

# Rules and Regulations

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## EXECUTIVE OFFICE OF THE PRESIDENT

### Office of the Intellectual Property Enforcement Coordinator

#### 5 CFR Chapter CIV

RIN 0355-AA00

### Freedom of Information Act and the Privacy Act

**AGENCY:** Office of the Intellectual Property Enforcement Coordinator, Executive Office of the President.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Intellectual Property Enforcement Coordinator (IPEC) is issuing its implementing regulations for the Freedom of Information Act (FOIA) and the Privacy Act. The final rule describes how to make a FOIA request with IPEC and how IPEC processes requests for records. The final rule also states IPEC's Privacy Act Policies and Procedures. The final rule describes how individuals can find out if an IPEC system of records contains information about them and, if so, how to access or amend a record.

**DATES:** This final rule is effective on March 10, 2023.

**FOR FURTHER INFORMATION CONTACT:**

Steven D. Aitken, Office of the Intellectual Property Enforcement Coordinator, Executive Office of the President, at (202) 395-4728 or [Steven.D.Aitken@ipec.eop.gov](mailto:Steven.D.Aitken@ipec.eop.gov). Questions concerning this notice may also be sent to [ipecfia@ipec.eop.gov](mailto:ipecfia@ipec.eop.gov).

**SUPPLEMENTARY INFORMATION:**

#### I. Background

During its first ten years of operation, following its establishment "within the Executive Office of the President" in Title III of the PRO IP Act of 2008 (Pub. L. 110-403; 15 U.S.C. 8111-8116), IPEC was located within the Office of Management and Budget (OMB). With the enactment of a separate

appropriation for IPEC in the Financial Services and General Government Appropriations Act, 2020 (Pub. L. 116-93, Div. C), IPEC has moved out of OMB and become a stand-alone component of the Executive Office of the President. Accordingly, IPEC is issuing its implementing regulations on FOIA and the Privacy Act.

The FOIA, 5 U.S.C. 552 *et seq.*, provides a right of access to certain records and information that Federal agencies maintain and control. The FOIA requires each Federal agency to publish regulations describing how to submit a FOIA request and how people responsible for FOIA will process these requests. IPEC's final regulations on FOIA and the Privacy Act incorporate guidance from OMB and the U.S. Department of Justice, Office of Information Policy. The regulations also strive for consistency with FOIA and Privacy Act regulations among other agencies of the Executive Office of the President.

On September 22, 2022, IPEC issued a Notice of Proposed Rulemaking seeking comments on its proposed regulations for FOIA and the Privacy Act (87 FR 57840). In response, IPEC received seven public comments about the proposed rule, two of which suggested revisions to the proposed regulatory text. IPEC appreciates the commenters' focus on the proposed rule and the suggestions that they made.

In response to the comments (and based on a further review of the proposed rule, the FOIA statute, and the Justice Department's guidance on FOIA), IPEC has made several revisions to the regulatory text on FOIA, include the following: §§ 10400.3 (revised several of the definitions); 10400.4 (added a "reading room" reference); 10400.6 (deleted paragraph (i) as unnecessary in this regulation, and revised several paragraphs); 10400.7 (revised paragraph (a) and added new paragraphs (c) and (d)); 10400.8 (revised paragraph (a)(2) and paragraph (b)); 10400.9 (revised paragraph (c)); 10400.10 (revised paragraph (a)); 10400.12 (deleted paragraph (e) as duplicative of another provision in the regulation); 10400.13 (revised paragraph (b)); 10400.14 (revised paragraphs (b) and (d)); and 10400.18 (revised paragraph (j)). In addition, in response to a comment, IPEC has revised the regulatory text on the Privacy Act in

paragraph (a) of § 10400.22; also, revisions have been made to paragraph (b) of § 10400.21 and paragraphs (b)(2) and (f)(2) of § 10400.23.

One commenter pointed out that, unless the disclosure of information is prohibited by law, the FOIA Improvements Act of 2016 directs agencies to apply the "foreseeable harm" standard in determining whether to withhold a record, in whole or in part, under an applicable FOIA exemption. The "foreseeable harm" standard is reiterated in the Attorney General's "Freedom of Information Act Guidelines" of March 15, 2022 (<https://www.justice.gov/media/1212566/dl?inline=>). In accordance with the statute and the Attorney General's Guidelines, IPEC will apply the "foreseeable harm" standard in determining whether to exercise its discretion to withhold a record, in whole or in part, under an applicable exemption. In addition, in accordance with the Attorney General's Guidelines, IPEC will confirm in its responses to a requester that it has applied this standard when reviewing records and applying FOIA exemptions.

