, in all cases, will follow a request for access under § 4.25, the individual's identity will be established by his or her signature on the request and use of the Department control number assigned to the request.

(d) A request for correction or amendment should include the following:

(1) Specific identification of the record sought to be corrected or amended (for example, description, title, date, paragraph, sentence, line and words);

(2) The specific wording to be deleted, if any;

(3) The specific wording to be inserted or added, if any, and the exact place at which to be inserted or added; and,

(4) A statement of the basis for the requested correction or amendment, with all available supporting documents and materials which substantiate the statement. The statement should identify the criterion of the Act being

invoked, that is, whether the information in the record is unnecessary, inaccurate, irrelevant, untimely or incomplete.

§ 4.28 Agency review of requests for correction or amendment.

(a)(1)(i) Not later than ten working days (i.e., excluding Saturdays, Sundays and days on which Federal offices are closed) after receipt of a request to correct or amend a record, the Privacy Officer shall send an acknowledgment providing an estimate of time within which action will be taken on the request and asking for such further information as may be necessary to process the request. The estimate of time may take into account unusual circumstances as described in § 4.25(a). No acknowledgment will be sent if the request can be reviewed, processed and the individual notified of the results of review (either compliance or denial) within the ten working days. Requests filed in person will be acknowledged in writing at the time submitted.

(ii) If the Privacy Officer fails to send the acknowledgment within ten working days, as provided in paragraph (a)(1)(i) of this section, the requester may ask the Assistant General Counsel for Administration to take corrective action. No failure of a Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(2) Promptly after acknowledging receipt of a request, or after receiving such further information as might have been requested, or after arriving at a decision within the ten working days, the Privacy Officer shall either:

(i) Make the requested correction or amendment and advise the individual in writing of such action, providing either a copy of the corrected or amended record or a statement as to the means whereby the correction or amendment was effected in cases where a copy cannot be provided (for example, erasure of information from a record maintained only in magnetically recorded computer files); or,

(ii) Inform the individual in writing that his or her request is denied and provide the following information:

(A) The Privacy Officer's name and title or position;

(B) The date of the denial;

(C) The reasons for the denial, including citation to the appropriate sections of the Act and this subpart; and,

(D) The procedures for appeal of the denial as set forth in § 4.29, including the address of the Assistant General Counsel for Administration.

(3) The term *promptly* in this section means within thirty working days (i.e., excluding Saturdays, Sundays and days on which Federal offices are closed). If the Privacy Officer cannot make the determination within thirty working days, the individual will be advised in writing of the reason therefor and of the estimated date by which the determination will be made.

(b) Whenever an individual's record is corrected or amended pursuant to a request by that individual, the Privacy Officer shall be responsible for notifying all persons and agencies to which the corrected or amended portion of the record had been disclosed prior to its correction or amendment, if an accounting of such disclosure required by the Act was made. The notification shall require a recipient agency maintaining the record to acknowledge receipt of the notification, to correct or amend the record, and to apprise any agency or person to which it had disclosed the record of the substance of the correction or amendment.

(c) The following criteria will be considered by the Privacy Officer in reviewing a request for correction or amendment:

(1) The sufficiency of the evidence submitted by the individual;

(2) The factual accuracy of the information;

(3) The relevance and necessity of the information in terms of purpose for which it was collected;

(4) The timeliness and currency of the information in light of the purpose for which it was collected;

(5) The completeness of the information in terms of the purpose for which it was collected;

(6) The degree of risk that denial of the request could unfairly result in determinations adverse to the individual;

(7) The character of the record sought to be corrected or amended; and,

(8) The propriety and feasibility of complying with the specific means of correction or amendment requested by the individual.

(d) The Department will not undertake to gather evidence for the individual, but does reserve the right to verify the evidence which the individual submits.

(e) Correction or amendment of a record requested by an individual will be denied only upon a determination by the Privacy Officer that:

(1) The individual has failed to establish, by a preponderance of the evidence, the propriety of the correction or amendment in light of the criteria set forth in paragraph (c) of this section;

(2) The record sought to be corrected or amended is part of the official record in a terminated judicial, quasi-judicial or quasi-legislative proceeding to which the individual was a party or participant;

(3) The information in the record sought to be corrected or amended, or the record sought to be corrected or amended, is the subject of a pending judicial, quasi-judicial or quasi-legislative proceeding to which the individual is a party or participant;

(4) The correction or amendment would violate a duly enacted statute or promulgated regulation; or,

(5) The individual unreasonably has failed to comply with the procedural requirements of this part.

(f) If a request is partially granted and partially denied, the Privacy Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

§ 4.29 Appeal of initial adverse agency determination on correction or amendment.

(a) When a request for correction or amendment has been denied initially under § 4.28, the individual may submit a written appeal within thirty working days (i.e., excluding Saturdays, Sundays and days on which Federal offices are closed) after the date of the initial denial. When an appeal is submitted by mail, the postmark is conclusive as to timeliness.

