



# **CODE OF FEDERAL REGULATIONS**

## **Title 1** General Provisions

Revised as of January 1, 2016

Containing a codification of documents  
of general applicability and future effect

As of January 1, 2016

Published by the Office of the Federal Register  
National Archives and Records Administration  
as a Special Edition of the Federal Register



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The seal of the National Archives and Records Administration (NARA) authenticates the Code of Federal Regulations (CFR) as the official codification of Federal regulations established under the Federal Register Act. Under the provisions of 44 U.S.C. 1507, the contents of the CFR, a special edition of the Federal Register, shall be judicially noticed. The CFR is prima facie evidence of the original documents published in the Federal Register (44 U.S.C. 1510).

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*Cite this Code:* CFR

*To cite the regulations in  
this volume use title,  
part and section num-  
ber. Thus, 1 CFR 1.1 re-  
fers to title 1, part 1,  
section 1.*

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## Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....	as of January 1
Title 17 through Title 27.....	as of April 1
Title 28 through Title 41.....	as of July 1
Title 42 through Title 50.....	as of October 1

The appropriate revision date is printed on the cover of each volume.

### LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

### HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, January 1, 2016), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

### EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

### OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request.

Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

#### PAST PROVISIONS OF THE CODE

Provisions of the Code that are no longer in force and effect as of the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on any given date in the past by using the appropriate List of CFR Sections Affected (LSA). For the convenience of the reader, a “List of CFR Sections Affected” is published at the end of each CFR volume. For changes to the Code prior to the LSA listings at the end of the volume, consult previous annual editions of the LSA. For changes to the Code prior to 2001, consult the List of CFR Sections Affected compilations, published for 1949-1963, 1964-1972, 1973-1985, and 1986-2000.

#### “[RESERVED]” TERMINOLOGY

The term “[Reserved]” is used as a place holder within the Code of Federal Regulations. An agency may add regulatory information at a “[Reserved]” location at any time. Occasionally “[Reserved]” is used editorially to indicate that a portion of the CFR was left vacant and not accidentally dropped due to a printing or computer error.

#### INCORPORATION BY REFERENCE

*What is incorporation by reference?* Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

*What is a proper incorporation by reference?* The Director of the Federal Register will approve an incorporation by reference only when the requirements of 1 CFR part 51 are met. Some of the elements on which approval is based are:

- (a) The incorporation will substantially reduce the volume of material published in the Federal Register.
- (b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.
- (c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR part 51.

*What if the material incorporated by reference cannot be found?* If you have any problem locating or obtaining a copy of material listed as an approved incorporation by reference, please contact the agency that issued the regulation containing that incorporation. If, after contacting the agency, you find the material is not available, please notify the Director of the Federal Register, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001, or call 202-741-6010.

#### CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Authorities and Rules. A list of CFR titles, chapters, subchapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of “Title 3—The President” is carried within that volume. The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the “Contents” entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

#### REPUBLICATION OF MATERIAL

There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

#### INQUIRIES

For a legal interpretation or explanation of any regulation in this volume, contact the issuing agency. The issuing agency’s name appears at the top of odd-numbered pages.

For inquiries concerning CFR reference assistance, call 202-741-6000 or write to the Director, Office of the Federal Register, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001 or e-mail [fedreg.info@nara.gov](mailto:fedreg.info@nara.gov).

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#### ELECTRONIC SERVICES

The full text of the Code of Federal Regulations, the LSA (List of CFR Sections Affected), The United States Government Manual, the Federal Register, Public Laws, Public Papers of the Presidents of the United States, Compilation of Presidential Documents and the Privacy Act Compilation are available in electronic format via [www.ofr.gov](http://www.ofr.gov). For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800, or 866-512-1800 (toll-free). E-mail, [ContactCenter@gpo.gov](mailto:ContactCenter@gpo.gov).

The Office of the Federal Register also offers a free service on the National Archives and Records Administration’s (NARA) World Wide Web site for public law numbers, Federal Register finding aids, and related information. Connect to NARA’s web site at [www.archives.gov/federal-register](http://www.archives.gov/federal-register).

The e-CFR is a regularly updated, unofficial editorial compilation of CFR material and Federal Register amendments, produced by the Office of the Federal Register and the Government Publishing Office. It is available at [www.ecfr.gov](http://www.ecfr.gov).

OLIVER A. POTTS,  
*Director,*  
*Office of the Federal Register.*  
*January 1, 2016.*





## THIS TITLE

Title 1—GENERAL PROVISIONS is composed of one volume. This volume is comprised of Chapter I—Administrative Committee of the Federal Register, Chapter II—Office of the Federal Register, Chapter III—Administrative Conference of the United States, and Chapter IV—Miscellaneous Agencies. The contents of this volume represents all current regulations codified under this title of the CFR as of January 1, 2016.

Chapter IV contains the current Privacy Act, Freedom of Information Act, and Rehabilitation Act regulations issued by miscellaneous agencies.

For this volume, Bonnie Fritts was Chief Editor. The Code of Federal Regulations publication program is under the direction of John Hyrum Martinez, assisted by Stephen J. Frattini.



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# CHAPTER I—ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

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## SUBCHAPTER A—GENERAL

### PART 1—DEFINITIONS

AUTHORITY: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p.189.

#### § 1.1 Definitions.

As used in this chapter, unless the context requires otherwise—

*Administrative Committee* means the Administrative Committee of the Federal Register established under section 1506 of title 44, United States Code;

*Agency* means each authority, whether or not within or subject to review by another agency, of the United States, other than the Congress, the courts, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States;

*Document* includes any Presidential proclamation or Executive order, and any rule, regulation, order, certificate, code of fair competition, license, notice, or similar instrument issued, prescribed, or promulgated by an agency;

*Document having general applicability and legal effect* means any document issued under proper authority prescribing a penalty or course of conduct, conferring a right, privilege, authority, or immunity, or imposing an obligation, and relevant or applicable to the general public, members of a class, or persons in a locality, as distinguished from named individuals or organizations; and

*Filing* means making a document available for public inspection at the Office of the Federal Register during official business hours. A document is filed only after it has been received, processed and assigned a publication date according to the schedule in part 17 of this chapter.

*Regulation* and *rule* have the same meaning.

[37 FR 23603, Nov. 4, 1972, as amended at 50 FR 12466, Mar. 28, 1985]

### PART 2—GENERAL INFORMATION

Sec.

2.1 Scope and purpose.

2.2 Administrative Committee of the Federal Register.

2.3 Office of the Federal Register; location; office hours.

2.4 General authority of Director.

2.5 Publication of statutes, regulations, and related documents.

2.6 Unrestricted use.

AUTHORITY: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189; 1 U.S.C. 112; 1 U.S.C. 113.

SOURCE: 37 FR 23603, Nov. 4, 1972, unless otherwise noted.

#### § 2.1 Scope and purpose.

(a) This chapter sets forth the policies, procedures, and delegations under which the Administrative Committee of the Federal Register carries out its general responsibilities under chapter 15 of title 44, United States Code.

(b) A primary purpose of this chapter is to inform the public of the nature and uses of Federal Register publications.

#### § 2.2 Administrative Committee of the Federal Register.

(a) The Administrative Committee of the Federal Register is established by section 1506 of title 44, United States Code.

(b) The Committee consists of—

(1) The Archivist, or Acting Archivist, of the United States, who is the Chairman;

(2) An officer of the Department of Justice designated by the Attorney General; and

(3) The Public Printer or Acting Public Printer.

(c) The Director of the Federal Register is the Secretary of the Committee.

(d) Any material required by law to be filed with the Committee, and any correspondence, inquiries, or other material intended for the Committee or which relate to Federal Register publications shall be sent to the Director of the Federal Register.

## § 2.3

## 1 CFR Ch. I (1–1–16 Edition)

### § 2.3 Office of the Federal Register; location; office hours.

(a) The Office of the Federal Register is a component of the National Archives and Records Administration.

(b) The Office is located at 800 North Capitol, NW., suite 700, Washington, DC.

(c) The mailing address is: Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

(d) Office hours are 8:45 a.m. to 5:15 p.m., Monday through Friday, except for official Federal holidays.

[37 FR 23603, Nov. 4, 1972, as amended at 54 FR 9676, Mar. 7, 1989; 57 FR 40024, Sept. 1, 1992]

### § 2.4 General authority of Director.

(a) The Director of the Federal Register is delegated authority to administer generally this chapter, the related provisions of chapter 15 of title 44, United States Code, and the pertinent provisions of statutes and regulations contemplated by section 1505 of title 44, United States Code.

(b) The Director may return to the issuing agency any document submitted for publication in the FEDERAL REGISTER, or a special edition thereof, if in the Director's judgment the document does not meet the minimum requirements of this chapter.

[37 FR 23603, Nov. 4, 1972, as amended at 54 FR 9676, Mar. 7, 1989]

### § 2.5 Publication of statutes, regulations, and related documents.

(a) The Director of the Federal Register is responsible for the central filing of the original acts enacted by Congress and the original documents containing Executive orders and proclamations of the President, other Presidential documents, regulations, and notices of proposed rulemaking and other notices, submitted to the Director by officials of the executive branch of the Federal Government.

(b) Based on the acts and documents filed under paragraph (a) of this section, the Office of the Federal Register publishes the "slip laws," the "United States Statutes at Large," the daily FEDERAL REGISTER and the "Code of Federal Regulations."

(c) Based on source materials that are officially related to the acts and documents filed under paragraph (a) of this section, the Office also publishes "The United States Government Manual," the "Public Papers of the Presidents of the United States," the "Daily Compilation of Presidential Documents," the "FEDERAL REGISTER Index," and the "LSA (List of CFR Sections Affected)."

[37 FR 23603, Nov. 4, 1972, as amended at 54 FR 9676, Mar. 7, 1989; 74 FR 3952, Jan. 21, 2009]

### § 2.6 Unrestricted use.

Any person may reproduce or republish, without restriction, any material appearing in any regular or special edition of the FEDERAL REGISTER.

## PART 3—SERVICES TO THE PUBLIC

Sec.

3.1 Information services.

3.2 Public inspection of documents.

3.3 Reproduction and certification of copies of acts and documents.

AUTHORITY: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

SOURCE: 37 FR 23604, Nov. 4, 1972, unless otherwise noted.

### § 3.1 Information services.

Except in cases where the time required would be excessive, information concerning the publications described in § 2.5 of this chapter and the original acts and documents filed with the Office of the Federal Register is provided by the staff of that Office. However, the staff may not summarize or interpret substantive text of any act or document.

### § 3.2 Public inspection of documents.

(a) Documents filed with the Office of the Federal Register pursuant to law are available for public inspection at 800 North Capitol Street, NW., suite 700, Washington, DC, during the Office of the Federal Register office hours. There are no formal inspection procedures or requirements.



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**§ 3.3**

(b) The Director of the Federal Register shall cause each document received by the office to be filed for public inspection not later than the working day preceding the publication day for that document.

(c) The Director shall cause to be placed on the original and certified copies of each document a notation of the day and hour when it was filed and made available for public inspection.

(d) Photocopies of documents or excerpts may be made at the inspection desk.

[37 FR 23604, Nov. 4, 1972, as amended at 54 FR 9676, Mar. 7, 1989; 57 FR 40025, Sept. 1, 1992]

**§ 3.3 Reproduction and certification of copies of acts and documents.**

The regulations for the public use of records in the National Archives (36 CFR parts 1252-1258) govern the furnishing of reproductions of acts and documents and certificates of authentication for them. Section 1258.14 of those regulations provides for the advance payment of appropriate fees for reproduction services and for certifying reproductions.

[51 FR 27017, July 29, 1986, as amended at 54 FR 9676, Mar. 7, 1989]

## SUBCHAPTER B—THE FEDERAL REGISTER

### PART 5—GENERAL

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- 5.1 Publication policy.
  - 5.2 Documents required to be filed for public inspection and published.
  - 5.3 Publication of other documents.
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  - 5.6 Daily publication.
  - 5.7 Delivery and mailing.
  - 5.8 Form of citation.
  - 5.9 Categories of documents.
  - 5.10 Forms of publication.

AUTHORITY: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

SOURCE: 37 FR 23604, Nov. 4, 1972, unless otherwise noted.

#### § 5.1 Publication policy.

(a) Pursuant to chapter 15 of title 44, United States Code, and this chapter, the Director of the Federal Register shall publish a serial publication called the FEDERAL REGISTER to contain the following:

- (1) Executive orders, proclamations, and other Presidential documents.
- (2) Documents required to be published therein by law.
- (3) Documents accepted for publication under § 5.3.

(b) Each document required or authorized to be filed for publication shall be published in the FEDERAL REGISTER as promptly as possible, within limitations imposed by considerations of accuracy, usability, and reasonable costs.

(c) In prescribing regulations governing headings, preambles, effective dates, authority citations, and similar matters of form, the Administrative Committee does not intend to affect the validity of any document that is filed and published under law.

#### § 5.2 Documents required to be filed for public inspection and published.

The following documents are required to be filed for public inspection with the Office of the Federal Register and published in the FEDERAL REGISTER:

- (a) Presidential proclamations and Executive orders in the numbered se-

ries, and each other document that the President submits for publication or orders to be published.

(b) Each document or class of documents required to be published by act of Congress.

(c) Each document having general applicability and legal effect.

[37 FR 23604, Nov. 4, 1972, as amended at 54 FR 9676, Mar. 7, 1989]

#### § 5.3 Publication of other documents.

Whenever the Director of the Federal Register considers that publication of a document not covered by § 5.2 would be in the public interest, the Director may allow that document to be filed for public inspection with the Office of the Federal Register and published in the FEDERAL REGISTER.

[54 FR 9676, Mar. 7, 1989]

#### § 5.4 Publication not authorized.

(a) Chapter 15 of title 44, United States Code, does not apply to treaties, conventions, protocols, or other international agreements, or proclamations thereof by the President.

(b) Chapter 15 of title 44, United States Code, prohibits the publication in the FEDERAL REGISTER of comments or news items.

(c) The Director of the Federal Register may not accept any document for filing and publication unless it is the official action of the agency concerned. Chapter 15 of title 44, United States Code, does not authorize or require the filing and publication of other papers from an agency.

#### § 5.5 Supplement to the Code of Federal Regulations.

The FEDERAL REGISTER serves as a daily supplement to the Code of Federal Regulations. Each document that is subject to codification and published in a daily issue shall be keyed to the Code of Federal Regulations.

## Admin. Comm. of the Federal Register

## § 6.3

### § 5.6 Daily publication.

There shall be an edition of the FEDERAL REGISTER published for each official Federal working day.

[54 FR 9676, Mar. 7, 1989]

### § 5.7 Delivery and mailing.

The Government Printing Office shall distribute the FEDERAL REGISTER by delivery or by deposit at a post office at or before 9 a.m. on the publication day, except that each FEDERAL REGISTER dated for a Monday shall be deposited at a post office at or before 9 a.m. on the preceding Saturday.

### § 5.8 Form of citation.

Without prejudice to any other form of citation, FEDERAL REGISTER material may be cited by volume and page number, and the short form "FR" may be used for "FEDERAL REGISTER". For example, "37 FR 6803" refers to material beginning on page 6803 of volume 37 of the daily issues.

### § 5.9 Categories of documents.

Each document published in the FEDERAL REGISTER shall be placed under one of the following categories, as indicated:

(a) *The President*. This category contains each Executive order or Presidential proclamation and each other Presidential document that the President submits for publication or orders to be published.

(b) *Rules and regulations*. This category contains each document having general applicability and legal effect, except those covered by paragraph (a) of this section. This category includes documents subject to codification, general policy statements concerning regulations, interpretations of agency regulations, statements of organization and function, and documents that affect other documents previously published in the rules and regulations section.

(c) *Proposed rules*. This category contains each notice of proposed rule-making submitted pursuant to section 553 of title 5, United States Code, or any other law, which if promulgated as a rule, would have general applicability and legal effect. This category includes documents that suggest

changes to regulations in the Code of Federal Regulations, begin a rule-making proceeding, and affect or relate to other documents previously published in the proposed rules section.

(d) *Notices*. This category contains miscellaneous documents applicable to the public and not covered by paragraphs (a), (b), and (c) of this section. This category includes announcements of meetings and other information of public interest.

[37 FR 23604, Nov. 4, 1972, as amended at 54 FR 9676, Mar. 7, 1989]

### § 5.10 Forms of publication.

Pursuant to section 1506 of title 44, United States Code, the Administrative Committee publishes the FEDERAL REGISTER in the following formats: paper; microfiche; and online on GPO Access (44 U.S.C. 4101).

[61 FR 68118, Dec. 27, 1996]

## PART 6—INDEXES AND ANCILLARIES

Sec.

- 6.1 Index to daily issues.
- 6.2 Analytical subject indexes.
- 6.3 Daily lists of parts affected.
- 6.4 Monthly list of sections affected.
- 6.5 Indexes, digests, and guides.

AUTHORITY: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954-1958 Comp., p. 189.

SOURCE: 37 FR 23605, Nov. 4, 1972, unless otherwise noted.

### § 6.1 Index to daily issues.

Each daily issue of the FEDERAL REGISTER shall be appropriately indexed.

### § 6.2 Analytical subject indexes.

Analytical subject indexes covering the contents of the FEDERAL REGISTER shall be published as currently as practicable and shall be cumulated and separately published at least once each calendar year.

### § 6.3 Daily lists of parts affected.

(a) Each daily issue of the FEDERAL REGISTER shall carry a numerical list of the parts of the Code of Federal Regulations specifically affected by documents published in that issue.

(b) Beginning with the second issue of each month, each daily issue shall

## § 6.4

also carry a cumulated list of the parts affected by documents published during that month.

### § 6.4 Monthly list of sections affected.

A monthly list of sections of the Code of Federal Regulations affected shall be separately published on a cumulative basis during each calendar year. The list shall identify the sections of the Code specifically affected by documents published in the FEDERAL REGISTER during the period it covers.

### § 6.5 Indexes, digests, and guides.

(a) The Director of the Federal Register may order the preparation and

## 1 CFR Ch. I (1-1-16 Edition)

publication of indexes, digests, and similar guides, based on laws, Presidential documents, regulatory documents, and notice materials published by the Office, which will serve users of the FEDERAL REGISTER. Indexes, digests, and similar guides will be published yearly or at other intervals as necessary to keep them current and useful.

(b) Each index, digest, and guide is considered to be a special edition of the FEDERAL REGISTER whenever the public need requires special printing or special binding in substantial numbers.

[54 FR 9676, Mar. 7, 1989]

## SUBCHAPTER C—SPECIAL EDITIONS OF THE FEDERAL REGISTER

### PART 8—CODE OF FEDERAL REGULATIONS

Sec.

- 8.1 Policy.
- 8.2 Orderly development.
- 8.3 Periodic updating.
- 8.4 Indexes.
- 8.5 Ancillaries.
- 8.6 Forms of publication.
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AUTHORITY: 44 U.S.C. 1506, 1510; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954-1958 Comp., p. 189.

SOURCE: 37 FR 23605, Nov. 4, 1972, unless otherwise noted.

#### § 8.1 Policy.

(a) Pursuant to chapter 15 of title 44, United States Code, the Director of the Federal Register shall publish periodically a special edition of the FEDERAL REGISTER to present a compact and practical code called the "Code of Federal Regulations", to contain each Federal regulation of general applicability and legal effect.

(b) The Administrative Committee intends that every practical means be used to keep the Code as current and readily usable as possible, within limitations imposed by dependability and reasonable costs.

[37 FR 23605, Nov. 4, 1972, as amended at 54 FR 9677, Mar. 7, 1989]

#### § 8.2 Orderly development.

To assure orderly development of the Code of Federal Regulations along practical lines, the Director of the Federal Register may establish new titles in the Code and rearrange existing titles and subordinate assignments. However, before taking an action under this section, the Director shall consult with each agency directly affected by the proposed change.

#### § 8.3 Periodic updating.

(a) *Criteria.* Each book of the Code shall be updated at least once each calendar year. If no change in its contents has occurred during the year, a simple

notation to that effect may serve as the supplement for that year. More frequent updating of any unit of the Code may be made whenever the Director of the Federal Register determines that the content of the unit has been substantially superseded or otherwise determines that such action would be consistent with the intent and purpose of the Administrative Committee as stated in § 8.1.

(b) *Staggered publication.* The Code will be produced over a 12-month period under a staggered publication system to be determined by the Director of the Federal Register.

(c) *Cutoff dates.* Each updated title of the Code will reflect each amendment to that title published as a codified regulation in the FEDERAL REGISTER on or before the "As of" date. Thus, each title updated as of July 1 each year will reflect all amendatory documents appearing in the daily FEDERAL REGISTER on or before July 1.

[37 FR 23605, Nov. 4, 1972, as amended at 54 FR 9677, Mar. 7, 1989]

#### § 8.4 Indexes.

A subject index to the entire Code shall be annually revised and separately published. An agency-prepared index for any individual book may be published with the approval of the Director of the Federal Register.

#### § 8.5 Ancillaries.

The Code shall provide, among others, the following-described finding aids:

(a) *Parallel tables of statutory authorities and rules.* In the Code of Federal Regulations Index or at such other place as the Director of the Federal Register considers appropriate, numerical lists of all sections of the current edition of the United States Code (except section 301 of title 5) which are cited by issuing agencies as rule-making authority for currently effective regulations in the Code of Federal Regulations. The lists shall be arranged in the order of the titles and sections of the United States Code with

## §8.6

parallel citations to the pertinent titles and parts of the Code of Federal Regulations.

(b) *Parallel tables of Presidential documents and agency rules.* In the Code of Federal Regulations Index, or at such other place as the Director of the Federal Register considers appropriate, tables of proclamations, Executive orders, and similar Presidential documents which are cited as rulemaking authority in currently effective regulations in the Code of Federal Regulations.

(c) *List of CFR sections affected.* Following the text of each Code of Federal Regulations volume, a numerical list of sections which are affected by documents published in the FEDERAL REGISTER. (Separate volumes, “List of Sections Affected, 1949–1963” and “List of CFR Sections Affected, 1964–1972”, list all sections of the Code which have been affected by documents published during the period January 1, 1949, to December 31, 1963, and January 1, 1964, to December 31, 1972, respectively.)<sup>1</sup> Listings shall refer to FEDERAL REGISTER pages and shall be designed to enable the user of the Code to find the precise text that was in effect on a given date in the period covered.