#### II. Section-by-Section Analysis

##### *Subpart A—Freedom of Information Act Policies and Procedures*

*Section 10400.1—Purpose and scope:* This section describes the purpose of the regulation, which is to implement the FOIA.

*Section 10400.2—IPEC: Organization and functions:* This section describes the mission and leadership structure of the agency.

*Section 10400.3—Definitions:* This section defines the key terms used in the regulation.

*Section 10400.4—Access to information:* This section describes the types of information that IPEC will make available under FOIA.

*Section 10400.5—Records requiring consultation, referral, and coordination.* This section describes how IPEC will process records, in the custody of IPEC, for which another agency or other Federal Government office has an interest.

*Section 10400.6—How to request records—form and content:* This section explains what an individual must do to submit a valid FOIA request to IPEC and where a request should be sent. It also describes the information that

requesters must provide so that IPEC can identify the records sought and process their requests.

**Section 10400.7—Responses—form and content:** This section explains that IPEC will respond to a request in writing either with the requested records or an explanation of the reasons why all or portions of the requested records were not disclosed. IPEC also will provide information about the right of appeal and the mediation services offered by the Office of Government Information Services of the National Archives and Records Administration. The response will include any fees associated with the FOIA request.

**Section 10400.8—Expedited and multi-track processing, and aggregation of requests for processing:** This section describes the circumstances where expedited processing of a FOIA request may be granted; multi-track processing may be used; and requests may be aggregated.

**Section 10400.9—Extension of time:** This section describes and defines the “unusual circumstances” under which IPEC may extend the time limit for making a determination on a FOIA request.

**Section 10400.10—Appeal procedures:** This section describes when and how a requester may appeal a determination on a FOIA request, and how and within what period of time IPEC will make a determination on an appeal.

**Section 10400.11—Fees to be charged—general:** This section describes the general FOIA processing activities performed by IPEC staff, and the rates charged by IPEC to recoup the employee costs associated with responding to FOIA requests.

**Section 10400.12—Fees to be charged—Miscellaneous provisions:** This section contains miscellaneous FOIA fee provisions such as where payment should be sent, when advance payment is required, and rates of interest charged on late payments.

**Section 10400.13—Fees to be charged—Categories of Requesters:** This section describes the different categories of requesters, and the types and amounts of fees IPEC may assess to process and respond to a FOIA request.

**Section 10400.14—Restrictions on charging fees.** This section describes the circumstances under which IPEC is restricted in charging fees normally associated with processing a FOIA request, such as when IPEC does not meet time limits mandated by the FOIA.

**Section 10400.15—Waiver or Reduction of Fees:** This section describes the factors that IPEC may consider when deciding whether to

waive or reduce the fees associated with processing FOIA requests.

**Section 10400.16—Aggregation of requests for fees:** This section describes the circumstances under which IPEC may aggregate a series or group of requests for purposes of fee assessment.

**Section 10400.17—Markings on released documents:** This section provides that IPEC will redact exempt information from its FOIA disclosures to the extent that exempt information can be segregated from other information subject to disclosure.

**Section 10400.18—Confidential commercial information:** This section explains when and how a person or entity that submits information to IPEC must identify confidential commercial information. It also describes how IPEC staff will handle such information.

#### **Subpart B—Privacy Act Policies and Procedures**

**Section 10400.19—Definitions:** This section defines the key terms used in this Subpart.

**Section 10400.20—Purpose and scope:** This section describes the purpose of the regulation, which is to implement the Privacy Act, and explains general policies and procedures for individuals requesting access to records, requesting amendments or corrections to records, and requesting an accounting of disclosures of records.

**Section 10400.21—How do I make a Privacy Act request?:** This section explains what an individual must do to submit a request to IPEC for access to records, to amend or correct records, or for an accounting of disclosures of records. It also describes the information an individual must provide so that IPEC can identify the records sought and determine whether the request can be granted.

**Section 10400.22—How will IPEC respond to my Privacy Act request?:** This section describes the period of time within which IPEC will respond to requests. It also explains that IPEC will grant or deny requests in writing, provide reasons if a request is denied in whole or in part, and explain the right of appeal.

**Section 10400.23—What can I do if I am dissatisfied with IPEC’s response to my Privacy Act request?:** This section describes when and how an individual may appeal a determination on a Privacy Act request and how and within what time period IPEC will make a determination on an appeal.

**Section 10400.24—What does it cost to get records under the Privacy Act?:** This section explains that requesters are

required to pay fees for the duplication of requested records.

### **III. Statutory and Executive Order Reviews**

**Regulatory Flexibility Act.** IPEC has considered the impact of the final rule and determined that the final rule it is not likely to have a significant economic impact on a substantial number of small business entities. See 5 U.S.C. 601 *et seq.* Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters, and only for certain classes of requesters and when particular conditions are satisfied.