(b) An appeal should be addressed to the Assistant General Counsel for Administration, U.S. Department of Commerce, Room 5875, 14th and Constitution Avenue, NW, Washington, DC 20230. An appeal should include the words ''PRIVACY APPEAL'' in capital letters at the top of the letter and on the face of the envelope. An appeal not addressed and marked as provided herein will be so marked by Department personnel when it is so identified, and will be forwarded immediately to the Assistant General Counsel for Administration. An appeal which is not properly addressed by the individual will not be deemed to have been ''received'' for purposes of measuring the time periods in this section until actual receipt by the Assistant General Counsel for Administration. In each instance when an appeal so forwarded is received, the Assistant General Counsel for Administration shall notify the individual that his or her appeal was improperly addressed and the date when the appeal was received at the proper address.

(c) The individual's appeal shall include a statement of the reasons why the initial denial is believed to be in

error and the Department's control number assigned to the request. The appeal shall be signed by the individual. The record which the individual requests be corrected or amended and all correspondence between the Privacy Officer and the requester will be furnished by the Privacy Officer who issued the initial denial. Although the foregoing normally will comprise the entire record on appeal, the Assistant General Counsel for Administration may seek additional information necessary to assure that the final determination is fair and equitable and, in such instances, disclose the additional information to the individual to the greatest extent possible, and provide an opportunity for comment thereon.

(d) No personal appearance or hearing on appeal will be allowed.

(e) The Assistant General Counsel for Administration shall act upon the appeal and issue a final determination in writing not later than thirty working days (i.e., excluding Saturdays, Sundays and days on which Federal offices are closed) from the date on which the appeal is received, except that the Assistant General Counsel for Administration may extend the thirty days upon deciding that a fair and equitable review cannot be made within that period, but only if the individual is advised in writing of the reason for the extension and the estimated date by which a final determination will issue. The estimated date should not be later than the sixtieth working day after receipt of the appeal unless unusual circumstances, as described in § 4.25(a), are met.

(f) If the appeal is determined in favor of the individual, the final determination shall include the specific corrections or amendments to be made and a copy thereof shall be transmitted promptly both to the individual and to the Privacy Officer who issued the initial denial. Upon receipt of such final determination, the Privacy Officer promptly shall take the actions set forth in § 4.28(a)(2)(i) and (b).

(g) If the appeal is denied, the final determination shall be transmitted promptly to the individual and state the reasons for the denial. The notice of final determination also shall inform the individual of the following:

(1) The right of the individual under the Act to file a concise statement of reasons for disagreeing with the final determination. The statement ordinarily should not exceed one page and the Department reserves the right to reject a statement of excessive length. Such a statement shall be filed with the Assistant General Counsel for Administration. It should provide the Department control number assigned to the request, indicate the date of the final determination and be signed by the individual. The Assistant General Counsel for Administration shall acknowledge receipt of such statement and inform the individual of the date on which it was received.

(2) The facts that any such disagreement statement filed by the individual will be noted in the disputed record, that the purposes and uses to which the statement will be put are those applicable to the record in which it is noted, and that a copy of the statement will be provided to persons and agencies to which the record is disclosed subsequent to the date of receipt of such statement;

(3) The fact that the Department will append to any such disagreement statement filed by the individual, a copy of the final determination or summary thereof which also will be provided to persons and agencies to which the disagreement statement is disclosed; and,

(4) The right of the individual to judicial review of the final determination under 5 U.S.C. 552a(g)(1)(A), as limited by 5 U.S.C. 552a(g)(5).

(h) In making the final determination, the Assistant General Counsel for Administration shall employ the criteria set forth in § 4.28(c) and shall deny an appeal only on the grounds set forth in § 4.28(e).

(i) If an appeal is partially granted and partially denied, the Assistant General Counsel for Administration shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

(j) Although a copy of the final determination or a summary thereof will be treated as part of the individual's record for purposes of disclosure in instances where the individual has filed a disagreement statement, it will not be subject to correction or amendment by the individual.

(k) The provisions of paragraphs (g)(1) through (g)(3) of this section satisfy the requirements of 5 U.S.C. 552a(e)(3).

§ 4.30 Disclosure of record to person other than the individual to whom it pertains.

(a) The Department may disclose a record pertaining to an individual to a person other than the individual to whom it pertains only in the following instances:

(1) Upon written request by the individual, including authorization under § 4.25(f);

(2) With the prior written consent of the individual;

(3) To a parent or legal guardian under 5 U.S.C. 552a(h);

(4) When required by the Act and not covered explicitly by the provisions of 5 U.S.C. 552a(b); and

(5) When permitted under 5 U.S.C. 552a(b)(1) through (12), as follows: [1]

(i) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(ii) Required under 5 U.S.C. 552;

(iii) For a routine use as defined 5 U.S.C. 552a(a)(7) and described under 5 U.S.C. 552a(e)(4)(D);

(iv) 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;

(v) To a recipient who has provided the agency 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;

(vi) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States 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;

(vii) 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 agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(viii) 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;

(ix) 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;

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

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

[1] 5 U.S.C. 552a(b)(4) has no application within the Department.

(xii) To a consumer reporting agency in accordance with section 3711(e) of Title 31.

(b) The situations referred to in paragraph (a)(4) of this section include the following:

(1) 5 U.S.C. 552a(c)(4) requires dissemination of a corrected or amended record or notation of a disagreement statement by the Department in certain circumstances;

(2) 5 U.S.C. 552a(d) requires disclosure of records to the individual to whom they pertain, upon request; and

(3) 5 U.S.C. 552a(g) authorizes civil action by an individual and requires disclosure by the Department to the court.