[37 FR 23605, Nov. 4, 1972, as amended at 54 FR 9677, Mar. 7, 1989]

## §8.6 Forms of publication.

(a) Under section 1506 of title 44, United States Code, the Administrative Committee authorizes publication of the Code of Federal Regulations in the following formats:

- (1) Paper;
- (2) Microfiche; and
- (3) Online on GPO Access (44 U.S.C. 4101).

(b) The Director of the Federal Register is authorized to regulate the format of the Code of Federal Regulations according to the needs of users and compatibility with the facilities of the Government Printing Office. The Director may provide for the Code of Federal Regulations to be printed in as many separately bound books as nec-

<sup>1</sup>A three volume set, “List of CFR Sections Affected, 1973–1985”, lists all sections of the Code which have been affected during the period January 1, 1973 to December 31, 1985.

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essary, set requirements for microfiche images, and oversee the organization and means of access to material in the online edition.

[65 FR 8843, Feb. 23, 2000]

## §8.7 Agency cooperation.

Each agency shall cooperate in keeping publication of the Code current by complying promptly with deadlines set by the Director of the Federal Register and the Public Printer.

## §8.9 Form of citation.

The Code of Federal Regulations may be cited by title and section, and the short form “CFR” may be used for “Code of Federal Regulations.” For example, “1 CFR 10.2” refers to title 1, Code of Federal Regulations, part 10, section 2.

## PART 9—THE UNITED STATES GOVERNMENT MANUAL

Sec.

9.1 Publication required.

9.2 Scope.

AUTHORITY: 5 U.S.C. 552; 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

SOURCE: 76 FR 6312, Feb. 4, 2011, unless otherwise noted.

## §9.1 Publication required.

(a) The Director publishes a special edition of the FEDERAL REGISTER called “The United States Government Manual” as authorized by the Administrative Committee.

(b) The Director may update the *Manual* when such supplementation is considered to be in the public interest.

## §9.2 Scope.

(a) The *Manual* will contain appropriate information about the Executive, Legislative, and Judicial branches of the Federal Government, which for the major Executive agencies will include—

(1) Descriptions of the agency’s legal authorities, public purposes, programs, and functions;

(2) Established places and methods whereby the public may obtain information and make submittals or requests; and

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(3) Lists of officials heading major operating units.

(b) The *Manual* will also contain brief information about quasi-official agencies and supplemental information that, in the opinion of the Director, is of enough public interest to warrant.

### PART 10—PRESIDENTIAL PAPERS

#### Subpart A—Regular Publication

Sec.

- 10.1 Publication required.
- 10.2 Scope and sources.
- 10.3 Format.

#### Subpart B—Annual Publication

- 10.10 Publication required.
- 10.11 Scope and sources.
- 10.12 Format, indexes, and ancillaries.
- 10.13 Coverage of prior years.

AUTHORITY: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954-1958 Comp., p. 189.

SOURCE: 50 FR 12467, Mar. 28, 1985, unless otherwise noted.

#### Subpart A—Regular Publication

##### § 10.1 Publication required.

The Director publishes a special edition of the FEDERAL REGISTER compiling recent presidential documents, called “The Daily Compilation of Presidential Documents.”

[74 FR 3952, Jan. 21, 2009]

##### § 10.2 Scope and sources.

(a) The text of the publication consists of oral statements by the President or of writing subscribed by the President, and selected from transcripts or text issued by the Office of the White House Press Secretary, including—

- (1) Communications to Congress;
- (2) Public addresses and remarks;
- (3) News conferences and interviews;
- (4) Public messages and letters;
- (5) Statements released on miscellaneous subjects; and
- (6) Formal executive documents promulgated in accordance with law.

(b) In addition, each publication includes selections, either in full text or ancillary form, from the following groups of documents, when issued by the Press Office.

(1) Announcements of Presidential appointments and nominations;

(2) White House statements and announcements on miscellaneous subjects;

(3) Statements by the Press Secretary or Deputy Press Secretary;

(4) Statements and news conferences by senior administration officials; and

(5) Fact sheets.

[50 FR 12467, Mar. 28, 1985, as amended at 74 FR 3952, Jan. 21, 2009]

##### § 10.3 Format.

The Daily Compilation of Presidential Documents is published online on the Government Printing Office access system.

[74 FR 3952, Jan. 21, 2009]

#### Subpart B—Annual Publication

##### § 10.10 Publication required.

The Director of the Federal Register shall publish annually a special edition of the FEDERAL REGISTER called the “Public Papers of the Presidents of the United States”.

##### § 10.11 Scope and sources.

The basic text of the Public Papers consists of the documents compiled under subpart A of this part.

[74 FR 3952, Jan. 21, 2009]

##### § 10.12 Format, indexes, and ancillaries.

(a) Each publication covers one calendar year, unless procedures require otherwise, and is divided into books according to the amount of material to be included. The publication is published in the binding and style that the Administrative Committee of the Federal Register considers suitable to the dignity of the Office of the President of the United States.

(b) Each publication is appropriately indexed and contains additional ancillary information and illustrative material respecting significant Presidential documents and activities.

##### § 10.13 Coverage of prior years.

The Administrative Committee may authorize the publication of volumes of

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papers of the Presidents covering specified years before 1945 after consulting

with the National Historical Publications and Records Commission.



## SUBCHAPTER D—AVAILABILITY OF OFFICE OF THE FEDERAL REGISTER PUBLICATIONS

### PART 11—SUBSCRIPTIONS

Sec.

- 11.1 Subscription by the public.
- 11.2 Federal Register.
- 11.3 Code of Federal Regulations.
- 11.4 The United States Government Manual.
- 11.5 Public Papers of the Presidents of the United States.
- 11.6 [Reserved]
- 11.7 Federal Register Index.
- 11.8 LSA (List of CFR Sections Affected).

AUTHORITY: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

SOURCE: 54 FR 9677, Mar. 7, 1989, unless otherwise noted.

#### § 11.1 Subscription by the public.

The Government Printing Office produces the paper and microfiche editions of the publications described in § 2.5 of this chapter, and the Superintendent of Documents, Government Printing Office, Washington, DC 20402, makes them available for sale to the public. All fees are payable in advance to the Superintendent of Documents, Government Printing Office. They are not available for free distribution to the public.

[54 FR 9677, Mar. 7, 1989, as amended at 61 FR 68118, Dec. 27, 1996]

#### § 11.2 Federal Register.

(a) The subscription price for the paper edition of the daily FEDERAL REGISTER is \$749 per year. A combined subscription to the daily FEDERAL REGISTER, the monthly FEDERAL REGISTER Index, and the monthly LSA (List of CFR Sections Affected) is \$808 per year for the paper edition, or \$165 per year for the microfiche edition. Six-month subscriptions for the paper and microfiche editions are also available at one-half the annual rate. Those prices exclude postage. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily FEDERAL REGISTER, including postage, is based on the number of pages: \$11 for an issue containing less than 200 pages; \$22 for an issue containing 200 to 400

pages; and \$33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for \$3 per copy, including postage.

(b) The online edition of the FEDERAL REGISTER, issued under the authority of the Administrative Committee, is available on GPO Access, a service of the Government Printing Office (44 U.S.C. 4101).

[61 FR 68119, Dec. 27, 1996, as amended at 65 FR 8843, Feb. 23, 2000; 66 FR 44524, Aug. 24, 2001; 69 FR 12783, Mar. 18, 2004]

#### § 11.3 Code of Federal Regulations.

(a) The subscription price for a complete set of the Code of Federal Regulations is \$1,019 per year for the bound, paper edition, or \$247 per year for the microfiche edition. Those prices exclude postage. The prevailing postal rates will be applied to orders according to the delivery method requested. The Government Printing Office sells individual volumes of the paper edition of the Code of Federal Regulations at prices determined by the Superintendent of Documents under the general direction of the Administrative Committee. The price of a single volume of the microfiche edition is \$4 per copy, including postage.

(b) The online edition of the Code of Federal Regulations, issued under the authority of the Administrative Committee, is available on GPO Access, a service of the Government Printing Office (44 U.S.C. 4101).

[65 FR 8843, Feb. 23, 2000, as amended at 66 FR 44524, Aug. 24, 2001; 69 FR 12783, Mar. 18, 2004]

#### § 11.4 The United States Government Manual.

(a) The online edition of the *Manual*, issued under the authority of the Administrative Committee, is available through the Government Printing Office's Web site.

(b) Copies of a bound, paper edition of the *Manual* may be sold at a price determined by the Superintendent of

## § 11.5

Documents under the general direction of the Administrative Committee.

[76 FR 6313, Feb. 4, 2011]

### § 11.5 Public Papers of the Presidents of the United States.

Copies of annual clothbound volumes are sold at a price determined by the Superintendent of Documents under the general direction of the Administrative Committee.

### § 11.6 [Reserved]

### § 11.7 Federal Register Index.

The annual subscription price for the monthly FEDERAL REGISTER Index, purchased separately, in paper form, is \$29. The price excludes postage. The prevailing postal rates will be applied to orders according to the delivery method requested.

[69 FR 12783, Mar. 18, 2004]

### § 11.8 LSA (List of CFR Sections Affected).

The annual subscription price for the monthly LSA (List of CFR Sections Affected), purchased separately, in paper form, is \$30. The price excludes postage. The prevailing postal rates will be applied to orders according to the delivery method requested.

[69 FR 12783, Mar. 18, 2004]

## PART 12—OFFICIAL DISTRIBUTION WITHIN FEDERAL GOVERNMENT

Sec.

12.1 Federal Register.

12.2 Code of Federal Regulations.

12.4 Weekly Compilation of Presidential Documents.

12.5 Public Papers of the Presidents of the United States.

AUTHORITY: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

SOURCE: 54 FR 9678, Mar. 7, 1989, unless otherwise noted.

### § 12.1 Federal Register.

(a) Copies of the daily FEDERAL REGISTER in paper or microfiche form shall be made available to the following without charge:

(1) *Members of Congress.* Each Senator and each Member of the House of Representatives will be provided with not

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more than five copies of each daily issue based on a written request to the Director of the Federal Register.

(2) *Congressional committees.* Each committee of the Senate and the House of Representatives will be provided with the number of copies needed for official use based on a written request from the chairperson, or authorized delegate, to the Director of the Federal Register.

(3) *Supreme Court.* The Supreme Court will be provided with the number of copies needed for official use based on a written request to the Director of the Federal Register.

(4) *Other courts.* Other constitutional or legislative courts of the United States will be provided with the number of copies needed for official use based on a written request from the Director of the Administrative Office of the U.S. Courts, or authorized delegate, to the Director of the Federal Register.

(5) *Executive agencies.* Each Federal executive agency will be provided with the number of copies needed for official use based on a written request from the agency Federal Register authorizing officer, or the alternate, designated under § 16.1 of this chapter, to the Director of the Federal Register.

(b) Requisitions for quantity overruns of specific issues to be paid for by the agency are available as follows:

(1) To meet its needs for special distribution of the FEDERAL REGISTER in substantial quantity, any agency may request an overrun of a specific issue.

(2) An advance printing and binding requisition on Standard Form 1 must be submitted by the agency directly to the Government Printing Office, to be received not later than 12 noon on the working day before publication.

(c) Requisitions for quantity overruns of separate part issues to be paid for by the agency are available as follows:

(1) Whenever it is determined by the Director of the Federal Register to be in the public interest, one or more documents may be published as a separate part (e.g., part II, part III) of the FEDERAL REGISTER.

(2) Advance arrangements for this service must be made with the Office of the Federal Register.

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(3) Any agency may request an over-run of such a separate part by submitting an advance printing and binding requisition on Standard Form 1 directly to the Government Printing Office, to be received not later than 12 noon on the working day before the publication date.

(d) An agency may order limited quantities of extra copies of a specific issue of the FEDERAL REGISTER for official use, from the Superintendent of Documents, to be paid for by that agency.

(e) Copies of the Federal Register Index and LSA (List of CFR Sections Affected) are included with each FEDERAL REGISTER official distribution.

### § 12.2 Code of Federal Regulations.

(a) Copies of the Code of Federal Regulations in paper or microfiche form shall be made available to the following without charge:

(1) *Congressional committees.* Each committee of the Senate and House of Representatives will be provided with the number of copies needed for official use based on a written request from the chairperson, or authorized delegate, to the Director of the Federal Register.

(2) *Supreme Court.* The Supreme Court will be provided with the number of copies needed for official use based on a written request to the Director of the Federal Register.

(3) *Other courts.* Other constitutional and legislative courts of the United States will be provided with the number of copies needed for official use based on a written request from the Director of the Administrative Office of the U.S. Courts, or authorized delegate, to the Director of the Federal Register.

(4) *Executive agencies.* Each Federal executive agency will be provided with the number of copies needed for official use, not to exceed 300 copies of individual titles per agency, based on a written request from the agency Federal Register authorizing officer, or the alternate, designated under §16.1 of this chapter, to the Director of the Federal Register.

(b) Legislative, judicial, and executive agencies of the Federal Government may obtain additional copies of selected units of the Code, at cost, for official use, by submission, before the

press run, of a printing and binding requisition to the Government Printing Office on Standard Form 1.

(c) After the press run, each request for extra copies of selected units of the Code must be addressed to the Superintendent of Documents, to be paid for by the agency making the request.

### § 12.4 Weekly Compilation of Presidential Documents.

(a) Copies of the Weekly Compilation of Presidential Documents shall be made available to the following without charge:

(1) *Members of Congress.* Each Senator and each Member of the House of Representatives will be provided with the number of copies needed for official use based on a written request to the Director of the Federal Register.

(2) *Congressional committees.* Each committee of the Senate and the House of Representatives will be provided with the number of copies needed for official use based on a written request from the chairperson, or authorized delegate, to the Director of the Federal Register.

(3) *Supreme Court.* The Supreme Court will be provided with the number of copies needed for official use based on a written request to the Director of the Federal Register.

(4) *Other courts.* Other constitutional and legislative courts of the United States will be provided with the number of copies needed for official use based on a written request from the Director of the Administrative Office of the U.S. Courts, or authorized delegate, to the Director of the Federal Register.

(5) *Executive agencies.* Each Federal executive agency will be provided with the number of copies needed for official use based on a written request from the agency Federal Register authorizing officer, or the alternate designated under §16.1 of this chapter, to the Director of the Federal Register.

(b) Legislative, judicial, and executive agencies of the Federal Government may obtain additional copies of selected issues of the Weekly Compilation of Presidential Documents, at cost, for official use, by submission, before the press run, of a printing and binding requisition to the Government Printing Office on a Standard Form 1.

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(c) After the press run, each request for extra copies of selected issues must be addressed to the Superintendent of Documents, to be paid for by the agency making the request.

written request to the Director of the Federal Register.

**§ 12.5 Public Papers of the Presidents of the United States.**

(3) *Executive agencies.* Each head of a Federal executive agency will be provided with one copy of each annual publication based on a written request from the agency Federal Register authorizing officer, or the alternate, designated under §16.1 of this chapter, to the Director of the Federal Register.

(a) Copies of the Public Papers of the Presidents of the United States shall be made available to the following without charge:

(b) Legislative, judicial, and executive agencies of the Federal Government may obtain additional copies, at cost, for official use, by submission before the press run, of a printing and binding requisition to the Government Printing Office on Standard Form 1.

(1) *Members of Congress.* Each Senator and each Member of the House of Representatives will be provided with one copy of each annual publication published during the Member's term in office based on a written request to the Director of the Federal Register.

(c) After the press run, each request for extra copies must be addressed to the Superintendent of Documents, to be paid for by the agency making the request.

(2) *Supreme Court.* The Supreme Court will be provided with not more than 12 copies of each publication based on a

## SUBCHAPTER E—PREPARATION, TRANSMITTAL, AND PROCESSING OF DOCUMENTS

### PART 15—SERVICES TO FEDERAL AGENCIES

#### Subpart A—General

Sec.

- 15.1 Cooperation.
- 15.2 Information services.
- 15.3 Staff assistance.
- 15.4 Reproduction and certification of copies of acts and documents.

#### Subpart B—Special Assistance

- 15.10 Information on drafting and publication.

AUTHORITY: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

SOURCE: 37 FR 23607, Nov. 4, 1972, unless otherwise noted.

#### Subpart A—General

##### § 15.1 Cooperation.

The Director of the Federal Register shall assist each agency in complying with the pertinent publication laws to assure efficient public service in promulgating administrative documents having the effect of legal notice or of law.

##### § 15.2 Information services.

The Director of the Federal Register shall provide for the answering of each appropriate inquiry presented in person, by telephone, or in writing. Each written communication and each matter involving the Administrative Committee shall be sent to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

[50 FR 12468, Mar. 28, 1985]

##### § 15.3 Staff assistance.

The staff of the Office of the Federal Register shall provide informal assistance and advice to officials of the various agencies with respect to general or specific programs of regulatory drafting, procedures, and promulgation practices.

##### § 15.4 Reproduction and certification of copies of acts and documents.

The Director of the Federal Register shall furnish to requesting agencies, at cost, reproductions or certified copies of original acts and documents filed with that Office that are needed for official use unless funds are appropriated for that purpose.

[50 FR 12468, Mar. 28, 1985, as amended at 54 FR 9679, Mar. 7, 1989]

#### Subpart B—Special Assistance

##### § 15.10 Information on drafting and publication.

The Director of the Federal Register may prepare, and distribute to agencies, information and instructions designed to promote effective compliance with the purposes of chapter 15 of title 44, United States Code, sections 552–553 of title 5, United States Code, related statutes, and this chapter. The Director may also develop and conduct programs of technical instruction.

### PART 16—AGENCY REPRESENTATIVES

Sec.

- 16.1 Designation.
- 16.2 Liaison duties.
- 16.3 Certifying duties.
- 16.4 Authorizing duties.

AUTHORITY: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

SOURCE: 37 FR 23608, Nov. 4, 1972, unless otherwise noted.

##### § 16.1 Designation.

(a) Each agency shall designate, from its officers or employees, persons to serve in the following capacities with relation to the Office of the Federal Register:

- (1) A liaison officer and an alternate.
- (2) A certifying officer and an alternate.
- (3) An authorizing officer and an alternate.

The same person may be designated to serve in one or more of these positions.

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(b) In choosing its liaison officer, each agency should consider that this officer will be the main contact between that agency and the Office of the Federal Register and that the liaison officer will be charged with the duties set forth in § 16.2. Therefore, the agency should choose a person who is directly involved in the agency's regulatory program.

(c) Each agency shall notify the Director of the name, title, address, and telephone number of each person it designates under this section and shall promptly notify the Director of any changes.

### § 16.2 Liaison duties.

Each agency liaison officer shall—

(a) Represent the agency in all matters relating to the submission of documents to the Office of the Federal Register, and respecting general compliance with this chapter;

(b) Be responsible for the effective distribution and use within the agency of Federal Register information on document drafting and publication assistance authorized by § 15.10 of this chapter;

(c) Promote the agency's participation in the technical instruction authorized by § 15.10 of this chapter; and

(d) Be available to discuss documents submitted for publication with the editors of the FEDERAL REGISTER.

[54 FR 9679, Mar. 7, 1989]

### § 16.3 Certifying duties.

The agency certifying officer is responsible for attaching the required number of true copies of each original document submitted by the agency to the Office of the Federal Register and for making the certification required by §§ 18.5 and 18.6 of this chapter.

[54 FR 9679, Mar. 7, 1989]

### § 16.4 Authorizing duties.

The agency authorizing officer is responsible for furnishing, to the Director of the Federal Register, a current mailing list of officers or employees of the agency who are authorized to receive the FEDERAL REGISTER, the Code of Federal Regulations, and the Weekly

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[54 FR 9679, Mar. 7, 1989]

## PART 17—FILING FOR PUBLIC INSPECTION AND PUBLICATION SCHEDULES

Sec.

### Subpart A—Receipt and Processing

17.1 Receipt and processing.

### Subpart B—Regular Schedule

17.2 Procedure and timing for regular schedule.

### Subpart C—Emergency Schedule

17.3 Criteria for emergency publication.

17.4 Procedure and timing for emergency publication.

17.5 Criteria for emergency filing for public inspection.

17.6 Procedure and timing for emergency filing for public inspection.

### Subpart D—Deferred Schedule

17.7 Criteria for deferred schedule.

AUTHORITY: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

SOURCE: 37 FR 23608, Nov. 4, 1972, unless otherwise noted.

### Subpart A—Receipt and Processing

#### § 17.1 Receipt and processing.

Unless special arrangements are made with the Director of the Federal Register, the Office of the Federal Register receives documents only during official working hours. Upon receipt, each document shall be held for confidential processing until it is filed for public inspection.

### Subpart B—Regular Schedule

#### § 17.2 Procedure and timing for regular schedule.

(a) Each document received shall be filed for public inspection only after it has been received, processed and assigned a publication date.

(b) Except as provided in paragraph (d) of this section, each document received by 2:00 p.m. which meets the requirements of this chapter shall be assigned to the regular schedule. Unless the issuing agency makes special arrangements otherwise, or the Office determines that the document requires a deferred schedule (see 1 CFR 17.7), receipt of a document by 2:00 p.m. is considered to be a request for filing for public inspection and publication on the regular schedule. Documents received after 2:00 p.m. which meet the requirements of this chapter shall be assigned to the next working day's regular schedule.

(c) The regular schedule for filing for public inspection and publication is as follows:

Received before 2:00 p.m.	Filed for public in- spection	Published
Monday .....	Wednesday .....	Thursday
Tuesday .....	Thursday .....	Friday
Wednesday .....	Friday .....	Monday
Thursday .....	Monday .....	Tuesday
Friday .....	Tuesday .....	Wednesday

Where a legal Federal holiday intervenes, one additional work day is added.

(d) Each notice of meeting issued under the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)) is placed on immediate public inspection after it has been received, processed, and assigned a publication date.

(1) Each notice received before 4:00 p.m. is scheduled to be published 2 working days later.

