Office of the Secretary, Education

§ 5.10 Subpart B—Agency Records Available to the Public

§ 5.10 Public reading room.

(a) General. Pursuant to 5 U.S.C. 552(a)(2), the Department maintains a public reading room containing agency records that the FOIA requires to be made regularly available for public inspection and copying. Published records of the Department, whether or not available for purchase, are made available for examination. The Department’s public reading room is located at the National Library of Education, 400 Maryland Avenue, SW., Plaza Level (Level B), Washington, DC 20202-0008. The hours of operation are 9:00 a.m. to 5:00 p.m., Monday through Friday (except Federal holidays).

(b) Reading room records. Agency records maintained in the public reading room include final opinions and orders in adjudications, statements of policy and interpretations adopted by the Department and not published in the Federal Register, administrative staff manuals and instructions affecting the public, and copies of all agency records regardless of form or format released to the public pursuant to a FOIA request that the Department determines are likely to be the subject of future FOIA requests.

(c) Electronic access. The Department makes reading room records created on
§ 5.11 Business information.

(a) General. The Department discloses business information it obtains from a submitter under the Act in accordance with this section.

(b) Definitions. For purposes of this section:

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

(2) Submitter means any person or entity (including corporations; State, local, and tribal governments; and foreign governments) from whom the Department obtains business information.

(c) Designation of business information.

(1) A submitter must use good faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portion of its submission that it considers to be business information protected from disclosure under Exemption 4 of the Act.

(2) A submitter’s designations are not binding on the Department and will expire 10 years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(3) A blanket designation on each page of a submission that all information contained on the page is protected from disclosure under Exemption 4 presumptively will not be considered a good faith effort.

(d) Notice to submitters. Except as provided in paragraph (g) of this section, the Department promptly notifies a submitter whenever a FOIA request or administrative appeal is made under the Act seeking disclosure of the information the submitter has designated in good faith as business information protected from disclosure under Exemption 4 of this section, or the Department otherwise has reason to believe that it may be required to disclose information sought to be designated by the submitter as business information protected from disclosure under Exemption 4 of the Act. This notice includes either a description of the business information requested or copies of the requested agency records or portions of agency records containing the requested business information as well as a time period, consistent with §5.21(c), within which the submitter can object to the disclosure pursuant to paragraph (e) of this section.

(e) Opportunity to object to disclosure.

(1) If a submitter objects to disclosure, it must submit to the Department a detailed written statement specifying all grounds under Exemption 4 of the Act for denying access to the information, or a portion of the information sought.

(2) A submitter’s failure to object to the disclosure by the deadline established by the Department in the notice provided under paragraph (d) of this section constitutes a waiver of the submitter’s right to object to disclosure under paragraph (e) of this section.

(3) A submitter’s response to a notice from the Department under paragraph (d) of this section may itself be subject to disclosure under the Act.

(f) Notice of intent to disclose. The Department considers a submitter’s objections and submissions made in support thereof in deciding whether to disclose business information sought to be protected by the submitter. Whenever the Department decides to disclose information over a submitter’s objection, the Department gives the submitter written notice, which includes:

(1) A statement of the reasons why the submitter’s objections to disclosure were not sustained.

(2) A description of the information to be disclosed.

(3) A specified disclosure date that is a reasonable time subsequent to the notice.

(g) Exceptions to notice requirements. The notice requirements of paragraph (d) of this section do not apply if—

(1) The Department does not disclose the business information of the submitter;

(2) The Department has previously lawfully published the information;