**Paperwork Reduction Act.** The final rule does not contain any information collection requirement that requires approval from the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**Executive Order 12866 (Regulatory Planning and Review).** This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

**Unfunded Mandates Reform Act of 1995.** This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments.

**Congressional Review Act.** As required by the Congressional Review Act (5 U.S.C. 801–808), IPEC will submit a report on the final rule to each House of the Congress and to the Comptroller General of the United States. This rule is not a major rule under 5 U.S.C. 804.

#### **List of Subjects in 5 CFR Part 10400**

Freedom of information. Privacy.

■ For the reasons stated in the preamble, the Office of the Intellectual Property Enforcement Coordinator is adding part 10400 of title 5 of the Code of Federal Regulations to read as follows:

#### **PART 10400—PUBLIC AVAILABILITY OF INFORMATION**

##### **Subpart A—Freedom of Information Act Policies and Procedures**

Sec.

10400.1 Purpose and scope.

10400.2 The Office of the Intellectual Property Enforcement Coordinator—organization and functions.

10400.3 Definitions.

10400.4 Access to information.

10400.5 Records requiring consultation, referral, and coordination.

10400.6 How to request records—form and content.

- 10400.7 Responses—form and content.
- 10400.8 Expedited and multi-track processing, and aggregation of requests for processing.
- 10400.9 Extension of time.
- 10400.10 Appeal procedures.
- 10400.11 Fees to be charged—general.
- 10400.12 Fees to be charged—miscellaneous provisions.
- 10400.13 Fees to be charged—categories of requesters.
- 10400.14 Restrictions on charging fees.
- 10400.15 Waiver or reduction of fees.
- 10400.16 Aggregation of requests for fees.
- 10400.17 Markings on released documents.
- 10400.18 Confidential commercial information.

#### Subpart B—Privacy Act Policies and Procedures

- 10400.19 Definitions.
- 10400.20 Purpose and scope.
- 10400.21 How do I make a Privacy Act request?
- 10400.22 How will IPEC respond to my Privacy Act request?
- 10400.23 What can I do if I am dissatisfied with IPEC's response to my Privacy Act request?
- 10400.24 What does it cost to get records under the Privacy Act?

Authority: 5 U.S.C. 552, 552a

#### Subpart A—Freedom of Information Act Policies and Procedures

##### § 10400.1 Purpose and scope.

The regulations in this part prescribe procedures by which individuals may obtain access to agency records of the Office of the Intellectual Property Enforcement Coordinator (IPEC) under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, as well as the procedures IPEC must follow in response to requests for records under the FOIA. The regulations should be read together with the FOIA and the “Uniform Freedom of Information Fee Schedule and Guidelines” issued by the Office of Management and Budget. All requests for access to information contained within a system of records pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, shall be processed in accordance with these regulations. Nothing in this part shall be construed to entitle any person to any service or to the disclosure of any record to which such person is not entitled under the FOIA or the Privacy Act.

##### § 10400.2 The Office of the Intellectual Property Enforcement Coordinator—organization and functions.

The Office of the Intellectual Property Enforcement Coordinator was created by Title III of the Pro IP Act of 2008, 15 U.S.C. 8111 *et seq.* The mission of IPEC is to advise the President and coordinate with Cabinet departments and agencies on the development of the United

States' overall intellectual property policy and strategy, to promote innovation and creativity, and to ensure effective intellectual property protection and enforcement, domestically and abroad. IPEC is headed by the Intellectual Property Enforcement Coordinator.

##### § 10400.3 Definitions.

For the purpose of this part, all the terms defined in the Freedom of Information Act apply.

*Commercial use request* is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. IPEC's decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information. IPEC will notify requesters of their placement in this category.

*Direct costs* means the expenses (excluding overhead) actually expended for searching, reviewing (for commercial-use requests), or duplicating in response to a FOIA request. Direct costs include 116% of the salary of the employee performing work (*i.e.*, the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners.

*Disclose and disclosure* refer to making records available, upon request, for examination and copying, or furnishing a copy of records.

*Duplicate and duplication* mean the process of making a copy of a document. Such copies may take the form of paper, microform, audio-visual materials, or machine-readable documentation.

*Educational institution* is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with the requester's role at the educational institution. IPEC may seek verification from the requester that the request furthers scholarly research, and IPEC will advise requesters of their placement in this category.

*Fee waiver* means the waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied, including that the information is in the public interest and is not primarily in the commercial interest of the requester.

