

(5) [Reserved]. For further guidance see § 1.45G–1T(f)(5).

(g) \* \* \*

(4) *Taxable years beginning after December 31, 2011.* [Reserved]. For further guidance see § 1.45G–1T(g)(4).

(5) *Taxable years beginning before January 1, 2012.* [Reserved]. For further guidance see § 1.45G–1T(g)(5).

■ **Par. 7.** Section 1.45G–1T is added to read as follows:

**§ 1.45G–1T. Railroad track maintenance credit (temporary).**

(a) through (e) [Reserved]. For further guidance, see § 1.45G–1(a) through (e).

(f)(1) through (3) [Reserved]. For further guidance, see § 1.45G–1(f)(1) through (3).

(4) *Allocation of the group credit.* The group credit is allocated to each member of the controlled group on a proportionate basis to its share of the aggregate of the QRTMEs taken into account for the taxable year by such controlled group for purposes of the credit.

(5) *Special rules for consolidated groups—(i) In general.* For purposes of applying paragraph (f)(4) of this section, members of a consolidated group who are members of a controlled group are treated as a single member of the controlled group.

(ii) *Special rule for allocation of group credit among consolidated group members.* The portion of the group credit that is allocated to a consolidated group is allocated to each member of the consolidated group on a proportionate basis to its share of the aggregate of the QRTMEs taken into account for the taxable year by such consolidated group for purposes of the credit.

(6) through (8) [Reserved]. For further guidance, see § 1.45G–1(f)(6) through (8).

(g)(1) through (3) [Reserved]. For further guidance, see § 1.45G–1(g)(1) through (3).

(4) *Taxable years beginning after December 31, 2011.* Section 1.45G–1T is applicable for taxable years beginning on or after April 3, 2015. Taxpayers may apply § 1.45G–1T to taxable years beginning after December 31, 2011, but before April 3, 2015. For a taxpayer that does not apply § 1.45G–1T to a taxable year beginning after December 31, 2011, but before April 3, 2015, the guidance that applies to such taxable year is contained in Notice 2013–20 (2013–15 IRB 902).

(5) *Taxable years ending before January 1, 2012.* See § 1.45–1 as contained in 26 CFR part 1, revised April 1, 2014.

(6) *Expiration date.* The applicability of § 1.45G–1T expires on April 2, 2018.

■ **Par. 8.** Section 1.280C–4 is amended by revising paragraph (b)(2), redesignating paragraph (c) as (c)(1) and adding paragraphs (c)(2) and (3) to read as follows:

**§ 1.280C–4. Credit for increasing research activities.**

\* \* \* \* \*

(b) \* \* \*

(2) [Reserved]. For further guidance, see § 1.280C–4T(b)(2).

\* \* \* \* \*

(c) \* \* \*

(2) [Reserved]. For further guidance, see § 1.280C–4T(c)(2).

(3) [Reserved]. For further guidance, see § 1.280C–4T(c)(3).

■ **Par. 9.** Section 1.280C–4T is added to read as follows:

**§ 1.280C–4T. Credit for increasing research activities (temporary).**

(a) [Reserved]. For further guidance, see § 1.280C–4(a).

(b) *Controlled groups of corporations; trades or businesses under common control.* (1) [Reserved]. For further guidance, see § 1.280C–4(b)(1).

(2) *Example.* The following example illustrates an application of paragraph (b) of this section: A, B, and C, all of which are calendar year taxpayers, are members of a controlled group of corporations (within the meaning of section 41(f)(5)). A, B, and C each attach a statement to the 2012 Form 6765, “Credit for Increasing Research Activities,” showing A and C were the only members of the controlled group to have qualified research expenses when calculating the group credit. A and C report their allocated portions of the group credit on the 2012 Form 6765 and B reports no research credit on Form 6765. Pursuant to § 1.280C–4(a), A and B, but not C, each make an election for the reduced credit under section 280(c)(3)(B) on the 2012 Form 6765. In December 2013, B determines it had qualified research expenses in 2012 resulting in an increased group credit. On an amended 2012 Form 6765, A, B, and C each report their allocated portions of the group credit. B reports its credit as a regular credit under section 41(a) and reduces the credit under section 280(c)(3)(B). C may not reduce its credit under section 280(c)(3)(B) because C did not make an election for the reduced credit with its original return.

(c)(1) [Reserved]. For further guidance see § 1.280C–4(c)(1).

(2) *Taxable years beginning after December 31, 2011.* Section 1.280C–4T is applicable for taxable years beginning on or after April 3, 2015. Taxpayers may apply § 1.280C–4T to taxable years beginning after December 31, 2011, but before April 3, 2015. For a taxpayer that does not apply § 1.280C–4T to a taxable year beginning after December 31, 2011, but before April 3, 2015, the guidance that applies to such taxable year is

contained in Notice 2013–20 (2013–15 IRB 902).

(3) *For taxable years ending before January 1, 2012.* See § 1.280C–4 as contained in 26 CFR part 1, revised April 1, 2014.

(4) *Expiration date.* The applicability of paragraph (b)(2) expires on April 2, 2018.

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

Approved: March 16, 2015.

**Mark J. Mazur,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2015–07331 Filed 4–2–15; 8:45 am]

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**DEPARTMENT OF JUSTICE**

**28 CFR Part 16**

[Docket No. OAG 140; AG Order No. 3517–2015]

**RIN 1105–AB27**

**Revision of Department’s Freedom of Information Act Regulations**

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Department’s regulations under the Freedom of Information Act (“FOIA”). The regulations have been revised to update and streamline the language of several procedural provisions and to incorporate changes brought about by the amendments to the FOIA under the OPEN Government Act of 2007. Additionally, the regulations have been updated to reflect developments in the case law and to include current cost figures to be used in calculating and charging fees.

**DATES:** Effective May 4, 2015.

**FOR FURTHER INFORMATION CONTACT:** Lindsay Roberts, Attorney-Advisor, Office of Information Policy, (202) 514–3642.

**SUPPLEMENTARY INFORMATION:**

**Background Information**

On March 21, 2011, the Department of Justice published a proposed rule to revise its existing regulations under the FOIA. See 76 FR 15236. On September 19, 2011, the Department reopened the comment period for another thirty days in order to consider additional public comments. See 76 FR 57940.

**Comments**

Interested persons were afforded the opportunity to participate in the

rulemaking process through submission of written comments to the proposed rule during the two open comment periods. In total, the Department received fifteen public submissions in response to its proposed rule, including comments from another agency as well as internal comments from components of the Department. Due consideration has been given to each of the comments received and, in response, the Department has made several modifications to the rule. These modifications include clarifying, revising, or expanding various provisions, withdrawing a provision, retaining existing language for certain other provisions, and making technical edits, such as correcting Web site links.

### General Provisions

As an initial matter, the Department has decided that the final regulations will reference the Department's policy to encourage discretionary releases of information whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption.

Some commenters suggested the inclusion of provisions that would merely duplicate certain statutory requirements, such as adding provisions describing the FOIA's standards for tolling of requests or delineating the statutory duties of FOIA Public Liaisons. Other than those instances where the Department believed it was important for emphasis, in order to streamline these regulations the Department has intentionally not simply repeated statutory provisions. These regulations implement the FOIA as well as the Office of Management and Budget's Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012 (Mar. 27, 1987) ("OMB Guidelines"), and should be read in conjunction with those authorities. The regulations are not meant to duplicate or to serve as a substitute for these sources.

### Fee-Related Provisions

Several public submissions contained comments regarding the Department's assessment of fees. As a general matter, the Department notes that the fee provisions are written to conform with the OMB Guidelines, which establish uniform standards for fee matters. Conformity with the OMB Guidelines is required by the FOIA. *See* 5 U.S.C. 552(a)(4)(A)(i).

One commenter questioned the specific dollar amount that he had been charged by one Department component for producing records on compact discs ("CDs") as well as the volume of material that was loaded onto each CD.

In accordance with the OMB Guidelines, *see* 52 FR at 10018, the Department's current regulations provide (without specifying a dollar amount) for the assessment of "direct costs," meaning the actual cost of producing the media, incurred by the component when producing records in a format other than paper. The direct costs of producing records on CD may include scanning paper records into an electronic format and conducting requisite security scans in addition to the cost associated with the blank CD. Section 16.10(c)(2) of the final rule, which allows components to charge "direct costs" for non-paper media, gives components flexibility to adjust fees as the costs of providing records in a specified format change over time. This same flexibility allows components to adjust the volume of material loaded onto each CD to ensure that requesters receive material as efficiently as possible. The expectation is that with technological advances, components will pass along the reduced costs to requesters contemporaneously, without first necessitating a change in the regulation. Accordingly, this regulation is not the proper venue for determining the specific dollar amount that components should charge or the volume of material that should be loaded onto each CD.