(c) The Privacy Officer shall make an accounting of each disclosure by him of any record contained in a system of records in accordance with 5 U.S.C. 552a(c) (1) and (2). Except for a disclosure made under 5 U.S.C. 552a(b)(7), the Privacy Officer shall make such accounting available to any individual, insofar as it pertains to that individual, on request submitted in accordance with § 4.24. The Privacy Officer shall make reasonable efforts to notify any individual when any record in a system of records is disclosed to any person under compulsory legal process, promptly upon being informed that such process has become a matter of public record.

§ 4.31 Fees.

The only fees to be charged to or collected from an individual under the provisions of this part are for duplication of records at the request of the individual. Components shall charge fees for duplication of records under the Act in the same way in which they charge duplication fees under § 4.11, except as provided in this section.

(a) No fees shall be charged or collected for the following: Search for and retrieval of the records; review of the records; copying at the initiative of the Department without a request from the individual; transportation of records and personnel; and first-class postage.

(b) It is the policy of the Department to provide an individual with one copy of each record corrected or amended pursuant to his or her request without charge as evidence of the correction or amendment.

(c) As required by the United States Office of Personnel Management in its published regulations implementing the Act, the Department will charge no fee for a single copy of a personnel record covered by that agency's Government-wide published notice of systems of records.

§ 4.32 Penalties.

(a) The Act provides, in pertinent part:

Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000. (5 U.S.C. 552a(i)(3)).

(b) A person who falsely or fraudulently attempts to obtain records under the Act also may be subject to prosecution under such other criminal statutes as 18 U.S.C. 494, 495 and 1001.

§ 4.33 General exemptions.

(a) Individuals may not have access to records maintained by the Department but which were provided by another agency which has determined by regulation that such information is subject to general exemption under 5 U.S.C. 552a(j). If such exempt records are within a request for access, the Department will advise the individual of their existence and of the name and address of the source agency. For any further information concerning the record and the exemption, the individual must contact that source agency.

(b) The general exemptions determined to be necessary and proper with respect to systems of records maintained by the Department, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, are as follows:

(1) *Individuals identified in Export Administration compliance proceedings or investigations*—COMMERCE/ITA–1. Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). These exemptions are necessary to insure the proper functioning of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to maintain the integrity of the law enforcement process, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, to prevent interference with law enforcement proceedings, to avoid disclosure of investigative techniques, and to avoid the endangering of law enforcement personnel. Section 7(c) of the Export Administration Act of 1969, as amended, also protects this information from disclosure.

(2) *Fisheries Law Enforcement Case Files—COMMERCE/NOAA–11.* Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a (b), (c) (1) and (2), (e) (4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). These exemptions are necessary to insure the proper functioning of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to prevent interference with law enforcement proceedings, to avoid the disclosure of investigative techniques, to avoid the endangering of law enforcement personnel, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, and to maintain the integrity of the law enforcement process.

(3) *Investigative Records—Contract and Grant Frauds and Employee Criminal Misconduct—COMMERCE/DEPT.–12.* Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). These exemptions are necessary to insure the proper functions of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to prevent interference with law enforcement proceedings, to avoid the disclosure of investigative techniques, to avoid the endangering of law enforcement personnel, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, and to maintain the integrity of the law enforcement process.

§ 4.34 Specific exemptions.

(a)(1) Some systems of records under the Act which are maintained by the Department contain, from time to time, material subject to the exemption appearing at 5 U.S.C. 552a(k)(1), relating to national defense and foreign policy materials. The systems of records published in the **Federal Register** by the Department which are within this exemption are:

COMMERCE/ITA–1, COMMERCE/ITA–2, COMMERCE/ITA–3, COMMERCE/NOAA–11, COMMERCE/PAT–TM–4, COMMERCE/PAT–TM–6, COMMERCE/PAT–TM–7, COMMERCE/PAT–TM–8, COMMERCE/PAT–TM–9, COMMERCE/DEPT–12, COMMERCE/DEPT–13, and COMMERCE/DEPT–14.

(2) The Department hereby asserts a claim to exemption of such materials wherever they might appear in such systems of records, or any systems of records, at present or in the future. The

materials would be exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). The reason therefore is to protect the materials required by Executive order to be kept secret in the interest of the national defense and foreign policy.

(b) The specific exemptions determined to be necessary and proper with respect to systems of records maintained by the Department, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, are as follows:

(1) Exempt under 5 U.S.C. 552a(k)(1). The systems of records exempt hereunder appear in paragraph (a) of this section. The claims for exemption of COMMERCE/DEPT–12, COMMERCE/ITA–1, and COMMERCE/NOAA–11 under this paragraph are subject to the condition that the general exemption claimed in § 4.33(b)(3) is held to be invalid.

