

§ 1.5

§ 1.5 Signature to constitute certificate.

When an individual who appears in a representative capacity signs a paper in practice before the Department, his signature shall constitute his certificate:

(a) That under the provisions of this part and the law, he is authorized and qualified to represent the particular party in the matter;

(b) That, if he is the partner of a present or former officer or employee, including a special Government employee, the matter in respect of which he intends to practice is not a matter in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise and that the matter is not the subject of such partner's official Government responsibility;

(c) That, if he is a former officer or employee, including a special Government employee, the matter in respect of which he intends to practice is not a matter in which he participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed and, if a period of one year has not passed since the termination of his employment with the Government, that the matter was not under his official responsibility as an officer or employee of the Government; and

(d) That he has read the paper; that to the best of his knowledge, information, and belief there is good ground to support its contents; that it contains no scandalous or indecent matter; and that it is not interposed for delay.

§ 1.6 Disciplinary proceedings.

(a) Disciplinary proceedings may be instituted against anyone who is practicing or has practiced before the Department on grounds that he is incompetent, unethical, or unprofessional, or that he is practicing without authority under the provisions of this part, or that he has violated any provisions of

43 CFR Subtitle A (10-1-20 Edition)

the laws and regulations governing practice before the Department, or that he has been disbarred or suspended by any court or administrative agency. Individuals practicing before the Department should observe the Canons of Professional Ethics of the American Bar Association and those of the Federal Bar Association, by which the Department will be guided in disciplinary matters.

(b) Whenever in the discretion of the Solicitor the circumstances warrant consideration of the question whether disciplinary action should be taken against an individual who is practicing or has practiced before the Department, the Solicitor shall appoint a hearing officer to consider and dispose of the case. The hearing officer shall give the individual adequate notice of, and an opportunity for a hearing on, the specific charges against him. The hearing shall afford the individual an opportunity to present evidence and cross-examine witnesses. The hearing officer shall render a decision either (1) dismissing the charges, or (2) reprimanding the individual or suspending or excluding him from practice before the Department.

(c) Within 30 days after receipt of the decision of the hearing officer reprimanding, suspending, or excluding an individual from practice before the Department, an appeal may be filed with the Solicitor, whose decision shall be final.

PART 2—FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY

Subpart A—Introduction

Sec.

- 2.1 What should you know up front?
- 2.2 What kinds of records are not covered by the regulations in subparts A through I of this part?

Subpart B—How to Make a Request

- 2.3 Where should you send a FOIA request?
- 2.4 Does where you send your request affect its processing?
- 2.5 How should you describe the records you seek?
- 2.6 How will fee information affect the processing of your request?

Office of the Secretary, Interior

Pt. 2

- 2.7 What information should you include about your fee category?
- 2.8 Can you ask for records to be disclosed in a particular form or format?
- 2.9 What if your request seeks records about another person?
- 2.10 May you ask for the processing of your request to be expedited?
- 2.11 What contact information should your request include?

Subpart C—Processing Requests

- 2.12 What should you know about how bureaus process requests?
- 2.13 How do consultations and referrals work?

Subpart D—Timing of Responses to Requests

- 2.14 In what order are responses usually made?
- 2.15 What is multitrack processing and how does it affect your request?
- 2.16 What is the basic time limit for responding to a request?
- 2.17 When does the basic time limit begin for misdirected FOIA requests?
- 2.18 When can the bureau suspend the basic time limit?
- 2.19 When may the bureau extend the basic time limit?
- 2.20 When will expedited processing be provided and how will it affect your request?

Subpart E—Responses to Requests

- 2.21 How will the bureau respond to requests?
- 2.22 How will the bureau grant requests?
- 2.23 When will the bureau deny a request or procedural benefits?
- 2.24 How will the bureau deny requests?
- 2.25 What if the requested records contain both exempt and nonexempt material?

Subpart F—Handling Confidential Information

- 2.26 May submitters of possibly confidential information designate information as confidential when making Departmental submissions?
- 2.27 When will the bureau notify a submitter of a request for their possibly confidential information?
- 2.28 What information will the bureau include when it notifies a submitter of a request for their possibly confidential information?
- 2.29 When will the bureau not notify a submitter of a request for their possibly confidential information?
- 2.30 How and when may a submitter object to disclosure of confidential information?

- 2.31 What must a submitter include in a detailed Exemption 4 objection statement?
- 2.32 How will the bureau consider the submitter's objections?
- 2.33 What if the bureau determines it will disclose information over the submitter's objections?
- 2.34 Will a submitter be notified of a FOIA lawsuit?
- 2.35 Will you receive notification of activities involving the submitter?
- 2.36 Can a bureau release information protected by Exemption 4?

Subpart G—Fees

- 2.37 What general principles govern fees?
- 2.38 What are the requester fee categories?
- 2.39 How does your requester category affect the fees you are charged?
- 2.40 How will fee amounts be determined?
- 2.41 What search fees will you have to pay?
- 2.42 What duplication fees will you have to pay?
- 2.43 What review fees will you have to pay?
- 2.44 What fees for other services will you have to pay?
- 2.45 When will the bureau waive fees?
- 2.46 When may you ask the bureau for a fee waiver?
- 2.47 How will the bureau notify you if it denies your fee waiver request?
- 2.48 How will the bureau evaluate your fee waiver request?
- 2.49 When will you be notified of anticipated fees?
- 2.50 When will the bureau require advance payment?
- 2.51 What if the bureau needs clarification about fee issues?
- 2.52 How will you be billed?
- 2.53 How will the bureau collect fees owed?
- 2.54 When will the bureau combine or aggregate requests?
- 2.55 What if other statutes require the bureau to charge fees?
- 2.56 May the bureau waive or reduce your fees at its discretion?

Subpart H—Administrative Appeals

- 2.57 When may you file an appeal?
- 2.58 How long do you have to file an appeal?
- 2.59 How do you file an appeal?
- 2.60 Who makes decisions on appeals?
- 2.61 How are decisions on appeals issued?
- 2.62 When can you expect a decision on your appeal?
- 2.63 Can you receive expedited processing of appeals?
- 2.64 Must you submit an appeal before seeking judicial review?

Subpart I—General Information

- 2.65 Where are records made available?
- 2.66 What are FOIA Requester Centers and the FOIA Public Liaison?

§ 2.1

- 2.67 When will the Department make records available without a FOIA request?
- 2.68 How will FOIA materials be preserved?
- 2.69 How will a bureau handle a request for federally-funded research data?
- 2.70 What definitions apply to subparts A through I of this part?

Subpart J—Declassification of Classified Documents

- 2.200 Declassification of classified documents.

Subpart K—Privacy Act

- 2.220 Purpose and scope.
- 2.221 Definitions.
- 2.222 Records subject to Privacy Act.
- 2.223 Standards for maintenance of records subject to the Act.
- 2.224 [Reserved]
- 2.225 Federal Register notices describing systems of records.
- 2.226 Assuring integrity of records.
- 2.227 Conduct of employees.
- 2.228 Government contracts.
- 2.229-2.230 [Reserved]
- 2.2316 Disclosure of records.
- 2.232 Accounting for disclosures.
- 2.233-2.234 [Reserved]
- 2.235 Request for notification of existence of records: Submission.
- 2.236 Requests for notification of existence of records: Action on.
- 2.237 Requests for access to records.
- 2.238 Requests for access to records: Submission.
- 2.239 Requests for access to records: Initial decision.
- 2.240 Requests for notification of existence of records and for access to records: Appeals.
- 2.241 Requests for access to records: Special situations.
- 2.242-2.244 [Reserved]
- 2.245 Amendment of records.
- 2.246 Petitions for amendment: Submission and form.
- 2.247 Petitions for amendment: Processing and initial decision.
- 2.248 Petitions for amendments: Time limits for processing.
- 2.249 Petitions for amendment: Appeals.
- 2.250 Petitions for amendment: Action on appeals.
- 2.251 [Reserved]
- 2.252 Statements of disagreement.
- 2.253 [Reserved]
- 2.254 Exemptions.

Subpart L—Legal Process: Testimony by Employees and Production of Records

GENERAL INFORMATION

- 2.280 What does this subpart cover?

43 CFR Subtitle A (10–1–20 Edition)

- 2.281 What is the Department's policy on granting requests for employee testimony or Department records?

RESPONSIBILITIES OF REQUESTERS

- 2.282 How can I obtain employee testimony or Department records?
- 2.283 If I serve a subpoena *duces tecum*, must I also submit a *Touhy* Request?
- 2.284 What information must I put in my *Touhy* Request?
- 2.285 How much will I be charged?
- 2.286 Can I get an authenticated copy of a Department record?

RESPONSIBILITIES OF THE DEPARTMENT

- 2.287 How will the Department process my *Touhy* Request?
- 2.288 What criteria will the Department consider in responding to my *Touhy* Request?

RESPONSIBILITIES OF EMPLOYEES

- 2.289 What must I, as an employee, do upon receiving a request?
- 2.290 Must I get approval before testifying as an expert witness on a subject outside the scope of my official duties?

APPENDIX A TO PART 2—FEE SCHEDULE
APPENDIX B TO PART 2—MINERAL LEASING ACT AND MINERAL LEASING ACT FOR ACQUIRED LANDS—SPECIAL RULES

AUTHORITY: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461.

SOURCE: 40 FR 7305, Feb. 19, 1975, unless otherwise noted.

Subpart A—Introduction

SOURCE: 77 FR 76902, Dec. 31, 2012, unless otherwise noted.

§ 2.1 What should you know up front?

(a) Subparts A through I of this part contain the rules that the Department follows in processing records under the Freedom of Information Act (FOIA), 5 U.S.C. 552.

(b) Definitions of terms used in Subparts A through I of this part are found at § 2.70.

(c) Subparts A through I of this part should be read in conjunction with the text of the FOIA and the OMB Fee Guidelines.

(d) The Department's FOIA Handbook and its attachments contain detailed information about Department procedures for making FOIA requests and descriptions of the types of records maintained by different Department

bureaus or offices. This resource is available at <https://www.doi.gov/foia/news/guidance>.

(e) The Department's regulations for requests made under the Privacy Act of 1974, 5 U.S.C. 552a, are located at subpart K of this part.

(f) Part 2 does not entitle any person to any service or to the disclosure of any record that is not required under the FOIA.

(g) Before you file a FOIA request, you are encouraged to review the Department's electronic FOIA libraries at <http://www.doi.gov/foia/libraries>. The material you seek may be immediately available electronically at no cost.

[77 FR 76902, Dec. 31, 2012, as amended at 81 FR 11127, Mar. 3, 2016]

§ 2.2 What kinds of records are not covered by the regulations in subparts A through I of this part?

Subparts A through I of this part do not apply to records that fall under the law enforcement exclusions in 5 U.S.C. 552(c)(1)–(3). These exclusions may be used only in the limited circumstances delineated by the statute and require both prior approval from the Deputy Chief FOIA Officer and the recording of their use and approval process.

[77 FR 76902, Dec. 31, 2012, as amended at 84 FR 61826, Nov. 14, 2019]

Subpart B—How To Make a Request

SOURCE: 77 FR 76902, Dec. 31, 2012, unless otherwise noted.

§ 2.3 Where should you send a FOIA request?

(a) The Department does not have a central location for submitting FOIA requests and it does not maintain a central index or database of records in its possession. Instead, the Department's records are decentralized and maintained by various bureaus and offices throughout the country.

(b) To make a request for Department records, you must write directly to the bureau that you believe maintains those records by utilizing the written forms of submission listed on the Department's FOIA website, <https://www.doi.gov/foia>, or utilizing physical

or facsimile addresses of an appropriate FOIA contact, located at <http://www.doi.gov/foia/contacts>.

(c) Questions about where to send a FOIA request should be directed to the bureau that manages the underlying program or to the appropriate FOIA Requester Center, as discussed in § 2.66 of this part.

[77 FR 76902, Dec. 31, 2012, as amended at 81 FR 11127, Mar. 3, 2016; 84 FR 61826, Nov. 14, 2019]

§ 2.4 Does where you send your request affect its processing?

(a) A request to a particular bureau or a bureau component (for example, a request addressed to a regional or field office) will be presumed to seek only records from that particular bureau or component. A request will not be forwarded to another bureau or component unless it is clear on the face of your request that it was misdirected. For example, if you address your request to an appropriate FOIA contact in the National Park Service and ask for records concerning a specific park, but your request is delivered to the Fish and Wildlife Service, your request was clearly misdirected. In such a case, a FOIA contact in the receiving bureau or component will route the request to a FOIA contact in the proper bureau or component. If you need assistance determining where to send a request, you may seek assistance from the bureau's designated FOIA contact or FOIA Requester Center (see § 2.66 of this part).

(b) If you seek records from an entire bureau, submit your request to the bureau FOIA Officer. The bureau FOIA Officer will forward it to the bureau component(s) that he or she believes has or are likely to have responsive records.

(c) If a request to a bureau states that it seeks records located at another specific component of the same bureau, the appropriate FOIA contact will forward the request to the other component.

(d) If a request to a bureau states that it seeks records from other unspecified components within the same bureau, the appropriate FOIA contact will send the request to the Bureau FOIA Officer. He or she will forward it to the components that the bureau

§2.5

FOIA Officer believes have or are likely to have responsive records.

[77 FR 76902, Dec. 31, 2012, as amended at 81 FR 92694, Dec. 20, 2016; 84 FR 61826, Nov. 14, 2019]

§2.5 How should you describe the records you seek?

(a) You must reasonably describe the records sought. A reasonable description contains sufficient detail to enable bureau personnel familiar with the subject matter of the request to locate the records with a reasonable amount of effort.

(b) You should include as much detail as possible about the specific records or types of records that you are seeking. This will assist the bureau in identifying the requested records (for example, time frames involved or specific personnel who may have the requested records). For example, whenever possible, identify:

(1) The date, title or name, author, recipient, and subject of any particular records you seek;

(2) The office that created the records you seek;

(3) The timeframe for which you are seeking records; and

(4) Any other information that will assist the bureau in locating the records.

(c) The bureau's FOIA Requester Center can assist you in formulating or reformulating a request in an effort to better identify the records you seek.

(d) If the bureau determines that your request does not reasonably describe the records sought, the bureau will inform you what additional information you need to provide in order to reasonably describe the records that you seek so the requested records can be located with a reasonable amount of effort. The bureau will also notify you that it will not be able to comply with your request unless the additional information it has requested is received from you in writing within 20 workdays after the bureau has requested it and that you may appeal its determination. If you receive this type of notification, you may wish to discuss it with the bureau's designated FOIA contact or its FOIA Public Liaison (see §2.66 of this part). If the bureau does not receive your written response containing the

43 CFR Subtitle A (10–1–20 Edition)

additional information within 20 workdays after the bureau has requested it, the bureau will presume that you are no longer interested in the records and will close the file on the request.

[77 FR 76902, Dec. 31, 2012; 78 FR 6216, Jan. 30, 2013, as amended at 81 FR 11127, Mar. 3, 2016; 84 FR 61826, Nov. 14, 2019]

§2.6 How will fee information affect the processing of your request?

(a) Your request must explicitly state that you will pay all fees associated with processing the request, that you will pay fees up to a specified amount, and/or that you are seeking a fee waiver.

(b) If, after taking into consideration your fee category entitlements (see §2.39 of this part), the bureau anticipates processing costs will exceed \$50.00 (see §2.37(g) of this part) and these processing costs exceed the amount you have agreed to pay or you did not agree in writing to pay processing fees or request a fee waiver, the bureau will notify you:

(1) Of the estimated processing fees;

(2) Of its need for either an advance payment (see §2.50 of this part) or your written assurance that you will pay the anticipated fees (or fees up to a specified amount); and

(3) That it will not be able to fully comply with your request unless you provide a fee waiver request and/or the requested written assurance or advance payment.

(c) If the bureau does not receive a written response from you within 20 workdays after requesting the information in paragraph (b) of this section, it will presume that you are no longer interested in the records and will close the file on the request.

(d) If you are seeking a fee waiver, your request must include a justification that addresses and meets the criteria in §§2.45 and 2.48 of this part. Failure to provide sufficient justification will result in a denial of the fee waiver request. If you are seeking a fee waiver, you may also indicate the amount you are willing to pay if the fee waiver is denied. This allows the bureau to process the request for records while it considers your fee waiver request. You may also inform us of why you believe your request

Office of the Secretary, Interior

§ 2.12

meets one or more of the criteria for a discretionary fee waiver under § 2.56 of this part.