Several commenters expressed concerns about the increase in search fees. In contrast to the use of "direct costs" for responding to a request for non-paper media, search fees are assessed on a uniform basis throughout the Department in accordance with the OMB Guidelines and are largely salary-based. *See* 52 FR at 10018. The Department has reexamined the rates using a formula for search and review fees that takes into account current pay rates for different levels of staff involved in processing FOIA requests. The revised rule changes the "administrative" staff category to "clerical/administrative" to account for work performed by either clerical or administrative staff who may assist FOIA professionals in searching for responsive records. As a result of these adjustments, while there is a small increase in the rates from our existing regulations, we were able to reduce the rates from those originally proposed. Updating these costs is consistent with the OMB Guidelines, which provide that "[a]gencies should charge fees that recoup the full allowable direct costs they incur." *Id.* While certain costs are now higher than when last calculated 13 years ago, the revised fee schedule includes a decrease in duplication fees

due to advances in technology. The Department includes in the revised regulations a directive that components "ensure that searches, review, and duplication are conducted in the most efficient and the least expensive manner." § 16.10(a). For greater emphasis, the Department moves that directive in the final rule from the definition paragraph in proposed § 16.10 to the introductory paragraph in the final rule.

One commenter recommended that proposed § 16.10(b)(3) contain the statement, included in the existing version of that paragraph, 28 CFR 16.11(b)(3), that "[c]omponents shall honor a requester's specified preference of form or format." The requirement to honor a requester's specified form or format preference is now located in § 16.10(c)(2), concerning charging duplication fees, which is a more appropriate location.

Some commenters expressed concern regarding the provisions that govern fees for educational institutions. The FOIA provides in relevant part that "fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research." 5 U.S.C. 552(a)(4)(A)(ii)(II). In other words, such a requester may not be charged fees for searches or review.

One commenter took issue with proposed § 16.10(b)(4), concerning the definition of the term educational institution. Specifically, the commenter objected to the phrase indicating that the educational institution must "operate[] a program of scholarly research" and argued that this requirement would effectively exclude various types of schools other than universities. The commenter mistakenly asserted that the provision would be new; in fact, not only is it not new, but the requirement that an educational institution have as its purpose "scholarly" research derives from the FOIA itself, *see* 5 U.S.C. 552(a)(4)(A)(ii)(II), and the specific language was taken directly from the OMB Guidelines. 52 FR at 10018; *see also id.* at 10014 (addressing rationale for this requirement). As the OMB Guidelines note, whether a school qualifies must be determined on a case-by-case basis:

As a practical matter, it is unlikely that a preschool or elementary or secondary school would be able to qualify for treatment as an "educational" institution since few preschools, for example, could be said to conduct programs of scholarly research. But,

agencies should be prepared to evaluate requests on an individual basis when requesters can demonstrate that the request is from an institution that is within the category, that the institution has a program of scholarly research, and that the documents sought are in furtherance of the institution's program of scholarly research and not for a commercial use.

52 FR at 10014.

Two commenters objected to the provision in proposed § 16.10(b)(4) stating that “[r]ecords requested for the intention of fulfilling credit requirements are not considered to be sought for a scholarly purpose.” This requirement is also taken from the OMB Guidelines, which distinguish individual research goals from an institution's research goals. The addition of this language was intended to reflect longstanding Department practice and to alleviate any confusion among student requesters. The statute indicates that the relevant question is whether the request is made “by an educational or noncommercial scientific institution.” 5 U.S.C. 552(a)(4)(A)(ii)(II). The OMB Guidelines address how that inquiry is to be made:

Agencies should ensure that it is apparent from the nature of the request that it serves a scholarly research goal of the institution, rather than an individual goal. Thus, for example, a request from a professor of geology at a State university for records relating to soil erosion, written on letterhead of the Department of Geology, could be presumed to be from an educational institution. A request from the same person for drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery [*sic*] . . . .

The institutional versus individual test would apply to student requests as well. A student who makes a request in furtherance of the completion of a course of instruction is carrying out an individual research goal and the request would not qualify, although the student in this case would certainly have the opportunity to apply to the agency for a reduction or waiver of fees.

52 FR at 10014.

The final rule clarifies this provision by replacing the sentence that commenters flagged with a series of examples based on the OMB Guidelines discussion quoted above, thereby making clear that this inquiry applies to professors as well. Students and professors who do not qualify for reduced fees under this provision, and who do not seek the records for a commercial use, will, of course, be afforded the benefits of the two free hours of search time and one hundred pages of duplication without cost that are afforded to any other non-

commercial use requester. *See* § 16.10(d)(4) of the final rule. And like all requesters, they may apply for a fee waiver under the fee waiver provision of the FOIA, pursuant to § 16.10(k) of the final rule.

One commenter suggested that the provision in proposed § 16.10(b)(6) stating that “[a] component's decision to grant a requester media status will be made on a case-by-case basis based upon the requester's intended use” should be deleted. The Department agrees and believes that the language is better placed under the definition of a “commercial use” requester. In the OMB Guidelines, the requester's intended use of the requested records determines whether the requester will fall within the “commercial use” fee category, or one of the other categories. *See* 52 FR at 10013, 10017–18. As the OMB Guidelines explain, “it is possible to envision a commercial enterprise making a request that is not for a commercial use” and “[i]t is also possible that a non-profit organization could make a request that is for a commercial use.” *Id.* at 10013. To make this point clearer, the Department moves the reference to case-by-case determinations to the “commercial use” definition. Within the definition of “representative of the news media,” the Department retains the statement from its existing regulations that “a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.”

This commenter also suggested including a reference to news organizations that operate solely on the Internet in the list of examples of “representatives of the news media.” The Department concurs and adds such an example.

Another commenter suggested that the definition of “representative of the news media” in proposed § 16.10(b)(6) should not require that the person or entity be “organized and operated to publish or broadcast news.” This requirement is being retained because it comes directly from the definition of “representative of the news media” in the OMB Guidelines, *see* 52 FR at 10018, which is in turn based on the statute's inclusion of the term “news” in this fee category, *see id.* at 10015.

One commenter suggested that proposed § 16.10(c)(1)(iii), regarding the direct costs associated with creating computer programs to extract information, require that requesters be notified of any such costs before the costs are incurred. The Department agrees and revises this provision accordingly. Another commenter

suggested that the regulations address the provision of the OPEN Government Act of 2007, codified at 5 U.S.C. 552(a)(4)(A)(viii), that limits the charging of fees in certain instances where time limits are not met. This statutory provision, in fact, has been expressly addressed in proposed § 16.10(d)(2), which sets forth restrictions on charging fees.

One commenter suggested that under proposed § 16.10(e), when components notify requesters of anticipated fees in excess of \$25.00, they provide non-commercial use requesters with their statutory entitlements of one hundred free pages and, when search fees are assessed, their two hours of free search time or the cost equivalent. The Department believes that requesters should be apprised of the option to receive their statutory entitlements regardless of whether estimated fees exceed \$25.00 and has revised the provision to account for that. However, the Department believes it is preferable not to require components to perform the statutorily entitled free search and duplication before the requester responds to the notice because it would not be an efficient use of limited FOIA resources, inasmuch as the requester might choose to revise the request after receipt of the notice. The Department also adds a provision to permit requesters to designate a specific amount of fees that they are willing to pay. If it turns out that the total cost of processing the request is higher, the component must still process the request up to the amount of fees the requester agreed to pay, unless the requester withdraws the request. Finally, the Department adds language to clarify that when a requester has indicated a willingness to pay some amount of fees, the time to respond is tolled when the Department informs the requester that the total cost of processing the request is higher than the amount the requester indicated a willingness to pay. Once the agency receives the requester's response to the notice, the time to respond to the request will resume from where it was at the date of the notification.

One commenter suggested that Department components should make fee waiver determinations based “on the face of the request” under proposed § 16.10(k) and not defer such decisions “until after search costs are incurred.” The commenter misinterprets the effect of the six factors contained in proposed § 16.10(k). The regulations do not provide for the assessment of fees as part of the process of making a fee waiver determination. Rather, the six factors set out in the regulations guide

Department components in applying the statutory standard for waiving fees. Requesters do not incur any charge as a result of this process.