(2)(i) Exempt under 5 U.S.C. 552a(k)(2). The systems of records exempt (some only conditionally), the sections of the Act from which exempted, and the reasons therefor are as follows:

(A) Individuals identified in Export Administration compliance proceedings or investigations—COMMERCE/ITA–1, but only on condition that the general exemption claimed in § 4.33(b)(1) is held to be invalid;

(B) Individuals involved in export transactions—COMMERCE/ITA–2;

(C) Fisheries Law Enforcement Case Files—COMMERCE/NOAA–11, but only on condition that the general exemption claimed in § 4.33(b)(2) is held to be invalid;

(D) Investigative Records—Contract and Grant Frauds and Employee Criminal Misconduct—COMMERCE/DEPT–12, but only on condition that the general exemption claimed in § 4.33(b)(3) is held to be invalid;

(E) Investigative Records—Persons Within the Investigative Jurisdiction of the Department—COMMERCE/DEPT–13;

(F) Litigation, Claims and Administrative Proceeding Records—COMMERCE/DEPT–14; and

(G) Non-Registered Persons Rendering Assistance to Patent Applicants—COMMERCE/PAT–TM–5.

(ii) The foregoing are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The reasons for asserting the exemption are to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources and law enforcement personnel. Special note is taken of the fact that the proviso clause in this exemption imports due process and procedural protections for the individual. The existence and general character of the information exempted will be made known to the individual to whom it pertains.

(3)(i) Exempt under 5 U.S.C. 552a(k)(4). The systems of records exempt, the sections of the Act from which exempted, and the reasons therefore are as follows:

(A) Agricultural Census Records for 1964 (partial), 1969, and 1974—COMMERCE/CENSUS–1;

(B) Individual and Household Statistical Surveys and Special Census Studies Records—COMMERCE/CENSUS–3;

(C) Minority-Owned Business Enterprises Survey Records—COMMERCE/CENSUS–4;

(D) Population and Housing Census Records for 1960 and 1970—COMMERCE/CENSUS–5;

(E) Population Census Personal Service Records for 1900 and All Subsequent Decennial Censuses—COMMERCE/CENSUS–6; and

(F) Special Censuses of Population Conducted for State and Local Government—COMMERCE/CENSUS–7.

(ii) The foregoing are exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G) (H), and (I), and (f). The reasons for asserting the exemption are to comply with the prescription of Title 13, United States Code, especially sections 8 and 9 relating to prohibitions against disclosure, and to avoid needless consideration of these records whose sole statistical use comports fully with a basic purpose of the Act, namely, no adverse determinations may be made from these records as to any identifiable individual.

(4)(i) Exempt under 5 U.S.C. 552a(k)(5). The systems of records exempt (some only conditionally), the sections of the act from which exempted, and the reasons therefor are as follows:

(A) Applications to U.S. Merchant Marine Academy (USMMA)—COMMERCE/MA–1;

(B) USMMA Midshipman Medical Files—COMMERCE/MA–17;

(C) USMMA Midshipman Personnel Files—COMMERCE/MA–18;

(D) USMMA Non-Appropriated fund Employees—COMMERCE/MA–19;

(E) Applicants for the NOAA Corps—COMMERCE/NOAA–4;

(F) Commissioned Officer Official Personnel Folders—COMMERCE/NOAA–7;

(G) Conflict of Interest Records, Appointed Officials—COMMERCE/DEPT–3;

(H) Investigative Records—Contract and Grant Frauds and Employee Criminal Misconduct—COMMERCE/DEPT–12, but only on condition that the general exemption claimed in § 4.33(b)(3) is held to be invalid;

(I) Investigative Records—Persons Within the Investigative Jurisdiction of the Department—COMMERCE/DEPT–13; and

(J) Litigation, Claims, and Administrative Proceeding Records—COMMERCE/DEPT–14.

(ii) The foregoing are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). The reasons for asserting the exemption are to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources and, ultimately, to facilitate proper selection or continuance of the best applicants or persons for a given position or contract. Special note is made of the limitation on the extent to which this exemption may be asserted. The existence and general character of the information exempted will be made known to the individual to whom it pertains.

(c) At the present time, the Department claims no exemption under 5 U.S.C. 552a(k) (3), (6) and (7).

Appendix A to Part 4—Freedom of Information Public Inspection Facilities, and Addresses for Requests for Records Under the Freedom of Information Act and Privacy Act, and Requests for Correction or Amendment Under the Privacy Act

Each address listed below is the respective component's mailing address for receipt and processing of requests for records under the Freedom of Information Act and Privacy Act, for requests for correction or amendment under the Privacy Act and, unless otherwise noted, its public inspection facility for records available to the public under the Freedom of Information Act. Public inspection facilities are open to the public Monday through Friday (except for days on which Federal offices are closed) between 9 a.m. and 4 p.m. local time of the facility at issue. Requests should be addressed to the component the requester knows or has reason to believe has possession, control, or primary concern with the records sought. Otherwise, requests should be addressed to the Central Reference and Records Inspection Facility. The telephone number for each facility is included after its address.

(1) Department of Commerce Freedom of Information Central Reference and Records Inspection Facility, U.S. Department of Commerce, Room 6020, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–4115. This facility serves the Office of the Secretary, all other components of the Department not identified below, and those components identified below which do not have separate public inspection facilities.