(e) The bureau will begin processing your request only after all issues regarding fees are resolved.

(f) If you are required to pay a fee and it is later determined on appeal that you were entitled to a full or partial fee waiver or placement in a different fee category, you will receive an appropriate refund.

[77 FR 76902, Dec. 31, 2012, as amended at 81 FR 11128, Mar. 3, 2016; 84 FR 61826, Nov. 14, 2019]

§ 2.7 What information should you include about your fee category?

(a) A request should indicate your fee category (that is, whether you are a commercial-use requester, news media, educational or noncommercial scientific institution, or other requester as described in §§ 2.38 and 2.39 of this part).

(b) If you submit a FOIA request on behalf of another person or organization (for example, if you are an attorney submitting a request on behalf of a client), the bureau will determine the fee category by considering the underlying requester's identity and intended use of the information.

(c) If your fee category is unclear, the bureau may ask you for additional information (see § 2.51 of this part).

§ 2.8 Can you ask for records to be disclosed in a particular form or format?

(a) Generally, you may choose the form or format of disclosure for records requested. The bureau must provide the records in the requested form or format if the bureau can readily reproduce the record in that form or format. If the bureau cannot readily reproduce the record in that form or format, it must explain why it cannot.

(b) The bureau may charge you the direct costs involved in converting records to the requested format if the bureau does not normally maintain the records in that format (see § 2.44 of this part).

[77 FR 76902, Dec. 31, 2012, as amended at 81 FR 11128, Mar. 3, 2016]

§ 2.9 What if your request seeks records about another person?

(a) When a request seeks records about another person, you may receive greater access by submitting proof that the person either:

(1) Consents to the release of the records to you (for example, a notarized authorization signed by that person); or

(2) Is deceased (for example, a copy of a death certificate or an obituary).

(b) The bureau can require you to supply additional information if necessary to verify that a particular person has consented to disclosure or is deceased.

[77 FR 76902, Dec. 31, 2012, as amended at 81 FR 11128, Mar. 3, 2016]

§ 2.10 May you ask for the processing of your request to be expedited?

You may ask for the processing of your request to be expedited. If you are seeking expedited processing, your request must include a justification that addresses and meets the criteria in § 2.20 of this part and includes the certification required at § 2.20(b)(2) of this part. Failure to provide sufficient justification or the required certification will result in a denial of the expedited processing request.

[81 FR 11128, Mar. 3, 2016]

§ 2.11 What contact information should your request include?

A request should include your name and a way (such as a mailing or email address) for the bureau to send responsive records to you and/or to request additional information or clarification of your request. You may also wish to include a daytime telephone number (or the name and telephone number of an appropriate contact).

[81 FR 11128, Mar. 3, 2016]

Subpart C—Processing Requests

SOURCE: 77 FR 76902, Dec. 31, 2012, unless otherwise noted.

§ 2.12 What should you know about how bureaus process requests?

(a) Except as described in §§ 2.4 and 2.13 of this part, the bureau to which

§2.13

the request is addressed is responsible for responding to the request and for making a reasonable effort to search for responsive records.

(b) In determining which records are responsive to a request, the bureau will include only records in its possession and control on the date that it begins its search.

(c) The bureau will make reasonable efforts to search for the requested records. As part of its reasonable efforts, the bureau will search paper and/or electronic records (for example, emails), as appropriate. The bureau will not search for records in an electronic form or format if these efforts would significantly interfere with the operation of the bureau's automated information system.

(d) If a bureau receives a request for records in its possession that primarily concern another bureau or Federal Government agency that is subject to FOIA, it may undertake consultations and/or referrals as described in §2.13.

[77 FR 76902, Dec. 31, 2012, as amended at 81 FR 11128, Mar. 3, 2016; 84 FR 61826, Nov. 14, 2019]

§2.13 How do consultations and referrals work?

(a) When a bureau (other than the Office of Inspector General) locates responsive records that primarily concern another bureau or Federal Government agency that is subject to FOIA, the bureau will determine whether that bureau or agency would be better able to determine whether the record is exempt from disclosure.

(b) If the bureau processing the request believes that another bureau or agency would be better able to determine whether the record is exempt from disclosure, the bureau will contact that bureau or agency to determine whether it should refer the record to that bureau or agency or consult with that bureau or agency.

(1) If the bureau processing the request refers a record to another bureau or agency, that other bureau or agency will respond to you directly about that record. If the bureau processing the request consults with another bureau or agency, the bureau processing the request will respond to you directly.

43 CFR Subtitle A (10–1–20 Edition)

(2) If the bureau receives a request for records that another agency has classified under any applicable executive order concerning record classification, or that the bureau believes may be appropriate for classification by another agency, it will refer the request for those records to that agency for response.

(3) Whenever a bureau refers any part of the responsibility for responding to a request to another bureau or agency, it will:

- (i) Document the referral;
- (ii) Maintain a copy of the referred record; and
- (iii) Notify you in writing of the referral, including whether all or part of your request has been referred, the name of the bureau or agency to which the record was referred, and that bureau or agency's FOIA contact information.

(4) If disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemption that protects ongoing law enforcement investigations, a referral would be inappropriate and the bureau will coordinate with the agency instead.

(c) When a bureau receives a referral, the bureau will assign the referral to the appropriate processing track as described in §2.15 of this part and process it according to the date that the consulting or referring bureau or agency received your request as described in §2.14 of this part.

(d) Bureaus may establish written agreements with other bureaus or agencies to eliminate the need for consultations or referrals for particular types of records.

[84 FR 61826, Nov. 14, 2019]

Subpart D—Timing of Responses to Requests

SOURCE: 77 FR 76902, Dec. 31, 2012, unless otherwise noted.

§2.14 In what order are responses usually made?

The bureau ordinarily will respond to requests according to their order of receipt within their processing track.

Office of the Secretary, Interior

§ 2.19

§ 2.15 What is multitrack processing and how does it affect your request?

(a) Bureaus use processing tracks to distinguish simple requests from more complex ones on the basis of the estimated number of workdays needed to process the request.

(b) In determining the number of workdays needed to process the request, the bureau considers factors such as the number of pages involved in processing the request or the need for consultations.

(c) The basic processing tracks are assigned according to the expected complexity of the collection/review/production process of each request and designated as follows:

(1) Simple: requests in this track would generally take between one to five workdays to process;

(2) Normal: requests in this track would generally take between six to twenty workdays to process;

(3) Complex: requests in this track would generally take between twenty-one workdays and sixty workdays to process; or

(4) Extraordinary: requests in this track involve very complex processing challenges, which may include a large number of potentially responsive records, and would generally take over sixty workdays to process.

(d) Bureaus also have a specific processing track for requests that are granted expedited processing under the standards in § 2.20 of this part. These requests will be processed as soon as practicable.

(e) Bureaus must advise you of the track into which your request falls and, when appropriate, will offer you an opportunity to narrow your request so that it can be placed in a different processing track. If you request placement in a particular processing track but the bureau places you in a different processing track, the bureau will provide you with an explanation of why you were not placed in the processing track you requested.

(f) The use of multitrack processing does not alter the statutory deadline for a bureau to determine whether to comply with your FOIA request (see § 2.16 of this part).

(g) You may track the status of your request, including its estimated processing completion date, at <https://foia.doi.gov/requeststatus/>.

[77 FR 76902, Dec. 31, 2012, as amended at 81 FR 11128, Mar. 3, 2016; 81 FR 92694, Dec. 20, 2016; 84 FR 61827, Nov. 14, 2019]

§ 2.16 What is the basic time limit for responding to a request?

(a) Ordinarily, the bureau has 20 workdays (including the date of receipt) to determine whether to comply with a request, but unusual circumstances may allow the bureau to take longer than 20 workdays (see § 2.19 of this subpart).

(b) A consultation or referral under § 2.13 of this part does not restart the statutory time limit for responding to a request.

[77 FR 76902, Dec. 31, 2012, as amended at 81 FR 11128, Mar. 3, 2016]

§ 2.17 When does the basic time limit begin for misdirected FOIA requests?

The basic time limit for a misdirected FOIA request (see § 2.4(a) of this part) begins no later than ten workdays after the request is first received by any component of the Department that is designated to receive FOIA requests.

[77 FR 76902, Dec. 31, 2012, as amended at 84 FR 61827, Nov. 14, 2019]

§ 2.18 When can the bureau suspend the basic time limit?

(a) The basic time limit in § 2.16 of this part may be temporarily suspended for the time it takes you to respond to one written communication from the bureau reasonably asking for clarifying information.

(b) The basic time limit in § 2.16 may also repeatedly be temporarily suspended for the time it takes you to respond to written communications from the bureau that are necessary to clarify issues regarding fee assessment (see § 2.51 of this part).

§ 2.19 When may the bureau extend the basic time limit?

(a) The bureau may extend the basic time limit, if unusual circumstances exist, by notifying you in writing of:

§2.20

(1) The unusual circumstances involved; and

(2) The date by which it expects to complete processing the request.

(b) If the processing time will extend beyond a total of 30 workdays, the bureau will:

(1) Give you an opportunity to limit the scope of the request or agree to an alternative time period for processing; and

(2) Make available the FOIA Public Liaison (see §2.66 of this part) to assist in resolving any disputes between you and the bureau, and notify you of your right to seek dispute resolution from the Office of Government Information Services (OGIS).

(c) If the bureau extends the time limit under this section and you do not receive a response in accordance with §2.16(a) in that time period, you may consider the request denied and file an appeal in accordance with the procedures in §2.59.

(d) Your refusal to reasonably modify the scope of a request or arrange an alternative time frame for processing a request after being given the opportunity to do so may be considered for litigation purposes as a factor when determining whether exceptional circumstances exist.

[77 FR 76902, Dec. 31, 2012, as amended at 81 FR 11128, Mar. 3, 2016; 81 FR 92694, Dec. 20, 2016; 84 FR 61827, Nov. 14, 2019]

§2.20 When will expedited processing be provided and how will it affect your request?

(a) The bureau will provide expedited processing upon request if you demonstrate to the satisfaction of the bureau that there is a compelling need for the records. The following circumstances demonstrate a compelling need:

(1) Failure to expedite the request could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) There is an urgency to inform the public about an actual or alleged Federal Government activity and the request is made by a person primarily engaged in disseminating information.

(i) In most situations, a person primarily engaged in disseminating infor-

43 CFR Subtitle A (10–1–20 Edition)

mation will be a representative of the news media.

(ii) If you are not a full time member of the news media, to qualify for expedited processing here, you must establish that your main professional activity or occupation is information dissemination, although it need not be your sole occupation.

(iii) The requested information must be the type of information that has particular value that will be lost if not disseminated quickly; this ordinarily refers to a breaking news story that concerns a matter of public exigency.

(iv) Information of historical interest only or information sought for litigation or commercial activities would not qualify, nor would a news media deadline unrelated to breaking news.

(b) If you seek expedited processing, you must submit a statement that:

(1) Explains in detail how all elements and subcomponents of your request meets each element of one or both of the criteria in paragraph (a) of this section; and

(2) Certifies that your explanation is true and correct to the best of your knowledge and belief.

(c) You may ask for expedited processing of your request by writing to the appropriate FOIA contact in the bureau that maintains the records requested any time before the bureau issues its final response to your request. Bureaus will consult with the Office of the Solicitor before granting expedited processing requests and responses to you will include the name and title of the Office of the Solicitor or Office of General Counsel attorney consulted. If only a portion of your request would qualify for expedited processing, we will:

(1) Assign the portion of the request that qualifies for expedited processing a new processing number and place it in the expedited processing track as described in §2.15;

(2) Place the remainder of the request that does not qualify for expedited processing into the appropriate processing track as described in §2.15; and

(3) Inform you of the basis for the partial denial of expedited processing and your right to file an appeal as set forth in §2.20(g) of this subpart.

(d) When making a request for expedited processing of an administrative appeal, submit the request to the appropriate deciding official for FOIA appeals.

(e) The bureau must notify you of its decision to grant or deny expedited processing within 10 calendar days of receiving an expedited processing request.

(f) If expedited processing is granted, the request will be given priority, placed in the processing track for expedited requests, and be processed as soon as practicable.

(g) If expedited processing is denied, the bureau will:

(1) Inform you of the basis for the denial, including an explanation of why the expedited processing request does not meet the Department's expedited processing criteria under this section; and

(2) Notify you of the right to appeal the decision on expedited processing in accordance with the procedures in subpart H of this part.

(h) If you appeal the bureau's expedited processing decision, that portion of your appeal (if it is properly formatted under § 2.59) will be processed before appeals that do not challenge expedited processing decisions.

(i) If the bureau has not responded to the request for expedited processing within 10 calendar days, you may file an appeal (for nonresponse in accordance with § 2.57(a)(8)).

[84 FR 61827, Nov. 14, 2019]

Subpart E—Responses to Requests

SOURCE: 77 FR 76902, Dec. 31, 2012, unless otherwise noted.

§ 2.21 How will the bureau respond to requests?

(a) When the bureau informs you of its decision to comply with a request by granting, partially granting, or denying the request, it will do so in writing and in accordance with the deadlines in subpart D of this part. The bureau's written response will include a statement about the services offered by the FOIA Public Liaison. The bureau's written response will also include a statement about the services offered by

OGIS, using standard language that can be found at: <https://www.doi.gov/foia/news/guidance>."

(b) If the bureau determines that your request will take longer than 10 workdays to process, the bureau immediately will send you a written acknowledgment that includes the request's individualized tracking number and processing track (see § 2.15(e)). The acknowledgement may also include a brief description of the subject of your request.

[77 FR 76902, Dec. 31, 2012, as amended at 81 FR 11129, Mar. 3, 2016; 81 FR 92694, Dec. 20, 2016; 84 FR 61828, Nov. 14, 2019]

§ 2.22 How will the bureau grant requests?

(a) Once the bureau makes a determination to grant a request in full or in part, it must notify you in writing.

(b) The notification will inform you of any fees charged under subpart G of this part.

(c) The bureau will release records (or portions of records) to you promptly upon payment of any applicable fees (or before then, at its discretion).

(d) If the records (or portions of records) are not included with the bureau's notification, the bureau will advise you how, when, and where the records will be released or made available.

[77 FR 76902, Dec. 31, 2012, as amended at 81 FR 11129, Mar. 3, 2016]

§ 2.23 When will the bureau deny a request or procedural benefits?

(a) A bureau denies a request when it makes a decision that:

(1) A requested record is exempt, in full or in part;

(2) The request does not reasonably describe the records sought;

(3) A requested record does not exist, cannot be located, or is not in the bureau's possession and/or control; or

(4) A requested record is not readily reproducible in the form or format you seek.

(b) A bureau denies a procedural benefit only, and not access to the underlying records, when it makes a decision that:

(1) A fee waiver, or another fee-related issue, will not be granted; or

§ 2.24

(2) Expedited processing will not be provided.

(c) The bureau must consult with the Office of the Solicitor before it denies a fee waiver request or withholds all or part of a requested record (unless the Office of the Solicitor has expressly preapproved such a withholding).

[77 FR 76902, Dec. 31, 2012, as amended at 81 FR 11129, Mar. 3, 2016; 84 FR 61828, Nov. 14, 2019]

§ 2.24 How will the bureau deny requests?

(a) The bureau must notify you in writing of any denial of your request.

(b) The denial notification must include:

(1) The name and title or position of the person responsible for the denial, along with an office phone number or email address;

(2) A statement of the reasons for the denial;

(3) A reference to any FOIA exemption applied by the bureau to withhold records in full or in part, along with a statement that the bureau reasonably foresees that disclosure would harm an interest protected by the applied exemption(s) or disclosure is prohibited by law;

(4) An estimate of the volume of any records withheld in full or in part (for example, by providing the number of pages or some other reasonable form of estimation), unless the bureau notes that it does not have or could not locate responsive records or that including an estimate would harm an interest protected by an exemption used to withhold the records and the bureau explains this harm to you;

(5) The name and title of the Office of the Solicitor or Office of General Counsel attorney consulted (if the bureau is denying a fee waiver request or withholding all or part of a requested record); and

(6) A statement that the denial may be appealed under subpart H of this part and a description of the procedures in subpart H of this part.

[77 FR 76902, Dec. 31, 2012, as amended at 81 FR 11129, Mar. 3, 2016; 81 FR 92694, Dec. 20, 2016; 84 FR 61828, Nov. 14, 2019]

43 CFR Subtitle A (10–1–20 Edition)

§ 2.25 What if the requested records contain both exempt and non-exempt material?