Another commenter suggested that the Department delete the word “ordinarily” from proposed § 16.10(k)(2)(iii), concerning the third fee waiver factor, which discusses whether disclosure will contribute to public understanding of the subject. The Department accepts this comment and reinstates the original language: “It shall be presumed that a representative of the news media will satisfy this consideration.”

This commenter also suggested reinstatement of language in the existing regulations regarding presumptions about disclosures made to data brokers. The Department agrees and reinstates that language in § 16.10(k)(3)(ii) as well as the related language about presumptions regarding disclosure to the news media.

One commenter suggested adding a provision containing a statement that components may waive fees as a matter of discretion. The FOIA establishes a standard for waiver or reduction of fees. The Department’s regulations are intended to define the manner in which this standard is to be applied. In some cases, components may need to make discretionary judgments, but they must do so within the confines of the statutory standard.

An agency commenter suggested that proposed § 16.10(e) be revised to include a provision that when components notify requesters of the actual or estimated amount of fees that they include in that estimate a breakdown of the fees for search, review, or duplication. The Department agrees and makes that revision.

### Exclusion Provision

A number of commenters raised concerns regarding proposed § 16.6(f)(2), which pertained to responses to requests involving records excluded from the requirements of the FOIA by 5 U.S.C. 552(c). Section 552(c), enacted as an amendment to the FOIA in 1986, *see* Public Law 99–570, secs. 1801–04, 100 Stat. 3207, provides special protection for three categories of particularly sensitive law enforcement records. The first exclusion protects against disclosure of a pending criminal law enforcement investigation where there is reason to believe that the target is unaware of the investigation and disclosure of its existence could reasonably be expected to interfere with enforcement proceedings. The second exclusion, which applies only to records maintained by criminal law

enforcement agencies, protects against disclosure of unacknowledged, confidential informants. The third exclusion, which applies only to the Federal Bureau of Investigation, protects against disclosure of foreign intelligence or counterintelligence, or international terrorism records, when the existence of those records is classified.

Proposed § 16.6(f)(2) provided as follows: “When a component applies an exclusion to exclude records from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the component utilizing the exclusion will respond to the request as if the excluded records did not exist. This response should not differ in wording from any other response given by the component.” Commenters suggested that this language would impede governmental transparency and accountability.

Proposed § 16.6(f)(2) was intended to incorporate guidance issued more than 20 years ago by Attorney General Edwin Meese. *See* Attorney General’s Memorandum on the 1986 Amendments to the Freedom of Information Act 18–30 (December 1987), *available at* <http://www.justice.gov/oip/86agmemo.htm> (“Meese Guidance”). The Meese Guidance provided, among other things, that where the only records responsive to a request were excluded from the FOIA by statute, that “a requester can properly be advised in such a situation that ‘there exist no records responsive to your FOIA request.’” *Id.* at 27. The Meese Guidance also advised agencies that they must ensure that their FOIA responses are consistently worded so that a requester is not able to determine from the wording of a response that an exclusion was invoked. *See id.*

In September 2012, in order to bring greater awareness to the public about the existence and effect of these statutory provisions, the Office of Information Policy (“OIP”) issued guidance outlining the steps all agencies should take to ensure proper implementation of exclusions and setting forth the new requirements for their use. *See* Office of Information Policy, “Implementing FOIA’s Statutory Exclusion Provisions” (September 14, 2012), *available at* <http://www.justice.gov/oip/foiapost/2012foiapost9.html> (“OIP Exclusion Guidance”).

The OIP Exclusion Guidance establishes a new approach for all agencies to take when responding to requests, in lieu of the approach that had been set forth in proposed § 16.6(f)(2). Specifically, all agency components that maintain criminal law enforcement records now include a

notification in their FOIA response letters advising requesters that Congress excluded certain records from the requirements of the FOIA and that the agency’s response addresses those records that are subject to the requirements of the FOIA. The Department instructed these law enforcement components to include the following language in response to all FOIA requests:

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

*See* OIP Exclusion Guidance.

As explained in greater length in the OIP Exclusion Guidance, the Department believes that the use of this language addresses the concerns raised by the commenters who had criticized proposed § 16.6(f)(2), while preserving the integrity of the sensitive law enforcement records at stake.

The final rule retains two provisions in the proposed rule aimed at ensuring proper use of exclusions. Before applying an exclusion, the component must first obtain approval from OIP. *See* § 16.6(g)(1). Furthermore, any component invoking an exclusion must maintain records of its use and approval. *See* § 16.6(g)(2). These provisions are intended to enhance accountability in the use of exclusions.

One commenter suggested that the last sentence of proposed § 16.4(a), which provides that “[a] record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), shall not be considered responsive to a request” should be changed to say that the records “may not be considered responsive.” This sentence was designed to provide notice that records determined by a component to be properly subject to an exclusion are not considered to be responsive to the FOIA request. The FOIA provides that agencies “may,” under certain defined circumstances, treat records “as not subject to the requirements of [the FOIA],” 5 U.S.C. 552(c). As a result, components may choose not to apply an exclusion even if the FOIA would allow them to do so. This provision addresses those situations where a component does decide to lawfully apply an exclusion. The provision makes clear that in those cases the excluded records are not responsive to the request. For clarity, we have changed the wording in the final rule to replace the word

“shall” with “is” so that the regulation more clearly conveys that it is addressing the consequence of those situations where a component has decided to apply an exclusion.

An agency commenter suggested that requiring components to obtain OIP approval before applying an exclusion would conflict with OIP’s role as the adjudicator of any subsequent administrative appeal. The commenter questioned whether, if OIP approved the use of an exclusion beforehand, it could review impartially its own decision on appeal. The commenter therefore recommended that components be required only to consult with OIP, rather than obtain its approval, before applying an exclusion. The Department declines to make this change. OIP is both a guidance office and an appeal authority, and aims to assist components as early as possible in the process to ensure that requests are processed properly and to obviate the need for appeals where possible. In light of the importance of invoking exclusions properly, the Department believes it is critical that OIP approve their use beforehand, given that only a subset of requesters file administrative appeals.

#### *Other Provisions*

##### *Section 16.2 (Proactive Disclosure of Department Records)*

One commenter expressed concern that the proposed rule removes a reference to the requirement that records required to be made available for public inspection be indexed as well. In fact, the rule does not remove this requirement; rather, it states that each component is responsible for posting and indexing such records, and for updating posted records and indices on an ongoing basis.

The same commenter suggested that proposed § 16.2 should be modified to require that Department components post online the responses to all FOIA requests that do not involve individuals seeking access to their own records. The Department encourages the posting of all records, particularly records likely to be of interest to the public. However, given that resources are needed to properly code records for posting, it is important that Department components retain flexibility to decide how best to use those resources, including flexibility to use other options such as posting logs of FOIA responses.

##### *Section 16.3 (Requirements for Making a Request)*

One commenter expressed concern that proposed § 16.3(a) “will allow the

agency to summarily deny requests when the requester fails to write to the correct ‘FOIA office of the Department component.’” This scenario was not the intention of that provision, nor will it be a consequence of the provision. Indeed, as noted in § 16.5(a) of the proposed regulations and as is contemplated in the FOIA itself, components are expected to re-route misdirected requests to the proper component. See 5 U.S.C. 552(a)(6)(A)(ii). For emphasis, the Department adds a new § 16.4(c) that expressly states the obligation to re-route misdirected requests.

In addition, the Department adds language to the provision to explain that the requester will receive the quickest response if the request is directed to the component that maintains the records. Requesters have another option as well. For any requester who is uncertain as to which Department component may maintain responsive records, or who simply chooses to do so, proposed § 16.3(a)(2) provides the requester with the option of submitting the request to the FOIA/PA Mail Referral Unit, which will then direct the request to the component(s) that it determines is most appropriate. The Mail Referral Unit is a long-standing service the Department provides to assist requesters who are uncertain as to where to direct their requests.

The same commenter asserted that proposed § 16.3(a)(3), which requires the submission of a certification of identity for first-party requesters and references the Department’s Privacy Act regulation in subpart D on that point, should be clarified as only applying to U.S. citizens or lawful alien residents. This provision of the regulations is intended to apply to all first-party requesters, regardless of their country of origin and is intended to protect the privacy of individuals. The reference to subpart D of the regulations is merely meant to inform requesters as to the location of the requirements for verifying their identities when making requests for their own records. As a matter of policy, the Department requires verification of identity for all first-party requesters, not just requesters who are covered by the Privacy Act, to appropriately protect the privacy of all individuals and ensure that an individual’s private records are not improperly disclosed to a third party. This is not a new requirement and is in the existing regulations.