(2) Bureau of the Census, Program and Policy Development Office, U.S. Department of Commerce, Federal Building 3, Room 2430, Suitland, Maryland 20233; (301) 457–2520. This agency maintains a separate public inspection facility in Room 2455, Federal Building 3, Suitland, Maryland 20233.

(3) Bureau of Economic Analysis/ Economics and Statistics Administration, Office of the Under Secretary for Economic Affairs, Department of Commerce, Room 4838, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–3308. This component does not maintain a separate public inspection facility.

(4) Economic Development Administration, Office of the Chief Counsel, U.S. Department of Commerce, Room 7005, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–4687. Mailing addresses of Regional EDA offices:

(i) Philadelphia Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Curtis Center, Suite 140 South, Independence Square West, Philadelphia, Pennsylvania 19106.

(ii) Atlanta Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, 401 West Peachtree Street, NW, Suite 1820, Atlanta, GA 30308.

(iii) Denver Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Room 670, 1244 Speer Boulevard, Denver, Colorado 80204.

(iv) Chicago Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, 111 North Canal Street, Suite 855, Chicago, IL 60606.

(v) Seattle Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Jackson Federal Building, Room 1856, 915 Second Avenue, Seattle WA 98174.

(vi) Austin Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Grant Building, Suite 201, 611 East 6th Street, Austin, Texas 78701.

(5) Bureau of Export Administration, Office of Administration, U.S. Department of Commerce, Room 4525, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–0109.

(6) International Trade Administration, Office of Organization and Management Support, U.S. Department of Commerce, Room 4001, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–3756.

(7) Minority Business Development Agency, Data Resources Division, U.S. Department of Commerce, Room 5084, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–2025. This agency does not maintain a separate public inspection facility.

(8) National Institute of Standards and Technology, Office of the Director, Room A–1105, Gaithersburg, Maryland 20234; (301) 975–2389. This agency maintains a separate public inspection facility in Room E–106, Administration Building, Gaithersburg, Maryland.

(9) National Oceanic and Atmospheric Administration, Central FOIA Facility, 1305 East-West Highway, SSMC–4, 8th floor, Station 8627, Silver Spring, Maryland 20910; (301) 713–3540.

(10) National Technical Information Service, Office of Administrative Management, Room 209, Forbes Building, Springfield, Virginia 22161; (703) 487–4736. This agency does not maintain a separate public inspection facility.

(11) National Telecommunications and Information Administration, Office of the Chief Counsel, U.S. Department of Commerce, Room 4713, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–1816. This agency maintains a separate public inspection facility in Room 1609.

(12) Office of Inspector General, Counsel to the Inspector General, U.S. Department of Commerce, Room 7892, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–5992. This component does not maintain a separate public inspection facility.

(13) Technology Administration, Office of the Under Secretary, U.S. Department of Commerce, Room 4835, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–1984. This component does not maintain a separate public inspection facility.

Appendix B to Part 4—Officials Authorized to Deny Requests for Records Under the Freedom of Information Act, and Requests for Records and Requests for Correction or Amendment Under the Privacy Act

The following officials of the Department, and their superiors, have been delegated authority with respect to the records for which each is responsible, to deny requests for records under the Freedom of Information Act, and requests for records and requests for correction or amendment under the Privacy Act. The Director for Executive Budgeting and Assistance Management is authorized to revise this appendix to reflect organizational changes or new delegations.

Office of the Secretary

Office of the Secretary: Executive Secretary
Freedom of Information Officer
Office of the Deputy Secretary: Associate Deputy Secretary
Office of Business Liaison: Director
Office of Consumer Affairs: Director
Office of the Press Secretary: Press Secretary; Deputy Press Secretary
Office of Public Affairs: Director
Office of Space Commerce: Director
Office of the Assistant Secretary for Legislative and Intergovernmental Affairs: Deputy Assistant Secretary for Legislative and Intergovernmental Affairs
Office of the Inspector General: Counsel to the Inspector General; Deputy Counsel to the Inspector General
Office of the General Counsel: Deputy General Counsel; Assistant General Counsel for Administration
Office of Intelligence Liaison: Director

Assistant Secretary for Administration

Office of the Administrative Law Judge: Office Manager
Office of Civil Rights: Director
Office of Budget, Planning and Organization: Director
Office of Management and Organization: Director
Office of Budget: Director
Office of Information Policy and Technology: Director
Office of Information Planning and Review: Director
Office of Executive Budgeting and Assistance Management: Director
Office of Executive Assistance Management: Director
Office of Grants Administration: Office Manager
Departmental Freedom of Information Officer
Office of Financial Management: Director
Office of Human Resources Management: Director; Deputy Director
Office of Workforce Effectiveness and Executive Resources: Director
Office of Labor and Employee Relations: Director
Office of Automated Systems and Pay Administration: Director
Office of Administrative Services: Director
Office of Security: Director, Deputy Director
Office of Acquisition Management: Director
Office of Acquisition Services: Director
Office of Small and Disadvantaged Business Utilization: Director

Economics and Statistics Administration

Office of Administration: Director
Bureau of Economic Analysis: Director
Bureau of the Census: Chief, Program and Policy Development Office