If responsive records contain both exempt and nonexempt material, the bureau will consult with the Office of the Solicitor, as discussed in § 2.23(c). After consultation, the bureau will partially grant and partially deny the request by:

(a) Segregating and releasing the nonexempt information, unless the nonexempt material is so intertwined with the exempt material that disclosure of it would leave only meaningless words and phrases;

(b) Indicating on the released portion of the record the amount of information deleted and the FOIA exemption under which the deletion was made, unless doing so would harm an interest protected by the FOIA exemption used to withhold the information; and

(c) If technically feasible, indicating the amount of information deleted and the FOIA exemption under which the deletion was made at the place in the record where the deletion was made.

[77 FR 76902, Dec. 31, 2012, as amended at 81 FR 11129, Mar. 3, 2016]

Subpart F—Handling Confidential Information

SOURCE: 77 FR 76906, Dec. 31, 2012, unless otherwise noted.

§ 2.26 May submitters of possibly confidential information designate information as confidential when making Departmental submissions?

(a) The Department encourages, but does not require, submitters to designate confidential information in good faith (in other words, to identify specific information as information the submitter considers protected from disclosure under Exemption 4 of the FOIA, found at 5 U.S.C. 552(b)(4)), at the time of submission or reasonably soon thereafter.

(b) The designations discussed in paragraph (a) of this section assist the bureau in identifying what information obtained from the submitter is possibly

Office of the Secretary, Interior

§ 2.30

confidential and triggers the requirement for bureau-provided notifications under § 2.27(a)(1) of this subpart.

[81 FR 11129, Mar. 3, 2016]

§ 2.27 When will the bureau notify a submitter of a request for their possibly confidential information?

(a) Except as outlined in § 2.29 of this subpart, a bureau must exercise due diligence to promptly notify a submitter in writing when it receives a FOIA request if:

(1) The requested information has been designated by the submitter as confidential information under § 2.26(a) of this subpart; or

(2) The requested information has not been designated as confidential information by the submitter under § 2.26(a) of this subpart, but the bureau identifies it as possibly confidential information.

(b) If a voluminous number of submitters are involved, the bureau may publish a notice in a manner reasonably calculated to reach the attention of the submitters (for example, in newspapers or newsletters, the bureau's Web site, or the FEDERAL REGISTER) instead of providing a written notice to each submitter.

[77 FR 76902, Dec. 31, 2012, as amended at 81 FR 11129, Mar. 3, 2016; 84 FR 61828, Nov. 14, 2019]

§ 2.28 What information will the bureau include when it notifies a submitter of a request for their possibly confidential information?

A notice to a submitter must include:

(a) Either a copy of the request, the exact language of the request, or (for notices published under § 2.27(b) of this subpart) a general description of the request;

(b) Either a description of the possibly confidential information located in response to the request or a copy of the responsive records, or portions of records, containing the information;

(c) A description of the procedures for objecting to the release of the possibly confidential information under §§ 2.30 and 2.31 of this subpart;

(d) A time limit for responding to the bureau—no less than 10 workdays from receipt or publication of the notice (as set forth in § 2.27(b) of this subpart)—to

object to the release and to explain the basis for the objection;

(e) Notice that information contained in the submitter's objections may itself be subject to disclosure under the FOIA;

(f) Notice that the bureau, not the submitter, is responsible for deciding whether the information will be released or withheld;

(g) A request for the submitter's views on whether they still consider the information to be confidential if the submitter designated the material as confidential commercial or financial information 10 or more years before the request; and

(h) Notice that failing to respond within the time frame specified under § 2.28(d) of this subpart will create a presumption that the submitter has no objection to the disclosure of the information in question.

[77 FR 76902, Dec. 31, 2012, as amended at 81 FR 11129, Mar. 3, 2016]

§ 2.29 When will the bureau not notify a submitter of a request for their possibly confidential information?

The notice requirements of § 2.28 of this subpart will not apply if:

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

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

(c) The bureau has exercised due diligence to notify the submitter, but its efforts were unsuccessful.

[77 FR 76906, Dec. 31, 2012, as amended at 84 FR 61828, Nov. 14, 2019]

§ 2.30 How and when may a submitter object to the disclosure of confidential information?

(a) If a submitter has any objections to the disclosure of confidential information, the submitter should provide a detailed written statement to the bureau that specifies all grounds for withholding the particular information under any FOIA exemption (see § 2.31 of this subpart for further discussion of Exemption 4 objection statements).

§2.31

(b) A submitter who does not respond within the time period specified under §2.28(d) of this subpart will be considered to have no objection to disclosure of the information. Responses received by the bureau after this time period will not be considered by the bureau unless the appropriate bureau FOIA contact determines, in his or her sole discretion, that good cause exists to accept the late response.

§2.31 What must a submitter include in a detailed Exemption 4 objection statement?

(a) To rely on Exemption 4 as a basis for nondisclosure, the submitter must explain why the information is confidential information. To do this, the submitter must provide a detailed written statement that explains why the information is a trade secret or, if the information is not a trade secret, certification that the information is both customarily and actually treated as private by the owner of the information. The statement must also include any available background on whether the information was provided to the government under an assurance that the government would keep it private.

(b) If not already provided, the submitter must include a daytime telephone number, an email and mailing address, and a fax number (if available).

[77 FR 76902, Dec. 31, 2012, as amended at 81 FR 11129, Mar. 3, 2016; 84 FR 61828, Nov. 14, 2019]

§2.32 How will the bureau consider the submitter's objections?

(a) The bureau must carefully consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(b) The bureau, not the submitter, is responsible for deciding whether the information will be released or withheld.

§2.33 What if the bureau determines it will disclose information over the submitter's objections?

If the bureau decides to disclose information over the objection of a submitter, the bureau must notify the submitter by certified mail or other traceable mail, return receipt requested.

43 CFR Subtitle A (10–1–20 Edition)

The notification must be sent to the submitter's last known address and must include:

(a) The specific reasons why the bureau determined that the submitter's disclosure objections do not support withholding the information;

(b) Copies of the records or information the bureau intends to release; and

(c) Notice that the bureau intends to release the records or information no less than 10 workdays after receipt of the notice by the submitter.

§2.34 Will a submitter be notified of a FOIA lawsuit?

If you file a lawsuit seeking to compel the disclosure of confidential information, the bureau must promptly notify the submitter.

§2.35 Will you receive notification of activities involving the submitter?

If any of the following occur, the bureau will notify you:

(a) The bureau provides the submitter with notice and an opportunity to object to disclosure;

(b) The bureau notifies the submitter of its intent to disclose the requested information; or

(c) A submitter files a lawsuit to prevent the disclosure of the information.

§2.36 Can a bureau release information protected by Exemption 4?

If a bureau determines that the requested information is protected from release by Exemption 4 of the FOIA, the bureau has no discretion to release the information. Release of information protected from release by Exemption 4 is prohibited by the Trade Secrets Act, a criminal provision found at 18 U.S.C. 1905.

Subpart G—Fees

SOURCE: 77 FR 76906, Dec. 31, 2012, unless otherwise noted.

§2.37 What general principles govern fees?

(a) The bureau will charge for processing requests under the FOIA in accordance with this subpart and with the OMB Fee Guidelines.

Office of the Secretary, Interior

§ 2.39

(b) The bureau may contact you for additional information to resolve fee issues.

(c) The bureau ordinarily will collect all applicable fees before sending copies of records to you.

(d) You may usually pay fees by check, certified check, or money order made payable to the “Department of the Interior” or the bureau.

(1) Where appropriate, the bureau may require that your payment be made in the form of a certified check.

(2) You may also be able to pay your fees by credit card. You may contact the bureau to determine what forms of payment it accepts.

(e) The bureau should ensure that it conducts searches, review, and duplication in the most efficient and the least expensive manner so as to minimize costs for both you and the bureau.

(f) If the bureau does not comply with any time limit in the FOIA:

(1) Except as provided in paragraph (f)(2) of this section, the bureau cannot assess any search fees (or, if you are in the fee category of a representative of the news media or an educational and noncommercial scientific institution, duplication fees).

(2)(i) If the bureau has determined that unusual circumstances apply (as the term is defined in § 2.70) and the bureau provided you a timely written notice to extend the basic time limit in accordance with § 2.19, the noncompliance is excused for an additional 10 workdays.

(ii) If the bureau has determined that unusual circumstances apply and more than 5,000 pages are necessary to respond to the request, the noncompliance is excused if the bureau has provided you a timely written notice in accordance with § 2.19 and has discussed with you via written mail, email, or telephone (or made not less than 3 good-faith attempts to do so) how you could effectively limit the scope of the request.

(iii) If a court has determined that exceptional circumstances exist (as that term is defined in § 2.70), the noncompliance is excused for the length of time provided by the court order.

(g) If the fee for processing your request is less than \$50, you will not be charged unless multiple requests are

aggregated under § 2.54 of this subpart to an amount that is \$50 or more.

(h) If you fail to pay any FOIA-related fee within 30 calendar days of the date of billing, the processing of any new or ongoing requests and/or appeals from you shall ordinarily be suspended.

(i) If you would like to reformulate your request so it will meet your needs at a lower cost, you may wish to seek assistance from the bureau’s designated FOIA contact or its FOIA Requester Center (see § 2.66 of this part).

[77 FR 76906, Dec. 31, 2012, as amended at 81 FR 11129, Mar. 3, 2016; 81 FR 92694, Dec. 20, 2016; 84 FR 61828, Nov. 14, 2019]

§ 2.38 What are the requester fee categories?

(a) There are four categories of requesters for the purposes of determining fees—commercial-use, educational and noncommercial scientific institutions, representatives of news media, and all others.

(b) The bureau’s decision to place you in a particular fee category will be made on a case-by-case basis based on your intended use of the information and, in most cases, your identity. If you do not submit sufficient information in your FOIA request for the bureau to determine your proper fee category, the bureau may ask you to provide additional information (see § 2.51 of this subpart). If you request placement in a particular fee category but the bureau places you in a different fee category, the bureau will provide you with an explanation of why you were not placed in the fee category you requested (for example, if you were placed in the commercial use requester category rather than the category you requested, the bureau will describe how the records would further your commercial, trade, or profit interests).

(c) See § 2.70 of this part for the definitions of each of these fee categories.

[77 FR 76906, Dec. 31, 2012, as amended at 81 FR 11129, Mar. 3, 2016]

§ 2.39 How does your requester category affect the fees you are charged?

You will be charged as shown in the following table:

§ 2.40

43 CFR Subtitle A (10–1–20 Edition)

Requester Category	Search fees	Review fees	Duplication fees
Commercial use requester	Yes	Yes	Yes.
Educational and noncommercial scientific institutions	No	No	Yes (first 100 pages, or equivalent volume, free).
Representative of news media requester	No	No	Yes (first 100 pages, or equivalent volume, free).
All other requesters	Yes (first 2 hours free)	No	Yes (first 100 pages, or equivalent volume, free).

[77 FR 76906, Dec. 31, 2012, as amended at 81 FR 11130, Mar. 3, 2016; 81 FR 92694, Dec. 20, 2016]

§ 2.40 How will fee amounts be determined?

(a) The bureau will charge the types of fees discussed below unless a waiver of fees is required under § 2.39 of this subpart or has been granted under § 2.45 or § 2.56.

(b) Because the types of fees discussed below already account for the overhead costs associated with a given fee type, the bureau should not add any additional costs to those charges.

§ 2.41 What search fees will you have to pay?

(a) The bureau will charge search fees for all requests, subject to the restrictions of §§ 2.37(f), 2.39, and 2.40(a) of this subpart. The bureau may charge you for time spent searching even if it does not locate any responsive records or if it determines that the records are entirely exempt from disclosure.

(b) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be 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, as applicable:

(1) Clerical—Based on GS-6, Step 5, pay (all employees at GS-7 and below are classified as clerical for this purpose);

(2) Professional—Based on GS-11, Step 7, pay (all employees at GS-8 through GS-12 are classified as professional for this purpose); and

(3) Managerial—Based on GS-14, Step 2, pay (all employees at GS-13 and above are classified as managerial for this purpose).

(c) You can review the current fee schedule for the categories discussed above in paragraph (b) of this section at <http://www.doi.gov/foia/fees-waivers>.

(d) Some requests may require retrieval of records stored at a Federal records center operated by the National Archives and Records Administration. For these requests, bureaus will charge additional costs in accordance with the Transactional Billing Rate Schedule established by the National Archives and Records Administration.

[77 FR 76906, Dec. 31, 2012, as amended at 81 FR 11130, Mar. 3, 2016]

§ 2.42 What duplication fees will you have to pay?

(a) The bureau will charge duplication fees, subject to the restrictions of §§ 2.37(f), 2.39, and 2.40(a) of this subpart.

(b) If photocopies or scans are supplied, the bureau will provide one copy per request at the cost determined by the table in appendix A to this part.

(c) For other forms of duplication, the bureau will charge the actual costs of producing the copy, including the time spent by personnel duplicating the requested records. For each quarter hour spent by personnel duplicating the requested records, the fees will be the same as those charged for a search under § 2.41(b) of this subpart.

(d) If the bureau must scan paper records to accommodate your preference to receive records in an electronic format or print electronic records to accommodate your preference to receive records in a paper format, you will pay both the per page amount noted in Appendix A to this part and the time spent by personnel scanning or printing the requested records. For each quarter hour spent by personnel scanning or printing the requested records, the fees will be the

Office of the Secretary, Interior

§ 2.45

same as those charged for a search under § 2.41(b) of this subpart.

[77 FR 76906, Dec. 31, 2012, as amended at 81 FR 11130, Mar. 3, 2016]

§ 2.43 What review fees will you have to pay?

(a) The bureau will charge review fees if you make a commercial-use request, subject to the restrictions of §§ 2.37(f), 2.39, and 2.40(a) of this subpart.

(b) The bureau will assess review fees in connection with the initial review of the record (the review conducted by the bureau to determine whether an exemption applies to a particular record or portion of a record).

(c) The Department will not charge for reviews at the administrative appeal stage of exemptions applied at the initial review stage. However, if the appellate authority determines that an exemption no longer applies, any costs associated with the bureau's re-review of the records to consider the use of other exemptions may be assessed as review fees.

(d) The bureau will charge review fees at the same rates as those charged for a search under § 2.41(b) of this subpart.

(e) The bureau can charge review fees even if the record(s) reviewed ultimately is not disclosed.

§ 2.44 What fees for other services will you have to pay?

(a) Although not required to provide special services, if the bureau chooses to do so as a matter of administrative discretion, it will charge you the direct costs of providing the service.

(b) Examples of these services include providing multiple copies of the same record, converting records that are not already maintained in a requested format to the requested format, obtaining research data under § 2.69 of this part, sending records by means other than first class mail, and conducting a search that requires the creation of a new computer search program to locate the requested records.

(c) The bureau will notify you of these fees before they accrue and will obtain your written assurance of payment or an advance payment before

proceeding. See §§ 2.49 and 2.50 of this subpart.

[77 FR 76906, Dec. 31, 2012, as amended at 81 FR 11130, Mar. 3, 2016]

§ 2.45 When will the bureau waive fees?

(a) The bureau will release records responsive to a request without charge (in other words, it will give you a full fee waiver) or at a reduced charge (in other words, it will give you a partial fee waiver, as discussed further in paragraph (b) of this section) if the bureau determines, considering the information you have provided, that you have demonstrated (by addressing and meeting each of the criteria listed in § 2.48 of this subpart) that disclosing the information is:

(1) In the public interest because it is likely to contribute significantly to public understanding of government operations or activities, and

(2) Not primarily in your commercial interest.

(b) A partial fee waiver may be appropriate if some but not all of the requested records are likely to contribute significantly to public understanding of the operations and activities of the government.

(c) When deciding whether to waive or reduce fees, the bureau will rely on the fee waiver justification submitted in your request letter. If the letter does not include sufficient justification, the bureau will deny the fee waiver request. The bureau may, at its discretion, request additional information from you (see § 2.51 of this subpart).

(d) The burden is on you to justify entitlement to a fee waiver. Requests for fee waivers are decided on a case-by-case basis under the criteria discussed above in paragraph (a) of this section and § 2.48 of this subpart. If you have received a fee waiver in the past, that does not mean you are automatically entitled to a fee waiver for every request submitted.

(e) Discretionary fee waivers are addressed in § 2.56 of this subpart.