One commenter expressed concern that the change in language proposed for § 16.3(c), (redesignated as § 16.3(b) in the final rule), which addresses the requirement to reasonably describe the records sought, would “establish new

barriers to access.” That was not the Department’s intention. We revise this section to conform to the existing regulations and add further resources for requesters to assist them in reasonably describing the records they seek. The section now provides that requesters may discuss their requests with the component’s FOIA contact or its FOIA Public Liaison in advance of making a request, as well as to clarify a request already made. Further, requesters may also contact a representative of OIP for assistance. All these officials will be available to assist requesters in reasonably describing the records sought.

##### *Section 16.4 (Responsibility for Responding to Requests)*

One commenter noted that the proposed rule deleted existing § 16.7 concerning classified information. This commenter also indicated that it was unclear whether the citation to part 17 in proposed § 16.4(d) (redesignated as § 16.4(e) in the final rule) reflects the Department’s obligations with respect to such material. The Department further clarifies this provision to make clear that, in responding to requests for classified information, the component must determine whether the information remains currently and properly classified.

With respect to proposed § 16.4(e) (now incorporated into § 16.4(d) in the final rule), regarding notice of referrals, one commenter was concerned with the reference to protecting the identities of recipients of document referrals when disclosure of the recipient would itself disclose a sensitive, exempt fact. In the intervening period since the close of the second comment period, the Department has issued new guidance on consultations and referrals that requires agencies to use coordination procedures, rather than making a referral, if the recipient cannot be identified due to law enforcement or national security concerns. As a result, this provision, as well as proposed § 16.4(c) (now incorporated into § 16.4(d) in the final rule), is being revised to reflect that new Department guidance. See Office of Information Policy, “Referrals, Consultations, and Coordination: Procedures for Processing Records When Another Agency or Entity Has an Interest in Them,” (December 2011), available at [www.justice.gov/oip/foiapost/2011foiapost42.html](http://www.justice.gov/oip/foiapost/2011foiapost42.html) (explaining exceptions to standard procedures for making referrals and procedures for coordinating responses).

One commenter suggested that any agreements between Department

components as to the processing of certain records, which was discussed in proposed § 16.4(g), should be made publicly available. This provision is intended to hasten processing by eliminating certain consults or referrals for components that share or encounter the same types of records on a regular basis. There is no requirement, however, that components create formal agreements appropriate for posting with respect to these records. In the interests of maintaining flexibility and enhancing efficiency, which are the goals of this section, no changes are being made to the provision.

#### *Section 16.5 (Timing of Responses to Requests)*

One commenter contended that the portion of proposed § 16.5(a) concerning the commencement of response time for misdirected requests should be deleted. The commenter is referred to 5 U.S.C. 552(a)(6)(A)(ii) of the FOIA, which is the statutory provision establishing the time period to route misdirected requests.

Another commenter recommended that proposed § 16.5(a) require components to forward any misdirected requests to the Justice Management Division's Mail Referral Unit, rather than to the Department component that the receiving component deems most appropriate. While components are free to do so when they are uncertain as to the proper component, imposing a requirement to route all misdirected requests through the Mail Referral Unit rather than directly to the proper component would unnecessarily delay the receipt of the request by the appropriate Department component. The Department has issued guidance on the handling of misdirected requests, *see* Office of Information Policy, "OIP Guidance: New Requirement to Route Misdirected FOIA Requests," (November 11, 2008), available at <http://www.justice.gov/oip/foiapost/2008foiapost31.htm>.

One commenter took issue with the use of the term "unusual circumstances" contained in proposed § 16.5(c) and suggested instead using the term "unforeseen circumstances." However, "unusual circumstances" is a term of art that is taken directly from, and defined by, the FOIA. *See* 5 U.S.C. 552(a)(6)(B)(i).

One commenter asserted that the language from the existing regulation stating that information dissemination "need not be a [requester's] sole occupation," 28 CFR 16.5(d)(3) should be restored in proposed § 16.5(e)(3), which pertains to expedited processing. It was not the Department's intention to

narrow this standard—indeed, the example provided in the provision references a requester who is not a full-time member of the news media. To provide even greater clarity, the final rule provides that information dissemination "need not be the requester's sole occupation."

The commenter also suggested deletion of a sentence from proposed § 16.5(e)(3) regarding the provision of news articles. The commenter noted that requesters frequently make use of news articles to demonstrate a need for expedited processing. While acknowledging that provision of news articles does not "necessarily require[] the grant of expedited processing" in all instances, the commenter objected to the proposed sentence as not recognizing the usefulness of providing articles. The Department modifies this sentence to make it clear that provision of news articles on a topic "can be helpful" to establishing that the standard is met. This language conveys more appropriately the impact of providing numerous news articles. Finally, the Department revises the final sentence of proposed § 16.5(e)(4), regarding administrative appeal of any component denial of expedited processing, to maintain the language used in the existing regulations.

#### *Section 16.6 (Responses to Requests)*

One commenter suggested adding a sentence to proposed § 16.6(d) (redesignated as § 16.6(e) in the final rule), which concerns estimating the volume of information withheld, to require a listing of any documents withheld in full. Another commenter suggested that a brief description of the withheld information be provided if doing so would not reveal exempt information. While the Department understands the desire for such further detail, and encourages components to use their judgment to provide additional helpful information when practical, the Department must balance the time involved with imposing such a requirement against the heavy demands faced by many components to process thousands or tens of thousands of requests each year. In light of those demands, imposing such a requirement would be counterproductive. Contrary to the first commenter's assertion, a listing is not required at the administrative stage of processing a FOIA request. *See Bangoura v. U.S. Dep't of the Army*, 607 F. Supp. 2d 134, 143 n.8 (D.D.C. 2009) (holding that list of withheld documents is not required at administrative stage of processing FOIA requests and appeals).

One commenter mistakenly thought that proposed § 16.6(e) had eliminated the requirement that a denial be signed by the head of the component or a designee. The first line of § 16.6(e) in the final rule continues to contain this requirement.

An agency commenter recommended that acknowledgments of requests include a brief description of the subject of the request in order to help requesters keep track of multiple pending requests. The Department agrees and has included such language in § 16.6(b) of the final rule.

The same commenter recommended that the rule reference the statutory requirement that agencies indicate, if technically feasible, the amount of information deleted and the exemption under which each deletion is made unless doing so would harm an interest protected by an applicable exemption. The Department adds such language in § 16.6 of the final rule.

#### *Section 16.7 (Confidential Commercial Information)*

One commenter approved of the change to proposed § 16.7(b) which states that "[a] submitter of confidential commercial information must use good faith efforts to designate by appropriate markings . . . any portion of its submission that it considers to be protected from disclosure under Exemption 4." A similar requirement is also contained in proposed § 16.7(e) for submitters relying on Exemption 4 as a basis for nondisclosure after receipt of submitter notice. However, the commenter objected to the language of proposed § 16.7(e) that also states that a submitter *should* provide the component with detailed reasons for withholding under any FOIA exemption. The commenter suggested the use of the word "must" instead of "should."

The difference in the requirements is based on the nature of the information at issue. Submitters are in the best position to explain why information should be considered confidential commercial information pursuant to Exemption 4, but would not have any specialized insight into the application of other FOIA exemptions. Accordingly, although a submitter's opinion on the applicability of other FOIA exemptions is solicited, the Department does not require it because the components are best suited to make such disclosure determinations.

#### *Section 16.8 (Administrative Appeals)*

Two commenters took issue with the timing associated with submitting an administrative appeal set forth in

proposed § 16.8(a). In response, the Department increases the time period from 45 days to 60 days. The Department notes that the use of the postmark or transmission date, rather than a “received” date, will provide a date certain for requesters to ensure, and components to ascertain, the timeliness of an appeal.

The Department also adds language in § 16.8(c) of the final rule to indicate that, when issuing a decision on appeal, it will inform the requester of the mediation services offered by the Office of Government Information Services (“OGIS”) of the National Archives and Records Administration as a non-exclusive alternative to litigation.

#### *Section 16.9 (Preservation of Records)*

One commenter objected to the language in proposed § 16.9 concerning document preservation. The purpose of proposed § 16.9 is to ensure that components appropriately preserve all records that are subject to a pending request, appeal, or lawsuit under the FOIA. It was not the Department’s intention to narrow the scope of the obligation and so the Department is revising the language to state: “Records will not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.”