(2) Each notice received after 4:00 p.m. is scheduled to be published 3 working days later.

[54 FR 9680, Mar. 7, 1989]

**Subpart C—Emergency Schedule**

**§ 17.3 Criteria for emergency publication.**

The emergency schedule is designed to provide the fastest possible publication of a document involving the prevention, alleviation, control, or relief of an emergency situation.

[37 FR 23608, Nov. 4, 1972, as amended at 54 FR 9680, Mar. 7, 1989]

**§ 17.4 Procedure and timing for emergency publication.**

(a) Each agency requesting publication on the emergency schedule shall briefly describe the emergency and the benefits to be attributed to immediate publication in the FEDERAL REGISTER. The request must be made by letter.

(b) The Director of the Federal Register shall assign a document to the emergency schedule whenever the Director concurs with a request for that action and it is feasible.

(c) Each document assigned to the emergency schedule shall be published as soon as possible.

(d) Each document assigned to the emergency schedule for publication will be filed for public inspection on the working day before publication unless emergency filing for public inspection is also requested.

[37 FR 23608, Nov. 4, 1972, as amended at 54 FR 9680, Mar. 7, 1989]

**§ 17.5 Criteria for emergency filing for public inspection.**

An agency may request emergency filing for public inspection for documents to be published under the regular, emergency or deferred publication schedules. Emergency filing for public inspection provides for the fastest possible public access to a document after it has been received, processed and assigned a publication date. Emergency filing for public inspection is considered a special arrangement under §17.2 of this part that results in deviation from the regular schedule for filing for public inspection. A document receiving emergency filing for public inspection remains on public inspection until it is published according to the schedule for publication.

[54 FR 9680, Mar. 7, 1989]

**§ 17.6 Procedure and timing for emergency filing for public inspection.**

(a) Each agency requesting emergency filing for public inspection shall briefly describe the emergency and the benefits to be attributed to immediate public access. The request must be made by letter.

(b) The Director of the Federal Register shall approve an emergency filing for public inspection request whenever

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the Director concurs with a request for that action and it is feasible.

(c) Each document approved for emergency filing for public inspection shall be filed as soon as possible following processing and scheduling.

[54 FR 9680, Mar. 7, 1989]

### Subpart D—Deferred Schedule

#### § 17.7 Criteria for deferred schedule.

(a) A document may be assigned to the deferred schedule under the following conditions:

(1) There are technical problems, unusual or lengthy tables, or illustrations, or the document is of such size as to require extraordinary processing time.

(2) The agency concerned requests a deferred publication date.

(b) The Office of the Federal Register staff will notify the agency if its documents must be assigned to a deferred schedule.

[37 FR 23608, Nov. 4, 1972, as amended at 54 FR 9680, Mar. 7, 1989; 54 FR 23343, May 31, 1989]

## PART 18—PREPARATION AND TRANSMITTAL OF DOCUMENTS GENERALLY

Sec.

18.1 Original and copies required.

18.2 Prohibition on combined category documents.

18.3 Submission of documents and letters of transmittal.

18.4 Form of document.

18.5 Certified copies.

18.6 Form of certification.

18.7 Signature.

18.8 Seal.

18.9 Style.

18.10 Illustrations, tabular material, and forms.

18.12 Preamble requirements.

18.13 Withdrawal or correction of filed documents.

18.15 Correction of errors in printing.

18.16 Reinstatement of expired regulations.

18.17 Effective dates and time periods.

18.20 Identification of subjects in agency regulations.

AUTHORITY: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

SOURCE: 37 FR 23609, Nov. 4, 1972, unless otherwise noted.

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#### § 18.1 Original and copies required.

Except as provided in § 19.2 of this subchapter for Executive orders and proclamations, each agency submitting a document to be filed and published in the FEDERAL REGISTER shall send an original and two duplicate originals or certified copies.<sup>1</sup> However, if the document is printed or processed on both sides, one of the copies sent by the agency must be a collated, single-sided copy.

[54 FR 9680, Mar. 7, 1989]

#### § 18.2 Prohibition on combined category documents.

(a) The Director of the Federal Register will not accept a document for filing and publication if it combines material that must appear under more than one category in the FEDERAL REGISTER. For example, a document may not contain both rulemaking and notice of proposed rulemaking material.

(b) Where two related documents are to be published in the same FEDERAL REGISTER issue, the agency may insert a cross-reference in each document.

[54 FR 9680, Mar. 7, 1989]

#### § 18.3 Submission of documents and letters of transmittal.

(a) Each document authorized or required by law to be filed for public inspection with the Office of the Federal Register and published in the FEDERAL REGISTER shall be sent to the Director of the Federal Register.

(b) Except for cases involving special handling or treatment, there is no need for a letter of transmittal for a document submitted for filing and FEDERAL REGISTER publication.

(c) Receipt dates are determined at the time a signed original and clear and legible copies are received.

[37 FR 23609, Nov. 4, 1972, as amended at 54 FR 9680, Mar. 7, 1989]

#### § 18.4 Form of document.

(a) A printed or processed document may be accepted for filing for public inspection and publication if it is on

<sup>1</sup>Agencies with computer processed data are urged to consult with the Office of the Federal Register staff about possible use of the data in the publication process.



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bond or similar quality paper, legible, and free of adhesive or correction tape.<sup>2</sup>

(b) A document in the form of a letter or press release may not be accepted for filing for public inspection or publication in the rules and regulations, proposed rules, or notices categories of the FEDERAL REGISTER.

(c) Original documents submitted by telecommunication and authenticated by digital signatures consistent with applicable Federal standards and Office of the Federal Register technical specifications may be accepted for publication.<sup>3</sup>

[54 FR 9681, Mar. 7, 1989, as amended at 61 FR 68119, Dec. 27, 1996]

### § 18.5 Certified copies.

The certified copies or duplicate originals of each document must be submitted with the original. Each copy or duplicate must be entirely clear and legible.

[54 FR 9681, Mar. 7, 1989]

### § 18.6 Form of certification.

Each copy of each document submitted for filing and publication, except a Presidential document or a duplicate original, must be certified as follows:

(Certified to be a true copy of the original)

The certification must be signed by a certifying officer designated under §16.1 of this chapter.

[54 FR 9681, Mar. 7, 1989]

### § 18.7 Signature.

The original and each duplicate original document must be signed in ink, with the name and title of the official signing the document typed or stamped beneath the signature. Initialed or impressed signatures will not be accepted. Documents submitted under §18.4(c) may be authenticated as

<sup>2</sup>Agencies with computer processed data are urged to consult with the Office of the Federal Register staff about possible use of the data in the publication process.

<sup>3</sup>At present, submission of documents by telecommunication is limited to selected pilot projects.

original documents by digital signatures.

[37 FR 23609, Nov. 4, 1972, as amended at 54 FR 9681, Mar. 7, 1989; 61 FR 68119, Dec. 27, 1996]

### § 18.8 Seal.

Use of a seal on an original document or certified copy is optional with the issuing agency.

### § 18.9 Style.

Each document submitted by an agency for filing and publication shall conform to the current edition of the U.S. Government Printing Office Style Manual in punctuation, capitalization, spelling, and other matters of style.

[54 FR 9681, Mar. 7, 1989]

### § 18.10 Illustrations, tabular material, and forms.

(a) If it is necessary to publish a form or illustration, a clear and legible original form or illustration, or a clear and completely legible reproduction approximately 8 ½ by 11 inches, shall be included in the original document and each certified copy.

(b) A document that includes tabular material may be assigned to the deferred publication schedule. See §17.7.

[54 FR 9681, Mar. 7, 1989]

### § 18.12 Preamble requirements.

(a) Each agency submitting a proposed or final rule document for publication shall prepare a preamble which will inform the reader, who is not an expert in the subject area, of the basis and purpose for the rule or proposal.

(b) The preamble shall be in the following format and contain the following information:

AGENCY: \_\_\_\_\_  
(Name of issuing agency)

ACTION: \_\_\_\_\_  
(Notice of Intent), (Advance Notice of Proposed Rulemaking), (Proposed Rule), (Final Rule), (Other).

SUMMARY: \_\_\_\_\_  
(Brief statements, in simple language, of: (i) the action being taken; (ii) the circumstances which created the need for the action; and (iii) the intended effect of the action.)

DATES: \_\_\_\_\_

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(Comments must be received on or before: \_\_\_\_\_.) (Proposed effective date: \_\_\_\_\_.) (Effective date: \_\_\_\_\_.) (Hearing: \_\_\_\_\_.) (Other: \_\_\_\_\_.)

ADDRESSES: \_\_\_\_\_ (Any relevant addresses.)

FOR FURTHER INFORMATION CONTACT: \_\_\_\_\_

(For Executive departments and agencies, the name and telephone number of a person in the agency to contact for additional information about the document [Presidential Memorandum, 41 FR 42764, September 28, 1976].)

SUPPLEMENTARY INFORMATION: \_\_\_\_\_

(See paragraph (c) of this section.)

(c) The agency may include the following information in the preamble, as applicable:

- (1) A discussion of the background and major issues involved;
- (2) In the case of a final rule, any significant differences between it and the proposed rule;
- (3) A response to substantive public comments received; and
- (4) Any other information the agency considers appropriate.

[41 FR 56624, Dec. 29, 1976, as amended at 54 FR 9681, Mar. 7, 1989]

**§ 18.13 Withdrawal or correction of filed documents.**

(a) A document that has been filed for public inspection with the Office of the Federal Register but not yet published, may be withdrawn from publication or corrected by the submitting agency. Withdrawals or minor corrections may be made with a timely letter, signed by a duly authorized representative of the agency. Extensive corrections may require agency withdrawal of the document from publication.

(b) Both the originally filed document and the withdrawing or correcting letter shall remain on file. The original document and the withdrawing or correcting letter will be retained by the Office of the Federal Register after the public inspection period expires.

[54 FR 9681, Mar. 7, 1989]

**§ 18.15 Correction of errors in printing.**

(a) Typographical or clerical errors made in the printing of the FEDERAL

REGISTER shall be corrected by insertion of an appropriate notation or a re-printing in the FEDERAL REGISTER published without further agency documentation, if the Director of the Federal Register determines that—

- (1) The error would tend to confuse or mislead the reader; or
  - (2) The error would affect text subject to codification.
- (b) The issuing agency shall review published documents and notify the Office of the Federal Register of printing errors found in published documents.

(c) If the error was in the document as submitted by the agency, the issuing agency must prepare and submit for publication a correction document.

[50 FR 12468, Mar. 28, 1985]

**§ 18.16 Reinstatement of expired regulations.**

Agencies may reinstate regulations removed from the Code of Federal Regulations data base which have expired by their own terms only by republishing the regulations in full text in the FEDERAL REGISTER.

[54 FR 9681, Mar. 7, 1989]

**§ 18.17 Effective dates and time periods.**

(a) Each document submitted for publication in the FEDERAL REGISTER that includes an effective date or time period should either set forth a date certain or a time period measured by a certain number of days after publication in the FEDERAL REGISTER. When a document sets forth a time period measured by a certain number of days after publication, Office of the Federal Register staff will compute the date to be inserted in the document as set forth in paragraph (b) of this section.

(b) Dates certain will be computed by counting the day after the publication day as one, and by counting each succeeding day, including Saturdays, Sundays, and holidays. However, where the final count would fall on a Saturday, Sunday, or holiday, the date certain will be the next succeeding Federal business day.

(c) In the event an effective date is dependent upon Congressional action, or an act of Congress or a dispositive Federal court decision establishes or

changes the effective date of an agency's regulation, the issuing agency shall promptly publish a document in the FEDERAL REGISTER announcing the effective date.

[37 FR 23609, Nov. 4, 1972, as amended at 54 FR 9681, Mar. 7, 1989]

#### § 18.20 Identification of subjects in agency regulations.

(a) *Federal Register documents.* Each agency that submits a document that is published in the Rules and Regulations section or the Proposed Rules section of the FEDERAL REGISTER shall—

(1) Include a list of index terms for each Code of Federal Regulations part affected by the document; and

(2) Place the list of index terms as the last item in the Supplementary Information portion of the preamble for the document.

(b) *Federal Register Thesaurus.* To prepare its list of index terms, each agency shall use terms contained in the Federal Register Thesaurus of Indexing Terms. Agencies may include additional terms not contained in the Thesaurus as long as the appropriate Thesaurus terms are also used. Copies of the Federal Register Thesaurus of Indexing Terms are available from the Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408.

[46 FR 7163, Jan. 22, 1981, as amended at 54 FR 9681, Mar. 7, 1989]

## PART 19—EXECUTIVE ORDERS AND PRESIDENTIAL PROCLAMATIONS

Sec.

19.1 Form.

19.2 Routing and approval of drafts.

19.3 Routing and certification of originals and copies.

19.4 Proclamations calling for the observance of special days or events.

19.5 Proclamations of treaties excluded.

19.6 Definition.

AUTHORITY: Secs. 1 to 6 of E.O. 11030, 27 FR 5847, 3 CFR, 1959-1963 Comp., p. 610; E.O. 11354, 32 FR 7695, 3 CFR, 1966-1970 Comp., p. 652; and E.O. 12080, 43 FR 42235, 3 CFR, 1978 Comp., p. 224.

SOURCE: 37 FR 23610, Nov. 4, 1972, unless otherwise noted.

#### § 19.1 Form.

Proposed Executive orders and proclamations shall be prepared in accordance with the following requirements:

(a) The order or proclamation shall be given a suitable title.

(b) The order or proclamation shall contain a citation of the authority under which it is issued.

(c) Punctuation, capitalization, spelling, and other matters of style shall, in general, conform to the most recent edition of the U.S. Government Printing Office Style Manual.

(d) The spelling of geographic names shall conform to the decisions of the Board on Geographic Names, established by section 2 of the Act of July 25, 1947, 61 Stat. 456 (43 U.S.C. 364a).

(e) Descriptions of tracts of land shall conform, so far as practicable, to the most recent edition of the "Specifications for Descriptions of Tracts of Land for Use in Executive Orders and Proclamations,"<sup>1</sup> prepared by the Bureau of Land Management, Department of the Interior.

(f) Proposed Executive orders and proclamations shall be typewritten on paper approximately 8 × 13 inches, shall have a left-hand margin of approximately 1½ inches and a right-hand margin of approximately 1 inch, and shall be double-spaced except that quotations, tabulations, and descriptions of land may be single-spaced.

(g) Proclamations issued by the President shall conclude with the following-described recitation:

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, and of the Independence of the United States of America the \_\_\_\_\_.

[37 FR 23610, Nov. 4, 1972, as amended at 54 FR 9681, Mar. 7, 1989]

#### § 19.2 Routing and approval of drafts.

(a) A proposed Executive order or proclamation shall first be submitted, with seven copies thereof, to the Director of the Office of Management and Budget, together with a letter, signed

<sup>1</sup>Agencies with computer processed data are urged to consult with the Office of the Federal Register staff about possible use of the data in the publication process.

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by the head or other properly authorized officer of the originating Federal agency, explaining the nature, purpose, background, and effect of the proposed Executive order or proclamation and its relationship, if any, to pertinent laws and other Executive orders or proclamations.

(b) If the Director of the Office of Management and Budget approves the proposed Executive order or proclamation, he shall transmit it to the Attorney General for his consideration as to both form and legality.

(c) If the Attorney General approves the proposed Executive order or proclamation, he shall transmit it to the Director of the Office of the Federal Register, National Archives and Records Administration: *Provided*, That in cases involving sufficient urgency the Attorney General may transmit it directly to the President: *And provided further*, That the authority vested in the Attorney General by this section may be delegated by him, in whole or in part, to the Deputy Attorney General, Solicitor General, or to such Assistant Attorney General as he may designate.

(d) After determining that the proposed Executive order or proclamation conforms to the requirements of §19.1 and is free from typographical or clerical error, the Director of the Office of the Federal Register shall transmit it and three copies thereof to the President.

(e) If the proposed Executive order or proclamation is disapproved by the Director of the Office of Management and Budget or by the Attorney General, it shall not thereafter be presented to the President unless it is accompanied by a statement of the reasons for such disapproval.

### § 19.3 Routing and certification of originals and copies.

(a) If the order or proclamation is signed by the President, the original and two copies shall be forwarded to the Director of the Federal Register for publication in the FEDERAL REGISTER.

(b) The Office of the Federal Register shall cause to be placed upon the copies of all Executive orders and proclamations forwarded as provided in paragraph (a) of this section the following notation, to be signed by the Director

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or by some person authorized by him to sign such notation: "Certified to be a true copy of the original."

### § 19.4 Proclamations calling for the observance of special days or events.

Except as may be otherwise provided by law, responsibility for the preparation and presentation of proposed proclamations calling for the observance of special days, or other periods of time, or events, shall be assigned by the Director of the Office of Management and Budget to such agencies as he may consider appropriate. Such proposed proclamations shall be submitted to the Director at least 60 days before the date of the specified observance. Notwithstanding the provisions of §19.2, the Director shall transmit any approved commemorative proclamations to the President.

[37 FR 23610, Nov. 4, 1972, as amended at 54 FR 9681, Mar. 7, 1989]

### § 19.5 Proclamations of treaties excluded.

Consonant with the provisions of chapter 15 of title 44 of the United States Code (44 U.S.C. 1511), nothing in these regulations shall be construed to apply to treaties, conventions, protocols, or other international agreements, or proclamations thereof by the President.

### § 19.6 Definition.

The term "Presidential proclamations and Executive orders," as used in chapter 15 of title 44 of the United States Code (44 U.S.C. 1505(a)), shall, except as the President or his representative may hereafter otherwise direct, be deemed to include such attachments thereto as are referred to in the respective proclamations or orders.

## PART 20—HANDLING OF THE UNITED STATES GOVERNMENT MANUAL STATEMENTS

- Sec.
- 20.1 Liaison officers.
- 20.2 Preparation of agency statements.
- 20.3 Organization.
- 20.4 Description of program activities.
- 20.5 Sources of information.
- 20.6 Form, style, arrangement and apportionment of space.

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20.7 Deadline dates.

AUTHORITY: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954-1958 Comp., p. 189.

SOURCE: 37 FR 23611, Nov. 4, 1972, unless otherwise noted.

### § 20.1 Liaison officers.

(a) Each of the following shall appoint an officer to maintain liaison with the Office on matters relating to The United States Government Manual:

(1) Agencies of the legislative and judicial branches.

(2) Executive agencies that do not have a liaison officer designated under § 16.1 of this chapter or who wish to appoint a liaison officer for Manual matters other than the one designated under such § 16.1.

(3) Quasi-official agencies represented in the Manual.

(4) Any other agency that the Director believes should be included in the Manual.

(b) Each liaison officer will insure agency compliance with part 9 of this chapter and this part 20.

[37 FR 23611, Nov. 4, 1972, as amended at 50 FR 12468, Mar. 28, 1985; 54 FR 9682, Mar. 7, 1989]

### § 20.2 Preparation of agency statements.

In accordance with schedules established under § 20.7 each agency shall submit for publication in the Manual an official draft of the information required by § 9.2 of this chapter and this part 20.

### § 20.3 Organization.

(a) Information about lines of authority and organization may be reflected in a chart if the chart clearly delineates the agency's organizational structure. Charts must be prepared so as to be perfectly legible when reduced to the size of a Manual page. Charts that do not meet this requirement will not be included in the Manual.

(b) Listings of heads of operating units should be arranged whenever possible to reflect relationships between units.

(c) Narrative descriptions of organizational structure or hierarchy that duplicate information conveyed by

charts or by lists of officials will not be published in the Manual.

[37 FR 23611, Nov. 4, 1972, as amended at 54 FR 9682, Mar. 7, 1989]

### § 20.4 Description of program activities.

(a) Descriptions should clearly state the public purposes that the agency serves, and the programs that carry out those purposes.

(b) Descriptions of the responsibilities of individuals or of administrative units common to most agencies will not be accepted for publication in the Manual.

[54 FR 9682, Mar. 7, 1989]

### § 20.5 Sources of information.

Pertinent sources of information useful to the public, in areas of public interest such as employment, consumer activities, contracts, services to small business, and other topics of public interest should be provided with each agency statement. These sources of information shall plainly identify the places at which the public may obtain information or make submittals or requests.

### § 20.6 Form, style, arrangement and apportionment of space.

The form, style, and arrangement of agency statements and other materials included in the Manual and the apportionment of space therein shall be determined by the Director of the Federal Register. The U.S. Government Printing Office Style Manual is the applicable reference work in determining style.

### § 20.7 Deadline dates.

The Manual is published on a schedule designed to provide the public with information about their Government on a timely basis. Therefore, agencies must comply with the deadline dates established by the Director of the Federal Register for transmittal of statements and charts and for the verification of proofs. Failure to do so may result in publication of an outdated statement or the omission of important material, thus depriving members of the public of information they

have a right to expect in a particular edition of the Manual.

AUTHORITY: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

SOURCE: 37 FR 23611, Nov. 4, 1972, unless otherwise noted.

## PART 21—PREPARATION OF DOCUMENTS SUBJECT TO CODIFICATION

### Subpart A—General

#### Subpart A—General

Sec.

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#### FORM

21.51 General.

21.52 Statutory material.

21.53 Nonstatutory materials.

#### § 21.1 Drafting.

(a) Each agency that prepares a document that is subject to codification shall draft it as an amendment to the Code of Federal Regulations, in accordance with this subchapter, before submitting it to the Office of the Federal Register.

(b) Each agency that prepares a document that is subject to codification shall include words of issuance and amendatory language that precisely describes the relationship of the new provisions to the Code.

[37 FR 23611, Nov. 4, 1972, as amended at 54 FR 9682, Mar. 7, 1989]

#### § 21.6 Notice of expiration of codified material.

Whenever a codified regulation expires after a specified period by its own terms or by law, the issuing agency shall submit a notification by document for publication in the FEDERAL REGISTER.

[54 FR 9682, Mar. 7, 1989]

#### CODE STRUCTURE

#### § 21.7 Titles and subtitles.

(a) The major divisions of the Code are titles, each of which brings together broadly related Government functions.