(f) The bureau must not make value judgments about whether the information at issue is "important" enough to be made public; it is not the bureau's role to attempt to determine the level

§2.46

of public interest in requested information.

[77 FR 76906, Dec. 31, 2012, as amended at 81 FR 11130, Mar. 3, 2016; 84 FR 61828, Nov. 14, 2019]

§2.46 When may you ask the bureau for a fee waiver?

(a) You should request a fee waiver when your request is first submitted to the bureau (see §2.6 of this part).

(b) You may submit a fee waiver request at a later time if the bureau has not yet completed processing your request.

[77 FR 76906, Dec. 31, 2012, as amended at 81 FR 11130, Mar. 3, 2016]

§2.47 How will the bureau notify you if it denies your fee waiver request?

If the bureau denies your request for a fee waiver, it will notify you, in writing, of the following:

(a) The basis for the denial, including a full explanation of why the fee waiver request does not meet the Department's fee waiver criteria in §2.48 of this subpart;

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

(c) The name and title of the Office of the Solicitor attorney consulted;

(d) Your right to appeal the denial under subpart H of this part and a description of the requirements set forth therein, within 90 workdays from the date of the fee waiver denial letter; and

(e) Your anticipated fees, in accordance with §2.49 of this subpart.

[77 FR 76906, Dec. 31, 2012, as amended at 81 FR 11130, Mar. 3, 2016; 84 FR 61828, Nov. 14, 2019]

§2.48 How will the bureau evaluate your fee waiver request?

(a) In deciding whether your fee waiver request meets the requirements of §2.45(a)(1) of this subpart, the bureau will consider the criteria listed in paragraphs (a)(1) through (a)(4) of this section. You must address and meet each of these criteria in order to demonstrate that you are entitled to a fee waiver.

(1) How the records concern the operations or activities of the Federal government. The subject of the request must concern discrete, identifiable agency activities, operations, or pro-

43 CFR Subtitle A (10–1–20 Edition)

grams with a connection that is direct and clear, not remote or attenuated.

(2) How disclosure is likely to contribute significantly to public understanding of those operations or activities, including:

(i) How the contents of the records are meaningfully informative. The disclosure of information that is already readily available to you from other sources or easily accessible to the public, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding and the bureau informs you of where the requested information is already available;

(ii) What the logical connection is between the content of the records and the operations or activities of the Federal government;

(iii) How disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding;

(iv) Your expertise in the subject area as well as your identity, vocation, qualifications, and your plan to disclose the information in a manner that will be informative to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to furthering your individual understanding;

(v) Your ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject (for example, how and to whom you intend to disseminate the information). If we have categorized you as a representative of the news media under §2.38, we will presume you have this ability and intent;

(vi) Whether the records would confirm or clarify data that has been released previously; and

(vii) How the public's understanding of the subject in question will be enhanced to a significant extent by the disclosure.

(b) In deciding whether the fee waiver request meets the requirements in §2.45(a)(2) of this subpart, the bureau will consider any commercial interest of yours that would be furthered by the requested disclosure. To determine whether disclosure of the requested

Office of the Secretary, Interior

§ 2.49

records is primarily in your commercial interest (based on your intended use of the information), the bureau will consider:

(1) Whether the requested disclosure would further any commercial interest of yours.

(2) If you have a commercial interest, the bureau must determine whether that is the primary interest furthered by the request by balancing the commercial interest against the public interest in disclosure of the records. When the requirements of paragraph (a) are satisfied and any commercial interest is not the primary interest furthered by the request, this balancing test shows a waiver or reduction of fees is justified. Bureaus ordinarily will presume that, when a news media requester has satisfied paragraph (a) above, the request is not primarily in the commercial interest of the requester.

(3) You are encouraged to provide explanatory information regarding these considerations.

(4) The bureau will not find that disclosing the requested records will be primarily in your commercial interest where the public interest is greater than any identified commercial interest in disclosure.

(5) If you have a commercial interest that would be furthered by disclosure, explain how the public interest in disclosure would be greater than any commercial interest you may have in the documents.

(i) Your identity, vocation, and intended use of the requested records are all factors to be considered in determining whether disclosure would be primarily in your commercial interest.

(ii) If you are a representative of a news media organization seeking records as part of the news gathering process, we will ordinarily presume that the public interest outweighs your commercial interest. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(iii) If you represent a business/corporation/association or you are an attorney representing such an organization, we will presume that your com-

mercial interest outweighs the public interest unless you demonstrate otherwise.

[84 FR 61828, Nov. 14, 2019]

§ 2.49 When will you be notified of anticipated fees?

(a) The bureau will notify you under this section unless:

(1) The anticipated fee is less than \$50 (see § 2.37(g) of this subpart).

(2) You have been granted a full fee waiver;

(3) Your request does not reasonably describe the records sought and/or does not explicitly state that you will pay all fees associated with the processing of the request, that you will pay fees up to a specified amount, and/or that you are seeking a fee waiver; or

(4) You have already agreed to pay all the fees associated with the request.

(b) If none of the above exceptions apply, the bureau will:

(1) Promptly notify you of the estimated costs for search, review, and/or duplication;

(2) Ask you to provide written assurance within 20 workdays that you will pay all fees or fees up to a designated amount;

(3) Notify you that it will not be able to comply with your FOIA request unless you provide the written assurance requested; and

(4) Give you an opportunity to reduce the fee by modifying the request.

(c) If the bureau does not receive your written response containing the additional information that resolves any fee issues, in accordance with paragraphs (b)(2) and/or (b)(4) of this section, within 20 workdays after the bureau has requested it, the bureau will presume that you are no longer interested in the records and will close the file on the request.

(d) After the bureau begins processing a request, if it finds that the actual cost will exceed the amount you previously agreed to pay, the bureau will:

(1) Stop processing the request;

(2) Promptly notify you of the higher amount and ask you to provide written assurance of payment; and

§ 2.50

(3) Notify you that it will not be able to fully comply with your FOIA request unless you provide the written assurance requested; and

(4) Give you an opportunity to reduce the fee by modifying the request.

(e) If you wish to modify your request in an effort to reduce fees, the bureau's FOIA Requester Center can assist you.

[77 FR 76906, Dec. 31, 2012, as amended at 81 FR 11130, Mar. 3, 2016; 84 FR 61829, Nov. 14, 2019]

§ 2.50 When will the bureau require advance payment?

(a) The bureau will require advance payment before starting further work when it finds the estimated fee is over \$250 and:

(1) You have never made a FOIA request to the Department requiring the payment of fees; or

(2) You did not pay a previous FOIA fee within 30 calendar days of the date of billing.

(b) If the bureau believes that you did not pay a previous FOIA fee within 30 calendar days of the date of billing, the bureau will require you to either:

(1) Demonstrate you paid prior fee within 30 calendar days of the date of billing; or

(2) Pay any unpaid amount of the previous fee, plus any applicable interest penalties (see § 2.53 of this subpart), and pay in advance the estimated fee for the new request.

(c) When the bureau notifies you that an advance payment is due under paragraph (a) of this section, it will give you an opportunity to reduce the fee by modifying the request.

(d) Your payment of the funds you owe the bureau for work it has already completed before records are sent to you is not an advance payment under paragraph (a) of this section.

(e) If the bureau requires advance payment, it will start further work only after receiving the advance payment. It will also notify you that it will not be able to comply with your FOIA request unless you provide the advance payment. Unless you pay the advance payment within 20 workdays after the date of the bureau's fee letter, the bureau will presume that you are

43 CFR Subtitle A (10–1–20 Edition)

no longer interested and will close the file on the request.

[77 FR 76906, Dec. 31, 2012, as amended at 81 FR 11130, Mar. 3, 2016]

§ 2.51 What if the bureau needs clarification about fee issues?

(a) If your FOIA request does not contain sufficient information for the bureau to determine your proper fee category or leaves another fee issue unclear, the bureau may ask you to provide additional clarification. If it does so, the bureau will notify you that it will not be able to comply with your FOIA request unless you provide the clarification requested.

(b) If the bureau asks you to provide clarification, the 20-workday statutory time limit for the bureau to respond to the request is temporarily suspended.

(1) If the bureau receives a written response within 20 workdays after the bureau has requested the additional clarification, the 20-workday statutory time limit for processing the request will resume (see § 2.16 of this part).

(2) If you still have not provided sufficient information to resolve the fee issue, the bureau may ask you again to provide additional clarification and notify you that it will not be able to comply with your FOIA request unless you provide the additional information requested within 20 workdays after the bureau has requested the additional clarification.

(3) If the bureau asks you again for additional clarification, the statutory time limit for response will be temporarily suspended again and will resume again if the bureau receives a written response from you within 20 workdays after the bureau has requested the additional clarification.

(c) If the bureau asks for clarification about a fee issue and does not receive a written response from you within 20 workdays after the bureau has requested the additional clarification, it will presume that you are no longer interested and will close the file on the request.

[77 FR 76906, Dec. 31, 2012; 78 FR 6216, Jan. 30, 2013; 81 FR 11130, Mar. 3, 2016]

§ 2.52 How will you be billed?

If you are required to pay a fee associated with a FOIA request, the bureau processing the request will send a bill for collection.

§ 2.53 How will the bureau collect fees owed?

(a) The bureau may charge interest on any unpaid bill starting on the 31st day following the billing date.

(b) The bureau will assess interest charges at the rate provided in 31 U.S.C. 3717 and implementing regulations and interest will accrue from the billing date until the bureau receives payment.

(c) The bureau will follow the provisions of the Debt Collection Act of 1982 (Public Law 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset to collect overdue amounts and interest.

(d) This section does not apply if you are a state, local, or tribal government.

§ 2.54 When will the bureau combine or aggregate requests?

(a) The bureau may aggregate requests and charge accordingly when it reasonably believes that you, or a group of requesters acting in concert with you, are attempting to avoid fees by dividing a single request into a series of requests on a single subject or related subjects.

(1) The bureau may presume that multiple requests of this type made within a 30-day period have been made to avoid fees.

(2) The bureau may aggregate requests separated by a longer period only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved.

(b) The bureau will not aggregate multiple requests involving unrelated matters.

(c) The bureau may administratively aggregate requests without charging fees accordingly when it reasonably believes you, or a group of requesters acting in concert with you, are dividing a single request into a series of requests on a single subject or related subjects.

(1) The bureau may presume that multiple requests on a single subject or related subjects made within a 30-day period are dividing a single request into a series of requests.

(2) The bureau may administratively aggregate requests separated by a longer period only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved.

[77 FR 76906, Dec. 31, 2019, as amended at 84 FR 61829, Nov. 14, 2019]

§ 2.55 What if other statutes require the bureau to charge fees?

(a) The fee schedule in appendix A to this part does not apply to fees charged under any statute that specifically requires the bureau to set and collect fees for particular types of records.

(b) If records otherwise responsive to a request are subject to a statutorily-based fee schedule, the bureau will inform you whom to contact to obtain the records.

§ 2.56 May the bureau waive or reduce your fees at its discretion?

(a) The bureau may waive or reduce fees at its discretion if a request involves furnishing:

(1) A copy of a record that the bureau has reproduced for free distribution;

(2) One copy of a personal document (for example, a birth certificate) to a person who has been required to furnish it for retention by the Department;

(3) One copy of the transcript of a hearing before a hearing officer in a grievance or similar proceeding to the employee for whom the hearing was held;

(4) Records to donors with respect to their gifts;

(5) Records to individuals or private nonprofit organizations having an official, voluntary, or cooperative relationship with the Department if it will assist their work with the Department;

(6) A reasonable number of records to members of the U.S. Congress; state, local, and foreign governments; public international organizations; or Indian tribes, when to do so is an appropriate courtesy, or when the recipient is carrying on a function related to a Departmental function and the waiver

§ 2.57

will help accomplish the Department's work;

(7) Records in conformance with generally established business custom (for example, furnishing personal reference data to prospective employers of current or former Department employees); or

(8) One copy of a single record to assist you in obtaining financial benefits to which you may be entitled (for example, veterans or their dependents, employees with Government employee compensation claims).

(b) You cannot appeal the denial of a discretionary fee waiver or reduction.

Subpart H—Administrative Appeals

SOURCE: 77 FR 76906, Dec. 31, 2012, unless otherwise noted.

§ 2.57 When may you file an appeal?

(a) You may file an appeal when:

(1) The bureau withholds records, or parts of records;

(2) The bureau informs you that your request has not adequately described the records sought;

(3) The bureau informs you that it does not possess or cannot locate responsive records and you have reason to believe this is incorrect or that the search was inadequate;

(4) The bureau did not address all aspects of the request for records;

(5) You believe there is a procedural deficiency (for example, fees are improperly calculated or you have been placed in the wrong fee category);

(6) The bureau denied your request for a fee waiver;

(7) The bureau did not make a decision within the time limits in § 2.16 or, if applicable, § 2.18; or

(8) The bureau denied, or was late in responding to, a request for expedited processing filed under the procedures in § 2.20 of this part.

(b) An appeal under paragraph (a)(8) of this section relates only to the request for expedited processing and does not constitute an appeal of the underlying request for records. Special procedures apply to requests for expedited processing of an appeal (see § 2.63 of this subpart).

43 CFR Subtitle A (10–1–20 Edition)

(c) Before filing an appeal, you may wish to communicate with the contact person listed in the FOIA response, the bureau's FOIA Officer, and/or the FOIA Public Liaison to see if the issue can be resolved informally. However, appeals must be received by the FOIA Appeals Officer within the time limits in § 2.58 of this subpart or they will not be processed.

[77 FR 76906, Dec. 31, 2012, as amended at 81 FR 11130, Mar. 3, 2016]

§ 2.58 How long do you have to file an appeal?

(a) Appeals covered by § 2.57(a)(1) through (5) of this subpart must be received by the FOIA Appeals Officer no later than 90 workdays from the date of the final response.

(b) Appeals covered by § 2.57(a)(6) of this subpart must be received by the FOIA Appeals Officer no later than 90 workdays from the date of the letter denying the fee waiver.

(c) Appeals covered by § 2.57(a)(7) of this subpart may be filed any time after the time limit for responding to the request has passed.

(d) Appeals covered by § 2.57(a)(8) of this subpart should be filed as soon as possible.

(e) Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

[77 FR 76906, Dec. 31, 2012, as amended at 81 FR 92694, Dec. 20, 2016]

§ 2.59 How do you file an appeal?

(a) You must submit the appeal in writing by mail, fax or email to the FOIA Appeals Officer (using the address available at <http://www.doi.gov/foia/appeals>). Your failure to send an appeal directly to the FOIA Appeals Officer may delay processing.

(b) The appeal must include:

(1) Copies of all correspondence between you and the bureau concerning the FOIA request, including the request and the bureau's response (if there is one); and

(2) An explanation of why you believe the bureau's response was in error.

(c) The appeal should include your name, mailing address, daytime telephone number (or the name and telephone number of an appropriate contact), email address, and fax number (if available) in case the Department needs additional information or clarification.

(d) An appeal concerning a denial of expedited processing or a fee waiver denial should also demonstrate fully how the criteria in § 2.20 or §§ 2.45 and 2.48 of this part are met.

(e) All communications concerning an appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL."

(f) The Department will reject an appeal that does not attach all correspondence required by paragraph (b)(1) of this section, unless the FOIA Appeals Officer determines, in his or her sole discretion, that good cause exists to accept the defective appeal. The time limits for responding to an appeal will not begin to run until the correspondence is received.

[77 FR 76906, Dec. 31, 2012, as amended at 81 FR 11130, Mar. 3, 2016]

§ 2.60 Who makes decisions on appeals?

(a) The FOIA Appeals Officer is the deciding official for FOIA appeals that do not appeal a decision of the Office of Inspector General.

(b) The General Counsel is the deciding official for FOIA appeals that appeal a decision of the Office of Inspector General.

(c) When necessary, the appropriate deciding official for FOIA appeals will consult other appropriate offices, including the Office of the Solicitor or Office of General Counsel for denials of records and fee waivers.

(d) The deciding official for FOIA appeals normally will not make a decision on an appeal if the request becomes a matter of FOIA litigation.

[81 FR 11130, Mar. 3, 2016]

§ 2.61 How are decisions on appeals issued?

(a) A decision on an appeal must be made in writing.

(b) A decision that upholds the bureau's determination will notify you of

the decision and your statutory right to file a lawsuit.