#### *Miscellaneous*

One commenter recommended that the regulations restate various provisions included in the 2009 President’s Memorandum on the FOIA, Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 FR 4683 (Jan. 21, 2009), and the 2009 Attorney General FOIA Guidelines, Attorney General Holder’s Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 FR 51879 (Oct. 8, 2009). For example, the commenter requested that the rule restate the provision in the Attorney General’s FOIA Guidelines that the Department will defend in litigation a denial of a FOIA request only if the disclosure is prohibited by law or if the agency reasonably foresees that disclosure would harm an interest protected by a statutory exemption. Because this rule addresses the procedures for making and responding to FOIA requests, rather than the conduct of FOIA litigation, the Department declines to make this change. The commenter also requested that the rule restore the provision in § 16.1(a) of the existing regulations with regard to the Department’s policy on

making discretionary disclosures. The Department has decided to do so.

In response to the public comments and feedback from Department components with respect to the phrasing of certain provisions, the Department is revising for clarity the following provisions: § 16.1 (General provisions), § 16.3 (Requirements for making requests), § 16.4 (Responsibility for responding to requests), § 16.6 (Responses to requests), § 16.8 (Administrative appeals), and § 16.10 (Fees). The new wording more precisely states the Department’s obligations with respect to consultations and referrals of documents, classified information, acknowledging receipt of requests, marking documents before release, and determining fee status.

In recognition of the greater efficiency of electronic communication, the final rule makes clear that requesters may submit requests and appeals electronically, and instructs components to communicate electronically with requesters to the extent practicable. This language is being added in § 16.3(a) (Requirements for making requests) (General information), § 16.6(a) (Responses to requests) (In general), and § 16.8(a) (Administrative appeals) (Requirements for making an appeal).

#### *Regulatory Flexibility Act*

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that it 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, fees assessed by the Department are nominal. Further, the “small entities” that make FOIA requests, as compared with individual requesters and other requesters, are relatively few in number.

#### *Executive Orders 12866 and 13563—Regulatory Review*

This regulation has been drafted and reviewed in accordance with Executive Order 12866 (“Regulatory Planning and Review”), section 1(b) (“The Principles of Regulation”), and in accordance with Executive Order 13563 (“Improving Regulation and Regulatory Review”), section 1 (“General Principles of Regulation”).

The Department of Justice has determined that this rule is a “significant regulatory action” under Executive Order 12866, section 3(f), and, accordingly, this rule has been

reviewed by the Office of Management and Budget.

Further, both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits.

The rule benefits the public by updating and streamlining the language in the Department’s existing FOIA regulation. For example, the rule simplifies the assessment of fees in two ways: (1) By eliminating the presumption that requesters will pay fees up to \$25 and instead providing that no fees will be assessed if the fees are under \$25; and (2) by collapsing three categories of personnel into two for purposes of calculating search fees.

The rule also benefits the public by incorporating references to procedures reflecting Department guidance issued subsequent to the existing version of the regulations, such as guidance on conducting consultations, referrals, and coordination, use of exclusions, assigning tracking numbers, notifying requesters of mediation services, and routing of misdirected requests. Updating the regulation to reflect existing procedures enhances transparency and reduces the risk of confusion for requesters. There are only de minimis costs associated with incorporating the guidance changes into the rule. Many of the provisions addressed in the guidance are implemented simply by inserting standard language into correspondence, such as the language advising requesters of the mediation services offered by OGIS. Other provisions, such as those requiring assignment of tracking numbers, routing of misdirected requests, and provision of status estimates, reference procedures that components were already doing to varying degrees and so incur no meaningful new costs, and to the extent those procedures are now standardized, the time expended to comply is minimal.

The Department does not have statistics as to how many requests fall within the \$15 to \$25 range. Based on our experience, the Department does not

expect that raising the fee threshold to \$25 will have a significant effect on the number of FOIA submissions. Further, for the subset of requests where the fees are more than \$14, but less than \$25, the public benefits by receiving the additional value of \$11 of services without charge. While the Department will incur the cost for those additional services, the cost is minimal since it is only a difference of \$11 per request, and it is counterbalanced by the time savings incurred by having the rule simplified. As a result, the Department believes that the effect of the threshold change will be de minimis. It simplifies matters for Department personnel as now there is a clear line between what requesters get for free—services under \$25—and when components start assessing fees—at \$25. That simplification for Department personnel is a benefit. The fees that the Department currently collects from requesters represent only 0.17% of the Department's processing costs and so the slight change in the threshold for assessing fees simply does not have a measurable cost impact on the Department.

The rule further benefits requesters by changing the way in which timeliness is determined for filing administrative appeals. The rule replaces the difficult-to-determine "received" date with a date certain (a postmark), which provides requesters with clarity as to timeliness while imposing no cost on the Department.

Lastly, the rule promotes understanding of requesters' statutory fee entitlements by requiring Department components to advise non-commercial-use requesters of their right to obtain 100 pages and two hours of search time for free. This will impose few if any costs on the Department; some components already follow this procedure, and the remainder can implement it easily.

In sum, the Department is confident that the rule provides multiple benefits to the public while imposing minimal costs.

#### *Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### *Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

#### **List of Subjects in 28 CFR Part 16**

Administrative practice and procedure, Freedom of information, Privacy.

For the reasons stated in the preamble, the Department of Justice amends 28 CFR chapter I, part 16, as follows:

#### **PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION**

- 1. Revise the authority citation for part 16 to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

- 2. Revise subpart A of part 16 to read as follows:

#### **Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act**

Sec.

- 16.1 General provisions.
- 16.2 Proactive disclosure of Department records.
- 16.3 Requirements for making requests.
- 16.4 Responsibility for responding to requests.
- 16.5 Timing of responses to requests.
- 16.6 Responses to requests.
- 16.7 Confidential commercial information.
- 16.8 Administrative appeals.
- 16.9 Preservation of records.
- 16.10 Fees.
- 16.11 Other rights and services.

#### **Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act**

##### **§ 16.1 General provisions.**

(a) This subpart contains the rules that the Department of Justice follows in processing requests for records under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. The rules in this subpart should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget

("OMB Guidelines"). Additionally, the Department's "FOIA Reference Guide" and its attachments contain information about the specific procedures particular to the Department with respect to making FOIA requests and descriptions of the types of records maintained by different Department components. This resource is available at [http://www.justice.gov/oip/04\\_3.html](http://www.justice.gov/oip/04_3.html). Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under subpart D of part 16 as well as under this subpart. As a matter of policy, the Department makes 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 referenced in this subpart, component means each separate bureau, office, division, commission, service, center, or administration that is designated by the Department as a primary organizational entity.

(c) The Department has a decentralized system for processing requests, with each component handling requests for its records.

#### **§ 16.2 Proactive disclosure of Department records.**

Records that are required by the FOIA to be made available for public inspection and copying may be accessed through the Department's Web site at [http://www.justice.gov/oip/04\\_2.html](http://www.justice.gov/oip/04_2.html). Each component is responsible for determining which of its records are required to be made publicly available, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. Each component shall ensure that its Web site of posted records and indices is reviewed and updated on an ongoing basis. Each component has a FOIA Public Liaison who can assist individuals in locating records particular to a component. A list of the Department's FOIA Public Liaisons is available at <http://www.justice.gov/oip/foiacontact/index-list.html>.

#### **§ 16.3 Requirements for making requests.**

(a) *General information.* (1) The Department has a decentralized system for responding to FOIA requests, with each component designating a FOIA office to process records from that component. All components have the capability to receive requests electronically either through email or a web portal. To make a request for



records of the Department, a requester should write directly to the FOIA office of the component that maintains the records being sought. A request will receive the quickest possible response if it is addressed to the FOIA office of the component that maintains the records sought. The Department's FOIA Reference Guide, which may be accessed as described in § 16.1(a), contains descriptions of the functions of each component and provides other information that is helpful in determining where to make a request. Each component's FOIA office and any additional requirements for submitting a request to a given component are listed in Appendix I to this part. Part 0 of this chapter also summarizes the functions of each component. These references can all be used by requesters to determine where to send their requests within the Department.

(2) A requester may also send requests to the FOIA/PA Mail Referral Unit, Justice Management Division, Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530-0001, or via email to [MRUFOIA.Requests@usdoj.gov](mailto:MRUFOIA.Requests@usdoj.gov), or via fax to (202) 616-6695. The Mail Referral Unit will forward the request to the component(s) that it determines to be most likely to maintain the records that are sought.

(3) A requester who is making a request for records about himself or herself must comply with the verification of identity provision set forth in subpart D of this part.