(b) Subtitles may be used to distinguish between materials emanating from an overall agency and the material issued by its various components. Subtitles may also be used to group chapters within a title.

#### § 21.8 Chapters and subchapters.

(a) The normal divisions of a title are chapters, assigned to the various agencies within a title descriptive of the subject matter covered by the agencies' regulations.

(b) Subchapters may be used to group related parts within a chapter.

(c) Chapter and subchapter assignments are made by the Office of the

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Federal Register after agency consultation.

[37 FR 23611, Nov. 4, 1972, as amended at 54 FR 9682, Mar. 7, 1989]

### §21.9 Parts, subparts, and undesignated center heads.

(a) The normal divisions of a chapter are parts, consisting of a unified body of regulations applying to a specific function of an issuing agency or devoted to specific subject matter under the control of that agency.

(b) Subparts or undesignated center heads may be used to group related sections within a part. Undesignated center heads may also be used to group sections within a subpart.

### §21.10 Sections.

(a) The normal divisions of a part are sections. Sections are the basic units of the Code.

(b) When internal division is necessary, a section may be divided into paragraphs, and paragraphs may be further subdivided using the lettering indicated in §21.11.

#### NUMBERING

### §21.11 Standard organization of the Code of Federal Regulations.

The standard organization consists of the following structural units:

(a) Titles, which are numbered consecutively in Arabic throughout the Code;

(b) Subtitles, which are lettered consecutively in capitals throughout the title;

(c) Chapters, which are numbered consecutively in Roman capitals throughout each title;

(d) Subchapters, which are lettered consecutively in capitals throughout the chapter;

(e) Parts, which are numbered in Arabic throughout each title;

(f) Subparts, which are lettered in capitals;

(g) Sections, which are numbered in Arabic throughout each part. A section number includes the number of the part followed by a period and the number of the section. For example, the section number for section 15 of part 21 is “§21.15”; and

(h) Paragraphs, which are designated as follows:

level 1 (a), (b), (c), etc.  
level 2 (1), (2), (3), etc.  
level 3 (i), (ii), (iii), etc.  
level 4 (A), (B), (C), etc.  
level 5 (1), (2), (3), etc.  
level 6 (i), (ii), (iii), etc.

[54 FR 9682, Mar. 7, 1989; 54 FR 23343, May 31, 1989]

### §21.12 Reservation of numbers.

In a case where related parts or related sections are grouped under a heading, numbers may be reserved at the end of each group to allow for expansion.

[37 FR 23611, Nov. 4, 1972, as amended at 54 FR 9682, Mar. 7, 1989]

### §21.14 Deviations from standard organization of the Code of Federal Regulations.

(a) Any deviation from standard Code of Federal Regulations designations must be approved in advance by the Office of the Federal Register. Requests for approval must be submitted in writing at least five working days before the agency intends to submit the final rule document for publication and include a copy of the final rule document.

(b) The Director of the Federal Register may allow the keying of section numbers to correspond to a particular numbering system used by an agency only when the keying will benefit both that agency and the public.

[54 FR 9682, Mar. 7, 1989]

#### HEADINGS

### §21.16 Required document headings.

(a) Each rule and proposed rule document submitted to the Office of the Federal Register shall contain the following headings, when appropriate, on separate lines in the following order:

- (1) Agency name;
- (2) Subagency name;
- (3) Numerical references to the CFR title and parts affected;
- (4) Agency numbers of identifying symbol in brackets, if used;
- (5) Brief subject heading describing the document.

(b) Each CFR section in the regulatory text of the document shall have

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a brief descriptive heading, preceding the text, on a separate line.

[50 FR 12468, Mar. 28, 1985]

**§21.18 Tables of contents.**

A table of contents shall be used at the beginning of the part whenever a new part is introduced, an existing part is completely revised, or a group of sections is revised or added and set forth as a subpart or otherwise separately grouped under a center head. The table shall follow the part heading and precede the text of the regulations in that part. It shall also list the headings for the subparts, undesignated center headings, sections in the part, and appendix headings to the part or subpart.

[37 FR 23611, Nov. 4, 1972, as amended at 54 FR 9682, Mar. 7, 1989]

**§21.19 Composition of part headings.**

Each part heading shall indicate briefly the general subject matter of the part. Phrases such as "Regulations under the Act of July 28, 1955" or other expressions that are not descriptive of the subject matter may not be used. Introductory expressions such as "Regulations governing" and "Rules applicable to" may not be used.

AMENDMENTS

**§21.20 General requirements.**

(a) Each amendatory document shall identify in specific terms the unit amended, and the extent of the changes made.

(b) The number and heading of each section amended shall be set forth in full on a separate line.

REFERENCES

**§21.21 General requirements: References.**

(a) Each reference to the Code of Federal Regulations shall be in terms of the specific titles, chapters, parts, sections, and paragraphs involved. Ambiguous references such as "herein", "above", "below", and similar expressions may not be used.

(b) Each document that contains a reference to material published in the Code shall include the Code citation as a part of the reference.

(c) Each agency shall publish its own regulations in full text. Cross-references to the regulations of another agency may not be used as a substitute for publication in full text, unless the Office of the Federal Register finds that the regulation meets any of the following exceptions:

(1) The reference is required by court order, statute, Executive order or reorganization plan.

(2) The reference is to regulations promulgated by an agency with the exclusive legal authority to regulate in a subject matter area, but the referencing agency needs to apply those regulations in its own programs.

(3) The reference is informational or improves clarity rather than being regulatory.

(4) The reference is to test methods or consensus standards produced by a Federal agency that have replaced or preempted private or voluntary test methods or consensus standards in a subject matter area.

(5) The reference is to the Department level from a subagency.

[37 FR 23611, Nov. 4, 1972, as amended at 50 FR 12468, Mar. 28, 1985]

**§21.23 Parallel citations of Code and Federal Register.**

For parallel reference, the Code of Federal Regulations and the FEDERAL REGISTER may be cited in the following forms, as appropriate:

\_\_\_\_\_ CFR \_\_\_\_\_ (\_\_\_\_\_ FR \_\_\_\_\_). § \_\_\_\_\_ of this chapter (\_\_\_\_\_ FR \_\_\_\_\_).

**§21.24 References to 1938 edition of Code.**

When reference is made to material codified in the 1938 edition of the Code of Federal Regulations, or a supplement thereto, the following forms may be used, as appropriate:

\_\_\_\_\_ CFR, 1938 Ed., \_\_\_\_\_.  
\_\_\_\_\_ CFR, 1943, Cum. Supp., \_\_\_\_\_.  
\_\_\_\_\_ CFR, 1946 Supp., \_\_\_\_\_.  
\_\_\_\_\_

EFFECTIVE DATE STATEMENT

**§21.30 General.**

Each document subject to codification shall include a clear statement as to the date or dates upon which its contents become effective.



## OMB CONTROL NUMBERS

**§ 21.35 OMB control numbers.**

To display OMB control numbers in agency regulations, those numbers shall be placed parenthetically at the end of the section or displayed in a table or codified section.

[50 FR 12468, Mar. 28, 1985]

**Subpart B—Citations of Authority****§ 21.40 General requirements: Authority citations.**

Each section in a document subject to codification must include, or be covered by, a complete citation of the authority under which the section is issued, including—

(a) General or specific authority delegated by statute; and

(b) Executive delegations, if any, necessary to link the statutory authority to the issuing agency.

[50 FR 12468, Mar. 28, 1985]

**§ 21.41 Agency responsibility.**

(a) Each issuing agency is responsible for the accuracy and integrity of the citations of authority in the documents it issues.

(b) Each issuing agency shall formally amend the citations of authority in its codified material to reflect any changes therein.

**§ 21.42 Exceptions.**

The Director of the Federal Register may make exceptions to the requirements of this subpart relating to placement and form of citations of authority whenever the Director determines that strict application would impair the practical use of the citations.

[37 FR 23611, Nov. 4, 1972, as amended at 54 FR 9682, Mar. 7, 1989]

## PLACEMENT

**§ 21.43 Placing and amending authority citations.**

(a) The requirements for placing authority citations vary with the type of amendment the agency is making in a document. The agency shall set out the full text of the authority citation for each part affected by the document.

(1) If a document sets out an entire CFR part, the agency shall place the complete authority citation directly after the table of contents and before the regulatory text.

(2) If a document amends only certain sections within a CFR part, the agency shall present the complete authority citation to this part as the first item in the list of amendments.

(i) If the authority for issuing an amendment is the same as the authority listed for the whole CFR part, the agency shall simply restate the authority.

(ii) If the authority for issuing an amendment changes the authority citation for the whole CFR part, the agency shall revise the authority citation in its entirety. The agency may specify the particular authority under which certain sections are amended in the revised authority citation.

(b) The agency shall present a centralized authority citation. The authority citation shall appear at the end of the table of contents for a part or after each subpart heading within the text of a part. Citations of authority for particular sections may be specified within the centralized authority citation.

[50 FR 12469, Mar. 28, 1985, as amended at 54 FR 9682, Mar. 7, 1989]

**§ 21.45 Nonstatutory authority.**

Citation to a nonstatutory document as authority shall be placed after the statutory citations. For example:

AUTHORITY: Sec. 9, Pub. L. 89-670, 80 Stat. 944 (49 U.S.C. 1657), E.O. 11222, 30 FR 6469, 3 CFR, 1965 Comp., p. 10.

[37 FR 23611, Nov. 4, 1972, as amended at 54 FR 9682, Mar. 7, 1989]

FORM

**§ 21.51 General.**

(a) Formal citations of authority shall be in the shortest form compatible with positive identification and ready reference.

(b) The Office of the Federal Register shall assist agencies in developing model citations.

**§ 21.52 Statutory material.**

(a) *United States Code*. All citations to statutory authority shall include a

## § 21.53

United States Code citation, where available. Citations to titles of the United States Code, whether or not enacted into positive law, may be cited without Public Law or U.S. Statutes at Large citation. For example:

AUTHORITY: 10 U.S.C. 501.

(b) *Public Laws and U.S. Statutes at Large*. Citations to Public Laws and U.S. Statutes at Large are optional when the United States Code is cited. Citations to current public laws and to the U.S. Statutes at Large shall refer to the section of the public law and the volume and page of the U.S. Statutes at Large to which they have been assigned. The page number shall refer to the page on which the section cited begins. For example:

AUTHORITY: Sec. 5, Pub. L. 89-670, 80 Stat. 935 (49 U.S.C. 1654); sec. 313, Pub. L. 85-726, 72 Stat. 752 (49 U.S.C. 1354).

[54 FR 9682, Mar. 7, 1989]

## § 21.53 Nonstatutory materials.

Nonstatutory documents shall be cited by document designation and by FEDERAL REGISTER volume and page, followed, if possible, by the parallel citation to the Code of Federal Regulations. For example:

AUTHORITY: Special Civil Air Reg. SR-422A, 28 FR 6703, 14 CFR part 4b. E.O. 11130, 28 FR 12789; 3 CFR 1959-1963 Comp.

[37 FR 23611, Nov. 4, 1972, as amended at 54 FR 9683, Mar. 7, 1989]

## PART 22—PREPARATION OF NOTICES AND PROPOSED RULES

### Subpart A—Notices

Sec.

22.1 Name of issuing agency and subdivision.

22.2 Authority citation.

### Subpart B—Proposed Rules

22.5 General requirements.

22.6 Code designation.

22.7 Codification.

AUTHORITY: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954-1958 Comp., p. 189.

SOURCE: 37 FR 23614, Nov. 4, 1972, unless otherwise noted.

## 1 CFR Ch. I (1-1-16 Edition)

### Subpart A—Notices

#### § 22.1 Name of issuing agency and subdivision.

(a) The name of the agency issuing a notice shall be placed at the beginning of the document.

(b) Whenever a specific bureau, service, or similar unit within an agency issues a notice, the name of that bureau, service, or unit shall be placed on a separate line below the name of the agency.

(c) An agency that uses file numbers, docket numbers, or similar identifying symbols shall place them in brackets immediately below the other headings required by this section.

(d) A suitable short title identifying the subject shall be provided beginning on a separate line immediately after the other required caption or captions. Whenever appropriate, an additional brief caption indicating the nature of the document shall be used.

#### § 22.2 Authority citation.

The authority under which an agency issues a notice shall be cited in narrative form within text or in parentheses on a separate line following text.

### Subpart B—Proposed Rules

#### § 22.5 General requirements.

Each proposed rule required by section 553 of title 5, United States Code, or any other statute, and any similar document voluntarily issued by an agency shall include a statement of—

(a) The time, place, and nature of public rulemaking proceedings; and

(b) Reference to the authority under which the regulatory action is proposed.

[37 FR 23614, Nov. 4, 1972, as amended at 54 FR 9683, Mar. 7, 1989]

#### § 22.6 Code designation.

The area of the Code of Federal Regulations directly affected by a proposed regulatory action shall be identified by placing the appropriate CFR citation immediately below the name of the issuing agency. For example:

**Admin. Comm. of the Federal Register**

**§ 22.7**

1 CFR part 22  
[37 FR 23614, Nov. 4, 1972, as amended at 54  
FR 9683, Mar. 7, 1989]

posed regulation shall also conform to  
the pertinent provisions of part 21 of  
this chapter.

[37 FR 23614, Nov. 4, 1972, as amended at 54  
FR 9683, Mar. 7, 1989]

**§ 22.7 Codification.**

Any part of a proposed rule document  
that contains the full text of a pro-

**PARTS 23–49 [RESERVED]**



## CHAPTER II—OFFICE OF THE FEDERAL REGISTER

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## PART 50 [RESERVED]

### PART 51—INCORPORATION BY REFERENCE

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51.1 Policy.

51.3 When will the Director approve a publication?

51.5 How does an agency request approval?

51.7 What publications are eligible?

51.9 What is the proper language of incorporation?

51.11 How does an agency change or remove an approved incorporation?

AUTHORITY: 5 U.S.C. 552(a).

SOURCE: 47 FR 34108, Aug. 6, 1982, unless otherwise noted.

#### § 51.1 Policy.

(a) Section 552(a) of title 5, United States Code, provides, in part, that “matter reasonably available to the class of persons affected thereby is deemed published in the FEDERAL REGISTER when incorporated by reference therein with the approval of the Director of the Federal Register.”

(b) The Director will interpret and apply the language of section 552(a) together with other requirements which govern publication in the FEDERAL REGISTER and the Code of Federal Regulations. Those requirements which govern publication include—

(1) The Federal Register Act (44 U.S.C. 1501 *et seq.*)

(2) The Administrative Procedure Act (5 U.S.C. 551 *et seq.*);

(3) The regulations of the Administrative Committee of the Federal Register under the Federal Register Act (1 CFR Ch. I); and

(4) The acts which require publication in the FEDERAL REGISTER (See CFR volume entitled “CFR Index and Finding Aids.”)

(c) The Director will assume in carrying out the responsibilities for incorporation by reference that incorporation by reference—

(1) Is intended to benefit both the Federal Government and the members of the class affected; and

(2) Is not intended to detract from the legal or practical attributes of the system established by the Federal Register Act, the Administrative Procedure Act, the regulations of the Admin-

istrative Committee of the Federal Register, and the acts which require publication in the FEDERAL REGISTER.

(d) The Director will carry out the responsibilities by applying the standards of part 51 fairly and uniformly.

(e) Publication in the FEDERAL REGISTER of a document containing an incorporation by reference does not of itself constitute an approval of the incorporation by reference by the Director.

(f) Incorporation by reference of a publication is limited to the edition of the publication that is approved. Future amendments or revisions of the publication are not included.

#### § 51.3 When will the Director approve a publication?

(a)(1) The Director will informally approve the proposed incorporation by reference of a publication when the preamble of a proposed rule meets the requirements of this part (See § 51.5(a)).

(2) If the preamble of a proposed rule does not meet the requirements of this part, the Director will return the document to the agency (See 1 CFR 2.4).

(b) The Director will formally approve the incorporation by reference of a publication in a final rule when the following requirements are met:

(1) The publication is eligible for incorporation by reference (See § 51.7).

(2) The preamble meets the requirements of this part (See § 51.5(b)(2)).

(3) The language of incorporation meets the requirements of this part (See § 51.9).

(4) The publication is on file with the Office of the Federal Register.

(5) The Director has received a written request from the agency to approve the incorporation by reference of the publication.

(c) The Director will notify the agency of the approval or disapproval of an incorporation by reference in a final rule within 20 working days after the agency has met all the requirements for requesting approvals (See § 51.5).

[79 FR 66273, Nov. 7, 2014]

#### § 51.5 How does an agency request approval?

(a) For a proposed rule, the agency does not request formal approval but must:

## §51.7

## 1 CFR Ch. II (1–1–16 Edition)

(1) Discuss, in the preamble of the proposed rule, the ways that the materials it proposes to incorporate by reference are reasonably available to interested parties or how it worked to make those materials reasonably available to interested parties; and

(2) Summarize, in the preamble of the proposed rule, the material it proposes to incorporate by reference.

(b) For a final rule, the agency must request formal approval. The formal request package must:

(1) Send a letter that contains a written request for approval at least 20 working days before the agency intends to submit the final rule document for publication;

(2) Discuss, in the preamble of the final rule, the ways that the materials it incorporates by reference are reasonably available to interested parties and how interested parties can obtain the materials;

(3) Summarize, in the preamble of the final rule, the material it incorporates by reference;

(4) Send a copy of the final rule document that uses the proper language of incorporation with the written request (See §51.9); and

(5) Ensure that a copy of the incorporated material is on file at the Office of the Federal Register.

(c) Agencies may consult with the Office of the Federal Register at any time with respect to the requirements of this part.

[79 FR 66278, Nov. 7, 2014]

### §51.7 What publications are eligible?

(a) A publication is eligible for incorporation by reference under 5 U.S.C. 552(a) if it—

(1) Conforms to the policy stated in §51.1;

(2)(i) Is published data, criteria, standards, specifications, techniques, illustrations, or similar material; and

(ii) Does not detract from the usefulness of the FEDERAL REGISTER publication system; and

(3) Is reasonably available to and usable by the class of persons affected. In determining whether a publication is usable, the Director will consider—

(i) The completeness and ease of handling of the publication; and

(ii) Whether it is bound, numbered, and organized, as applicable.

(b) The Director will assume that a publication produced by the same agency that is seeking its approval is inappropriate for incorporation by reference. A publication produced by the agency may be approved, if, in the judgment of the Director, it meets the requirements of paragraph (a) and possesses other unique or highly unusual qualities. A publication may be approved if it cannot be printed using the FEDERAL REGISTER/Code of Federal Regulations printing system.

(c) The following materials are not appropriate for incorporation by reference:

(1) Material published previously in the FEDERAL REGISTER.

(2) Material published in the *United States Code*.

[47 FR 34108, Aug. 6, 1982, as amended at 79 FR 66278, Nov. 7, 2014]

### §51.9 What is the proper language of incorporation?

(a) The language incorporating a publication by reference must be precise, complete, and clearly state that the incorporation by reference is intended and completed by the final rule document in which it appears.

(b) The language incorporating a publication by reference is precise and complete if it—

(1) Uses the words “incorporated by reference;”

(2) States the title, date, edition, author, publisher, and identification number of the publication;

(3) Informs the user that the incorporated publication is a requirement;

(4) Makes an official showing that the publication is in fact available by stating where and how copies may be examined and readily obtained with maximum convenience to the user; and

(5) Refers to 5 U.S.C. 552(a).

(c) If the Director approves a publication for incorporation by reference in a final rule, the agency must include—

(1) The following language under the **DATES** caption of the preamble to the final rule document (See 1 CFR 18.12 Preamble requirements):



**Office of the Federal Register**

**§51.11**

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of \_\_\_\_\_.

(2) The preamble requirements set out in 51.5(b).

(3) The term “incorporation by reference” in the list of index terms (See 1 CFR 18.20 Identification of subjects in agency regulations).

[47 FR 34108, Aug. 6, 1982, as amended at 79 FR 66273, Nov. 7, 2014]

**§51.11 How does an agency change or remove an approved incorporation?**

(a) An agency that seeks approval for a change to a publication that is approved for incorporation by reference must—

(1) Publish notice of the change in the FEDERAL REGISTER and amend the Code of Federal Regulations;

(2) Ensure that a copy of the amendment or revision is on file at the Office of the Federal Register; and

(3) Notify the Director of the Federal Register in writing that the change is being made.

(b) If a regulation containing an incorporation by reference fails to become effective or is removed from the Code of Federal Regulations, the agency must notify the Director of the Federal Register in writing of that fact within 5 working days of the occurrence.

**PARTS 52–299 [RESERVED]**



## CHAPTER III—ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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## PART 300 [RESERVED]

### PART 301—ORGANIZATION AND PURPOSE

- Sec.  
301.1 Establishment and location.  
301.2 Purposes.  
301.3 Organization.  
301.4 Activities.  
301.5 Office of the Chairman.

AUTHORITY: 5 U.S.C. 552, 591–96.

SOURCE: 75 FR 68941, Nov. 10, 2010, unless otherwise noted.

#### § 301.1 Establishment and location.

The Administrative Conference of the United States was established as a permanent independent agency of the Federal Government by the Administrative Conference Act (5 U.S.C. 591–96), as amended. The Conference offices are located at 1120 20th Street, NW., South Lobby, Suite 706, Washington, DC 20036. The offices are open from 8:30 a.m. to 5 p.m., Monday through Friday, excluding legal holidays, unless otherwise stated. General correspondence and filings should be delivered to the foregoing address. Electronic filings should be transmitted as specified by the Conference. The public may obtain information about the Conference either by accessing its Web site at <http://www.acus.gov>, by calling the Conference offices at (202) 480–2080, or by contacting [info@acus.gov](mailto:info@acus.gov). The Conference's recommendations may be obtained by accessing its Web site or by visiting the reading room at its offices.

#### § 301.2 Purposes.

The purposes of the Administrative Conference are—

(a) To provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest;

(b) To promote more effective public participation and efficiency in the rulemaking process;

(c) To reduce unnecessary litigation in the regulatory process;

(d) To improve the use of science in the regulatory process; and

(e) To improve the effectiveness of laws applicable to the regulatory process.