(c) A decision that overturns, remands, or modifies the bureau's determination will notify you of the decision. The bureau then must further process the request in accordance with the appeal determination.

§ 2.62 When can you expect a decision on your appeal?

(a) The basic time limit for responding to an appeal is 20 workdays after receipt of an appeal meeting the requirements of § 2.59 of this subpart.

(b) If the Department is unable to reach a decision on your appeal within the given time limit for response, the appropriate deciding official for FOIA appeals will notify you of your statutory right to seek review in a United States District Court.

[81 FR 11131, Mar. 3, 2016]

§ 2.63 Can you receive expedited processing of appeals?

(a) To receive expedited processing of an appeal, you must demonstrate to the Department's satisfaction that the appeal meets one of the criteria under § 2.20 of this part and include a statement that the need for expedited processing is true and correct to the best of your knowledge and belief.

(b) The appropriate deciding official for FOIA appeals will advise you whether the Department will grant expedited processing within 10 calendar days of receiving the appeal.

(c) If the appropriate deciding official for FOIA appeals decides to grant expedited processing, he or she will give the appeal priority over other pending appeals and process it as soon as practicable.

[77 FR 76906, Dec. 31, 2012, as amended at 81 FR 11131, Mar. 3, 2016]

§ 2.64 Must you submit an appeal before seeking judicial review?

Before seeking review by a court of the bureau's adverse determination, you generally must first submit a timely administrative appeal.

§ 2.65

Subpart I—General Information

SOURCE: 77 FR 76906, Dec. 31, 2012, unless otherwise noted.

§ 2.65 Where are records made available?

Records that are required by the FOIA to be made proactively available for public inspection and copying are accessible on the Department's Web site, <http://www.doi.gov/foia/libraries>. They may also be available at bureau office locations.

[77 FR 76906, Dec. 31, 2012, as amended at 81 FR 11131, Mar. 3, 2016]

§ 2.66 What are FOIA Requester Centers and the FOIA Public Liaison?

(a) FOIA Requester Centers typically serve as your first point of contact for questions about how the FOIA works. Before and after you make a request, FOIA Requester Centers can assist you by:

- (1) Identifying information that is already posted and available;
- (2) Informing you about the types of records maintained by the bureau;
- (3) Providing guidance on formulating effective requests;
- (4) Describing the Department's various processing tracks and the average processing times for the various tracks;
- (5) Answering questions about expedited processing standards and the FOIA's fee provisions; and
- (6) Answering questions about the status of an existing request.

(b) The FOIA Public Liaison is responsible for:

- (1) Assisting in reducing delays;
- (2) Increasing transparency and understanding of the status of requests; and
- (3) Assisting in the resolution of disputes between you and the agency.

(c) If you need further information or assistance after contacting the applicable FOIA Requester Center and the FOIA Public Liaison, you may wish to seek dispute resolution services from the Office of Government Information Services.

(d) Contact information for the FOIA Requester Centers and FOIA Public Li-

43 CFR Subtitle A (10–1–20 Edition)

aisson is available at <https://www.doi.gov/foia/foiacenters>.

[84 FR 61829, Nov. 14, 2019]

§ 2.67 When will the Department make records available without a FOIA request?

(a) Each bureau must:

(1) Determine which of its records must be made publicly available under the FOIA (for example, certain frequently requested records);

(2) Identify additional records of interest to the public that are appropriate for public disclosure; and

(3) Post those records in FOIA libraries.

(b) Because of these proactive disclosures, you are encouraged to review the Department's FOIA libraries before filing a FOIA request. The material you seek may be immediately available electronically at no cost.

§ 2.68 How will FOIA materials be preserved?

(a) Each bureau must preserve all correspondence pertaining to the requests that it receives under subpart B of this part, as well as copies of all requested records, until disposition or destruction is authorized by the General Records Schedule 4.2 of the National Archives and Records Administration (NARA) or another NARA-approved records schedule, such as DAA-0048-2013-0001.

(b) Materials that are identified as responsive to a FOIA request will not be disposed of or destroyed while the request or a related appeal or lawsuit is pending. This is true even if they would otherwise be authorized for disposition or destruction under the General Records Schedule 4.2 of NARA or another NARA-approved records schedule, such as DAA-0048-2013-0001.

[77 FR 76906, Dec. 31, 2012, as amended at 81 FR 11131, Mar. 3, 2016]

§ 2.69 How will a bureau handle a request for federally-funded research data?

(a) If you request research data that were used by the Federal Government in developing certain kinds of agency actions, and the research data relate to published research findings produced

under an award, in accordance with OMB Circular A-110:

(1) If the bureau was the awarding agency, it will request the research data from the recipient;

(2) The recipient must provide the research data within a reasonable time; and

(3) The bureau will review the research data to see if it can be released under the FOIA.

(b) If the bureau obtains the research data solely in response to your FOIA request, the bureau may charge you a reasonable fee equaling the full incremental cost of obtaining the research data.

(1) This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients.

(2) This fee is in addition to any fees the agency may assess under the FOIA.

(c) The bureau will forward a copy of the request to the recipient, who is responsible for searching for and reviewing the requested information in accordance with these FOIA regulations. The recipient will forward a copy of any responsive records that are located, along with any recommendations concerning the releasability of the data, and the total cost incurred in searching for, reviewing, and providing the data.

(d) The bureau will review and consider the recommendations of the recipient regarding the releasability of the requested research data. However, the bureau, not the recipient, is responsible for deciding whether the research data will be released or withheld.

§ 2.70 What definitions apply to subparts A through I of this part?

For the purposes of subparts A through I of this part, the following definitions apply:

Bureau means any major component of the Department administering its own FOIA program. A list of these components is available at: <http://www.doi.gov/foia/contacts>.

Commercial interest means a commercial, trade, or profit interest as these terms are commonly understood. Your status as profitmaking or non-profitmaking is not the deciding factor in de-

termining whether you have a commercial interest.

Commercial use means a use that furthers your commercial, trade or profit interests or that of the person on whose behalf the request is made.

Confidential information means trade secrets or commercial or financial information (that is privileged or confidential and obtained by the Department from a person) that may be protected from disclosure under Exemption 4 of the FOIA.

Department means the Department of the Interior.

Direct costs means those resources that the bureau expends in searching for and duplicating (and, in the case of commercial-use requests, reviewing) records to respond to a FOIA request. For example, direct costs include 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 duplicating machinery, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space and of heating or lighting a facility.

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

Educational institution means any school that operates a program of scholarly research. In order to fall within this category, you must show that the request is authorized by and made under the auspices of, a qualifying institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research. Teachers (if they demonstrate how the requested records will further their teaching, scholarly research, or production of scholarly works) and students (if they demonstrate how the requested records will further their coursework or other school-sponsored activities) may also qualify as an educational institution for the purposes of this definition.

Exceptional circumstances means a delay that does not result from a predictable workload of requests (unless the bureau demonstrates reasonable

§2.70

progress in reducing its backlog of pending requests).

Exempt means the record in question, or a portion thereof, is not subject to disclosure due to one or more of the FOIA's nine statutory exemptions, found at 5 U.S.C. 552(b)(1)–(9).

Exemption means one or more of the FOIA's nine statutory exemptions, found at 5 U.S.C. 552(b)(1)–(9).

Expedited processing means giving a FOIA request priority and processing it ahead of other requests pending in the bureau because you have shown a compelling need for the records.

Fee category means one of the four categories, discussed in §§2.38 and 2.39, that agencies place you in for the purpose of determining whether you will be charged fees for search, review, and duplication.

FOIA means the Freedom of Information Act, 5 U.S.C. 552, as amended.

FOIA libraries means a physical or electronic compilation of records required to be made available to the public for inspection and copying under 5 U.S.C. 552(a)(2). It also includes a physical or electronic compilation of records that the bureau, at its discretion, makes available to the public for inspection and copying.

Frequently requested records means records that have been released to any person in response to a FOIA request and that have been requested, or that the bureau anticipates will be requested, at least two more times under the FOIA.

Multitrack processing means placing simple requests, requiring relatively minimal review, in one processing track and more voluminous and complex requests in one or more other tracks. Requests in each track are ordinarily processed on a first-in/first-out basis, but other factors, such as litigation, may affect the sequence and/or timing of processing.

Noncommercial scientific institution means an institution that is not operated for commerce, trade or profit, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, you must show that the request is authorized by and is made under the auspices

43 CFR Subtitle A (10–1–20 Edition)

of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

OMB Fee Guidelines means the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget at 52 FR 10012 (Mar. 27, 1987).

Published means, for the purposes of §2.69 of this subpart only, when:

(1) Research findings are published in a peer-reviewed scientific or technical journal; or

(2) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

Recipient means, for the purposes of §2.69 of this subpart only, an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

Record means an agency record that is either created or obtained by an agency and is under agency possession and control at the time of the FOIA request, or is maintained by an entity under Government contract for the purposes of records management.

Representative of the news media 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. The term *news* as used in this definition means information that is about current

events or that would be of current interest to the public. Simply distributing copies of released records, electronically or otherwise, does not qualify as using editorial skills to turn the raw materials into a distinct work. Examples of news media entities are newspapers, television, Web sites, 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. As methods of news delivery evolve, alternative representatives of news media may come into being. A freelance journalist will qualify as a news-media entity if he or she can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by that entity (for example, a publication contract would present a solid basis for such an expectation).

Research data means, for the purposes of § 2.69 of this subpart only, the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. The term *recorded* as used in this definition excludes physical objects (e.g., laboratory samples). Research data also do not include:

(1) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(2) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

Review means the examination of a record located in response to a request to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclo-

sure, including the process of redacting the record and marking the appropriate exemptions. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential information submitter under subpart G of this part, but it excludes time spent resolving general legal or policy issues regarding the application of FOIA exemptions.

Search means the process of looking for and retrieving records responsive to a request. Search time includes page-by-page or line-by-line identification of information within records; and the reasonable efforts expended to locate and retrieve electronic records.

Submitter means any person or entity outside the Federal Government from whom the Department obtains confidential information, directly or indirectly. The term includes, but is not limited to individuals, corporations, and state, local, tribal, and foreign governments.

Unusual circumstances means the need to search for and collect requested records from field facilities or other establishments that are separate from the office processing the request; the need to search for, collect, and examine a voluminous amount of separate and distinct records which are demanded in a single request; or the need for consultation, which shall be conducted with all practicable speed, with another agency, or among two or more components of the Department, having a substantial interest in the determination of the request.

Workday means a regular Federal workday. It excludes Saturdays, Sundays, or Federal legal public holidays. Items arriving or delivered after 5 p.m. Eastern Time will be deemed received on the next workday.

You means a person requesting records, or filing an appeal, under the FOIA.

[77 FR 76906, Dec. 31, 2012, as amended at 81 FR 11131, Mar. 3, 2016; 84 FR 61829, Nov. 14, 2019]

Subpart J—Declassification of Classified Documents

SOURCE: 40 FR 7305, Feb. 19, 1975, unless otherwise noted. Redesignated at 67 FR 64530,

§ 2.200

Oct. 21, 2002. Redesignated at 77 FR 76902, Dec. 31, 2012; 78 FR 6216, Jan. 30, 2013.

§ 2.200 Declassification of classified documents.

(a) *Request for classification review.* (1) Requests for a classification review of a document of the Department of the Interior pursuant to section 5(c) of Executive Order 11652 (37 FR 5209, March 10, 1972) and section III B of the National Security Council Directive Governing Classification, Downgrading, Declassification and Safeguarding of National Security Information (37 FR 10053, May 1972) shall be made in accordance with the procedures established by this section.

(2) Any person desiring a classification review of a document of the Department of the Interior containing information classified as National Security Information by reason of the provisions of Executive Order 12065 (or any predecessor executive order) and which is more than 10 years old, should address such request to the Chief, Division of Enforcement and Security Management, Office of Administrative Services, U.S. Department of the Interior, Washington, DC 20240.

(3) Requests need not be made on any special form, but shall, as specified in the executive order, describe the document with sufficient particularity to enable identification of the document requested with expenditure of no more than a reasonable amount of effort.

(4) Charges for locating and reproducing copies of records will be made when deemed applicable in accordance with appendix A to this part and the requester will be notified.

(b) *Action on requests for classification review.* (1) The Chief, Division of Enforcement and Security Management, shall, unless the request is for a document over 30 years old, assign the request to the bureau having custody of the requested records for action. In the case of requests for declassification of records in the custody of the Office of the Secretary and less than 30 years old, the request shall be processed by the Chief, Division of Enforcement and Security Management. Requests for declassification of documents over 30 years shall be referred directly to the Archivist of the United States. The bu-

43 CFR Subtitle A (10–1–20 Edition)

reau which has been assigned the request, or the Chief, Division of Enforcement and Security Management, in the case of requests assigned to him, shall immediately acknowledge the request in writing. Every effort will be made to complete action on each request within thirty (30) days of its receipt. If action cannot be completed within thirty (30) days, the requester shall be so advised.

(2) If the requester does not receive a decision on his request within sixty (60) days from the date of receipt of his request, or from the date of his most recent response to a request for more particulars, he may apply to the Department of the Interior Oversight Committee for Security, U.S. Department of the Interior, Washington, DC 20240, for a decision on his request. The Committee must render a decision within thirty (30) days.

(c) *Form of decision and appeal to Oversight Committee for Security.* In the event that the bureau to which a request is assigned or the Chief, Division of Enforcement and Security Management, in the case of a request assigned to him, determines that the requested information must remain classified by reason of the provisions of Executive Order 11652, the requester shall be given prompt notification of that decision and, whenever possible, shall be provided with a brief statement as to why the information or material cannot be declassified. He shall also be advised that if he desires he may appeal the determination to the Chairman, Department of the Interior Oversight Committee for Security, U.S. Department of the Interior, Washington, DC 20240. An appeal shall include a brief statement as to why the requester disagrees with the decision which he is appealing. The Department Oversight Committee for Security shall render its decision within thirty (30) days of receipt of an appeal. The Departmental Committee shall be authorized to overrule previous determinations in whole or in part when, in its judgement, continued protection is no longer required.

(d) *Appeal to Interagency Classification Review Committee.* Whenever the Department of the Interior Oversight Committee for Security confirms a determination for continued classification, it shall so notify the requester

and advise him that he is entitled to appeal the decision to the Interagency Classification Review Committee established under section 8(A) of the Executive Order 11652. Such appeals shall be addressed to the Interagency Classification Review Committee, the Executive Office Building, Washington, DC 20500.

(e) *Suggestions and complaints.* Any person may also direct suggestions or complaints with respect to the administration of the other provisions of Executive Order 11652 and the NSC Directive by the Department of the Interior to the Department of the Interior Oversight Committee for Security, U.S. Department of the Interior, Washington, DC 20240.

[40 FR 7305, Feb. 19, 1975, as amended at 47 FR 38327, Aug. 31, 1982]

Subpart K—Privacy Act

SOURCE: 40 FR 44505, Sept. 26, 1975, unless otherwise noted. Redesignated at 67 FR 64530, Oct. 21, 2002. Redesignated at 77 FR 76902, Dec. 31, 2012; 78 FR 6216, Jan. 30, 2013.

§ 2.220 Purpose and scope.

This subpart contains the regulations of the Department of the Interior implementing section 3 of the Privacy Act. Sections 2.47 through 2.57 describe the procedures and policies of the Department concerning maintenance of records which are subject to the Act. Sections 2.60 through 2.66 describe the procedure under which individuals may determine whether systems of records subject to the Act contain records relating to them and the procedure under which they may seek access to existing records. Sections 2.70 through 2.77 describe the procedure under which individuals may petition for amendment of records subject to the Act relating to them. Section 2.79 lists records systems that have been exempted from certain requirements of the Act.

[48 FR 56583, Dec. 22, 1983]

§ 2.221 Definitions.

(a) *Act.* As used in this subpart, “Act” means section 3 of the Privacy Act, 5 U.S.C. 552a.

(b) *Bureau.* For purposes of this subpart, a “bureau” is any constituent bu-

reau or office of the Department, including the Office of the Secretary and any other Departmental office.

(c) *Individual.* As used in this subpart, “individual” means a citizen of the United States or an alien lawfully admitted for permanent residence.

(d) *Maintain.* As used in this subpart, the term “maintain” includes maintain, collect, use or disseminate.

(e) *Record.* As used in this subpart, “record” means any item, collection, or grouping of information about an individual that is maintained by the Department or a bureau thereof, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the individual’s name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, or a photograph.