(4) Where a request for records pertains to a third party, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (e.g., a copy of a death certificate or an obituary). As an exercise of administrative discretion, each component can require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

(b) *Description of records sought.* Requesters must describe the records sought in sufficient detail to enable Department personnel to locate them with a reasonable amount of effort. To the extent possible, requesters should include specific information that may assist a component in identifying the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file

designation, or reference number. Requesters should refer to Appendix I to this part for additional, component-specific requirements. In general, requesters should include as much detail as possible about the specific records or the types of records that they are seeking. Before submitting their requests, requesters may contact the component's FOIA contact or FOIA Public Liaison to discuss the records they are seeking and to receive assistance in describing the records. If after receiving a request a component determines that it does not reasonably describe the records sought, the component shall inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the component's designated FOIA contact, its FOIA Public Liaison, or a representative of the Office of Information Policy ("OIP"), each of whom is available to assist the requester in reasonably describing the records sought. If a request does not reasonably describe the records sought, the agency's response to the request may be delayed.

#### **§ 16.4 Responsibility for responding to requests.**

(a) *In general.* Except in the instances described in paragraphs (c) and (d) of this section, the component that first receives a request for a record and maintains that record is the component responsible for responding to the request. In determining which records are responsive to a request, a component ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, the component shall inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), is not considered responsive to a request.

(b) *Authority to grant or deny requests.* The head of a component, or designee, is authorized to grant or to deny any requests for records that are maintained by that component.

(c) *Re-routing of misdirected requests.* Where a component's FOIA office determines that a request was misdirected within the Department, the receiving component's FOIA office shall route the request to the FOIA office of the proper component(s).

(d) *Consultation, referral, and coordination.* When reviewing records located by a component in response to a request, the component shall determine whether another component or another agency of the Federal

Government is better able to determine whether the record is exempt from disclosure under the FOIA and, if so, whether it should be released as a matter of discretion. As to any such record, the component shall proceed in one of the following ways:

(1) *Consultation.* When records originated with the component processing the request, but contain within them information of interest to another component, agency, or other Federal Government office, the component processing the request should typically consult with that other component or agency prior to making a release determination.

(2) *Referral.* (i) When the component processing the request believes that a different component, agency, or other Federal Government office is best able to determine whether to disclose the record, the component typically should refer the responsibility for responding to the request regarding that record, as long as the referral is to a component or agency that is subject to the FOIA. Ordinarily, the component or agency that originated the record will be presumed to be best able to make the disclosure determination. However, if the component processing the request and the originating component or agency jointly agree that the former is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever a component refers any part of the responsibility for responding to a request to another component or agency, it shall document the referral, maintain a copy of the record that it refers, and notify the requester of the referral and inform the requester of the name(s) of the component or agency to which the record was referred, including that component's or agency's FOIA contact information.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the component or agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement component responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if a component locates within its files material originating with an

Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the component that received the request should coordinate with the originating component or agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination should then be conveyed to the requester by the component that originally received the request.

(e) *Classified information.* On receipt of any request involving classified information, the component shall determine whether the information is currently and properly classified and take appropriate action to ensure compliance with part 17 of this title. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another component or agency under any applicable executive order concerning the classification of records, the receiving component shall refer the responsibility for responding to the request regarding that information to the component or agency that classified the information, or that should consider the information for classification. Whenever a component's record contains information that has been derivatively classified (for example, when it contains information classified by another component or agency), the component shall refer the responsibility for responding to that portion of the request to the component or agency that classified the underlying information.

(f) *Timing of responses to consultations and referrals.* All consultations and referrals received by the Department will be handled according to the date that the FOIA request initially was received by the first component or agency.

(g) *Agreements regarding consultations and referrals.* Components may establish agreements with other components or agencies to eliminate the need for consultations or referrals with respect to particular types of records.

#### § 16.5 Timing of responses to requests.

(a) *In general.* Components ordinarily will respond to requests according to their order of receipt. Appendix I to this part contains the list of the Department components that are designated to accept requests. In instances involving misdirected requests that are re-routed pursuant to § 16.4(c), the response time

will commence on the date that the request is received by the proper component's office that is designated to receive requests, but in any event not later than 10 working days after the request is first received by any component's office that is designated by these regulations to receive requests.

(b) *Multitrack processing.* All components must designate a specific track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (e) of this section. A component may also designate additional processing tracks that distinguish between simple and more complex requests based on the estimated amount of work or time needed to process the request. Among the factors a component may consider are the number of pages involved in processing the request and the need for consultations or referrals. Components shall advise requesters of the track into which their request falls and, when appropriate, shall offer the requesters an opportunity to narrow their request so that it can be placed in a different processing track.

(c) *Unusual circumstances.* Whenever the statutory time limit for processing a request cannot be met because of "unusual circumstances," as defined in the FOIA, and the component extends the time limit on that basis, the component shall, before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed. Where the extension exceeds 10 working days, the component shall, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing. The component shall make available its designated FOIA contact and its FOIA Public Liaison for this purpose.

(d) *Aggregating requests.* For the purposes of satisfying unusual circumstances under the FOIA, components may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. Components shall not aggregate multiple requests that involve unrelated matters.

(e) *Expedited processing.* (1) Requests and appeals shall be processed on an expedited basis whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably

be expected to pose an imminent threat to the life or physical safety of an individual;

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

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.

(2) A request for expedited processing may be made at any time. Requests based on paragraphs (e)(1)(i), (ii), and (iii) of this section must be submitted to the component that maintains the records requested. When making a request for expedited processing of an administrative appeal, the request should be submitted to OIP. Requests for expedited processing that are based on paragraph (e)(1)(iv) of this section must be submitted to the Director of Public Affairs at the Office of Public Affairs, Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530-0001. A component that receives a misdirected request for expedited processing under the standard set forth in paragraph (e)(1)(iv) of this section shall forward it immediately to the Office of Public Affairs for its determination. The time period for making the determination on the request for expedited processing under paragraph (e)(1)(iv) of this section shall commence on the date that the Office of Public Affairs receives the request, provided that it is routed within 10 working days.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (e)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an "urgency to inform" the public on the topic. As a matter of administrative discretion, a component

may waive the formal certification requirement.

(4) A component shall notify the requester within 10 calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request shall be given priority, placed in the processing track for expedited requests, and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

#### § 16.6 Responses to requests.

(a) *In general.* Components should, to the extent practicable, communicate with requesters having access to the Internet using electronic means, such as email or web portal.

(b) *Acknowledgments of requests.* A component shall acknowledge the request and assign it an individualized tracking number if it will take longer than 10 working days to process. Components shall include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests.

(c) *Grants of requests.* Once a component makes a determination to grant a request in full or in part, it shall notify the requester in writing. The component also shall inform the requester of any fees charged under § 16.10 and shall disclose the requested records to the requester promptly upon payment of any applicable fees.

(d) *Adverse determinations of requests.* A component making an adverse determination denying a request in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(e) *Content of denial.* The denial shall be signed by the head of the component, or designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemption applied by the component in denying the request;

(3) An estimate of the volume of any records or information withheld, such as the number of pages or some other reasonable form of estimation, although such an estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption; and

(4) A statement that the denial may be appealed under § 16.8(a), and a description of the requirements set forth therein.

(f) *Markings on released documents.* Markings on released documents must be clearly visible to the requester. Records disclosed in part shall be marked to show the amount of information deleted and the exemption under which the deletion was made 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 technically feasible.

(g) *Use of record exclusions.* (1) In the event that a component identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the component must confer with OIP to obtain approval to apply the exclusion.

(2) Any component invoking an exclusion shall maintain an administrative record of the process of invocation and approval of the exclusion by OIP.

#### § 16.7 Confidential commercial information.

(a) *Definitions.* (1) *Confidential commercial information* means commercial or financial information obtained by the Department from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity, including a corporation, State, or foreign government, but not including another Federal Government entity, that provides information, either directly or indirectly to the Federal Government.

(b) *Designation of confidential commercial information.* A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, either at the time of submission or within a reasonable time thereafter, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations shall expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) *When notice to submitters is required.* (1) A component shall promptly provide written notice to a submitter of confidential commercial information whenever records containing such information are requested under the FOIA if, after reviewing the request, the responsive records, and any appeal by the requester, the component determines that it may be required to disclose the records, provided:

(i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) The component has a reason to believe that the requested information may be protected from disclosure under Exemption 4, but has not yet determined whether the information is protected from disclosure under that exemption or any other applicable exemption.