#### § 301.3 Organization.

(a) The Chairman of the Administrative Conference of the United States is appointed by the President, with the advice and consent of the Senate, for a five-year term.

(b) The Council consists of the Chairman and 10 other members who are appointed by the President for three-year terms, of whom not more than one-half may be employees of Federal regulatory agencies or Executive departments.

(c) The total membership of the Conference may not, by statute, be lower than 75 or higher than 101. It comprises, in addition to the Council, approximately 50 Government members (from Executive departments and agencies designated by the President and independent regulatory boards or commissions) and approximately 40 non-Government or public members appointed by the Chairman with the approval of the Council (lawyers in private practice, scholars in the field of administrative law or government, or others specially informed by knowledge and experience with respect to Federal administrative procedure). Public members are selected so as to provide broad representation of the views of private citizens and utilize diverse experience.

(d) Members of the Conference, except the Chairman, are not entitled to pay for service; although public members are entitled to travel reimbursement.

(e) The membership is divided into six standing committees, each assigned a broad area of interest as follows: Adjudication, Administration, Public Processes, Judicial Review, Regulation, and Rulemaking.

(f) The membership meeting in plenary session is called the Assembly of the Administrative Conference. The Council must call at least one plenary session each year. The Assembly has

## § 301.4

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authority to adopt bylaws for carrying out the functions of the Conference.

### § 301.4 Activities.

(a) The Conference may study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs. Subjects for inquiry by the Conference are developed by the Chairman, the Council, the committees, and the Assembly. The committees, with the assistance of staff and consultants, conduct thorough studies of these subjects and develop proposed recommendations and supporting reports. Reports and recommendations are considered by the Council and distributed to the membership, with the views and recommendations of the Council, to be placed on the agenda of a plenary session. The Assembly has complete authority to approve, amend, remand, or reject recommendations presented by the committees. The deliberations of the Assembly are public. Recommendations may be made to administrative agencies, collectively or individually, and to the President, Congress, or the Judicial Conference of the United States, as the Conference considers appropriate.

(b) The Conference may arrange for interchange among administrative agencies of information potentially useful in improving administrative procedure, collect information and statistics from administrative agencies and publish such reports as it considers useful for evaluating and improving administrative procedure, and enter into arrangements with any administrative agency or major organizational unit within an administrative agency pursuant to which the Conference performs any of the functions described in this section.

(c) The Conference may provide assistance in response to requests relating to the improvement of administrative procedure in foreign countries, subject to the concurrence of the Secretary of State or the Administrator of the Agency for International Development, as appropriate, except that:

(1) Such assistance shall be limited to the analysis of issues relating to administrative procedure, the provision of training of foreign officials in ad-

ministrative procedure, and the design or improvement of administrative procedure, where the expertise of members of the Conference is indicated; and

(2) Such assistance may only be undertaken on a fully reimbursable basis, including all direct and indirect administrative costs.

(d) For purposes of this section:

(1) “Administrative program” includes a Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rulemaking, adjudication, licensing, or investigation, except that it does not include a military or foreign affairs function of the United States; and

(2) “Administrative procedure” means procedure used in carrying out an administrative program and is to be broadly construed to include any aspect of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review, but does not include the scope of agency responsibility as established by law or matters of substantive policy committed by law to agency discretion.

### § 301.5 Office of the Chairman.

The Chairman is the chief executive of the Conference. The Chairman presides at meetings of the Council and at each plenary session of the Conference. Among his powers is the authority to encourage Federal agencies to adopt the recommendations of the Conference. The Chairman is also authorized to make inquiries into matters he considers important for Conference consideration, including matters proposed by individuals inside or outside the Federal Government. The purpose of such inquiries is not to review the results in particular cases, but rather to determine whether the problems should be made the subject of Conference study in the interests of developing fair and effective procedures for such cases. Upon request of the head of an agency, the Chairman is authorized to furnish assistance and advice on matters of administrative procedure.

**Administrative Conference of the U.S.**

**§ 304.1**

The Chairman may request agency heads to provide information needed by the Conference, which information shall be supplied to the extent permitted by law.

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

AUTHORITY: 5 U.S.C. 552, 591–96.

**PARTS 302–303 [RESERVED]**

**§ 304.1 General provisions.**

**PART 304—DISCLOSURE OF RECORDS OR INFORMATION**

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

Sec.

- 304.1 General provisions.
- 304.2 Public reading room.
- 304.3 Requirements for making requests.
- 304.4 Responsibility for responding to requests.
- 304.5 Timing of responses to requests.
- 304.6 Responses to requests.
- 304.7 Business information.
- 304.8 Appeals.
- 304.9 Fees.
- 304.10 Preservation of records.
- 304.11 Other rights and services.

**Subpart B—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974**

- 304.20 General provisions.
- 304.21 Requests for access to records.
- 304.22 Responsibility for responding to requests for access to records.
- 304.23 Responses to requests for access to records.
- 304.24 Appeals from denials of requests for access to records.
- 304.25 Requests for amendment or correction of records.
- 304.26 Requests for an accounting of record disclosures.
- 304.27 Fees.
- 304.28 Notice of court-ordered and emergency disclosures.
- 304.29 Security of systems of records.
- 304.30 Contracts for the operation of record systems.
- 304.31 Use and collection of social security numbers and other information.
- 304.32 Employee standards of conduct.
- 304.33 Preservation of records.
- 304.34 Other rights and services.

SOURCE: 76 FR 18635, Apr. 5, 2011, unless otherwise noted.

(a) This subpart contains the rules that the Administrative Conference of the United States (“ACUS” or “the agency”) follows in processing requests for disclosure of records under the Freedom of Information Act (“FOIA” or “the Act”), 5 U.S.C. 552, as amended, and in meeting its responsibilities under the Act. Note that electronic records are treated as records for the purposes of the FOIA. These rules should be read together with the text of the FOIA itself, which provides additional information about access to records maintained by the agency. They also may be read in conjunction with the agency’s “Freedom of Information Act Reference Guide,” which provides basic information about use of the Act in relation to the agency’s records. Requests made by individuals for access to records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a (2006 & Supp. II 2008), which are processed under subpart B of this part, are also processed under this subpart. The agency will automatically process the request under both provisions in order to provide the maximum possible records to the requester. Information routinely provided to the public as part of a regular agency activity (for example, press releases or recommendations adopted by the agency pursuant to the Administrative Conference Act, 5 U.S.C. 591 *et seq.*) may be provided to the public without following this subpart.

(b) As a matter of policy, ACUS makes discretionary disclosures of records or information exempt from disclosure under the FOIA whenever it is determined that disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

(c) The agency has designated its General Counsel as its Chief FOIA Officer, who has agency-wide responsibility

## § 304.2

for efficient and appropriate compliance with the FOIA and these implementing regulations. The General Counsel has designated the agency's Deputy General Counsel as its FOIA Public Liaison.

### § 304.2 Public reading room.

(a) ACUS maintains a public reading room that affords access to the records that the FOIA requires it to make regularly available for public inspection and copying even in the absence of a FOIA request, including a current subject-matter index of its reading room records that will be updated quarterly with respect to newly included records.

(b) ACUS also makes all reading room records that have been created by the agency regularly available to the public electronically on its Web site (<http://www.acus.gov>).

### § 304.3 Requirements for making requests.

(a) *How made and addressed.* You may make a request for records by sending an e-mail message addressed to [info@acus.gov](mailto:info@acus.gov), or by using the FOIA Request form on the ACUS Web site at <http://www.acus.gov/foia>. You may also send a written request letter to the agency either by mail addressed to FOIA Public Liaison, Administrative Conference of the United States, 1120 20th Street, NW., South Lobby, Suite 706, Washington, DC 20036, or by fax delivery to (202) 386-7190. For the quickest possible handling of a mail request, you should mark both your request letter and the envelope "Freedom of Information Act Request." (You may find the agency's "Freedom of Information Act Reference Guide"—which is available on its Web site and in paper form—helpful in making your request.) If you are making a request for records about yourself, see § 304.21(d) for additional requirements. If you are making a request for records about another individual, then either a written authorization signed by that individual permitting disclosure of those records to you or proof that that individual is deceased (for example, a copy of a death certificate or an obituary notice) will help the processing of your request. Your request will be considered received as of the date upon

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which it is logged in as received by the agency's FOIA Public Liaison.

(b) *Description of records sought.* You must describe the records that you seek in enough detail to enable agency personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. If known, you should include any file designations or similar descriptions for the records that you want. As a general rule, the more specific you are about the records or type of records that you want, the more likely that the agency will be able to locate those records in response to your request. If the agency determines that your request does not reasonably describe records, then it will tell you either what additional information is needed or why your request is otherwise insufficient. It also will give you an opportunity to discuss your request by telephone so that you may modify it to meet the requirements of this section. Additionally, if your request does not reasonably describe the records you seek, the agency's response to it may be delayed as an initial matter.

(c) *Agreement to pay fees.* When you make a FOIA request, it will be considered to be an agreement by you to pay all applicable fees charged under § 304.9, up to \$50.00, unless you specifically request a waiver of fees. The agency ordinarily will confirm this agreement in an acknowledgment letter. When making a request, you may specify a willingness to pay a greater or lesser amount. Your agreement will not prejudice your ability to seek a waiver or reduction of any applicable fee at a later time.

### § 304.4 Responsibility for responding to requests.

(a) *In general.* The agency will be responsible for responding to a request in all respects, except in the case of a referral to another agency as is described in paragraphs (b), (c), and (d) of this section. In determining which records are responsive to a request, the agency ordinarily will include only records in its possession and control as of the date upon which it begins its search for



them. If any other date is used, the agency will inform the requester of that date.

(b) *Consultations and referrals.* When the agency receives a request for a record in its possession and control, it will determine whether 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 disclosed as a matter of administrative discretion. If the agency determines that it is best able to process the record in response to the request, then it will do so. If the agency determines that it is not best able to process the record, then it will either:

(1) Respond to the request regarding that record, after consulting with the agency that is best able to determine whether to disclose it and with any other agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to another agency that originated the record (but only if that agency is subject to the FOIA). Ordinarily, the agency that originated a record will be presumed to be best able to determine whether to disclose it.

(c) *Notice of referral.* When the agency refers all or any part of the responsibility for responding to a request to another agency, it ordinarily will notify the requester of the referral and inform the requester of the name of the agency to which the request has been referred and of the part of the request that has been referred.

(d) *Timing of responses to consultations and referrals.* All consultations and referrals will be handled according to the date upon which the FOIA request initially was received by the first agency, and not any later date.

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

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

(a) *In general.* The agency ordinarily will respond to requests according to their order of receipt.

(b) *Multi-track processing.* The agency may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, including according to the number of pages involved. If it does so, then it will advise requesters in its slower track(s) of the limits of its faster track(s) and may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of its faster track(s). The agency will contact the requester by telephone, e-mail or letter, whichever is most efficient, in each case.

(c) *Unusual circumstances.* (1) Where the statutory time limits for processing a request cannot be met because of "unusual circumstances," as defined in the FOIA, and the agency determines to extend the time limits on that basis, it will as soon as practicable notify the requester in writing of the unusual circumstances and of the date by which processing of the request can be expected to be completed. Where the extension is for more than ten business days, it will provide the requester with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an alternative time period processing the request or a modified request.

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

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

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

(ii) An urgency to inform the public concerning actual or alleged federal

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government activity, if made by a person primarily engaged in disseminating information; or

(iii) Other circumstances as determined by the agency.

(2) A request for expedited processing may be made at the time of the initial request for records (i.e., as part of the initial request) or at any later time.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category in paragraph (d)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. That requester also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived by the agency as a matter of administrative discretion.

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

### § 304.6 Responses to requests.

(a) *Acknowledgments of requests.* On receipt of a request, if the agency cannot provide the requested information within two business days, then an acknowledgment letter or e-mail message will be sent to the requester that will confirm the requester's agreement to pay fees under § 304.3(c) and will provide a request tracking number for further reference. Requesters may use this tracking number to determine the status of their request—including the date of its receipt and the estimated date on

which action on it will be completed—by calling the agency's FOIA Public Liaison at (202) 480-2080. In some cases, the agency may seek further information or clarification from the requester.

(b) *Grants of requests.* Ordinarily, the agency will have twenty business days from when a request is received to determine whether to grant or deny the request. Once the agency makes such a determination, it will immediately notify the requester in writing. The agency will inform the requester in the notice of any fee charged under § 304.9 and will disclose records to the requester promptly upon payment of any applicable fee. Records disclosed in part will be marked or annotated to show the amount of information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted also will be indicated on the record, if technically feasible.

(c) *Adverse determinations of requests.* Whenever the agency makes an adverse determination denying a request in any respect, it will notify the requester of that determination in writing. Adverse determinations, or denials of requests, consist of: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver; and a denial of a request for expedited treatment. The denial letter will include:

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

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

(3) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate

would harm an interest protected by an applicable exemption; and

(4) An indication on the released portion of a record of each exemption applied, at the place at which it was applied, if technically feasible.

(5) A statement that the denial may be appealed under §304.8(a) and a description of the requirements of §304.8(a).

#### §304.7 Business information.

(a) *In general.* Business information obtained by the agency will be disclosed under the FOIA only under this section and in accordance with Executive Order 12,600, 3 CFR part 235 (1988).

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

(1) "Business information" means privileged or confidential commercial or financial information obtained by the agency from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) "Submitter" means any person or entity from whom the agency obtains business information, either directly or indirectly. The term includes corporations; state, local, and tribal governments; and foreign governments.

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

(d) *Notice to submitters.* The agency will provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information wherever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (f) of this section. The notice will either describe the business information requested or include copies of the requested records or record portions containing the infor-

mation. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish it.

(e) *Where notice is required.* Notice will be given to a submitter wherever:

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

(2) The agency has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* The agency will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period within the notice. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received by the agency until after its disclosure decision has been made will not be considered by the agency. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* The agency will consider a submitter's objections and specific grounds for non-disclosure in deciding whether to disclose business information. Whenever the agency decides to disclose business information over the objection of a submitter, it will give the submitter written notice, which will include:

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

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

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

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

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

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

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12,600; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous—except that, in such a case, the agency will, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

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

(j) *Corresponding notice to requesters.* Whenever the agency provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, it will also notify the requester(s). Whenever the agency notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, it will also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the agency will notify the requester(s).

### § 304.8 Appeals.

(a) *Appeals of adverse determinations.* If you are dissatisfied with the response to your request, you may appeal an adverse determination denying your request, in any respect, to the Chairman of the agency. You must make your appeal in writing, by e-mail or letter, and it must be received by the agency within 60 days of the date of the agency's response denying your request. Your appeal should provide reasons and supporting information as to why the initial determination was incorrect. The appeal should clearly identify the particular determination (including the assigned request num-

ber, if known) that you are appealing. For the quickest possible handling of a mail request, you should mark your appeal "Freedom of Information Act Appeal." The Chairman or his or her designee will act on the appeal, except that an appeal ordinarily will not be acted on if the request becomes a matter of FOIA litigation.

(b) *Responses to appeals.* The decision on your appeal will be made by e-mail or letter, ordinarily within 20 business days of receipt of your appeal. A decision affirming an adverse determination in whole or in part will contain a statement of the reason(s) for the affirmation, including any FOIA exemption(s) applied, and will inform you of the FOIA provisions for court review of the decision. (You also may be aware of the mediation services that are offered by the Office of Government Information Services ("OGIS") of the National Archives and Records Administration—see <http://www.archives.gov/ogis/>—as a non-exclusive alternative to FOIA litigation.) If the adverse determination is reversed or modified on appeal, in whole or in part, then you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.

(c) *When appeal is required.* As a general rule, if you wish to seek review by a court of any adverse determination, you must first appeal it in a timely fashion under this section.

### § 304.9 Fees.

(a) *In general.* The agency will charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section, where a waiver or reduction of fees is granted under paragraph (k) of this section, or where the agency's FOIA staff waives fees in whole or in part because they are deemed to be inappropriate or unreasonable—and in some cases the agency may seek further information or clarification from the requester for this purpose. The agency ordinarily will collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

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

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

(2) "Direct costs" means those expenses that an agency actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) "Duplication" means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others. The agency will honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.

(4) "Educational institution" means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To qualify under this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the

records are not sought for a commercial use but are sought to further scholarly research.

(5) "Noncommercial scientific institution" means an institution that is not operated on a "commercial" basis, as that term is defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To qualify under this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

(6) "Representative of the news media," or "news-media requester," means any person or entity that 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. For this purpose, 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 are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of "news") who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the agency may also consider the past publication record of the requester in making such a determination. To qualify under this category, a requester must not be seeking the requested records for a

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commercial use. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use.

(7) “Review” means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure—for example, doing all that is necessary to redact it and prepare it for disclosure. Review costs are recoverable even if a record ultimately is not disclosed. Review time includes time spent considering any formal objection to disclosure made by a business submitter under §304.7 but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) “Search” means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. The agency will conduct searches in the most efficient and least expensive manner reasonably possible. For example, it will not search on a line-by-line basis where duplicating an entire document would be quicker and less expensive.

(c) *Fees charged.* In responding to FOIA requests, the agency will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section:

(1) *Search.* (i) Search fees will be charged for all requests (other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media) subject to the limitations of paragraph (d) of this section. The agency may charge for time spent searching even if it does not locate any responsive record or if it withholds the record(s) located as entirely exempt from disclosure.

(ii) For each quarter hour spent by clerical personnel in searching for and retrieving a requested record, the fee will be \$5.00. Where a search and retrieval cannot be performed entirely by clerical personnel (for example, where

the identification of records within the scope of a request requires the use of professional personnel) the fee will be \$10.00 for each quarter hour of search time spent by professional personnel. Where the time of managerial personnel is required, the fee will be \$15.00 for each quarter hour of time spent by those personnel.

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

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

(3) *Review.* Review fees will be charged to requesters who make a commercial use request. Review fees will be charged only for the initial record review, when the agency determines whether an exemption applies to a particular record or record portion at the initial request level. No charge will be made for review at the administrative appeal level regarding an exemption already applied. However, records or record portions withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies; the costs of that review are chargeable where it is made necessary by such a change of circumstances. Review fees will be charged at the same rates as those used for a search under paragraph (c)(1)(i) of this section.

(d) *Limitations on charging fees.* (1) No search fee will be charged for requests

by educational institutions, non-commercial scientific institutions, or representatives of the news media.

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

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

- (i) The first 100 pages of duplication (or the cost equivalent); and
- (ii) The first two hours of search (or the cost equivalent).

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

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

(6) In the case of any request on which the agency does not comply with any of the time limits of the FOIA and for which no "unusual or exceptional circumstances" exist, as those terms are defined by the FOIA, the agency will not charge any search fee or, for such requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media, will not charge any duplication fee.

(e) *Notice of anticipated fees in excess of \$50.00.* When the agency determines or estimates that the fees to be charged under this section will amount to more than \$50.00, it will notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the agency will advise the requester that the estimated fee might be only a portion of the total fee. In cases in which a requester has been notified that actual or estimated fees amount to more than \$50.00, the request will not be considered received and further work will not be done on it until the requester agrees to pay the total anticipated fee. Any such agree-

ment should be memorialized in writing. A notice under this paragraph will offer the requester an opportunity to discuss the matter with agency personnel in order to reformulate the request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Apart from the other provisions of this section, when the agency chooses as a matter of administrative discretion to provide a special service—such as certifying that records are true copies or sending them by other than ordinary mail—the direct costs of providing the service ordinarily will be charged.

(g) *Charging interest.* The agency may charge interest on any unpaid bill starting on the 31st day following the date of the billing of the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the agency. The agency will follow the provisions of the Debt Collection Act of 1982, Public Law 97-365, 96 Stat. 1749, as amended, and regulations pursuant thereto.

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

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

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(2) Where the agency determines or estimates that a total fee to be charged under this section will be more than \$250.00, it may require the requester to make an advance payment of an amount up to the amount of the entire anticipated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester that has a history of prompt payment.

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

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

(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 cases in which records responsive to requests are maintained for distribution by another agency under such a statutorily based fee schedule program, ACUS will inform the requesters of the steps for obtaining records from those sources so that they may do so most economically.

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

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

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

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

(i) The subject of the request: Whether the subject of the requested records concerns “the operations or activities of the government.” The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) The informative value of the information to be disclosed: Whether the disclosure is “likely to contribute” to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be “likely to contribute” to an increased public understanding of those operations or activities.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to “public understanding.” The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester’s expertise in the subject area and ability and intention to convey information effectively to the public will be considered. It will be presumed that a representative of the news media satisfies this consideration.

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



operations or activities of the government is “important” enough to be made public.

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

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

(ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.” A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The agency ordinarily will 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 will not be presumed primarily to serve the public interest.

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

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

#### § 304.10 Preservation of records.

(a) The agency will 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 by title 44 of the United States Code or the National Archives and Records Administration’s General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

(b) In the event that the agency contracts with another agency, entity, or person to maintain records for the agency for the purposes of records management, it will promptly identify such records in its “Freedom of Information Reference Guide” and specify the particular means by which request for such records can be made.

#### § 304.11 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.

### Subpart B—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

AUTHORITY: 5 U.S.C. 552a, 591–96.

#### § 304.20 General provisions.

(a) *Purpose and scope.* This subpart contains the rules that the Administrative Conference of the United States (“ACUS” or “the agency”) follows under the Privacy Act of 1974 (“the Privacy Act”), 5 U.S.C. 552a, as amended, regarding the protection of, and individual access to, certain records about individuals. These rules should be read together with and are governed by the Privacy Act itself, which provides additional information about records maintained on individuals. The rules in this subpart apply to all records in Privacy Act systems of records maintained by the agency, which are retrieved by an individual’s name or personal identifier. They describe the procedures by which individuals may request access to records about themselves, request

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amendment or correction of those records, and request an accounting of disclosures of those records by the agency. In addition, the agency processes all Privacy Act requests for access to records under the Freedom of Information Act (“FOIA”), 5 U.S.C. 552, *as amended*, following the rules contained in subpart A of this part. Thus, all Privacy Act requests will be subject to exemptions for access to records only applicable under both FOIA and the Privacy Act.