Economic Development Administration

Freedom of Information Act Officer

Export Administration

Under Secretary
Deputy Under Secretary
Director for Administration
Director, Office of Planning, Evaluation and Management
Assistant Secretary for Export Administration
Deputy Assistant Secretary for Export Administration
Director, Office of Strategic Industries and Economic Security
Director, Office of Chemical and Biological Controls and Treaty Compliance
Director, Office of Nuclear and Missile Technology Controls
Director, Office of Strategic Trade and Foreign Policy Controls
Director, Office of Exporter Services
Assistant Secretary for Export Enforcement
Deputy Assistant Secretary for Export Enforcement
Director, Office of Export Enforcement

Director, Office of Enforcement Analysis
Director, Office of Antiboycott Compliance

International Trade Administration

Deputy Under Secretary for International Trade

Counselor to the Department
Director, Office of Public Affairs
Director, Office of Legislative and Intergovernmental Affairs

Administration

Director, Office of Organization and Management Support
Director, Office of Human Resources Management
Director, Office of Financial Management
Director, Office of Information Resources Management

U.S. and Foreign Commercial Service

Deputy Assistant Secretary for International Operations
Deputy Assistant Secretary for Export Promotion Services
Deputy Assistant Secretary for Domestic Operations
Director, Human Resources Development Staff
Director, Office of Planning

Market Access and Compliance

Director, Office of Multilateral Affairs
Director, Trade Compliance Center
NAFTA Secretary
Director, Office of Policy Coordination
Director, Office of Africa
Director, Office of the Near East
Director, Office of European Union and Regional Affairs
Director, Office of Eastern Europe, Russia and Independent States
Director, Office of Latin America and the Caribbean
Director, Office of NAFTA
Director, Office of Inter-American Affairs
Director, Office of China Economic Area
Director, Office of Korea and Southeast Asia
Director, Office of South Asia and Oceania
Director, Office of Japan Trade Policy
Director, Office of Japan Commercial Programs

Trade Development

Deputy Assistant Secretary for Environmental Technologies Exports
Deputy Assistant Secretary for Tourism Industries
Director, Trade Information Center
Director, Advocacy Center
Director, Office of Trade and Economic Analysis
Director, Office of Planning, Coordination and Resource Management
Director, Office of Aerospace
Director, Office of Computers and Business Equipment
Director, Office of Microelectronics, Medical Equipment and Instrumentation
Director, Office of Telecommunications
Director, Office of Textiles and Apparel
Director, Office of Consumer Goods
Director, Office of Automotive Affairs
Director, Office of Materials, Metals and Chemicals
Director, Office of Energy, Infrastructure and Machinery
Director, Office of Export Trading Company Affairs
Director, Office of Finance
Director, Office of Service Industries

Import Administration

Director of Policy and Analysis
Director, Foreign Trade Zones Staff
Director, Statutory Import Programs Staff
Director, Office of AD/CVD Enforcement I
Director, Office of AD/CVD Enforcement II
Director, Office of AD/CVD Enforcement III
Director, Office of AD/CVD Enforcement IV
Director, Office of AD/CVD Enforcement V
Director, Office of AD/CVD Enforcement VI
Director, Office of AD/CVD Enforcement VII
Director, Office of AD/CVD Enforcement VIII
Director, Office of AD/CVD Enforcement IX

Minority Business Development Administration

Freedom of Information Officer

National Oceanic and Atmospheric Administration

Under Secretary
Assistant Secretary
Director, Office of Public Affairs
Director, NOAA Corps
General Counsel
Assistant Administrator for Ocean Services and Coastal Zone Management
Assistant Administrator for Fisheries
Assistant Administrator for Weather Services
Assistant Administrator for Environmental Satellite, Data and Information Services
Assistant Administrator for Oceanic and Atmospheric Research
Director, Environmental Research Laboratories
Director, Office of Finance and Administration
Director, Eastern Administrative Support Center
Director, Western Administrative Support Center
Director, Mountain Administrative Support Center
Director, Central Administrative Support Center
Director, Procurement, Grants, and Administrative Services Office
Director, Systems Acquisition Office
NOAA FOIA Officer

National Telecommunications and Information Administration

Deputy Assistant Secretary
Chief Counsel
Deputy Chief Counsel

Technology Administration

Under Secretary for Technology
Deputy Under Secretary for Technology
Assistant Secretary for Technology Policy
Chief Counsel
Deputy Chief Counsel
National Institute of Standards and Technology: Director of Administration; Deputy Director of Administration
National Technical Information Service: Director; Director: Office of Administration

Appendix C to Part 4—Systems of Records Noticed by Other Federal Agencies and Applicable to Records of the Department and Applicability of This Part Thereto

Category of records	Other Federal agency
Federal Personnel Records.	Office of Personnel Management.[1]
Federal Employee Compensation Act Program.	Department of Labor.[2]
Equal Employment Opportunity Appeal Complaints.	Equal Employment Opportunity Commission.[3]
Formal Complaints/ Appeals of Adverse Personnel Actions.	Merit Systems Protection Board.[4]

[1] The provisions of this part do not apply to these records covered by notices of systems of records published by the Office of Personnel Management for all agencies. The regulations of OPM alone apply.

[1] The provisions of this part apply only initially to these records covered by notices of systems of records published by the U.S. Department of Labor for all agencies. The regulations of that Department attach at the point of any denial for access or for correction or amendment.