(2) The notice shall either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, notice may be made by posting or publishing the notice in a place or manner reasonably likely to accomplish it.

(d) *Exceptions to submitter notice requirements.* The notice requirements of this section shall not apply if:

(1) The component determines that the information is exempt under the FOIA;

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

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987; or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous, except that, in such a case, the component shall give the submitter written notice of any final decision to disclose the information and must provide that notice within a reasonable number of days prior to a specified disclosure date.

(e) *Opportunity to object to disclosure.*

(1) A component shall specify a reasonable time period within which the submitter must respond to the notice referenced above. If a submitter has any objections to disclosure, it should provide the component a detailed written statement that specifies all grounds for withholding the particular

information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is privileged or confidential.

(2) A submitter who fails to respond within the time period specified in the notice shall be considered to have no objection to disclosure of the information. Information received by the component after the date of any disclosure decision shall not be considered by the component. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(f) *Analysis of objections.* A component shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(g) *Notice of intent to disclose.* Whenever a component decides to disclose information over the objection of a submitter, the component shall provide the submitter written notice, which shall include:

(1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

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

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

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

(i) *Requester notification.* The component shall notify a requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

#### **§ 16.8 Administrative appeals.**

(a) *Requirements for making an appeal.* A requester may appeal any adverse determinations to OIP. The contact information for OIP is contained in the FOIA Reference Guide, which is available at [http://www.justice.gov/oip/04\\_3.html](http://www.justice.gov/oip/04_3.html). Appeals can be submitted through the web portal accessible on OIP's Web site. Examples of adverse determinations are provided in § 16.6(d). The requester must make the appeal in writing and to be considered timely it must be postmarked, or in the case of electronic submissions, transmitted, within 60 calendar days after the date of the response. The

appeal should clearly identify the component's determination that is being appealed and the assigned request number. To facilitate handling, the requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, "Freedom of Information Act Appeal."

(b) *Adjudication of appeals.* (1) The Director of OIP or designee will act on behalf of the Attorney General on all appeals under this section.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(3) On receipt of any appeal involving classified information, OIP shall take appropriate action to ensure compliance with part 17 of this title.

(c) *Decisions on appeals.* A decision on an appeal must be made in writing. A decision that upholds a component's determination will contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision will provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation services offered by the Office of Government Information Services of the National Archives and Records Administration as a non-exclusive alternative to litigation. If a component's decision is remanded or modified on appeal, the requester will be notified of that determination in writing. The component will thereafter further process the request in accordance with that appeal determination and respond directly to the requester.

(d) *When appeal is required.* Before seeking review by a court of a component's adverse determination, a requester generally must first submit a timely administrative appeal.

#### **§ 16.9 Preservation of records.**

Each component shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 14 of the National Archives and Records Administration. Records shall not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

#### **§ 16.10 Fees.**

(a) *In general.* Components shall charge for processing requests under the FOIA in accordance with the provisions of this section and with the OMB Guidelines. In order to resolve any fee issues that arise under this section, a

component may contact a requester for additional information. Components shall ensure that searches, review, and duplication are conducted in the most efficient and the least expensive manner. A component ordinarily will collect all applicable fees before sending copies of 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* is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. A component's decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information.

(2) *Direct costs* are those expenses that an agency incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.*, the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

(3) *Duplication* is reproducing a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

(4) *Educational institution* is any school that operates a program of scholarly research. A requester in this fee category must show that the request is authorized by, and is made under the auspices of, an educational institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research. To fall within this fee category, the request must serve the scholarly research goals of the institution rather than an individual research goal.

*Example 1.* A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

*Example 2.* A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a

murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

*Example 3.* A student who makes a request in furtherance of the completion of a course of instruction would be presumed to be carrying out an individual research goal, rather than a scholarly research goal of the institution and would not qualify as part of this fee category.

(5) *Noncommercial scientific institution* is an institution that is not operated on a "commercial" basis, as 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. A requester in this category 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 and are not for a commercial use.

(6) *Representative of the news media* is any person or entity organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. 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 that broadcast "news" to the public at large and publishers of periodicals that disseminate "news" and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the Internet. A request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use. "Freelance" journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, components shall also consider a requester's past publication record in making this determination.

(7) *Review* is the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of

redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under § 16.7, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* is the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

(c) *Charging fees.* In responding to FOIA requests, components shall charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section. Because the fee amounts provided below already account for the direct costs associated with a given fee type, components should not add any additional costs to charges calculated under this section.

(1) *Search.* (i) Requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media are not subject to search fees. Search fees shall be charged for all other requesters, subject to the restrictions of paragraph (d) of this section. Components may properly charge for time spent searching even if they do not locate any responsive records or if they determine that the records are entirely exempt from disclosure.

(ii) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees shall be as follows: professional—\$10.00; and clerical/administrative—\$4.75.

(iii) Requesters shall be charged the direct costs associated with conducting any search that requires the creation of a new computer program to locate the requested records. Requesters shall be notified of the costs associated with creating such a program and must agree to pay the associated costs before the costs may be incurred.

(iv) For requests that require the retrieval of records stored by an agency at a Federal records center operated by the National Archives and Records Administration (NARA), additional costs shall be charged in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) *Duplication.* Duplication fees shall be charged to all requesters, subject to

the restrictions of paragraph (d) of this section. A component shall honor a requester's preference for receiving a record in a particular form or format where it is readily reproducible by the component in the form or format requested. Where photocopies are supplied, the component shall provide one copy per request at a cost of five cents per page. For copies of records produced on tapes, disks, or other media, components shall charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials. For other forms of duplication, components shall charge the direct costs.

(3) *Review.* Review fees shall be charged to requesters who make commercial use requests. Review fees shall be assessed in connection with the initial review of the record, *i.e.*, the review conducted by a component to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if a particular exemption is deemed to no longer apply, any costs associated with a component's re-review of the records in order to consider the use of other exemptions may be assessed as review fees. Review fees shall be charged at the same rates as those charged for a search under paragraph (c)(1)(i) of this section.

(d) *Restrictions on charging fees.* (1) No search fees will be charged for requests by educational institutions (unless the records are sought for a commercial use), noncommercial scientific institutions, or representatives of the news media.

(2) If a component fails to comply with the time limits in which to respond to a request, and if no unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (d)(1) of this section, may not charge duplication fees.

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

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

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

(ii) The first two hours of search.

(5) When, after first deducting the 100 free pages (or its cost equivalent) and the first two hours of search, a total fee calculated under paragraph (c) of this section is \$25.00 or less for any request, no fee will be charged.

(e) *Notice of anticipated fees in excess of \$25.00.* (1) When a component determines or estimates that the fees to be assessed in accordance with this section will exceed \$25.00, the component shall notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review or duplication, 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 accordingly. If the requester is a noncommercial use requester, the notice shall specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge, and shall advise the requester whether those entitlements have been provided.

(2) In cases in which a requester has been notified that the actual or estimated fees are in excess of \$25.00, the request shall not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees the requester is willing to pay, or in the case of a noncommercial use requester who has not yet been provided with the requester's statutory entitlements, designates that the requester seeks only that which can be provided by the statutory entitlements. The requester must provide the commitment or designation in writing, and must, when applicable, designate an exact dollar amount the requester is willing to pay. Components are not required to accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the component estimates that the total fee will exceed that amount, the component shall toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The component shall inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to

respond will resume from where it was at the date of the notification.

(4) Components shall make available their FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Although not required to provide special services, if a component chooses to do so as a matter of administrative discretion, the direct costs of providing the service shall be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(g) *Charging interest.* Components may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges shall be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date 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.* When a component reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single 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-day period have been made in order to avoid fees. For requests separated by a longer period, components will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of 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) or (i)(3) of this section, a component shall not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (*i.e.*, payment before copies are sent to a requester) is not an advance payment.

(2) When a component determines or estimates that a total fee to be charged under this section will exceed \$250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. A component may elect to process the

request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to any component or agency within 30 calendar days of the billing date, a component may require that the requester pay the full amount due, plus any applicable interest on that prior request, and the component may require that the requester 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 or any pending appeal. Where a component has a reasonable basis to believe that a requester has misrepresented the requester's identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which a component requires advance payment, the request shall not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of the component's fee determination, the request will be closed.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the component shall inform the requester of the contact information for that program.