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

(1) “Request for access to a record” means a request made under Privacy Act, 5 U.S.C. 552a(d)(1).

(2) “Request for amendment or correction of a record” means a request made under Privacy Act, 5 U.S.C. 552a(d)(2).

(3) “Request for an accounting” means a request made under Privacy Act, 5 U.S.C. 552a(e)(3).

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

### § 304.21 Requests for access to records.

(a) *How made and addressed.* You may make a request for access to a record about yourself by appearing in person or by sending an e-mail message addressed to [info@acus.gov](mailto:info@acus.gov). You may also send a written request letter to the agency either by mail addressed to 1120 20th Street, NW., South Lobby, Suite 706, Washington, DC 20036, or by fax delivery to (202) 386-7190. For the quickest possible handling of a mail request, you should mark both your request letter and the envelope “Privacy Act Request.”

(b) *Description of records sought.* You must describe the records that you want in enough detail to enable agency personnel to locate the system of records containing them with a reasonable amount of effort. Whenever possible, your request should describe the records sought, the time periods in which you believe they were compiled, and the name or identifying number of each system of records in which you believe they are kept. The agency publishes a notice in the FEDERAL REG-

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ISTER that describes its systems of records.

(c) *Agreement to pay fees.* If you make a Privacy Act request for access to records, it will be considered an agreement by you to pay all applicable fees charged under § 304.27, up to \$50.00. Duplication fees in excess of \$50.00 are subject to the requirements of § 304.27 of this subpart and the notification requirements in § 304.9 of subpart A. The agency ordinarily will confirm this agreement in an acknowledgment letter. When making a request, you may specify a willingness to pay a greater or lesser amount.

(d) *Verification of identity.* When you make a request for access to records about yourself, you must verify your identity. You must state your full name, current address, and date and place of birth. You must sign your request and your signature must either be notarized or submitted by you under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In order to help the identification and location of requested records, you may also, entirely at your option, include the last four digits of your social security number.

### § 304.22 Responsibility for responding to requests for access to records.

(a) *In general.* The agency will be responsible for responding to a request in all respects, except in the case of a referral to another agency as is described in paragraphs (b), (c), and (d) of this section. In determining which records are responsive to a request, the agency ordinarily will include only records in its possession and control as of the date upon which it begins its search for them. If any other date is used, the agency will inform the requester of that date.

(b) *Consultations and referrals.* When the agency receives a request for access to a record in its possession and control, it will determine whether another agency of the Federal Government, is better able to determine whether the record is exempt from access under the Privacy Act. If the agency determines

that it is the agency best able to process the record in response to the request, then it will do so. If it determines that it is not best able to process the record, then it will either:

(1) Respond to the request regarding that record, after consulting with the agency that is best able to determine whether the record is exempt from access and with any other agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to the agency that is best able to determine whether it is exempt from access, or to another agency that originated the record (but only if that agency is subject to the Privacy Act). Ordinarily, the agency that originated a record will be presumed to be best able to determine whether it is exempt from access.

(c) *Notice of referral.* When the agency refers all or any part of the responsibility for responding to a request to another agency, it ordinarily will notify the requester of the referral and inform the requester of the name of the agency to which the request has been referred and of the part of the request that has been referred.

(d) *Timing of responses to consultations and referrals.* All consultations and referrals will be handled according to the date upon which the Privacy Act access request was initially received by the first agency, not any later date.

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

#### **§ 304.23 Responses to requests for access to records.**

(a) *Acknowledgments of requests.* On receipt of a request, the agency ordinarily will send an acknowledgment letter to the requester that will confirm the requester's agreement to pay fees under § 304.21(c) and provide an assigned request number for further reference. In some cases, the agency may seek further information or clarification from the requester.

(b) *Grants of requests for access.* Once the agency makes a determination to grant a request for access in whole or

in part, it will notify the requester in writing. The agency will inform the requester in the notice of any fee charged under § 304.27 and will disclose records to the requester promptly on payment of any applicable fee. If a request is made in person, the agency may disclose records to the requester directly, in a manner not unreasonably disruptive of its operations, on payment of any applicable fee and with a written record made of the grant of the request. If a requester is accompanied by another person, the requester will be required to authorize in writing any discussion of the records in the presence of the other person.

(c) *Adverse determinations of requests for access.* Upon making an adverse determination denying a request for access in any respect, the agency will notify the requester of that determination in writing. Adverse determinations, or denials of requests consist of: a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the Privacy Act; a determination on any disputed fee matter; and a denial of a request for expedited treatment. The notification letter will include:

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

(2) A brief statement of the reason(s) for the denial, including any Privacy Act exemption(s) applied in denying the request; and

(3) A statement that the denial may be appealed under § 304.24(a) and a description of the requirements of § 304.24(a).

#### **§ 304.24 Appeals from denials of requests for access to records.**

(a) *Appeals.* If you are dissatisfied with the response to your request, you may appeal an adverse determination denying your request, in any respect, to the Chairman of the agency. You must make your appeal in writing, by e-mail or letter, and it must be received by the agency within 60 days of the date of the denial of your request. Your appeal letter should provide reasons and supporting information as to

why the initial determination was incorrect. The appeal should clearly identify the particular determination (including the assigned request number, if known) that you are appealing. For the quickest possible handling of a mail request, you should mark your appeal letter and the envelope "Privacy Act Appeal." The Chairman of the agency or his or her designee will act on the appeal, except that an appeal ordinarily will not be acted on if the request becomes a matter of FOIA or Privacy Act litigation.

(b) *Responses to appeals.* The decision on your appeal will be made in writing. A decision affirming an adverse determination in whole or in part will include a brief statement of the reason(s) for the affirmance, including any exemption applied, and will inform you of the Privacy Act provisions for court review of the decision. If the adverse determination is reversed or modified on appeal in whole or in part, then you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.

(c) *When appeal is required.* As a general rule, if you wish to seek review by a court of any adverse determination or denial of a request, you must first appeal it under this section.

**§304.25 Requests for amendment or correction of records.**

(a) *How made and addressed.* Unless the record is not subject to amendment or correction as stated in paragraph (f) of this section, you may make a request for amendment or correction of an ACUS record about yourself by following same procedures as in §304.21. Your request should identify each particular record in question, state the amendment or correction that you want, and state why you believe that the record is not accurate, relevant, timely, or complete. You may submit any documentation that you think would be helpful. If you believe that the same record is maintained in more than one system of records, you should state that.

(b) *Agency responses.* Within ten business days of receiving your request for amendment or correction of records, the agency will send you a written acknowledgment of its receipt of your re-

quest. The agency will promptly notify you whether your request is granted or denied. If the agency grants your request in whole or in part, it will describe the amendment or correction made and will advise you of your right to obtain a copy of the corrected or amended record, in disclosable form. If the agency denies your request in whole or in part, it will send you a letter that will state:

(1) The reason(s) for the denial; and

(2) The procedure for appeal of the denial under paragraph (c) of this section, including the name and business address of the official who will act on your appeal.

(c) *Appeals.* You may appeal a denial of a request for amendment or correction in the same manner as a denial of a request for access to records (see §304.24(a)) and the same procedures will be followed. The agency will ordinarily act on the appeal within 30 business days of receipt of the appeal, except that the Chairman of the agency may extend the time for response for good cause shown. If your appeal is denied, you will be advised of your right to file a Statement of Disagreement as described in paragraph (d) of this section and of your right under the Privacy Act for court review of the decision.

(d) *Statements of Disagreement.* If your appeal under this section is denied in whole or in part, you have the right to file a Statement of Disagreement that states your reason(s) for disagreeing with the agency's denial of your request for amendment or correction. Statements of Disagreement must be concise, must clearly identify each part of any record that is disputed, and should be no longer than one typed page for each fact disputed. The agency will place your Statement of Disagreement in the system of records in which the disputed record is maintained and will mark the disputed record to indicate that a Statement of Disagreement has been filed and exactly where in the system of records it may be found.

(e) *Notification of amendment/correction or disagreement.* Within 30 business days of the amendment or correction of a record, the agency will notify all persons, organizations, or agencies to which it previously disclosed the

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record, if an accounting of that disclosure was made, that the record has been amended or corrected. If an individual has filed a Statement of Disagreement, the agency will append a copy of it to the disputed record whenever the record is disclosed and may also append a concise statement of its reason(s) for denying the request to amend or correct the record.

(f) *Records not subject to amendment or correction.* The following records are not subject to amendment or correction:

(1) Transcripts of testimony given under oath or written statements made under oath;

(2) Transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings, which are the official record of those proceedings; and

(3) Any other record that originated with the courts.

### § 304.26 Requests for an accounting of record disclosures.

(a) *How made and addressed.* Except where accountings of disclosures are not required to be kept (as stated in paragraph (b) of this section), you may make a request for an accounting of any disclosure that has been made by the agency to another person, organization, or agency of any record about you. This accounting contains the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. Your request for an accounting should identify each particular record in question and should be made in writing to the agency, following the procedures in § 304.21.

(b) *Where accountings are not required.* The agency is not required to provide accountings to you where they relate to:

(1) Disclosures for which accountings are not required to be kept (i.e., disclosures that are made to officers and employees of the agency and disclosures required under the FOIA); or

(2) Disclosures made to law enforcement agencies for authorized law enforcement activities in response to written requests from a duly authorized representative of any such law en-

forcement agency specifying portion of the record desired and the law enforcement activity for which the record is sought.

(c) *Appeals.* You may appeal a denial of a request for an accounting in the same manner as a denial of a request for access to records (see § 304.24(a)) and the same procedures will be followed.

### § 304.27 Fees.

The agency will charge fees for duplication of records under the Privacy Act in the same way in which it charges duplication fees under § 304.9 of subpart A. No search or review fee may be charged for any record under the Privacy Act.

### § 304.28 Notice of court-ordered and emergency disclosures.

(a) *Court-ordered disclosures.* When a record pertaining to an individual is required to be disclosed by a court order, the agency will make reasonable efforts to provide notice of such order to the individual. Notice will be given within a reasonable time after the agency's receipt of the order, except that in a case in which the order is not a matter of public record, the notice will be given only after the order becomes public. This notice will be mailed to the individual's last known address and will contain a copy of the order and a description of the information disclosed.

(b) *Emergency disclosures.* Upon disclosing a record pertaining to an individual made under compelling circumstances affecting health or safety, the agency will notify that individual of the disclosure. This notice will be mailed to the individual's last known address and will state the nature of the information disclosed; the person, organization, or agency to which it was disclosed; the date of disclosure; and the compelling circumstances justifying the disclosure.

### § 304.29 Security of systems of records.

(a) *Administrative and physical controls.* The agency will have administrative and physical controls to prevent unauthorized access to its systems of records, to prevent unauthorized disclosure of records, and to prevent physical damage to or destruction of

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records. The stringency of these controls corresponds to the sensitivity of the records that the controls protect. At a minimum, these controls are designed to ensure that:

- (1) Records are protected from public view;
- (2) The area in which records are kept is supervised during business hours in order to prevent unauthorized persons from having access to them;
- (3) Records are inaccessible to unauthorized persons outside of business hours; and
- (4) Records are not disclosed to unauthorized persons or under unauthorized circumstances in oral, written or any other form.

(b) *Restrictive procedures.* The agency will implement practices and procedures that restrict access to records to only those individuals within the agency who must have access to those records in order to perform their duties and that prevent inadvertent disclosure of records.

**§ 304.30 Contracts for the operation of record systems.**

Any approved contract for the operation of a record system will contain appropriate requirements issued by the General Services Administration in order to ensure compliance with the requirements of the Privacy Act for that record system. The contracting officer of the agency will be responsible for ensuring that the contractor complies with these contract requirements.

**§ 304.31 Use and collection of social security numbers and other information.**

The agency will ensure that employees authorized to collect information are aware:

- (a) That individuals may not be denied any right, benefit, or privilege as a result of refusing to provide their social security numbers, unless the collection is authorized either by a statute or by a regulation issued prior to 1975;
- (b) That individuals requested to provide their social security numbers, or any other information collected from them, must be informed, before providing such information, of:

(1) Whether providing social security numbers (or such other information) is mandatory or voluntary;

(2) Any statutory or regulatory authority that authorizes the collection of social security numbers (or such other information);

(3) The principal purpose(s) for which the information is intended to be used;

(4) The routine uses that may be made of the information; and

(5) The effects, in any, on the individual of not providing all or any part of the requested information; and

(c) That, where the information referred to above is requested on a form, the requirements for informing such individuals are set forth on the form used to collect the information, or on a separate form that can be retained by such individuals.

**§ 304.32 Employee standards of conduct.**

The agency will inform its employees of the provisions of the Privacy Act, including the scope of its restriction against disclosure of records maintained in a system of records without the prior written consent of the individual involved, and the Act's civil liability and criminal penalty provisions. Unless otherwise permitted by law, an employee of the agency will:

(a) Collect from individuals and maintain only the information that is relevant and necessary to discharge the agency's responsibilities;

(b) Collect information about an individual directly from that individual to the greatest extent practicable when the information may result in an adverse determination about an individual's rights, benefits, or privileges under Federal programs;

(c) Inform each individual from whom information is collected of the information set forth in § 304.31(b);

(d) Ensure that the agency maintains no system of records without public notice and also notify appropriate agency officials of the existence or development of any system of records that is not the subject of a current or planned public notice;

(e) Maintain all records that are used by it in making any determination

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about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in the determination;

(f) Except as to disclosures made to an agency or made under the FOIA, make reasonable efforts, prior to disseminating any record about an individual, to ensure that the record is accurate, relevant, timely, and complete;

(g) Maintain no record describing how an individual exercises his or her First Amendment rights unless such maintenance is expressly authorized by statute or by the individual about whom the record is maintained or is pertinent to and within the scope of an authorized law enforcement activity;

(h) When required by the Privacy Act, maintain an accounting in the specified form of all disclosures of records by the agency to persons, organizations, or agencies;

(i) Maintain and use records with care in order to prevent the unauthorized or inadvertent disclosure of a record to anyone; and

(j) Notify the appropriate agency official of any record that contains information that the Privacy Act does not permit the agency to maintain.

**§ 304.33 Preservation of records.**

The agency will 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 by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the Act.

**§ 304.34 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 Privacy Act.

**PARTS 305–399 [RESERVED]**





## CHAPTER IV—MISCELLANEOUS AGENCIES

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EDITORIAL NOTE: Federal agencies are required to publish regulations implementing the provisions of the Freedom of Information Act (5 U.S.C. 552(a)), the Privacy Act of 1974 (Pub. L. 93-579, 5 U.S.C. 552a), the Government in the Sunshine Act (Pub. L. 94-409, 5 U.S.C. 552b), and section 504 of the Rehabilitation Act of 1973, as amended by section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (29 U.S.C. 794). While most agencies have existing chapter assignments in the Code of Federal Regulations, a few agencies do not. Since certain of these agencies are unlikely to be issuing regulations other than those relating to the acts mentioned above, the Director of the Office of the Federal Register has grouped these miscellaneous agencies into this chapter as an efficient means of administering the CFR system.

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## PARTS 400-424 [RESERVED]

### PART 425—PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS

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425.2 Procedures for notification of existence of records pertaining to individuals.

425.3 Procedure for requests for access to or disclosure of records pertaining to individuals.

425.4 Correction of records.

425.5 Disclosure of records to agencies or persons other than the individual to whom the record pertains.

AUTHORITY: 5 U.S.C. 552a(f).

SOURCE: 40 FR 52416, Nov. 10, 1975; 40 FR 56651, Dec. 4, 1975, unless otherwise noted.

#### § 425.1 Purpose and scope.

This part sets forth the President's Commission on White House Fellowships procedures under the Privacy Act of 1974 as required by 5 U.S.C. 552a(f). Information to applicants regarding the implementation of this Act is contained in the White House Fellowships Application Instructions.

#### § 425.2 Procedures for notification of existence of records pertaining to individuals.

(a) The system of records, as defined in the Privacy Act of 1974, maintained by the President's Commission on White House Fellowships is listed annually in the FEDERAL REGISTER as required by that Act. Any person who wishes to know whether a system of records contains a record pertaining to him or her may either appear in person at Room 1308, 1900 E Street, NW., on work days between the hours of 8:30 a.m. and 5 p.m. or may write to the President's Commission on White House Fellowships Administrative Officer, Washington, DC 20415 (Phone 202-382-4661). It is recommended that requests be made in writing.

(b) Requests for notification of the existence of a record should state, if the requester is other than the individual to whom the record pertains, the relationship of the requester to that individual. (Note that requests will not be honored by the Commission pursuant to the Privacy Act unless

made: (1) By the individual to whom the record pertains or (2) by such individual's legal guardian if the individual has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction.)

(c) The Commission will acknowledge requests for the existence of records within 10 working days from the time it receives the request and will normally notify the requester of the existence or non-existence of records within 30 working days from receipt of request.

(d) No special identity verification is required for individuals who wish to know whether a specific system of records pertains to them.

[40 FR 52416, Nov. 10, 1975; 40 FR 56651, Dec. 4, 1975, as amended at 40 FR 59187, Dec. 22, 1975]

#### § 425.3 Procedure for requests for access to or disclosure of records pertaining to individuals.

(a) Any person may request review of records pertaining to him by appearing at Room 1308, 1900 E Street, NW., Washington, DC on work days between the hours of 8:30 a.m. and 5 p.m. or by writing to the Commission on White House Fellowships Administrative Officer, Washington, DC 20415. (See paragraph (b) of this section for identification requirements.) The Commission will strive either to make the record available within 15 working days of the request or to inform the requester of the need for additional identification.

(b) In the case of persons making requests by appearing at the Commission, reasonable identification such as employment identification cards, drivers licenses, or credit cards will normally be accepted as sufficient evidence of identity in the absence of any indications to the contrary.

(c) Charges for copies of records will be at the rate of \$0.10 per photocopy of each page. No charge will be made unless the charge as computed above would exceed \$3 for each request or related series of requests. If a fee in excess of \$25 would be required, the requester shall be notified and the fee must be tendered before the records will be copied. Remittances shall be in the form either of a personal check or

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bank draft drawn on a bank in the United States, or a money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed or delivered to the Administrative Officer, President's Commission on White House Fellowships, 1900 E Street, NW., Washington, DC 20415.

(d) Individuals will not be denied access to records pertaining to them.

[40 FR 52416, Nov. 10, 1975; 40 FR 56651, Dec. 4, 1975, as amended at 40 FR 59187, Dec. 22, 1975]

#### § 425.4 Correction of records.

(a) An individual may request that a record or records pertaining to him or her be amended or corrected. Such requests shall be submitted in writing to the Administrative Officer at the Commission's business address.

(b) The signature of the requester will be sufficient identification for requesting correction of records.

(c) A request for amendment shall contain an exact description of the item or items sought to be amended and specific reasons for the requested amendment, as well as the individual's birthdate for purposes of verification of records.

(d) Within 10 working days after receipt of a request to amend a record, the Administrative Officer shall transmit to the requester a written acknowledgement of receipt of request. No acknowledgement is required if the request can be reviewed and processed with notification to the individual of compliance or denial within the ten-day period. Requester will be notified within 30 days whether or not his or her request has been granted.

(e) If the Administrative Officer determines that the requested amendment is appropriate to insure that the record is:

(1) Relevant and necessary to accomplish the purposes for which the records were collected; and

(2) As accurate, timely, and complete as are reasonably necessary to assure fairness to the requester, the Administrative Officer shall:

(i) Change the record accordingly;

(ii) Advise the requester that the change has been made, thirty days from receipt of written request;

(iii) After an accounting of disclosures has been kept pursuant to 5 U.S.C. 552a(c), advise all previous recipients of the record, who, the Commission believes, still retain a copy thereof, of the fact that the amendment was made and the substance of the amendment.

(f) If, after review of the record, the Administrative Officer determines that the requested amendment is not in conformity with the requirements of the Act, he shall:

(1) Advise the requester in writing within thirty days of written request of such determination together with specific reasons therefor; and

(2) Inform the requester that further review of the request by the Director of the Commission is available if a written request therefor is made within 30 days after date of denial.

(g) Within 30 working days of receipt of a written request for review pursuant to § 425.4(f)(2) the Director shall make an independent review of the record, using the criteria of § 425.4(e) (1) and (2).

(1) If the Director determines that the record should be amended in accordance with the request, the Administrative Officer shall take the actions listed in § 425.4(e)(2) (i), (ii), and (iii).

(2) If the Director, after independent review, determines that the record should not be amended in accordance with the request, the Administrative Officer shall advise the requester:

(i) Of the determination and the reasons therefor;

(ii) Of his or her right to file with the Administrative Officer a concise statement of his or her reasons for disagreeing with the refusal to amend the record;

(iii) That the record will be annotated to indicate to anyone subsequently having access to it that a statement of disagreement has been filed, and that the statement will be made available to anyone to whom the record is disclosed;

(iv) That the Director and the Administrative Officer may, in their discretion, include a brief summary of their reasons for refusing to amend the record whenever such disclosure is made;

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(v) That any prior recipients of this disputed record, who, the Commission believes, still retain a copy thereof, will be sent a copy of the statement of disagreement, after an accounting of disclosures has been kept pursuant to 5 U.S.C. 552a(c);

(vi) Of his or her right to seek judicial review of the refusal to amend the record, pursuant to 5 U.S.C. 552a(g)(1)(A).

[40 FR 59187, Dec. 22, 1975]

### § 425.5 Disclosure of records to agencies or persons other than the individual to whom the record pertains.

Records subject to the Privacy Act that are requested by any person other than the individual to whom they pertain will not be made available except under the following circumstances:

(a) Records may be circulated to appropriate officials incident to placing Fellows in work assignments for the Fellowship year.

(b) An accounting of the date, nature, and purpose of each disclosure of a record as well as the name and address of the person and agency to whom the disclosure was made will be indicated on the record. This accounting is available to the individual to whom the records pertain on written request to the Commission.

[40 FR 52416, Nov. 10, 1975; 40 FR 56651, Dec. 4, 1975, as amended at 40 FR 59187, Dec. 22, 1975]

## PART 455—NATIONAL CAPITAL PLANNING COMMISSION (PRIVACY ACT REGULATIONS)

Sec.