[3] The provisions of this part do not apply to these records covered by notices of systems of records published by the Equal Employment Opportunity Commission for all agencies. The regulations of the Commission alone apply.

[4] The provisions of this part do not apply to these records covered by notices of systems of records published by the Merit Systems Protection Board for all agencies. The regulations of the Board alone apply.

2. Part 4a is revised to read as follows:

PART 4a—CLASSIFICATION, DECLASSIFICATION, AND PUBLIC AVAILABILITY OF NATIONAL SECURITY INFORMATION

Sec.
4a.1 General
4a.2 Deputy Assistant Secretary for Security
4a.3 Classification levels
4a.4 Classification authority
4a.5 Duration of classification
4a.6 General
4a.7 Mandatory review for declassification
4a.8 Access to classified information by individuals outside the Government

Authority: E.O. 12958; 47 FR 14874, April 6, 1982; 47 FR 15557, April 12, 1982.

§ 4a.1 General.

Executive Order 12958 provides the only basis for classifying information within the Department of Commerce, except as provided in the Atomic Energy Act of 1954, as amended. The policy of the Department of Commerce is to make information concerning its activities available to the public consistent with the need to protect the national defense or foreign relations as required by the interests of the United

States and its citizens. Accordingly, security classification shall be applied only to protect the national security.

§ 4a.2 Deputy Assistant Secretary for Security.

The Deputy Assistant Secretary for Security (DAS) is responsible for implementing E.O. 12958 and this part.

§ 4a.3 Classification levels.

Information may be classified as national security information by a designated original classifier of the Department when it is determined that the information concerns one or more of the categories described in § 1.5 of E.O. 12958. The levels established by E.O. 12958 (Top Secret, Secret, and Confidential) are the only terms which may be applied to national security information. Except as provided by statute, no other terms shall be used within the Department of Commerce in conjunction with any of the three classification levels.

§ 4a.4 Classification authority.

Authority to originally classify information as Secret or Confidential may be exercised only by the Secretary of Commerce and by officials to whom such authority is specifically delegated. No official of the Department of Commerce is authorized to originally classify information as Top Secret.

§ 4a.5 Duration of Classification.

(a) Information shall remain classified no longer than ten years from the date of its original classification, except as provided in § 1.6(d) of E.O. 12958. Under E.O. 12958, information may be exempted from declassification within ten years if the unauthorized disclosure of such information could reasonably be expected to cause damage to the national security for more than ten years and meets one of the eight criteria listed in § 1.6(d).

(b) Department of Commerce originally classified information marked for an indefinite duration of classification under predecessor orders to E.O. 12958 shall be declassified after twenty years. Classified information contained in archive records determined to have permanent historical value under title 44, United States Code, shall be automatically declassified no longer than 25 years from the date of its original classification, except as provided in § 3.4(d) of E.O. 12958.

§ 4a.6 General.

National security information over which the Department of Commerce exercises final classification jurisdiction shall be declassified or downgraded as soon as national security considerations permit. When information is declassified, it may continue to be exempt from public disclosure by the Freedom of Information Act (5 U.S.C. 552) or other applicable law.

§ 4a.7 Mandatory review for declassification.

(a) *Requests.* Classified information under the jurisdiction of the Department of Commerce is subject to review for declassification upon receipt of a written request that describes the information with sufficient specificity to locate it with a reasonable amount of effort. Requests must be submitted to the Deputy Assistant Secretary for Security, U.S. Department of Commerce, Room 1069, 14th and Constitution Avenue, NW, Washington, DC 20230.

(b) *Exemptions.* The following are exempt from mandatory review for declassification:

(1) Information that has been reviewed for declassification within the past two years;

(2) Information that is the subject of pending litigation;

(3) Information originated by the incumbent President, the incumbent President's White House Staff, committees, commissions, or boards appointed by the incumbent President, or other entities within the Executive Office of the President that solely advise and assist the incumbent President; and

(4) Information specifically exempt from such review by law.

(c) *Processing requirements.* (1) The DAS shall acknowledge receipt of the request directly to the requester. If a request does not adequately describe the information sought in accordance with paragraph (a) of this section, the requester shall be notified that unless additional information is provided, no further action will be taken. The request shall be forwarded to the operating unit or office which originated the information or which has primary interest in the subject matter. The unit or office assigned action shall review the information in accordance with § 4a.7(c)(2) through (4) within twenty working days.

(2) The action office shall determine whether, under the declassification provisions of the Department of Commerce National Security Manual, the entire document or portions thereof may be declassified. Declassification of the information shall be accomplished by a designated declassification authority. Upon declassification the information shall be remarked. If the information is not partially or entirely declassified, the reviewing official shall provide the reasons for denial by citing the applicable provisions of E.O. 12958. When the classification is a derivative decision based on classified source material of another Federal agency, the action office shall provide the information to the originator for review.

(3) If information is declassified, the action office shall also determine whether it is releasable under the Freedom of Information Act. If the information is not releasable, the action office shall advise the DAS that the information has been declassified but that it is exempt from disclosure, citing the appropriate exemption of the Freedom of Information Act.