(f) *System of records.* As used in this subpart, “System of records” means a group of any records under the control of the Department or a bureau thereof 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.

(g) *Medical records.* As used in this subpart, “medical records” means records which relate to the identification, prevention, cure or alleviation of any disease, illness or injury including psychological disorders, alcoholism and drug addiction.

(h) *Office of Personnel Management personnel records.* As used in the subpart, “Office of Personnel Management personnel records” means records maintained for the Office of Personnel Management by the Department and used for personnel management programs or processes such as staffing, employee development, retirement, and grievances and appeals.

(i) *Statistical records.* As used in this subpart, “statistical records” means records in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual.

(j) *Routine use.* As used in this subpart, “routine use” means a use of a

§ 2.222

record for a purpose which is compatible with the purpose for which it was collected.

(k) *System notice.* As used in this subpart, “system notice” means the notice describing a system of records required by 5 U.S.C. 552a(e)(4) to be published in the FEDERAL REGISTER upon establishment or revision of the system of records.

(l) *System manager.* As used in this subpart, “system manager” means the official designated in a system notice as having administrative responsibility for a system of records.

(m) *Departmental Privacy Act Officer.* As used in this subpart, “Departmental Privacy Act Officer” means the official in the Office of the Assistant Secretary—Policy, Budget and Administration charged with responsibility for assisting the Assistant Secretary—Policy, Budget and Administration in carrying out the functions assigned in this subpart and for coordinating the activities of the bureaus of the Department in carrying out the functions which they are assigned in this subpart.

(n) *Bureau Privacy Act Officer.* As used in this subpart, “Bureau Privacy Act Officer” means the official within each bureau assigned responsibility for bureau implementation of the Act and the regulations of this subpart.

(o) *Working day.* As used in this subpart, “working day” means a regular Federal work day. It does not include Saturdays, Sundays or public legal holidays.

[40 FR 44505, Sept. 26, 1975, as amended at 47 FR 38327, Aug. 31, 1982; 48 FR 56583, Dec. 22, 1983; 53 FR 3749, Feb. 9, 1988]

§ 2.222 Records subject to Privacy Act.

The Privacy Act applies to all “records,” as that term is defined in § 2.46(e), which the Department maintains in a “system of records,” as that term is defined in § 2.46(f).

§ 2.223 Standards for maintenance of records subject to the Act.

(a) *Content of records.* Records subject to the Act shall contain only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be

43 CFR Subtitle A (10–1–20 Edition)

accomplished by statute or Executive Order of the President.

(b) *Standards of accuracy.* Records subject to the Act which are used in making any determination about any individual shall be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making the determination.

(c) *Collection of information.* (1) Information which may be used in making determinations about an individual’s rights, benefits, and privileges under Federal programs shall, to the greatest extent practicable, be collected directly from that individual.

(2) In deciding whether collection of information from an individual, as opposed to a third party source, is practicable, the following factors, among others, may be considered:

(i) Whether the nature of the information sought is such that it can only be obtained from a third party;

(ii) Whether the cost of collecting the information from the individual is unreasonable when compared with the cost of collecting it from a third party;

(iii) Whether there is a risk that information collected from third parties, if inaccurate, could result in an adverse determination to the individual concerned;

(iv) Whether the information, if supplied by the individual, would have to be verified by a third party; or

(v) Whether provisions can be made for verification, by the individual, of information collected from third parties.

(d) *Advice to individuals concerning uses of information.* (1) Each individual who is asked to supply information about him or herself which will be added to a system of records shall be informed of the basis for requesting the information, how it may be used, and what the consequences, if any, are of not supplying the information.

(2) At a minimum, the notice to the individual must state:

(i) The authority (whether granted by statute or Executive Order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(ii) The principal purpose or purposes for which the information is intended to be used;

(iii) The routine uses which may be made of the information; and

(iv) The effects on the individual, if any, of not providing all or any part of the requested information.

(3)(i) When information is collected on a standard form, the notice to the individual shall be provided on the form, on a tear-off sheet attached to the form, or on a separate sheet, whichever is most practical.

(ii) When information is collected by an interviewer, the interviewer shall provide the individual with a written notice which the individual may retain. If the interview is conducted by telephone, however, the interviewer may summarize the notice for the individual and need not provide a copy to the individual unless the individual requests a copy.

(iii) An individual may be asked to acknowledge, in writing, that the notice required by this section has been provided.

(e) *Records concerning activity protected by the First Amendment.* No record may be maintained describing how any individual exercises rights guaranteed by the First Amendment to the Constitution unless the maintenance of the record is (1) expressly authorized by statute or by the individual about whom the record is maintained or (2) pertinent to and within the scope of an authorized law enforcement activity.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56583, Dec. 22, 1983]

§ 2.224 [Reserved]

§ 2.225 Federal Register notices describing systems of records.

(a) The Privacy Act requires publication of a notice in the FEDERAL REGISTER describing each system of records subject to the Act. Such notice will be published prior to the establishment or a revision of the system of records. 5 U.S.C. 552a(e)(4).

(b) Each bureau shall notify the Departmental Privacy Act Officer promptly of any modifications or amendments which are required in the then-current notice describing a sys-

tem of records for which it is responsible.

(c) A bureau desiring to establish a new system of records or a new use for an existing system of records shall notify the Departmental Privacy Act Officer, no fewer than ninety (90) calendar days in advance.

[48 FR 56583, Dec. 22, 1983]

§ 2.226 Assuring integrity of records.

(a) *Statutory requirement.* The Privacy Act requires that records subject to the Act be maintained with appropriate administrative, technical and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained, 5 U.S.C. 552a(e)(10).

(b) *Records maintained in manual form.* When maintained in manual form, records subject to the Privacy Act shall be maintained in a manner commensurate with the sensitivity of the information contained in the system of records. The following minimum safeguards, or safeguards affording comparable protection, are applicable to Privacy Act systems of records containing sensitive information:

(1) Areas in which the records are maintained or regularly used shall be posted with an appropriate warning stating that access to the records is limited to authorized persons. The warning also shall summarize the requirements of § 2.52 and state that the Privacy Act contains a criminal penalty for the unauthorized disclosure of records to which it applies.

(2) During working hours, (i) the area in which the records are maintained or regularly used shall be occupied by authorized personnel or (ii) access to the records shall be restricted by their storage in locked metal file cabinets or a locked room.

(3) During non-working hours, access to the records shall be restricted by their storage in locked metal file cabinets or a locked room.

(4) Where a locked room is the method of security provided for a system, the bureau responsible for the system

§ 2.227

shall supplement that security by (i) providing lockable file cabinets or containers for the records or (ii) changing the lock or locks for the room so that they may not be opened with a master key. For the purposes of this paragraph, a master key is a key which may be used to open rooms other than the room containing records subject to the Privacy Act, unless those rooms are utilized by officials or employees authorized to have access to the records subject to the Privacy Act.

(c) *Records maintained in computerized form.* When maintained in computerized form, records subject to the Privacy Act shall be maintained, at a minimum, subject to safeguards based on those recommended in the National Bureau of Standard's booklet "Computer Security Guidelines for Implementing the Privacy Act of 1974" (May 30, 1975), and any supplements thereto, which are adequate and appropriate to assuring the integrity of records in the system.

(d) *Office of Personnel Management personnel records.* A system of records made up of Office of Personnel Management personnel records shall be maintained under the security requirements set out in 5 CFR 293.106 and 293.107.

(e) *Bureau responsibility.* (1) The bureau responsible for a system of records shall be responsible for assuring that specific procedures are developed to assure that the records in the system are maintained with security meeting the requirements of the Act and this section.

(2) These procedures shall be in writing and shall be posted or otherwise periodically brought to the attention of employees working with the records contained in the system.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56583, Dec. 22, 1983]

§ 2.227 Conduct of employees.

(a) *Handling of records subject to the Act.* Employees whose duties require handling of records subject to the Privacy Act shall, at all times, take care to protect the integrity, security and confidentiality of these records.

(b) *Disclosure of records.* No employee of the Department may disclose records subject to the Privacy Act unless disclosure is permitted under § 2.56

43 CFR Subtitle A (10-1-20 Edition)

or is to the individual to whom the record pertains.

(c) *Alteration of records.* No employee of the Department may alter or destroy a record subject to the Privacy Act unless (1) such alteration or destruction is properly undertaken in the course of the employee's regular duties or (2) such alteration or destruction is required by a decision under §§ 2.70 through 2.75 or the decision of a court of competent jurisdiction.

(d) *Bureau responsibility.* The bureau responsible for a system of records shall be responsible for assuring that employees with access to the system are made aware of the requirements of this section and of 5 U.S.C. 552a(i)(1), which imposes criminal penalties for knowingly and willfully disclosing a record about an individual without the written request or consent of that individual unless disclosure is permitted under one of the exceptions listed in § 2.56 (b) and (c).

§ 2.228 Government contracts.

(a) *Required contract provisions.* When a contract provides for the operation by or on behalf of the Department of a system of records to accomplish a Department function, the contract shall, consistent with the Department's authority, cause the requirements of 5 U.S.C. 552a and the regulations contained in this subpart to be applied to such system.

(b) *System manager.* The head of the bureau responsible for the contract shall designate a regular employee of the bureau to be the manager for a system of records operated by a contractor.

§§ 2.229-2.230 [Reserved]

§ 2.231 Disclosure of records.

(a) *Prohibition of disclosure.* No record contained in a system of records may be disclosed by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(b) *General exceptions.* The prohibition contained in paragraph (a) does not apply where disclosure of the record would be:

(1) To those officers or employees of the Department who have a need for the record in the performance of their duties; or

(2) Required by the Freedom of Information Act, 5 U.S.C. 552.

(c) *Specific exceptions.* The prohibition contained in paragraph (a) of this section does not apply where disclosure of the record would be:

(1) For a routine use as defined in § 2.46(j) which has been described in a system notice published in the FEDERAL REGISTER;

(2) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13, U.S. Code.

(3) To a recipient who has provided the system manager responsible for the system in which the record is maintained with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(4) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(5) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Department specifying the particular portion desired and the law enforcement activity for which the record is sought;

(6) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(7) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint com-

mittee of Congress or subcommittee of any such joint committee;

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

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

(10) To a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(f)).

(d) *Reviewing records prior to disclosure.* (1) Prior to any disclosure of a record about an individual, unless disclosure is required by the Freedom of Information Act, reasonable efforts shall be made to assure that the records are accurate, complete, timely and relevant for agency purposes.

(2) When a record is disclosed in connection with a Freedom of Information request made under subpart B of this part and it is appropriate and administratively feasible to do so, the requester shall be informed of any information known to the Department indicating that the record may not be fully accurate, complete, or timely.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56584, Dec. 22, 1983; 50 FR 45114, Oct. 30, 1985]

§ 2.232 Accounting for disclosures.

(a) *Maintenance of an accounting.* (1) Where a record is disclosed to any person, or to another agency, under any of the specific exceptions provided by § 2.56 (c), an accounting shall be made.

(2) The accounting shall record (i) the date, nature, and purpose of each disclosure of a record to any person or to another agency and (ii) the name and address of the person or agency to whom the disclosure was made.

(3) Accountings prepared under this section shall be maintained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(b) *Access to accountings.* (1) Except for accountings of disclosures made under § 2.56(c)(5), accountings of all disclosures of a record shall be made available to the individual to whom the record relates at the individual's request.

§§ 2.233–2.234

(2) An individual desiring access to an accounting of disclosures of a record pertaining to the individual shall submit a request by following the procedures of § 2.63.

(c) *Notification of disclosure.* When a record is disclosed pursuant to § 2.56(c)(9) as the result of the order of a court of competent jurisdiction, reasonable efforts shall be made to notify the individual to whom the record pertains as soon as the order becomes a matter of public record.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56584, Dec. 22, 1983]

§§ 2.233–2.234 [Reserved]

§ 2.235 Request for notification of existence of records: Submission.

(a) *Submission of requests.* (1)(i) Individuals desiring to determine under the Privacy Act whether a system of records contains records pertaining to them shall address inquiries to the system manager having responsibility for the system unless the system notice describing the system prescribes or permits submission to some other official or officials.

(ii) If a system notice describing a system requires individuals to contact more than two officials concerning the existence of records in the system, individuals desiring to determine whether the system contains records pertaining to them may contact the system manager for assistance in determining which official is most likely to be in possession of records pertaining to those individuals.

(2) Individuals desiring to determine whether records pertaining to them are maintained in two or more systems shall make a separate inquiry concerning each system.

(b) *Form of request.* (1) An inquiry to determine whether a system of records contains records pertaining to an individual shall be in writing.

(2) To insure expeditious handling, the request shall be prominently marked, both on the envelope and on the face of the request, with the legend “PRIVACY ACT INQUIRY.”

(3) The request shall state that the individual is seeking information concerning records pertaining to him or herself and shall supply such additional

43 CFR Subtitle A (10–1–20 Edition)

identifying information, if any, as is called for in the system notice describing the system.

(4) Individuals who have reason to believe that information pertaining to them may be filed under a name other than the name they are currently using (e.g., maiden name), shall include such information in the request.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56584, Dec. 22, 1983]

§ 2.236 Requests for notification of existence of records: Action on.

(a) *Decisions on request.* (1) Individuals inquiring to determine whether a system of records contains records pertaining to them shall be promptly advised whether the system contains records pertaining to them unless (i) the records were compiled in reasonable anticipation of a civil action or proceeding or (ii) the system of records is one which has been excepted from the notification provisions of the Privacy Act by rulemaking (§ 2.79).

(2) If the records were compiled in reasonable anticipation of a civil action or proceeding or the system of records is one which has been excepted from the notification provisions of the Privacy Act by rulemaking, the individuals will be promptly notified that they are not entitled to notification of whether the system contains records pertaining to them.

(b) *Authority to deny requests.* A decision to deny a request for notification of the existence of records shall be made by the system manager responsible for the system of records concerning which inquiry has been made and shall be concurred in by the bureau Privacy Act officer for the bureau which maintains the system, provided, however that the head of a bureau may, in writing, require (1) that the decision be made by the bureau Privacy Act officer and/or (2) that the bureau head's own concurrence in the decision be obtained.

(c) *Form of decision.* (1) No particular form is required for a decision informing individuals whether a system of records contains records pertaining to them.

(2) A decision declining to inform an individual whether or not a system of records contains records pertaining to

him or her shall be in writing and shall:

(i) State the basis for denial of the request.

(ii) Advise the individual that an appeal of the declination may be made to the Assistant Secretary—Policy, Budget and Administration pursuant to § 2.65 by writing to the Privacy Act Officer, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, DC 20240.

(iii) State that the appeal must be received by the foregoing official within twenty (20) working days of the date of the decision.

(3) If the decision declining a request for notification of the existence of records involves Department employee records which fall under the jurisdiction of the Office of Personnel Management, the individual shall be informed in a written response which shall:

(i) State the reasons for the denial.

(ii) Include the name, position title, and address of the official responsible for the denial.

(iii) Advise the individual that an appeal of the declination may be made only to the Assistant Director for Workforce Information, Personnel Systems Oversight Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(4) Copies of decisions declining a request for notification of the existence of records made pursuant to paragraphs (c)(2) and (c)(3) of this section shall be provided to the Departmental and Bureau Privacy Act Officers.

[48 FR 56584, Dec. 22, 1983, as amended at 53 FR 3749, Feb. 9, 1988]

§ 2.237 Requests for access to records.

The Privacy Act permits individuals, upon request, to gain access to their records or to any information pertaining to them which is contained in a system and to review the records and have a copy made of all or any portion thereof in a form comprehensive to them. 5 U.S.C. 552a(d)(1). A request for access shall be submitted in accordance with the procedures in this subpart.

[48 FR 56584, Dec. 22, 1983]

§ 2.238 Requests for access to records: Submission.

(a) *Submission of requests.* (1)(i) Requests for access to records shall be submitted to the system manager having responsibility for the system in which the records are maintained unless the system notice describing the system prescribes or permits submission to some other official or officials.

(ii) If a system notice describing a system requires individuals to contact more than two officials concerning access to records in the system, individuals desiring to request access to records pertaining to them may contact the system manager for assistance in determining which official is most likely to be in custody of records pertaining to that individual.

(2) Individuals desiring access to records maintained in two or more separate systems shall submit a separate request for access to the records in each system.

(b) *Form of request.* (1) A request for access to records subject to the Privacy Act shall be in writing.