455.1 Purpose and scope.

455.2 Definitions.

455.3 Procedures for requests pertaining to individual records in a record system.

455.4 Times, places, and requirements for identification of individuals making requests.

455.5 Disclosure of requested information to individuals.

455.6 Request for correction or amendment to the record.

455.7 Agency review of request for correction or amendment of the record.

455.8 Appeal of an initial adverse agency determination on correction or amendment of the record.

455.9 Disclosure of record to a person other than the individual to whom the record pertains.

455.10 Fees.

455.11 Penalties.

455.12 Exemptions.

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 42 FR 7921, Feb. 8, 1977, unless otherwise noted.

### § 455.1 Purpose and scope.

These procedures provide the means by which individuals may safeguard their privacy by obtaining access to, and requesting amendments or corrections in, information, if any, about these individuals which is under the control of the National Capital Planning Commission (hereafter, the "Commission").

### § 455.2 Definitions.

For the purpose of these procedures:

(a) The term *individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term *maintain* includes maintain, collect, use, or disseminate;

(c) The term *record* means any item, collection or grouping of information about an individual that is maintained by the Commission, including, but not limited to, his or her payroll information and mailing address and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as social security number;

(d) The term *system of records* means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

(e) The term *routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

### § 455.3 Procedures for requests pertaining to individual records in a record system.

(a) An individual who wishes to know whether a system of records maintained by the Commission contains a

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record pertaining to him or her shall submit a written request to that effect to the appropriate System Manager at the Commission. The System Manager shall, within 10 days of the receipt of such submission, inform the individual whether a system of records maintained by the Commission contains such a record.

(b) An individual who desires access to any identified record shall file a request therefor, addressed to the System Manager indicating whether such individual intends to appear in person at the Commission's offices or whether he or she desires to receive a copy of any identified record through the mail.

#### § 455.4 Times, places, and requirements for identification of individuals making requests.

(a) An individual who, in accord with § 455.3(b) of this part indicated that he or she would appear personally shall do so at the Commission's offices, 1325 G Street NW., Washington, DC, between the hours of 8:30 A.M. and 5:00 P.M., Monday through Friday (legal holidays excluded) and present a form of identification, such as a valid driver's license or employee identification card, which will permit the System Manager to verify that the individual is the same individual as contained in the record requested.

(b) An individual who, in accord with § 455.3(b) of this part indicated that he or she desired mail delivery of a copy of the record shall include in the request the date and location of birth of the individual as suitable proof of identity.

(c) Where the above mentioned forms of identification are not feasible or appropriate, the Commission shall request a signed statement from the individual asserting his or her identity and stipulating that the individual understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is punishable by a fine of up to \$5,000.

#### § 455.5 Disclosure of requested information to individuals.

Upon verification of identity, the System Manager shall disclose to the individual: (a) The information con-

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tained in the record which pertains to that individual; and (b) the accounting of disclosures of the record, if any, required by 5 U.S.C. 552a(c).

#### § 455.6 Request for correction or amendment to the record.

An individual may request that a record pertaining to him or her be amended or corrected. The individual shall submit any such request in accord with § 455.3 of this part and shall state therein the item sought to be amended and specific reasons therefor.

#### § 455.7 Agency review of request for correction or amendment of the record.

Within ten days of the receipt of the request to correct or to amend the record, the System Manager will acknowledge in writing such receipt and promptly either: (a) Make any correction or amendment of any portion thereof which the individual believes is not accurate, relevant, timely, or complete and inform the individual of same; or (b) inform the individual of his or her refusal to correct or to amend the record in accordance with the request, the reason for the refusal, and the procedures established by the Commission for the individual to request a review of that refusal.

#### § 455.8 Appeal of an initial adverse agency determination on correction or amendment of the record.

An individual who disagrees with the refusal of the System Manager to correct or to amend his or her record may submit a request for a review of such refusal to the Chairman of the Commission, 1325 G Street NW., Washington, DC 20576. The Chairman will, not later than thirty days from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the Chairman extends such thirty day period. If, after his or her review, the Chairman also refuses to correct or to amend the record in accordance with the request, the individual may file with the Commission a concise statement setting forth the reasons for his or her disagreement with the refusal of the Commission and may seek judicial review

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of the Chairman's determination under 5 U.S.C. 552a(g)(1)(A).

### § 455.9 Disclosure of record to a person other than the individual to whom the record pertains.

An individual to whom a record is to be disclosed in person may have a person of his or her own choosing accompany the individual when the record is disclosed.

### § 455.10 Fees.

(a) The Commission will not charge an individual for the costs of making a search for a record or the costs of reviewing the record. When the Commission makes a copy of a record as a necessary part of the process of disclosing the record to an individual, the Commission will not charge the individual for the cost of making that copy.

(b) If an individual requests the Commission to furnish him or her with a copy of the record (when a copy has not otherwise been made as a necessary part of the process of disclosing the record to the individual), the Commission will charge a fee of \$0.25 per page (maximum per page dimension of 8½ × 13 inches) to the extent that the request exceeds \$5.00 in cost to the Commission. Requests not exceeding \$5.00 in cost to the Commission will be met without cost to the requester.

### § 455.11 Penalties.

Title 18 U.S.C. 1001, Crimes and Criminal Procedures, makes it a criminal offense, subject to a maximum fine of \$10,000 or imprisonment for not more than five years or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States. Section 552a(i)(3) of the Privacy Act (5 U.S.C. 552a(i)(3)), makes it a misdemeanor, subject to a maximum fine of \$5,000, to knowingly and willfully request or obtain any record concerning an individual under false pretenses. Section 552a(i) (1) and (2) of the Privacy Act (5 U.S.C. 552a(i) (1) and (2)) provide penalties for violations by agency employees of the Privacy Act or regulations established thereunder.

### § 455.12 Exemptions.

No Commission records system is exempted from the provisions of 5 U.S.C. 552a as permitted under certain conditions by 5 U.S.C. 552a (j) and (k).

## PART 456—NATIONAL CAPITAL PLANNING COMMISSION FREEDOM OF INFORMATION ACT

### Sec.

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AUTHORITY: 40 U.S.C. 8701 *et seq.*, as amended and 5 U.S.C. 552, as amended.

SOURCE: 79 FR 10952, Feb. 27, 2014, unless otherwise noted.

### § 456.1 General information.

This part contains the rules the National Capital Planning Commission (NCPCC or Commission) shall follow in processing third party Requests for Records concerning the activities of the NCPCC under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. Requests made by a U.S. citizen or an individual lawfully admitted for permanent residence to access his or her own records under the Privacy Act, 5 U.S.C. 552a are processed under this part and in accordance with part 455 of Title 1 of the Code of Federal Regulations (CFR) to provide the greatest degree of access while safeguarding an individual's personal privacy. Information routinely provided to the public as part of regular NCPCC activity shall be provided to the public without regard to this part.

### § 456.2 Organization.

(a) The NCPCC serves as the planning agency for the federal government in

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the National Capital Region (NCR). The NCR includes the District of Columbia; Montgomery and Prince George's Counties in Maryland; Arlington, Fairfax, Loudon, and Prince William Counties in Virginia; and all cities in Maryland and Virginia in the aforementioned counties.

(b) Pursuant to the Planning Act, 40 U.S.C. 8701 et seq., the NCPC's primary mission includes:

(1) Preparation of the "Comprehensive Plan for the National Capital: Federal Elements" (Comprehensive Plan). The Comprehensive Plan sets forth the principles, goals and planning policies that guide federal government growth and development of the NCR, and it serves as the foundation for all other plans prepared by the NCPC.

(2) Review of Federal and District of Columbia Agency Plans and Projects. The Commission reviews, and takes appropriate action on, federal and District government agency plans and projects to ensure compliance with, among others, the Comprehensive Plan, principals of good planning and urban design, and federal environmental and historic preservation policies mandated by the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA).

(3) Preparation of the "Federal Capital Improvement Program for the National Capital Region" (FCIP). The FCIP is an annual, six year program of prioritized federal government capital projects prepared by the NCPC for the Office of Management and Budget (OMB).

(c) The Commission is comprised of five citizen members, three of whom are appointed by the President of the United States without Senate approval, including the Chairman, and two of whom are appointed by the Mayor of the District of Columbia. Ex-officio members of the Commission include:

(1) The Secretary of Defense;

(2) The Administrator of the General Services Administration;

(3) The Mayor of the District of Columbia;

(4) The Chairman of the Council of the District of Columbia;

(5) The Chairman of the Senate Committee of Homeland Security and Governmental Affairs; and

(6) The Chairman of the House Committee on Oversight and Government Reform or their designated alternates.

(d) A professional staff, headed by an Executive Director, assists the Commission and is organized as described on the NCPC Web site ([www.ncpc.gov](http://www.ncpc.gov)).

#### § 456.3 Definitions.

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

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

(b) *Adverse Determination or Determination* shall include a determination to withhold, in whole or in part, Records requested in a FOIA Request; the failure to respond to all aspects of a Request; the determination to deny a request for a Fee Waiver; or the determination to deny a request for expedited processing. The term shall also encompass a challenge to NCPC's determination that Records have not been described adequately, that there are no responsive Records, or that an adequate Search has been conducted.

(c) *Agency Record or Record* means any documentary material which is either created or obtained by a federal agency (Agency) in the transaction of Agency business and under Agency control. Agency Records may include without limitation books; papers; maps; charts; plats; plans; architectural drawings; photographs and microfilm; machine readable materials such as magnetic tape, computer disks and electronic data storage devices; electronic records including email messages; and audiovisual material such as still pictures, sound, and video recordings. This definition generally does not cover records of Agency staff that are created and maintained primarily for a staff member's convenience, exempt from Agency creation or retention requirements, and withheld from distribution to other Agency employees for their official use.

(d) *Confidential Commercial Information* means commercial or financial information obtained by the NCPC from a Submitter that may be protected from disclosure under Exemption 4 of



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the FOIA. Exemption 4 of the FOIA protects trade secrets and commercial or financial information obtained from a person which information is privileged or confidential.

(e) *Controlled Unclassified Information* means unclassified information that does not meet the standards for National Security Classification under Executive Order 13536, as amended, but is pertinent to the national interests of the United States or to the important interests of entities outside the federal government, and under law or policy requires protection from unauthorized disclosure, special handling safeguards, or prescribed limits on exchange or dissemination.

(f) *Commercial Use Request* means a FOIA Request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the Requester or the person on whose behalf the Request is made.

(g) *Direct Costs* means those expenditures that the NCPD incurs in searching for, duplicating, and reviewing documents to respond to a FOIA Request. Direct Costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of the rate to cover benefits) and the cost of operating duplicating machinery. Direct Costs do not include overhead expenses such as costs of space, and heating or lighting the facility in which the Records are stored.

(h) *Duplication* means the process of making a copy of a document necessary to respond to a FOIA Request in a form that is reasonably usable by a Requester. Copies can take the form of, among others, paper copy, audio-visual materials, or machine readable documents (*i.e.*, computer disks or electronic data storage devices).

(i) *Educational Institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. To be classified in this category, a Requester must show that the

Request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(j) *Expedited Processing* means giving a FOIA Request priority because a Requester has shown a compelling need for the Records.

(k) *Fee Waiver* means a waiver in whole or in part of fees if a Requester can demonstrate that certain statutory requirements are satisfied including that the information is in the public interest and is not requested for commercial purposes.

(l) *FOIA Public Liaison* means an NCPD official who is responsible for assisting in reducing delays, increasing transparency and understanding the status of Requests, and assisting in the resolution of disputes.

(m) *FOIA Request or Request* means a written Request made by an entity or member of the public for an Agency Record submitted via the U.S. Postal Service mail or other delivery means to include without limitation electronic-mail (email) or facsimile.

(n) *Freelance Journalist* means a Representative of the News Media who is able to demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by that news organization. A publication contract or past evidence of a specific freelance assignment from a news organization may indicate a solid basis for expecting publication.

(o) *Frequently Requested Documents* means documents that have been Requested at least three times under the FOIA. It also includes documents the NCPD anticipates would likely be the subject of multiple Requests.

(p) *Multi-track Processing* means placing simple Requests requiring relatively minimal work and/or review in one processing track, more complex Requests in one or more other tracks, and expedited Requests in a separate track. Requests in each track are processed on a first-in/first-out basis.

(q) *Noncommercial Scientific Institution* means an institution that is not operated for commerce, trade or profit, but is operated solely for the purpose of

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conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, a Requester must show that the Request is authorized by and is made under the auspices of a qualifying institution and that the Records are not sought for commercial use but are sought to further scientific research.

(r) *Privacy Act Request* means a written (paper copy with an original signature) request made by an individual for information about himself/herself that is contained in a Privacy Act system of records. The Privacy Act applies only to U.S. citizens and aliens lawfully admitted for permanent residence such that only individuals satisfying these criteria may make Privacy Act Requests.

(s) *Reading Room Materials* means Records, paper or electronic, that are required to be made available to the public under 5.U.S.C. 552(a)(2) as well as other Records that the NCPC, at its discretion, makes available to the public for inspection and copying without requiring the filing of a FOIA Request.

(t) *Representative of the News Media* means any person or entity that gathers information of potential interest to a segment of the population, uses his/her/its editorial skills to turn raw material into a distinct work, and distributes that work to an audience. News media entities include television or radio stations broadcasting to the public at large; publishers of periodicals that qualify as disseminators of news and make their products available for purchase or subscription by the general public; and alternative media to include electronic dissemination through telecommunication (internet) services. To be in this category, a Requester must not be seeking the Requested Records for a commercial use.

(u) *Requester* means an entity or member of the public submitting a FOIA Request.

(v) *Requester Category* means one of the five categories NCPC places Requesters in for the purpose of determining whether the Requester will be charged for Search, Review and Duplication, and includes Commercial Use Requests, Educational Institutions, Noncommercial Scientific Institutions,

Representatives of the News Media, and all other Requesters.

(w) *Review* means the examination of Records to determine whether any portion of the located Record is eligible to be withheld. It also includes processing any Records for disclosure, i.e., doing all that is necessary to excise the record and otherwise prepare the Record for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(x) *Search* means the process of looking for material, by manual or electronic means that is responsive to a FOIA Request. The term also includes page-by-page or line-by-line identification of material within documents.

(y) *Submitter* means any person or entity outside the federal government from whom the NCPC directly or indirectly obtains commercial or financial information. The term includes, among others, corporations, banks, state and local governments, and agencies of foreign governments who provide information to the NCPC.

(z) *Unusual Circumstances* means, for purposes of § 456.7(c), and only to the extent reasonably necessary to the proper processing of a particular Request:

(1) The need to Search for and collect the Requested Agency Records from establishments that are separate from the Commission's offices;

(2) The need to Search for, collect and appropriately examine and Review a voluminous amount of separate and distinct Agency Records which are demanded in a single Request; or

(3) The need for consultation with another Agency having a substantial interest in the determination of the FOIA Request.

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

#### § 456.4 General policy.

(a) It is the NCPC's general policy to facilitate the broadest possible availability and dissemination of information to the public through use of the NCPC's Web site, *www.ncpc.gov*, and physical distribution of materials not available electronically. The NCPC

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staff shall be available to assist the public in obtaining information formally by using the procedures herein or informally in a manner not inconsistent with the rule set forth in this part. In addition, to the extent permitted by other laws, the NCPC will make available Agency Records of interest to the public that are appropriate for disclosure.

(b) The NCPC possesses the administrative discretion in the context of individual Requests to release documents for no or reduced fees or to waive any of the NCPC's FOIA Request requirements in the interest of public disclosure of information eligible for disclosure under the Act.

### § 456.5 Public reading rooms and information routinely available.

(a) The NCPC shall maintain an electronic library at *www.ncpc.gov* that makes Reading Room Materials capable of production in electronic form available for public inspection and downloading. The NCPC shall also maintain an actual public reading room containing Reading Room Materials incapable of production in electronic form at NCPC's offices. The actual reading room shall be available for use on Workdays during the hours of 9:00 a.m. to 4:00 p.m. Requests for appointments to review Reading Room Materials in the actual public reading room should be directed to the NCPC's Information Resources Specialist identified on the NCPC Web site (*www.ncpc.gov*).

(b) The following types of Records shall be available routinely (subject to the fee schedule set forth in § 456.14) without resort to formal FOIA Request procedures unless such Records fall within one of the exemptions listed at 5 U.S.C. 552(b) of the Act:

- (1) Commission agendas;
- (2) Plans and supporting documentation submitted by applicants to the Commission to include environmental and historic preservation reports prepared for a plan or project;
- (3) Executive Director's Recommendations;
- (4) Commission Memoranda of Action;
- (5) Transcripts of Commission proceedings;

(6) "The Comprehensive Plan for the National Capital: Federal Elements" and other plans prepared by the NCPC;

(7) "Federal Capital Improvements Plan for the National Capital Region" following release of the President's Budget;

(8) Policies adopted by the Commission;

(9) Correspondence between the Commission and the Congress, other federal and local government agencies, and the public; and

(10) Frequently Requested Documents.

### § 456.6 FOIA request requirements.

(a) The NCPC shall designate a Chief Freedom of Information Act Officer who shall be authorized to grant or deny any Request for a Record of the NCPC.

(b) Requests for a Record or Records that is/are not available in the actual or electronic reading rooms shall be directed to the Chief Freedom of Information Act Officer.

(c) All FOIA Requests shall be made in writing. If sent by U.S. mail, Requests should be sent to NCPC's official business address contained on the NCPC Web site. If sent via email, they should be directed to *www.ncpc.gov*. To expedite internal handling of FOIA Requests, the words Freedom of Information Act Request shall appear prominently on the transmittal envelope or the subject line of a Request sent via email or facsimile.

(d) The FOIA Request shall:

(1) State that the Request is made pursuant to the FOIA;

(2) Describe the Agency Record(s) Requested in sufficient detail including, without limitation, any specific information known such as date, title or name, author, recipient, or time frame for which you are seeking Records, to enable the NCPC personnel to locate the Requested Agency Records;

(3) State, pursuant to the fee schedule set forth in § 456.14, a willingness to pay all fees associated with the FOIA Request or the maximum fee the Requester is willing to pay to obtain the Requested Records, unless the Requester is seeking a Fee Waiver or placement in a certain Requester Category;

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(4) State the desired form or format of disclosure of Agency Records with which the NCPD shall endeavor to comply unless compliance would damage or destroy an original Agency Record or reproduction is costly and/or requires the acquisition of new equipment; and

(5) Provide a phone number or email address at which the Requester can be reached to facilitate the handling of the Request.

(e) If a FOIA Request is unclear, overly broad, involves an extremely voluminous amount of Records or a burdensome Search, or fails to state a willingness to pay the requisite fees or the maximum fee which the Requester is willing to pay, the NCPD shall endeavor to contact the Requester to define the subject matter, identify and clarify the Records being sought, narrow the scope of the Request, and obtain assurances regarding payment of fees. The timeframe for a response set forth in § 456.7(a) shall be tolled (stopped temporarily) and the NCPD will not begin processing a Request until the NCPD obtains the information necessary to clarify the Request and/or clarifies issues pertaining to the fee.

### § 456.7 FOIA response requirements.

(a) The Freedom of Information Act Officer, upon receipt of a FOIA Request made in compliance with these rules, shall determine within 20 Workdays whether to grant or deny the Request. The Freedom of Information Officer shall within 20 Workdays notify the Requester in writing of his/her determination and the reasons therefore and of the right to appeal any Adverse Determination to the head of the NCPD.

(b) If a Request is denied in whole or in part, the Chief FOIA Officer's written determination shall include, if technically feasible, the precise amount of information withheld, a brief description of the information withheld without revealing its content, and the exemption under which it is being withheld unless revealing the exemption would harm an interested protected by the exemption. NCPD shall release any portion of a withheld Record that reasonably can be segregated from the exempt portion of the Record.

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(c) In cases involving Unusual Circumstances, the Chief FOIA Officer may extend the 20 Workday time limit by written notice to the Requester. The written notice shall set forth the reasons for the extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension of more than 10 Working Days unless the Freedom of Information Act Officer affords the Requester an opportunity to modify his/her Request or arranges an alternative timeframe with the Requester for completion of the NCPD's processing.

### § 456.8 Multi-track processing.

The NCPD may use multiple tracks for processing FOIA Requests based on the complexity of Requests and those for which expedited processing is Requested. Complexity shall be determined based on the amount of work and/or time needed to process a Request and/or the number of pages of responsive Records. If the NCPD utilizes Multi-track Processing, it shall advise a Requester when a Request is placed in a slower track of the limits associated with a faster track and afford the Requester the opportunity to limit the scope of its Request to qualify for faster processing.

### § 456.9 Expedited processing.

(a) The NCPD shall provide Expedited Processing of a FOIA Request if the person making the Request demonstrates that the Request involves:

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

(2) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information;

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

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

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(b) A Request for Expedited Processing may be made at the time of the initial FOIA Request or at a later time.

(c) A Requester seeking Expedited Processing must submit a detailed statement setting forth the basis for the Expedited Processing Request. The Requester must certify in the statement that the need for Expedited Processing is true and correct to the best of his/her knowledge. To qualify for Expedited Processing, a Requester relying upon the category in paragraph (a)(2) of this section must establish:

(1) He/she is a full time Representative of the News Media or primarily engaged in the occupation of information dissemination, though it need not be his/her sole occupation;

(2) A particular urgency to inform the public about the information sought by the FOIA Request beyond the public's right to know about the government activity generally; and

(3) The information is of the type that has value that will be lost if not disseminated quickly such as a breaking news story. Information of historical interest only or information sought for litigation or commercial activities will not qualify nor would a news media deadline unrelated to breaking news.

(d) Within 10 calendar days of receipt of a Request for expedited processing, the NCPC shall decide whether to grant or deny the Request and notify the Requester of the decision in writing. If a Request for Expedited Processing is granted, the Request shall be given priority and shall be processed in the expedited processing track. If a Request for Expedited Processing is denied, any appeal of that decision shall be acted on expeditiously.