(k) *Requirements for waiver or reduction of fees.* (1) Records responsive to a request shall be furnished without charge or at a reduced rate below the rate established under paragraph (c) of this section, where 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) In deciding whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities

of the government, components shall consider all four of the following factors:

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

(ii) Disclosure 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 the same or a substantially identical form, would not contribute to such understanding where nothing new would be added to the public’s understanding.

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

(iv) The public’s understanding of the subject in question must be enhanced by the disclosure to a significant extent. However, components shall not make value judgments about whether the information at issue is “important” enough to be made public.

(3) To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, components shall consider the following factors:

(i) Components shall identify any commercial interest of the requester, as defined in paragraph (b)(1) of this section, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

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

(4) Where only some of the records to be released satisfy the requirements for

a waiver of fees, a waiver shall be granted for those records.

(5) Requests for a waiver or reduction of fees should be made when the request is first submitted to the component and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester shall be required to pay any costs incurred up to the date the fee waiver request was received.

#### **§ 16.11 Other rights and services.**

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

■ 3. Revise Appendix I to part 16 to read as follows:

#### **Appendix I to Part 16—Components of the Department of Justice**

Please consult Attachment B of the Department of Justice FOIA Reference Guide for the contact information and a detailed description of the types of records maintained by each Department component. The FOIA Reference Guide is available at [http://www.justice.gov/oip/04\\_3.html](http://www.justice.gov/oip/04_3.html) or upon request to the Office of Information Policy.

The FOIA offices of Department components and any component-specific requirements for making a FOIA request are listed below. The Certification of Identity form, available at [http://www.justice.gov/oip/forms/cert\\_ind.pdf](http://www.justice.gov/oip/forms/cert_ind.pdf), may be used by individuals who are making requests for records pertaining to themselves. For each of the six components marked with an asterisk, FOIA and Privacy Act (PA) access requests must be sent to OIP, which handles initial requests for those six components.

Antitrust Division, FOIA/PA Unit  
Bureau of Alcohol, Tobacco, Firearms, and Explosives, Disclosure Division  
Civil Division, FOIA/PA Officer

Requests for records from case files must include a case caption or name, civil court case number, and judicial district.

Civil Rights Division, FOIA/PA Branch  
Community Relations Service, FOIA/PA Coordinator

Criminal Division, FOIA/PA Unit  
Drug Enforcement Administration, Freedom of Information Operations Unit, FOI/Records Management Section

Environment and Natural Resources Division, FOIA Coordinator, Law and Policy Section

Requests for records from case files must include a case caption or name, civil or criminal court case number, and judicial district.

Executive Office for Immigration Review, Office of the General Counsel

When seeking access to records concerning a named alien individual, requesters

must include an alien registration number (“A” number). If the “A” number is not known or the case occurred before 1988, the date of an Order to Show Cause, country of origin, and location of the immigration hearing must be provided.

Executive Office for United States Attorneys, FOIA/Privacy Unit

Executive Office for Organized Crime Drug Enforcement Task Forces

Requests for records from case files must include the judicial district in which the investigation/prosecution or other litigation occurred.

Executive Office for United States Trustees, FOIA/PA Counsel, Office of the General Counsel

Requests for records from bankruptcy case files must include a case caption or name, case number, and judicial district.

Federal Bureau of Investigation, Record/Information Dissemination Section, Records Management Division

Federal Bureau of Prisons, FOIA/PA Section

Foreign Claims Settlement Commission  
INTERPOL–U.S. National Central Bureau, FOIA/PA Specialist, Office of General Counsel

Justice Management Division, FOIA Contact  
National Security Division, FOIA Initiatives Coordinator

Office of the Associate Attorney General\*  
Office of the Attorney General\*

Office of Community Oriented Policing Services, FOIA Officer, Legal Division

Office of the Deputy Attorney General\*  
Office of Information Policy

Office of the Inspector General, Office of the General Counsel

Office of Justice Programs, Office of the General Counsel

Office of Legal Counsel

Office of Legal Policy\*

Office of Legislative Affairs\*

Office of the Pardon Attorney, FOIA Officer  
Office of Professional Responsibility, Special

Counsel for Freedom of Information and Privacy Acts

Office of Public Affairs\*

Office of the Solicitor General

Requests for records from case files must include a case name, docket number, or citation to case.

Office on Violence Against Women  
Professional Responsibility Advisory Office, Information Management Specialist

Tax Division, Division Counsel for FOIA and PA Matters

Requests for records from case files must include a case caption or name, civil or criminal court case number, and judicial district.

United States Marshals Service, Office of the General Counsel

Requests for records concerning seized property must specify the judicial district of the seizure, civil court case number, asset identification number, and an accurate description of the property.

United States Parole Commission, FOIA/PA Specialist

Dated: March 27, 2015.

**Eric H. Holder, Jr.,**  
Attorney General.

[FR Doc. 2015-07772 Filed 4-2-15; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2014-1029]

RIN 1625-AA09

#### Drawbridge Operation Regulation; Hoquiam River, Hoquiam, WA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is temporarily modifying the operating schedule that governs the Simpson Avenue Bridge on the Hoquiam River, mile 0.5, at Hoquiam, Washington. This temporary final rule is necessary to accommodate Washington State Department of Transportation's (WSDOT) extensive maintenance and restoration efforts on this bridge. WSDOT will only open one leaf of the double leaf bascule bridge when at least two hours of notice is given.

**DATES:** This temporary final rule is effective from 7 a.m. on April 1, 2015 to 11 p.m. on November 30, 2015.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG-2014-1029. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. To avoid duplication, please use only one of three methods.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule change, call or email Steven M. Fischer, Bridge Administrator, Thirteenth Coast Guard District Bridge

Program Office, telephone 206-220-7282; email [d13-pf-d13bridges@uscg.mil](mailto:d13-pf-d13bridges@uscg.mil). If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

CFR Code of Federal Regulations  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of Proposed Rulemaking  
§ Section Symbol  
U.S.C. United States Code

#### A. Regulatory History and Information

On January 2, 2015, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled "Drawbridge Operation Regulation; Hoquiam River, Hoquiam, WA" in the **Federal Register** (80 FR 21). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register** because to wait otherwise would be impracticable because *WSDOT's work will commence on April 1, 2015 and, as noted below, there is no indication that the change will have a significant impact on any waterways users.*

#### B. Basis and Purpose

WSDOT, who owns and operates the Simpson Avenue Bridge on the Hoquiam River in Hoquiam, Washington, has requested a change to the bridge's existing operating regulations in order to facilitate the maintenance and restoration of the bridge. The restoration project will entail painting, rust removal, and steel repairs which require a full containment system to keep paint and debris out of the Hoquiam River.

In an effort to accommodate both the needs of the waterway and highway users, WSDOT has requested a rule change in order to eliminate the need to repeatedly uninstall and reinstall the containment system. As such, the Coast Guard will change the bridge's current operating regulation from April 1, 2015 to November 30, 2015. During that time the drawbridge would be maintained in the closed position except that, upon at least two hours advance notice, one leaf of the double leaf bascule bridge would be opened.

Vessels that are able to transit under the bridge without an opening will be free to do so. However, the existing

vertical navigation clearance of the closed draw span leaf (one half of the double leaf draw bridge), will be reduced from approximately 35 feet to approximately 25 feet at mean high tide and the horizontal navigation clearance will be reduced from 125 feet to approximately 52 feet. Navigation clearance reduction is due to the installation of a required containment system.

Vessel traffic along this part of the Hoquiam River consists of vessels ranging from commercial tug and barge to small pleasure craft. WSDOT has examined bridge opening logs and contacted all waterway users that have requested bridge openings throughout the last year. The input WSDOT received from waterway users indicated that the temporary rule change will have no impact on the known users.

#### C. Discussion of Final Rule

The Coast Guard will revise the operating regulations at 33 CFR 117.1047. The regulation currently states that the Simpson Avenue Bridge shall open on signal if at least one hour notice is given. The Coast Guard will change the regulation such that from 7 a.m. on April 1, 2015 to 6 p.m. on November 30, 2015, the draw of the Simpson Avenue Bridge, on the Hoquiam River at mile 0.5, at Hoquiam, Washington, shall open half of the bascule (single leaf) when at least two hours of advance notice is given. No alternate routes are available for this waterway. Vessels that can transit under the bridge without an opening may do so at any time, although the existing vertical navigation clearance of the closed draw span (one half of the double leaf draw bridge), will be reduced from approximately 35 feet to approximately 25 feet at mean high tide and the horizontal navigation clearance will be reduced from 125 feet to approximately 52 feet. Navigation clearance reduction is due to the installation of a required containment system.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of