(2) To insure expeditious handling, the request shall be prominently marked, both on the envelope and on the face of the request, with the legend "PRIVACY ACT REQUEST FOR ACCESS."

(3) Requesters shall specify whether they seek all of the records contained in the system which relate to them or only some portion thereof. If only a portion of the records which relate to the individual are sought, the request shall reasonably describe the specific record or records sought.

(4) If the requester seeks to have copies of the requested records made, the request shall state the maximum amount of copying fees which the requester is willing to pay. A request which does not state the amount of fees the requester is willing to pay will be treated as a request to inspect the requested records. Requesters are further notified that under § 2.64(d) the failure to state willingness to pay fees as high as are anticipated by the Department will delay processing of a request.

(5) The request shall supply such identifying information, if any, as is

§ 2.239

called for in the system notice describing the system.

(6) Requests failing to meet the requirements of this paragraph shall be returned to the requester with a written notice advising the requester of the deficiency in the request.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56585, Dec. 22, 1983]

§ 2.239 Requests for access to records: Initial decision.

(a) *Decisions on requests.* A request made under this subpart for access to a record shall be granted promptly unless (1) the record was compiled in reasonable anticipation of a civil action or proceeding or (2) the record is contained in a system of records which has been excepted from the access provisions of the Privacy Act by rulemaking (§ 2.79).

(b) *Authority to deny requests.* A decision to deny a request for access under this subpart shall be made by the system manager responsible for the system of records in which the requested record is located and shall be concurred in by the bureau Privacy Act officer for the bureau which maintains the system, provided, however, that the head of a bureau may, in writing, require (1) that the decision be made by the bureau Privacy Act officer and/or (2) that the bureau head's own concurrence in the decision be obtained.

(c) *Form of decision.* (1) No particular form is required for a decision granting access to a record. The decision shall, however, advise the individual requesting the record as to where and when the record is available for inspection or, as the case may be, where and when copies will be available. If fees are due under § 2.64(d), the individual requesting the record shall also be notified of the amount of fees due or, if the exact amount has not been determined, the approximate amount of fees due.

(2) A decision denying a request for access, in whole or part, shall be in writing and shall:

(i) State the basis for denial of the request.

(ii) Contain a statement that the denial may be appealed to the Assistant Secretary—Policy, Budget and Administration pursuant to § 2.65 by writing to the Privacy Act Officer, Office of the

43 CFR Subtitle A (10–1–20 Edition)

Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, DC 20240.

(iii) State that the appeal must be received by the foregoing official within twenty (20) working days of the date of the decision.

(3) If the decision denying a request for access involves Department employee records which fall under the jurisdiction of the Office of Personnel Management, the individual shall be informed in a written response which shall:

(i) State the reasons for the denial.

(ii) Include the name, position title, and address of the official responsible for the denial.

(iii) Advise the individual that an appeal of the denial may be made only to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(4) Copies of decisions denying requests for access made pursuant to paragraphs (c)(2) and (c)(3) of this section will be provided to the Departmental and Bureau Privacy Act Officers.

(d) *Fees.* (1) No fees may be charged for the cost of searching for or reviewing a record in response to a request made under § 2.63.

(2) Fees for copying a record in response to a request made under § 2.63 shall be charged in accordance with the schedule of charges contained in Appendix A to this part, unless the official responsible for processing the request determines that reduction or waiver of fees is appropriate.

(3) Where it is anticipated that fees chargeable in connection with a request will exceed the amount the person submitting the request has indicated a willingness to pay, the official processing the request shall notify the requester and shall not complete processing of the request until the requester has agreed, in writing, to pay fees as high as are anticipated.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56585, Dec. 22, 1983; 53 FR 3749, Feb. 9, 1988]

§ 2.240 Requests for notification of existence of records and for access to records: Appeals.

(a) *Right of appeal.* Except for appeals pertaining to Office of Personnel Management records, individuals who have been notified that they are not entitled to notification of whether a system of records contains records pertaining to them or have been denied access, in whole or part, to a requested record may appeal to the Assistant Secretary—Policy, Budget and Administration.

(b) *Time for appeal.* (1) An appeal must be received by the Privacy Act Officer no later than twenty (20) working days after the date of the initial decision on a request.

(2) The Assistant Secretary—Policy, Budget and Administration may, for good cause shown, extend the time for submission of an appeal if a written request for additional time is received within twenty (20) working days of the date of the initial decision on the request.

(c) *Form of appeal.* (1) An appeal shall be in writing and shall attach copies of the initial request and the decision on the request.

(2) The appeal shall contain a brief statement of the reasons why the appellant believes the decision on the initial request to have been in error.

(3) The appeal shall be addressed to Privacy Act Officer, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, DC 20240.

(d) *Action on appeals.* (1) Appeals from decisions on initial requests made pursuant to §§ 2.61 and 2.63 shall be decided for the Department by the Assistant Secretary—Policy, Budget and Administration or an official designated by the Assistant Secretary after consultation with the Solicitor.

(2) The decision on an appeal shall be in writing and shall state the basis for the decision.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56585, Dec. 22, 1983; 53 FR 3749, Feb. 9, 1988]

§ 2.241 Requests for access to records: Special situations.

(a) *Medical records.* (1) Medical records shall be disclosed to the indi-

vidual to whom they pertain unless it is determined, in consultation with a medical doctor, that disclosure should be made to a medical doctor of the individual's choosing.

(2) If it is determined that disclosure of medical records directly to the individual to whom they pertain could have an adverse effect on that individual, the individual may designate a medical doctor to receive the records and the records will be disclosed to that doctor.

(b) *Inspection in presence of third party.* (1) Individuals wishing to inspect records pertaining to them which have been opened for their inspection may, during the inspection, be accompanied by a person of their own choosing.

(2) When such a procedure is deemed appropriate, individuals to whom the records pertain may be required to furnish a written statement authorizing discussion of their records in the accompanying person's presence.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56585, Dec. 22, 1983]

§§ 2.242–2.244 [Reserved]

§ 2.245 Amendment of records.

The Privacy Act permits individuals to request amendment of records pertaining to them if they believe the records are not accurate, relevant, timely or complete. 5 U.S.C. 552a(d)(2). A request for amendment of a record shall be submitted in accordance with the procedures in this subpart.

[48 FR 56585, Dec. 22, 1983]

§ 2.246 Petitions for amendment: Submission and form.

(a) *Submission of petitions for amendment.* (1) A request for amendment of a record shall be submitted to the system manager for the system of records containing the record unless the system notice describing the system prescribes or permits submission to a different official or officials. If an individual wishes to request amendment of records located in more than one system, a separate petition must be submitted to each system manager.

(2) A petition for amendment of a record may be submitted only if the individual submitting the petition has previously requested and been granted

§ 2.247

access to the record and has inspected or been given a copy of the record.

(b) *Form of petition.* (1) A petition for amendment shall be in writing and shall specifically identify the record for which amendment is sought.

(2) The petition shall state, in detail, the reasons why the petitioner believes the record, or the objectionable portion thereof, is not accurate, relevant, timely or complete. Copies of documents or evidence relied upon in support of these reasons shall be submitted with the petition.

(3) The petition shall state, specifically and in detail, the changes sought in the record. If the changes involve re-writing the record or portions thereof or involve adding new language to the record, the petition shall propose specific language to implement the changes.

[48 FR 56585, Dec. 22, 1983]

§ 2.247 Petitions for amendment: Processing and initial decision.

(a) *Decisions on petitions.* In reviewing a record in response to a petition for amendment, the accuracy, relevance, timeliness and completeness of the record shall be assessed against the criteria set out in § 2.48. In addition, personnel records shall be assessed against the criteria for determining record quality published in the Federal Personnel Manual and the Departmental Manual addition thereto.

(b) *Authority to decide.* An initial decision on a petition for amendment may be made only by the system manager responsible for the system of records containing the challenged record. If the system manager declines to amend the record as requested, the bureau Privacy Act officer for the bureau which maintains the system must concur in the decision, provided, however, that the head of a bureau may, in writing, require (1) that the decision be made by the bureau Privacy Act officer and/or (2) that the bureau head's own concurrence in the decision be obtained.

(c) *Acknowledgement of receipt.* Unless processing of a petition is completed within ten (10) working days, the receipt of the petition for amendment shall be acknowledged in writing by the system manager to whom it is directed.

43 CFR Subtitle A (10-1-20 Edition)

(d) *Inadequate petitions.* (1) If a petition does not meet the requirements of § 2.71, the petitioner shall be so advised and shall be told what additional information must be submitted to meet the requirements of § 2.71.

(2) If the petitioner fails to submit the additional information within a reasonable time, the petition may be rejected. The rejection shall be in writing and shall meet the requirements of paragraph (e) of this section.

(e) *Form of decision.* (1) A decision on a petition for amendment shall be in writing and shall state concisely the basis for the decision.

(2) If the petition for amendment is rejected, in whole or part, the petitioner shall be informed in a written response which shall:

(i) State concisely the basis for the decision.

(ii) Advise the petitioner that the rejection may be appealed to the Assistant Secretary—Policy, Budget and Administration by writing to the Privacy Act Officer, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, DC 20240.

(iii) State that the appeal must be received by the foregoing official within twenty (20) working days of the decision.

(3) If the petition for amendment involves Department employee records which fall under the jurisdiction of the Office of Personnel Management and is rejected, in whole or part, the petitioner shall be informed in a written response which shall:

(i) State concisely the basis for the decision.

(ii) Advise the petitioner that an appeal of the rejection may be made pursuant to 5 CFR 297.306 only to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(4) Copies of rejections of petitions for amendment made pursuant to paragraphs (e)(2) and (e)(3) of this section will be provided to the Departmental and Bureau Privacy Act Officers.

(f) *Implementation of initial decision.* If a petition for amendment is accepted,

Office of the Secretary, Interior

§ 2.250

in whole or part, the bureau maintaining the record shall:

(1) Correct the record accordingly and,

(2) Where an accounting of disclosures has been made pursuant to § 2.57, advise all previous recipients of the record that the correction was made and the substance of the correction.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56585, Dec. 22, 1983; 53 FR 3750, Feb. 9, 1988]

§ 2.248 Petitions for amendments: Time limits for processing.

(a) *Acknowledgement of receipt.* The acknowledgement of receipt of a petition required by § 2.72(c) shall be dispatched not later than ten (10) working days after receipt of the petition by the system manager responsible for the system containing the challenged record, unless a decision on the petition has been previously dispatched.

(b) *Decision on petition.* A petition for amendment shall be processed promptly. A determination whether to accept or reject the petition for amendment shall be made within thirty (30) working days after receipt of the petition by the system manager responsible for the system containing the challenged record.

(c) *Suspension of time limit.* The thirty (30) day time limit for a decision on a petition shall be suspended if it is necessary to notify the petitioner, pursuant to § 2.72(d), that additional information in support of the petition is required. Running of the thirty (30) day time limit shall resume on receipt of the additional information by the system manager responsible for the system containing the challenged record.

(d) *Extensions of time.* (1) The thirty (30) day time limit for a decision on a petition may be extended if the official responsible for making a decision on the petition determines that an extension is necessary for one of the following reasons:

(i) A decision on the petition requires analysis of voluminous record or records;

(ii) Some or all of the challenged records must be collected from facilities other than the facility at which the official responsible for making the decision is located.

(iii) Some or all of the challenged records are of concern to another bureau of the Department or another agency of the Federal Government whose assistance and views are being sought in processing the request.

(2) If the official responsible for making a decision on the petition determines that an extension is necessary, the official shall promptly inform the petitioner of the extension and the date on which a decision is expected to be dispatched.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56586, Dec. 22, 1983; 53 FR 3750, Feb. 9, 1988]

§ 2.249 Petitions for amendment: Appeals.

(a) *Right of appeal.* Except for appeals pertaining to Office of Personnel Management records, where a petition for amendment has been rejected in whole or in part, the individual submitting the petition may appeal the denial to the Assistant Secretary—Policy, Budget and Administration.

(b) *Time for appeal.* (1) An appeal must be received no later than twenty (20) working days after the date of the decision on a petition.

(2) The Assistant Secretary—Policy, Budget and Administration may, for good cause shown, extend the time for submission of an appeal if a written request for additional time is received within twenty (20) working days of the date of the decision on a petition.

(c) *Form of appeal.* (1) An appeal shall be in writing and shall attach copies of the initial petition and the decision on that petition.

(2) The appeal shall contain a brief statement of the reasons why the appellant believes the decision on the petition to have been in error.

(3) The appeal shall be addressed to Privacy Act Officer, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, DC 20240.

[40 FR 44505, Sept. 26, 1975, as amended at 47 FR 38328, Aug. 31, 1982; 53 FR 3750, Feb. 9, 1988]

§ 2.250 Petitions for amendment: Action on appeals.

(a) *Authority.* Appeals from decisions on initial petitions for amendment

§ 2.251

shall be decided for the Department by the Assistant Secretary—Policy, Budget and Administration or an official designated by the Assistant Secretary, after consultation with the Solicitor.

(b) *Time limit.* (1) A final determination on any appeal shall be made within thirty (30) working days after receipt of the appeal.

(2) The thirty (30) day period for decision on an appeal may be extended, for good cause shown, by the Secretary of the Interior. If the thirty (30) day period is extended, the individual submitting the appeal shall be notified of the extension and of the date on which a determination on the appeal is expected to be dispatched.

(c) *Form of decision.* (1) The final determination on an appeal shall be in writing and shall state the basis for the determination.

(2) If the determination upholds, in whole or part, the initial decision rejecting the petition for amendment, the determination shall also advise the individual submitting the appeal:

(i) Of his or her right to file a concise statement of the reasons for disagreeing with the decision of the agency;

(ii) Of the procedure established by § 2.77 for the filing of the statement of disagreement;

(iii) That the statement which is filed will be made available to anyone to whom the record is subsequently disclosed together with, at the discretion of the Department, a brief statement by the Department summarizing its reasons for refusing to amend the record;

(iv) That prior recipients of the challenged record will be provided a copy of any statement of dispute to the extent that an accounting of disclosure was maintained; and

(v) Of his or her right to seek judicial review of the Department's refusal to amend the record.

(3) If the determination reverses, in whole or in part, the initial decision rejecting the petition for amendment, the system manager responsible for the system containing the challenged record shall be directed to:

(i) Amend the challenged record accordingly; and

43 CFR Subtitle A (10–1–20 Edition)

(ii) If an accounting of disclosures has been made, advise all previous recipients of the record of the amendment and its substance.

[40 FR 44505, Sept. 26, 1975, as amended at 48 FR 56586, Dec. 22, 1983; 53 FR 3750, Feb. 9, 1988]

§ 2.251 [Reserved]

§ 2.252 Statements of disagreement.

(a) *Filing of statement.* If the determination of the Assistant Secretary—Policy, Budget and Administration under § 2.75 rejects in whole or part, a petition for amendment, the individual submitting the petition may file with the system manager for the system containing the challenged record a concise written statement setting forth the reasons for disagreement with the determination of the Department.

(b) *Disclosure of statements.* In any disclosure of a record containing information about which an individual has filed a statement of disagreement under this section which occurs after the filing of the statement, the disputed portion of the record will be clearly noted and the recipient shall be provided copies of the statement of disagreement. If appropriate, a concise statement of the reasons of the Department for not making the requested amendments may also be provided to the recipient.

(c) *Maintenance of statements.* System managers shall develop procedures to assure that statements of disagreement filed with them shall be maintained in such a way as to assure dissemination of the statements to recipients of the records to which the statements pertain.

[48 FR 56586, Dec. 22, 1983]

§ 2.253 [Reserved]

§ 2.254 Exemptions.

(a) *Criminal law enforcement records exempt under 5 U.S.C. 552a(j)(2).* Pursuant to 5 U.S.C. 552a(j)(2) the following systems of records are exempted from all of the provisions of 5 U.S.C. 552a and the regulations in this subpart except paragraphs (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), (11) and (12), and (i) of 5 U.S.C. 552a and the portions of the regulations in this

Office of the Secretary, Interior

§ 2.280

subpart implementing these paragraphs:

(1) Investigative Case File System, Interior/FWS-20.

(2) Law Enforcement Services System, Interior/BIA-18.

(3) Law Enforcement Statistical Reporting System, Interior/NPS-19.

(4) Investigative Records, Interior/Office of Inspector General-2.

(5) Incident Management, Analysis and Reporting System, DOI-10.

(6) Insider Threat Program, DOI-50.