### § 456.10 Consultations and referrals.

(a) Unless the NCPC determines that it is best able to process a Record in response to a FOIA Request, the NCPC shall either respond to the FOIA Request after consultation with the Agency best able to determine if the Requested Record(s) is/are subject to disclosure; or refer the responsibility for responding to the FOIA Request to the Agency responsible for originating the Record(s). Generally, the Agency originating a Record will be presumed by

the NCPC to be the Agency best qualified to render a decision regarding disclosure or exemption except for Agency Records submitted to the NCPC pursuant to its authority to review Agency plans and/or projects.

(b) Upon referral of a FOIA Request to another Agency, the NCPC shall notify the Requester in writing of the referral, inform the Requester of the name of the Agency to which all or part of the FOIA Request has been referred, provide the Requester a description of the part of the Request referred, and advise the Requester of a point of contact within the receiving Agency.

(c) The timeframe for a response to a FOIA Request requiring consultation or referral shall be based on the date the FOIA Request was initially received by the NCPC and not any later date.

### § 456.11 Classified and controlled unclassified information.

(a) For Requests for an Agency Record that has been classified or may be appropriate for classification by another Agency pursuant to an Executive Order concerning the classification of Records, the NCPC shall refer the responsibility for responding to the FOIA Request to the Agency that either classified the Record, should consider classifying the Record, or has primary interest in the Record, as appropriate.

(b) Whenever a Request is made for a Record that is designated Controlled Unclassified Information by another Agency, the NCPC shall refer the FOIA Request to the Agency that designated the Record as Controlled Unclassified Information. Decisions to disclose or withhold information designated as Controlled Unclassified Information shall be made based on the applicability of the statutory exemptions contained in the FOIA, not on a Controlled Unclassified Information marking or designation.

### § 456.12 Confidential commercial information.

(a) Confidential Commercial Information obtained by the NCPC from a Submitter shall be disclosed under the FOIA only in accordance with the requirements of this section.

(b) A Submitter of Confidential Commercial Information shall use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4 of the FOIA. These designations will expire ten years after the date of the submission unless the Submitter requests, and provides justification for, a longer designation period.

(c) Notice shall be given to a Submitter of a FOIA Request for potential Confidential Commercial Information if:

(1) The requested information has been designated in good faith by the Submitter as Confidential Commercial Information eligible for protection from disclosure under Exemption 4 of the FOIA; or

(2) The NCPC has reason to believe the requested information is Confidential Commercial Information protected from disclosure under Exemption 4 of the FOIA.

(d) Subject to the requirements of paragraphs (c) and (g) of this section, the NCPC shall provide a Submitter with prompt written notice of a FOIA Request or administrative appeal that seeks the Submitter's Confidential Commercial Information. The notice shall give the Submitter an opportunity to object to disclosure of any specified portion of that Confidential Commercial Information pursuant to paragraph (e) of this section. The notice shall either describe the Confidential Commercial Information Requested or include copies of the Requested Records or portions thereof containing the Confidential Commercial Information. When notice to a large number of Submitters is required, NCPC may provide notification by posting or publishing the notice in a place reasonably likely to accomplish the intent of the notice requirement such as a newspaper, newsletter, the NCPC Web site, or the FEDERAL REGISTER.

(e) The NCPC shall allow a Submitter a reasonable time to respond to the notice described in paragraph (d) of this section and shall specify within the notice the time period for response. If a

Submitter has any objection to disclosure, it shall submit a detailed written statement. The statement must specify all grounds for withholding any portion of the Confidential Commercial Information under any exemption of the FOIA and, in the case of Exemption 4, it must show why the Confidential Commercial Information is a trade secret or commercial or financial information that is privileged or confidential. If the Submitter fails to respond to the notice within the specified time, the NCPC shall consider this failure to respond as no objection to disclosure of the Confidential Commercial Information on the part of the Submitter, and NCPC shall proceed to release the requested information. A statement provided by the Submitter that is not received by NCPC until after the NCPC's disclosure decision has been made shall not be considered by the NCPC. Information provided by a Submitter under this paragraph may itself be subject to disclosure under the FOIA.

(f) The NCPC shall consider a Submitter's objections and specific grounds for nondisclosure in deciding whether to disclose Confidential Commercial Information. Whenever the NCPC decides to disclose Confidential Commercial Information over the objection of a Submitter, the NCPC shall give the Submitter written notice, which shall include:

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

(2) A description of the Confidential Commercial Information to be disclosed; and

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

(g) The notice requirements of paragraphs (c) and (d) of this section shall not apply if:

(1) The NCPC determines that the Confidential Commercial Information is exempt under FOIA;

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

(3) The Confidential Commercial Information's disclosure is required by statute (other than the FOIA) or by a regulation issued in accordance with

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the requirements of Executive Order 12600 (Predisclosure Notification Procedures for Confidential Commercial Information); or

(4) The designation made by the Submitter under paragraph (b) of this section appears obviously frivolous in which case the NCPC shall, within a reasonable time prior to a specified disclosure date, give the Submitter written notice of any final decision to disclose the Confidential Commercial Information.

(h) Whenever a Requester files a lawsuit seeking to compel the disclosure of Confidential Commercial Information, the NCPC shall promptly notify the Submitter.

(i) Whenever the NCPC provides a Submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the NCPC shall also notify the Requester. Whenever the NCPC notifies a Submitter of its intent to disclose Requested Information under paragraph (f) of this section, the NCPC shall also notify the Requester. Whenever a Submitter files a lawsuit seeking to prevent the disclosure of Confidential Commercial Information, the NCPC shall notify the Requester.

### § 456.13 Appeals.

(a) An appeal of an Adverse Determination shall be made in writing to the Chairman of the Commission (Chairman). An appeal may be submitted via U.S. mail or other type of manual delivery service or via email or facsimile within 30 Workdays of the date of a notice of an Adverse Determination. To facilitate handling of an appeal, the words Freedom of Information Act Appeal shall appear prominently on the transmittal envelope or the subject line of a Request sent via electronic-mail or facsimile.

(b) An appeal of an Adverse Determination shall include a detailed statement of the legal, factual or other basis for the Requester's objections to an Adverse Determination; a daytime phone number or email address where the Requester can be reached if the NCPC requires additional information or clarification regarding the appeal; copies of the initial Request and the NCPC's written response; and for an

Adverse Determination of a Request for Expedited Processing or a Fee Waiver, a demonstration of compliance with the requirements of §§ 456.9(a) and (c) or 456.14(a) through (c) respectively.

(c) The Chairman shall respond to an appeal of an Adverse Determination in writing within 20 Workdays of receipt. If the Chairman grants the appeal, the Chairman shall notify the Requester, and the NCPC shall make available copies of the Requested Records promptly thereafter upon receipt of the appropriate fee determined in accordance with § 456.14. If the Chairman denies the appeal in whole or in part, the letter to the Requester shall state the reason(s) for the denial, including the FOIA exemptions(s) applied; a statement that the decision is final; and notification of the Requester's right to seek judicial review of the denial in the District Court of the United States in either the locale in which the Requester resides, the locale in which the Requester has his/her principal place of business, or in the District of Columbia. The Chairman's letter of denial shall also advise the Requester that the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between a Requester and the NCPC as a non-exclusive alternative to litigation. Contact information for OGIS can be obtained from the OGIS Web site at [ogis@nara.gov](mailto:ogis@nara.gov).

(d) The NCPC shall not act on an appeal of an Adverse Determination if the underlying FOIA Request becomes the subject of FOIA litigation.

(e) A party seeking court review of an Adverse Determination must first appeal the decision under this section to NCPC.

### § 456.14 Fees.

(a) In responding to FOIA Requests, the NCPC shall charge the following fees unless a Fee Waiver has been granted under § 456.15.

(1) Search Fees shall be as follows:

(i) Search fees shall be charged for all Requests, subject to the limitations of paragraph (b) of this section. The NCPC may charge for time spent conducting a Search even if it fails to locate any responsive Records or if the

NCPC withholds Records located based on a FOIA exemption.

(ii) For each quarter hour spent by personnel searching for Requested Records, including electronic searches that do not require new programming, the fees will be calculated based on the average hourly General Schedule (GS) base salary, plus the District of Columbia locality payment, plus 16 percent for benefits, of employees in the following three categories: Staff Assistant (assigned at the GS 9-11 grades); Professional Personnel (assigned at the GS 11-13 grades); and Managerial Staff (assigned at the 14-15 grades). For a Staff Assistant the quarter hour fee to Search for and retrieve a Requested Record shall be \$9.00. If a Search and retrieval cannot be performed entirely by a Staff Assistant, and the identification of Records within the scope of a Request requires the use of Professional Personnel, the fee shall be \$12.00 for each quarter hour of Search time spent by Professional Personnel. If the time of Managerial Personnel is required, the fee shall be \$18.00 for each quarter hour of Search time spent by Managerial Personnel.

(iii) For a computer Search of Records, Requesters shall be charged the Direct Costs of creating a computer program, if necessary, and/or conducting the Search, although certain Requesters (as provided in paragraph (b)(1) of this section) will be charged no Search fee and certain other Requesters (as provided in paragraph (b)(3) of this section) will be entitled to the cost equivalent of two hours of manual Search time without charge. These Direct Costs for a computer Search shall include the cost that is directly attributable to a Search for responsive Records, and the costs of the operator's salary for the time attributable to the Search.

(2) Duplication fees shall be charged to all Requesters, subject to the limitations of paragraph (b) of this Section. For a paper photocopy of a Record (no more than one copy of which shall be supplied), the fee shall be 10 cents per page for single or double sided copies, 90 cents per page for 8½ by 11 inch color copies, and \$1.50 per page for color copies up to 11 × 17 inches per page. For copies produced by computer,

and placed on an electronic data saving device or provided as a printout, the NCPC shall charge the Direct Costs, including operator time, of producing the copy. For other forms of Duplication, the NCPC shall charge the Direct Costs of that Duplication.

(3) Review fees shall be charged to Requesters who make a Commercial Use Request. Review fees will be charged only for the NCPC initial Review of a Record to determine whether an exemption applies to a particular Record or portion thereof. No charge will be made for Review at the administrative appeal level for an exemption already applied. However, Records or portions thereof withheld under an exemption that is subsequently determined not applicable upon appeal may be reviewed again to determine whether any other exemption not previously considered applies. If the NCPC determines a different exemption applies, the costs of that Review are chargeable. Review fees will be charged at the same rates as those charged for a Search under paragraph (a)(1)(ii) of this section.

(b) The following limitations on fees shall apply:

(1) No Search fee shall be charged for FOIA Requests made by Educational Institutions, Noncommercial Scientific Institutions, or Representatives of the News Media.

(2) No Search or Review fees shall be charged for a quarter-hour period unless more than half of that period is required for Search or Review.

(3) Except for Requesters of a Commercial Use Request, the NCPC shall provide without charge the first two hours of Search (or the cost equivalent) and the first 100 pages of Duplication (or the cost equivalent); and

(4) Except for Requesters of a Commercial Use Request, no fee shall be charged for a Request if the total fee calculated under this section equals \$50.00 or less.

(5) The fee provisions of this section shall be cumulative. Requesters other than those making a Commercial Use Request shall not be charged a fee unless the total cost of a Search in excess of two hours plus the cost of Duplication in excess of 100 pages totals more than \$50.00.



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(c) If the NCPC determines or estimates fees in excess of \$50.00, the NCPC shall notify the Requester of the actual or estimated amount of total fees, unless in its initial Request the Requester has indicated a willingness to pay fees as high as those determined or estimated. If only a portion of the fee can be estimated, the NCPC shall advise the Requester that the estimated fee constitutes only a portion of the total fee. If the NCPC notifies a Requester that actual or estimated fees amount to more than \$50.00, the Request shall not be considered received for purposes of calculating the time-frame for a Response, and no further work shall be undertaken on the Request until the Requester agrees to pay the anticipated total fee. Any such agreement shall be memorialized in writing. A notice under this paragraph shall offer the Requester an opportunity to work with the NCPC to reformulate the Request to meet the Requester's needs at a lower cost.

(d) Apart from other provisions of this section, if the Requester asks for or the NCPC chooses as a matter of administrative discretion to provide a special service—such as certifying that Records are true copies or sending them by other than ordinary mail—the actual costs of special service shall be charged.

(e) The NCPC shall charge interest on any unpaid fee starting on the 31st day following the date of billing the Requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 (Interest and Penalty on Claims) and will accrue from the date of the billing until payment is received by the NCPC. The NCPC shall follow the provisions of the Debt Collection Act of 1982 (Pub. L. No. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(f) Where the NCPC reasonably believes that one or more Requesters are acting in concert to subdivide a Request into a series of Requests to avoid fees, the NCPC may aggregate the Requests and charge accordingly. The NCPC shall presume that multiple Requests of this type made within a 30-day period have been made to avoid

fees. Where Requests are separated by a time period in excess of 30 days, the NCPC shall aggregate the multiple Requests if a solid basis exists for determining aggregation is warranted under all circumstances involved.

(g) Advance payments shall be treated as follows:

(1) For Requests other than those described in paragraphs (g)(2) and (3) of this section, the NCPC shall not require an advance payment. An advance payment refers to a payment made before work on a Request is begun or continued after being stopped for any reason but does not extend to payment owed for work already completed but not sent to a Requester.

(2) If the NCPC determines or estimates a total fee under this section of more than \$250.00, it shall require an advance payment of all or part of the anticipated fee before beginning to process a Request, unless the Requester provides satisfactory assurance of full payment or has a history of prompt payment.

(3) If a Requester previously failed to pay a properly charged FOIA fee to the NCPC within 30 days of the date of billing, the NCPC shall require the Requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the NCPC begins to process a new Request or continues processing a pending Request from that Requester.

(4) If the NCPC requires advance payment or payment due under paragraphs (g)(2) or (3) of this section, the Request shall not be considered received and no further work will be undertaken on the Request until the required payment is received.

(h) Where Records responsive to Requests are maintained for distribution by Agencies operating statutorily based fee schedule programs, the NCPC shall inform Requesters of the steps for obtaining Records from those sources so that they may do so most economically.

(i) All fees shall be paid by personal check, money order or bank draft drawn on a bank of the United States, made payable to the order of the Treasurer of the United States.

**§ 456.15 Fee waiver requirements.**

(a) Records responsive to a Request shall be furnished without charge or at a charge reduced below that established under § 456.14 if the Requester demonstrates to the NCPD, and the NCPD determines, based on all available information, that 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 disclosure of the information is not primarily in the commercial interest of the Requester.

(b) To determine if 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, the Requester shall demonstrate, and NCPD shall consider, the following factors:

(1) Whether the subject of the Requested Records concerns the operations or activities of the government. The subject of the Requested Records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.

(2) Whether the disclosure is likely to contribute to an understanding of government operations or activities. The portions of the Requested Records eligible for disclosure must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, is not likely to contribute to an understanding of government operations and activities because this information is already known.

(3) Whether disclosure of the Requested information will contribute to public understanding. The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the Requester. A Requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a Rep-

resentative of the News Media satisfies this consideration.

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

(c) To determine whether disclosure of the information is not primarily in the commercial interest of the Requester, the Requester shall demonstrate, and NCPD shall consider, the following factors:

(1) Whether the Requester has a commercial interest that would be furthered by the Requested disclosure. The NCPD shall consider any commercial interest of the Requester (with reference to the definition of Commercial Use Request in § 456.3(f)), or of any person on whose behalf the Requester may be acting, that would be furthered by the Requested disclosure. Requesters shall be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(2) Whether any identified commercial interest of the Requester is sufficiently large in comparison with the public interest in disclosure that disclosure is primarily in the commercial interest of the Requester. A Fee Waiver is justified where the public interest standard of paragraph (b) of this section is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The NCPD ordinarily shall presume that a Representative of the News Media satisfies the public interest standard, and 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.

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(d) Where only some of the Records to be released satisfy the requirements for a Fee Waiver, a Fee Waiver shall be granted for those Records.

(e) Requests for a Fee Waiver should address the factors listed in paragraphs (b) and (c) of this section, insofar as they apply to each Request. The NCPD shall exercise its discretion to consider the cost-effectiveness of its investment of administrative resources in this decision-making process in deciding to grant Fee Waivers.

### § 456.16 Preservation of FOIA records.

(a) The NCPD shall preserve all correspondence pertaining to FOIA Requests received and copies or Records provided until disposition or destruction is authorized by the NCPD's General Records schedule of the National Archives and Records Administration (NARA) or other NARA-approved Schedule.

(b) Materials that are responsive to a FOIA Request shall not be disposed of or destroyed while the Request or a related lawsuit is pending even if the Records would otherwise be authorized for disposition under the NCPD's General Records Schedule or NARA or other NARA-approved records schedule.

## PART 457—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL CAPITAL PLANNING COMMISSION

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 22887, 22896, June 23, 1986, unless otherwise noted.

### § 457.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

### § 457.102 Application.

This part applies to all programs or activities conducted by the agency.

### § 457.103 Definitions.

For purposes of this part, the term—  
*Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

*Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

*Complete complaint* means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf

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of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

*Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

*Handicapped person* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term “physical or mental impairment” includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

*Historic preservation programs* means programs conducted by the agency that have preservation of historic properties as a primary purpose.

*Historic properties* means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

*Qualified handicapped person* means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by §457.140.

*Section 504* means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies

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only to programs or activities conducted by Executive agencies and not to federally assisted programs.

*Substantial impairment* means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

### §§ 457.104–457.109 [Reserved]

#### § 457.110 Self-evaluation.

(a) The agency shall, by August 24, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

- (1) A description of areas examined and any problems identified, and
- (2) A description of any modifications made.

#### § 457.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

### §§ 457.112–457.129 [Reserved]

#### § 457.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied

the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a

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program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

**§§ 457.131–457.139 [Reserved]**

**§ 457.140 Employment.**

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of

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1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

**§§ 457.141–457.148 [Reserved]**

**§ 457.149 Program accessibility: Discrimination prohibited.**

Except as otherwise provided in § 457.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

**§ 457.150 Program accessibility: Existing facilities.**

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 457.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by

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a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General*. The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs*. In meeting the requirements of § 457.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of § 457.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide handicapped persons into or through por-

tions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance*. The agency shall comply with the obligations established under this section by October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible.

(d) *Transition plan*. In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by February 23, 1987 a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

### § 457.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

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**§§ 457.152–457.159 [Reserved]**

**§ 457.160 Communications.**

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf person (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 457.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her

designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

**§§ 457.161–457.169 [Reserved]**

**§ 457.170 Compliance procedures.**

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Executive Director shall be responsible for coordinating implementation of this section. Complaints may be sent to Equal Employment Opportunity Director, National Capital Planning Commission, 1325 G Street NW., Washington, DC 20576.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended



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(42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §457.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 22887, 22896, June 23, 1986, as amended at 51 FR 22888, June 23, 1986]

§§ 457.171–457.999 [Reserved]

## PART 500—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Sec.

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500.102 Application.

500.103 Definitions.

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500.110 Self-evaluation.

500.111 Notice.

500.112–500.129 [Reserved]

500.130 General prohibitions against discrimination.

500.131–500.139 [Reserved]

500.140 Employment.

500.141–500.148 [Reserved]

500.149 Program accessibility: Discrimination prohibited.

500.150 Program accessibility: Existing facilities.

500.151 Program accessibility: New construction and alterations.

500.152–500.159 [Reserved]

500.160 Communications.

500.161–500.169 [Reserved]

500.170 Compliance procedures.

500.171–500.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 22888, 22896, June 23, 1986, unless otherwise noted.

### § 500.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

### § 500.102 Application.

This part applies to all programs or activities conducted by the agency.

### § 500.103 Definitions.

For purposes of this part, the term—  
*Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

*Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

*Complete complaint* means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

*Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

*Handicapped person* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning

disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

*Historic preservation programs* means programs conducted by the agency that have preservation of historic properties as a primary purpose.

*Historic properties* means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

*Qualified handicapped person* means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a

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## § 500.130

handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 500.140.

*Section 504* means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

*Substantial impairment* means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

### §§ 500.104-500.109 [Reserved]

#### § 500.110 Self-evaluation.

(a) The agency shall, by August 24, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the

self-evaluation, maintain on file and make available for public inspection:

(1) a description of areas examined and any problems identified, and

(2) a description of any modifications made.

#### § 500.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

### §§ 500.112-500.129 [Reserved]

#### § 500.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide

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qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the

programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

**§§ 500.131–500.139 [Reserved]**

**§ 500.140 Employment.**

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

**§§ 500.141–500.148 [Reserved]**

**§ 500.149 Program accessibility: Discrimination prohibited.**

Except as otherwise provided in § 500.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

**§ 500.150 Program accessibility: Existing facilities.**

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

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(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 500.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General*. The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in mak-

ing alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs*. In meeting the requirements of § 500.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of § 500.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance*. The agency shall comply with the obligations established under this section by October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible.

(d) *Transition plan*. In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by February 23, 1987 a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

## § 500.151

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

### **§ 500.151 Program accessibility: New construction and alterations.**

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

### **§§ 500.152-500.159 [Reserved]**

### **§ 500.160 Communications.**

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf person (TDD's) or equally effective telecommunication systems shall be used.

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(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 500.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

### **§§ 500.161-500.169 [Reserved]**

### **§ 500.170 Compliance procedures.**

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section

## Miscellaneous Agencies

## §§ 500.171–500.999

504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director shall be responsible for coordinating implementation of this section. Complaints may be sent to Director, National Commission for Employment Policy, Suite 300, 1522 K Street NW., Washington, DC 20005.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the

complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §500.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 22888, 22896, June 23, 1986, as amended at 51 FR 22888, June 23, 1986]

§§ 500.171–500.999 [Reserved]





## FINDING AIDS

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For changes to this volume of the CFR prior to this listing, consult the annual edition of the monthly List of CFR Sections Affected (LSA). The LSA is available at *www.fdsys.gov*. For changes to this volume of the CFR prior to 2001, see the “List of CFR Sections Affected, 1949–1963, 1964–1972, 1973–1985, and 1986–2000” published in 11 separate volumes. The “List of CFR Sections Affected 1986–2000” is available at *www.fdsys.gov*.

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