(4) If the request for declassification is denied in whole or in part, the requester shall be notified of the right to appeal the determination within sixty calendar days and of the procedures for such an appeal. If declassified information remains exempt from disclosure under the Freedom of Information Act, the requester shall be advised of those appellate procedures.

(d) *Fees.* If the request requires the rendering of services for which fees may be charged, the unit assigned action may calculate the anticipated fees to be charged and ascertain the requester's willingness to pay the allowable charges as a precondition to taking further action on the request in accordance with § 4.11 of the Department of Commerce Freedom of Information Act rules and § 4.31 of the Department's Privacy Act rules.

(e) *Right of appeal.* (1) A requester may appeal to the DAS when information requested under this section is not completely declassified and released after expiration of the applicable time limits. Within thirty working days (i.e., excluding Saturdays, Sundays, and days on which Federal offices are closed) of receipt of a written appeal,

(i) The DAS shall determine whether continued classification of the requested information is required in whole or in part; if information is declassified;

(ii) Determine whether it is releasable under the Freedom of Information Act; and

(iii) Notify the requester of his determination, making available any information determined to be releasable. If continued classification is required under the provisions of the Department of Commerce National Security Manual, the DAS shall notify the requester of his determination, including the reasons for denial based on applicable provisions of E.O. 12958, and of the right of final appeal to the Interagency Security Classification Appeals Panel.

(2) During the declassification review of information under appeal the DAS may overrule previous determinations

in whole or in part when, in his judgment, continued protection in the interest of national security is no longer required. If the DAS determined that the information no longer requires classification, it shall be declassified and, unless it is otherwise exempt from disclosure under the Freedom of Information Act, released to the requester. The DAS shall advise the original reviewing Commerce office or unit of his decision.

§ 4a.8 Access to classified information by individuals outside the Government.

(a) *Industrial, Educational, and Commercial Entities.* Certain bidders, contractors, grantees, educational, scientific, or industrial organizations may receive classified information under the procedures prescribed by the National Industrial Security Program Operating Manual.

(b) *Access by historical researchers and former Presidential appointees.* An individual engaged in historical research projects or who has previously occupied a policy-making position to which he or she was appointed by the President may be authorized access to classified information for a limited period, provided that the head of the component with jurisdiction over the information:

(1) Determines in writing that:

(i) Access is consistent with national security,

(ii) The individual has a compelling need for access, and

(iii) The Department's best interest is served by providing access;

(2) Obtains in writing from the individual:

(i) Consent to a review by the Department of their resultant notes and manuscripts for the purpose of determining that no classified information is contained in them, and

(ii) Agreement to safeguard classified information in accordance with applicable requirements; and

(iii) A detailed description of the individual's research;

(3) Ensures that custody of classified information is maintained at a Department facility;

(4) Limits access granted to former Presidential appointees to items that the individual originated, reviewed, signed, or received while serving as a Presidential appointee; and

(5) Receives from the DAS:

(i) A determination that the individual is trustworthy; and

(ii) Approval to grant access to the individual.

(c) An individual seeking access should describe the information with sufficient specificity to locate and compile it with a reasonable amount of effort. If the access requested by a historical researcher or former Presidential appointee requires rendering services for which fair and equitable fees may be charged, the responsible component shall notify the individual in advance.

(d) This section applies only to classified information originated by the Department, or to information in the sole custody of the Department. Otherwise, the individual shall be referred to the classifying agency.

PART 4b—PRIVACY ACT [REMOVED]

3. Remove Part 4b.

Dated: May 17, 2000.

Susan Sutherland,

Acting Director for Executive Budgeting and Assistance Management.

[FR Doc. 00–13161 Filed 5–30–00; 8:45 am]

BILLING CODE 3510–BW–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–225–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Kentucky regulatory program (Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Kentucky regulations pertaining to permitting, abating violations, and constructing roads above highwalls. The amendment is intended to revise the Kentucky program to be consistent with the corresponding Federal regulations.

DATES: If you submit written comments, they must be received by 4 p.m., (e.d.t.) on June 30, 2000. If requested, a public hearing on the proposed amendment will be held on June 26, 2000. Requests to speak at the hearing must be received by 4 p.m. (e.d.t.) on June 15, 2000.

ADDRESSES: Mail or hand-deliver your written comments and requests to speak at the hearing to William J. Kovacic, Field Office Director, at the address listed below.

You may review copies of the Kentucky program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503; telephone: (859) 260–8400. E-Mail: bkovacic@osmre.gov.

Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601; telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone: (859) 260–8400.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21404). You can find subsequent actions concerning the conditions of approval and program amendments at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated May 9, 2000 (Administrative Record No. KY–1473), Kentucky submitted a proposed amendment to its program consisting of enacted House Bills (HB) 502 (partial), 599, and 792.

HB 502 is a budget bill and only Part IX, Item 36(b), which pertains to surface coal mining permits, was submitted. It provides that the permit block provisions of KRS 350.085(6) apply to either the applicant or any person who owns or controls the applicant who is currently in violation. It requires the cabinet to continue in effect the current administrative regulations on ownership and control, provided that a due process hearing is afforded at the time the cabinet makes a preliminary determination to impose a permit block. It requires the cabinet to conditionally issue a permit, permit renewal, or