(b) *Law enforcement records exempt under 5 U.S.C. 552a(k)(2)*. Pursuant to 5 U.S.C. 552a(k)(2), the following systems of records are exempted from paragraphs (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these paragraphs:

(1) Investigative Records, Interior/Office of Inspector General-2.

(2) Permits System, Interior/FWS-21.

(3) Criminal Case Investigation System, Interior/BLM-18.

(4) Civil Trespass Case Investigations, Interior/BLM-19.

(5) Employee Conduct Investigations, Interior/BLM-20.

(6)-(7) [Reserved]

(8) Employee Financial Irregularities, Interior/NPS-17.

(9) Trespass Cases, Interior/Reclamation-37.

(10) Litigation, Appeal and Case Files System, Interior/Office of the Solicitor-1 to the extent that it consists of investigatory material compiled for law enforcement purposes.

(11) Endangered Species Licenses System, Interior/FWS-19.

(12) Investigative Case File, Interior/FWS-20.

(13) Timber Cutting and Trespass Claims Files, Interior/BIA-24.

(14) Debarment and Suspension Program, DOI-11.

(15) Incident Management, Analysis and Reporting System, DOI-10.

(16) Insider Threat Program, DOI-50.

(17) Indian Arts and Crafts Board, DOI-24.

(18) Investigations Case Management System (CMS), BSEE-01.

(c) Investigatory records exempt under 5 U.S.C. 552a(k)(5), the following systems of records have been exempted

from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these subsections:

(1) [Reserved]

(2) National Research Council Grants Program, Interior/GS-9

(3) Committee Management Files, Interior/Office of the Secretary-68.

(4) Debarment and Suspension Program, DOI-11.

(5 U.S.C. 301, 552a and 5 U.S.C. app. sections 9(a)(1)(D) and 9(b); 5 U.S.C. 301, 552, and 552a; 31 U.S.C. 483a; and 43 U.S.C. 1460)

[40 FR 44505, Sept. 26, 1975, as amended at 40 FR 54790, Nov. 26, 1975; 47 FR 38328, Aug. 31, 1982; 48 FR 37412, Aug. 18, 1983; 48 FR 56586, Dec. 22, 1983; 49 FR 6907, Feb. 24, 1984; 79 FR 49014, Aug. 19, 2014; 79 FR 51917, Sept. 2, 2014; 79 FR 68800, Nov. 19, 2014; 80 FR 45894, Aug. 3, 2015; 85 FR 1284, Jan. 10, 2020]

Subpart L—Legal Process: Testimony by Employees and Production of Records

SOURCE: 65 FR 46369, July 28, 2000, unless otherwise noted. Redesignated at 67 FR 64530, Oct. 21, 2002. Redesignated at 77 FR 76902, Dec. 31, 2012; 78 FR 6216, Jan. 30, 2013.

GENERAL INFORMATION

§ 2.280 What does this subpart cover?

(a) This subpart describes how the Department of the Interior (including all its bureaus and offices) responds to requests or subpoenas for:

(1) Testimony by employees in State, territorial or Tribal judicial, legislative or administrative proceedings concerning information acquired while performing official duties or because of an employee's official status;

(2) Testimony by employees in Federal court civil proceedings in which the United States is not a party concerning information acquired while performing official duties or because of an employee's official status;

(3) Testimony by employees in any judicial or administrative proceeding in which the United States, while not a party, has a direct and substantial interest;

(4) Official records or certification of such records for use in Federal, State,

§2.281

territorial or Tribal judicial, legislative or administrative proceedings.

(b) In this subpart, “employee” means a current or former Department employee, including a contract or special government employee.

(c) This subpart does not apply to:

(1) Congressional requests or subpoenas for testimony or records;

(2) Federal court civil proceedings in which the United States is a party;

(3) Federal administrative proceedings;

(4) Federal, State and Tribal criminal court proceedings;

(5) Employees who voluntarily testify, while on their own time or in approved leave status, as private citizens as to facts or events that are not related to the official business of the Department. The employee must state for the record that the testimony represents the employee’s own views and is not necessarily the official position of the Department. See 5 CFR §§ 2635.702(b), 2635.807 (b).

(6) Testimony by employees as expert witnesses on subjects outside their official duties, except that they must obtain prior approval if required by §2.90.

(d) This subpart does not affect the rights of any individual or the procedures for obtaining records under the Freedom of Information Act (FOIA), Privacy Act, or statutes governing the certification of official records. The Department FOIA and Privacy Act regulations are found at 43 CFR part 2, subparts B and D.

(e) Nothing in this subpart is intended to impede the appropriate disclosure under applicable laws of Department information to Federal, State, territorial, Tribal, or foreign law enforcement, prosecutorial, or regulatory agencies.

(f) This subpart only provides guidance for the internal operations of the Department, and neither creates nor is intended to create any enforceable right or benefit against the United States.

§2.281 What is the Department’s policy on granting requests for employee testimony or Department records?

(a) Except for proceedings covered by §2.80(c) and (d), it is the Department’s general policy not to allow its employ-

43 CFR Subtitle A (10–1–20 Edition)

ees to testify or to produce Department records either upon request or by subpoena. However, if you request in writing, the Department will consider whether to allow testimony or production of records under this subpart. The Department’s policy ensures the orderly execution of its mission and programs while not impeding any proceeding inappropriately.

(b) No Department employee may testify or produce records in any proceeding to which this subpart applies unless authorized by the Department under §§2.80 through 2.90 *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

RESPONSIBILITIES OF REQUESTERS

§2.282 How can I obtain employee testimony or Department records?

(a) To obtain employee testimony, you must submit:

(1) A written request (hereafter a “*Touhy* Request;” see §2.84 and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951)); and

(2) A statement that you will submit a check for costs to the Department of the Interior, in accordance with §2.85, if your *Touhy* Request is granted.

(b) To obtain official Department records, you must submit:

(1) A *Touhy* Request; and

(2) A Statement that you agree to pay the costs of duplication in accordance with 43 CFR part 2, appendix A, if your *Touhy* Request is granted.

(c) You must send your *Touhy* Request to:

(1) The employee’s office address;

(2) The official in charge of the employee’s bureau, division, office or agency; and

(3) The appropriate unit of the Solicitor’s Office.

(d) To obtain employee testimony or records of the Office of Inspector General, you must send your *Touhy* Request to the General Counsel for the Office of Inspector General.

(e) 43 CFR part 2, appendix B contains a list of the addresses of the Department’s bureaus and offices and the units of the Solicitor’s Office. The General Counsel for the Inspector General is located at the address for the Office of the Inspector General. If you do not know the employee’s address, you may

Office of the Secretary, Interior

§ 2.288

obtain it from the employee's bureau or office.

§ 2.283 If I serve a subpoena *duces tecum*, must I also submit a *Touhy* request?

Yes. If you serve a subpoena for employee testimony, you also must submit a request under *United States ex rel. Touhy v. Regan*, 340 U.S. 462 (1951)? If you serve a subpoena *duces tecum* for records in the possession of the Department, you also must submit a *Touhy* Request.

§ 2.284 What information must I put in my *Touhy* Request?

Your *Touhy* Request must:

- (a) Identify the employee or record;
- (b) Describe the relevance of the desired testimony or records to your proceeding and provide a copy of the pleadings underlying your request;
- (c) Identify the parties to your proceeding and any known relationships they have to the Department's mission or programs;
- (d) Show that the desired testimony or records are not reasonably available from any other source;
- (e) Show that no record could be provided and used in lieu of employee testimony;
- (f) Provide the substance of the testimony expected of the employee; and
- (g) Explain why you believe your *Touhy* Request complies with § 2.88.

§ 2.285 How much will I be charged?

We will charge you the costs, including travel expenses, for employees to testify under the relevant substantive and procedural laws and regulations. You must pay costs for record production under 43 CFR part 2, appendix A. Costs must be paid by check or money order payable to the Department of the Interior.

§ 2.286 Can I get an authenticated copy of a Department record?

Yes. We may provide an authenticated copy of a Department record, for purposes of admissibility under Federal, State or Tribal law. We will do this only if the record has been officially released or would otherwise be released under § 2.13 or this subpart.

RESPONSIBILITY OF THE DEPARTMENT

§ 2.287 How will the Department process my *Touhy* Request?

(a) The appropriate Department official will decide whether to grant or deny your *Touhy* Request. Our Solicitor's Office or, in the case of the Office of Inspector General, its General Counsel, may negotiate with you or your attorney to refine or limit both the timing and content of your *Touhy* Request. When necessary, the Solicitor's Office or, in the case of the Office of Inspector General, its General Counsel, also will coordinate with the Department of Justice to file appropriate motions, including motions to remove the matter to Federal court, to quash, or to obtain a protective order.

(b) We will limit our decision to allow employee testimony to the scope of your *Touhy* Request.

(c) If you fail to follow the requirements of this Subpart, we will not allow the testimony or produce the records.

(d) If your *Touhy* Request is complete, we will consider the request under § 2.88.

§ 2.288 What criteria will the Department consider in responding to my *Touhy* Request?

In deciding whether to grant your *Touhy* Request, the appropriate Department official will consider:

- (a) Your ability to obtain the testimony or records from another source;
- (b) The appropriateness of the employee testimony and record production under the relevant regulations of procedure and substantive law, including the FOIA or the Privacy Act; and
- (c) Our ability to:
 - (1) Conduct our official business unimpeded;
 - (2) Maintain impartiality in conducting our business;
 - (3) Minimize the possibility that we will become involved in issues that are not related to our mission or programs;
 - (4) Avoid spending public employee's time for private purposes;
 - (5) Avoid the negative cumulative effect of granting similar requests;
 - (6) Ensure that privileged or protected matters remain confidential; and

§ 2.289

(7) Avoid undue burden on us.

RESPONSIBILITIES OF EMPLOYEES

§ 2.289 What must I, as an employee, do upon receiving a request?

(a) If you receive a request or subpoena that does not include a *Touhy* Request, you must immediately notify your supervisor and the Solicitor's Office, or the General Counsel of the Office of the Inspector General, as applicable, for assistance in issuing the proper response.

(b) If you receive a *Touhy* Request, you must promptly notify your supervisor and forward the request to the head of your bureau, division or office. After consulting with the Solicitor's Office or, in the case of the Office of Inspector General, its General Counsel, the official in charge will decide whether to grant the *Touhy* Request under § 2.88.

(c) All decisions granting or denying a *Touhy* Request must be in writing. The official in charge must ask the applicable unit of the Solicitor's Office or, in the case of the Office of Inspector General, its General Counsel, for advice when preparing the decision.

(d) Under 28 U.S.C. 1733, Federal Rule of Civil Procedure 44(a)(1), or comparable State or Tribal law, a request for an authenticated copy of a Department record may be granted by the person having the legal custody of the record. If you believe that you have custody of a record:

43 CFR Subtitle A (10-1-20 Edition)

(1) Consult your delegated authority to determine if you can grant a request for authentication of records; and

(2) Consult the Solicitor's Office or, in the case of the Office of Inspector General, its General Counsel, concerning the proper form of the authentication (as authentication requirements may vary by jurisdiction).

§ 2.290 Must I get approval before testifying as an expert witness on a subject outside the scope of my official duties?

(a) You must comply with 5 CFR 2635.805(c), which details the authorization procedure for an employee to testify as an expert witness, not on behalf of the United States, in any judicial or administrative proceeding in which the United States is a party or has a direct and substantial interest. This procedure means:

(1) You must obtain the written approval of your Deputy Ethics Official;

(2) You must be in an approved leave status if you testify during duty hours; and

(3) You must state for the record that you are appearing as a private individual and that your testimony does not represent the official views of the Department.

(b) If you testify as an expert witness on a matter outside the scope of your official duties, and which is not covered by paragraph (a) of this section, you must comply with 5 CFR 2635.802 and 5 CFR 3501.105.

APPENDIX A TO PART 2—FEE SCHEDULE

Types of Records	Fee
(1) Physical records: Pages no larger than 8.5 × 14 inches, when reproduced by standard office copying machines or scanned into an electronic format	\$.15 per page (\$.30 for double-sided copying).
Color copies of pages no larger than 8.5 × 11 inches	\$.90 per page.
Pages larger than 8.5 × 14 inches	Direct cost to DOI.
Color copies of pages no larger than 11 × 17 inches	\$ 1.50 per page.
Photographs and records requiring special handling (for example, because of age, size, or format).	Direct cost to DOI.
(2) Electronic records: Charges for services related to processing requests for electronic records	Direct cost to DOI.
(3) Certification Each certificate of verification attached to authenticate copies of records	Fee. \$.25
(4) Postage: Charges that exceed the cost of first class postage, such as express mail or overnight delivery	Postage or delivery charge.
(5) Other Services:	

Types of Records	Fee
Cost of special services or materials, other than those provided for by this fee schedule, when requester is notified of such costs in advance and agrees to pay them.	Direct cost to DOI.

[77 FR 76914, Dec. 31, 2012]

APPENDIX B TO PART 2—MINERAL LEASING ACT AND MINERAL LEASING ACT FOR ACQUIRED LANDS—SPECIAL RULES

(a) *Definitions.* As used in the section:

(1) *Exploration license* means a license issued by the Secretary of the Interior to conduct coal exploration operations on land subject to the Mineral Leasing Act, under 30 U.S.C. 201(b), or subject to the Mineral Leasing Act for Acquired Lands, under 30 U.S.C. 351-360.

(2) *Fair-market value of coal to be leased* means the minimum amount of a bid the Secretary is willing to accept in leasing coal within leasing tracts offered in general lease sales or reserved and offered for lease to public bodies, including Federal agencies, rural electric cooperatives, or non-profit corporations controlled by any of such entities, under 30 U.S.C. 201(a)(1) or 30 U.S.C. 351-360.

(3) *Information* means data, statistics, samples and other facts, whether analyzed or processed or not, pertaining to Federal coal resources.

(b) *Applicability.* This Appendix applies to the following categories of information:

(1) *Category A.* Information provided to or obtained by a bureau under 30 U.S.C. 201(b)(3) (and corresponding information under 30 U.S.C. 351-360) from the holder of an exploration license;

(2) *Category B.* Information acquired from commercial or other sources under service contract with United States Geological Survey (USGS) under 30 U.S.C. 208-1(b) (and corresponding information under 30 U.S.C. 351-360), and information developed by USGS under an exploratory program authorized by 30 U.S.C. 208-1 (and corresponding information under 30 U.S.C. 351-360);

(3) *Category C.* Information obtained from commercial sources which the commercial source acquired while not under contract with the United States Government;

(4) *Category D.* Information provided to the Secretary by a Federal department or agency under 30 U.S.C. 208-1(e) (and corresponding information under 30 U.S.C. 351-360); and

(5) *Category E.* The fair-market value of coal to be leased and comments received by the Secretary with respect to such value.

(c) *Availability of information.* Information obtained by the Department from various sources will be made available to the public as follows:

(1) *Category A—Information.* Category A information must not be disclosed to the public until after the areas to which the information pertains have been leased by the Department, or until the Secretary determines that release of the information to the public would not damage the competitive position of the holder of the exploration license, whichever comes first.

(2) *Category B—Information.* Category B information must not be withheld from the public; it will be made available by means of and at the time of open filing or publication by USGS.

(3) *Category C—Information.* To the extent Category C information is proprietary, such information must not be made available to the public until after the areas to which the information pertains have been leased by the Department.

(4) *Category D—Information.* To the extent Category D information is proprietary, the Department will withhold the information from the public for the length of time the department or agency providing the information agreed to when it obtained the information.

(5) *Category E—Information.* Category E information must not be made public until the lands to which the information pertains have been leased, or until the Secretary has determined that its release prior to the issuance of a lease is in the public interest.

[67 FR 64541, Oct. 21, 2002. Redesignated at 77 FR 76915, Dec. 31, 2012]

PART 3—PRESERVATION OF AMERICAN ANTIQUITIES

Sec.

- 3.1 Jurisdiction.
- 3.2 Limitation on permits granted.
- 3.3 Permits; to whom granted.
- 3.4 No exclusive permits granted.
- 3.5 Application.
- 3.6 Time limit of permits granted.
- 3.7 Permit to become void.
- 3.8 Applications referred for recommendation.
- 3.9 Form and reference of permit.
- 3.10 Reports.
- 3.11 Restoration of lands.
- 3.12 Termination.
- 3.13 Report of field officer.
- 3.14 Examinations by field officer.
- 3.15 Persons who may apprehend or cause to be arrested.