*FOIA public liaison* means a supervisory agency official who assists requesters in reducing processing delays, increasing transparency and understanding of the status of requests,

and assisting in the resolution of disputes.

*Noncommercial scientific institution* is an institution that is not operated on a “commercial” basis and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use. IPEC will advise requesters of their placement in this category.

*OGIS* means the Office of Government Information Services of the National Archives and Records Administration. OGIS offers FOIA dispute resolution services, which is a voluntary process. If IPEC agrees to participate in the dispute resolution services provided by OGIS, IPEC will actively engage as a partner to the process in an attempt to resolve the dispute.

*Records* and any other terms used in this part in reference to information includes any information that would be an agency record subject to the requirements of this part when maintained in any format, including electronic format.

*Representative of the news media and news media requester* is 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 distinct work, and distributes that work to an audience. The term “news” means information that is about current events or information that would be of interest to the public. Examples of news media entities include television or radio stations that broadcast “news” to the public at large and publishers of periodicals that disseminate “news” and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use. “Freelance” journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; IPEC can also consider a requester's past publication record in making this determination. IPEC will advise requesters of their placement in this category.

*Request* means a letter or other written communication seeking records or information under FOIA.

*Requester category* means one of the four categories that IPEC will place requesters in for the purpose of determining whether a requester will be charged fees for search, review, and duplication. The categories are: commercial use requests; requests by non-commercial scientific or educational institutions; news media requesters; and all other requesters.

*Review* means the process of examining documents that are located during a search to determine if any portion should lawfully be withheld. It is the process of determining disclosability. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under § 10400.18, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

*Search* is the process of looking for, manually or by automated means, agency records for the purpose of locating those records responsive to a request.

*Working day* means a Federal working day, and thus does not include Saturdays, Sundays, and legal public holidays.

#### **§ 10400.4 Access to information.**

The Office of the Intellectual Property Enforcement Coordinator makes available information pertaining to matters issued, adopted, or promulgated by IPEC, that are within the scope of 5 U.S.C. 552(a)(2). Such “reading room” information is located at <https://www.whitehouse.gov/ipeec>. Included in that information are IPEC’s proactive disclosures. Proactive disclosures are records that have been requested three or more times, or that have been released to a requester and that IPEC determines have become, or are likely to become, the subject of subsequent requests for substantially the same records.

#### **§ 10400.5 Records requiring consultation, referral, and coordination.**

Requests for records that are in IPEC’s custody, and for which other agencies (or other Federal Government offices)

have an interest, shall be reviewed by IPEC. IPEC will then either consult with the other agencies or offices regarding the records; refer the records to the other agencies for further processing; or coordinate with the other agencies when a referral is not appropriate.

(a) *Consultation*. When records originated with IPEC, and contain within them information of interest to another agency or other Federal Government office, IPEC will consult with that agency or office prior to making a release determination.

(b) *Referral*—(1) *Determination*. When IPEC believes that a different agency is best able to determine whether to disclose the record, IPEC will refer to that agency the responsibility for responding to the request regarding that record. Ordinarily, the agency that originated the record is presumed to be the best agency to make the disclosure determination. However, if IPEC and the originating agency jointly agree that IPEC is in the best position to respond regarding the record, then the record may be handled as a consultation.

(2) *Documentation*. Whenever IPEC refers any part of the responsibility for responding to a request to another agency, IPEC must document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name(s) of the agency to which the record was referred, including that agency’s FOIA contact information.

(3) *Coordination*. The standard referral procedure is not appropriate where 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 exemptions that protect personal privacy or national security interests. In order to avoid harm to an interest protected by an applicable exemption, IPEC will coordinate with the originating agency to seek its views on the disclosability of the record. IPEC will convey, to the requester, the release determination for the record.

(c) *Classified information*. On receipt of any request involving classified information, IPEC must determine whether the information is currently and properly classified in accordance with applicable classification rules. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another agency under any applicable executive order concerning the classification of records, IPEC will refer the responsibility for responding to the request regarding that information to the agency that classified the information, or that should consider

the information for classification.

Whenever a record contains information that has been derivatively classified (for example, when it contains information classified by another agency), IPEC will refer the responsibility for responding to that portion of the request to the agency that classified the underlying information.

(d) *Timing of responses to consultations and referrals*. IPEC will handle all consultations and referrals received by IPEC according to the date that the (consulting or referring) agency received the perfected FOIA request.

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

#### **§ 10400.6 How to request records—form and content.**

(a) A request for records must describe the records that it seeks in sufficient detail and in writing to enable IPEC to locate the records with a reasonable amount of effort. To the extent possible, each request must reasonably describe the record(s) sought, including by referencing the type of document; a specific event or action; the title or name, author, recipient, subject matter, date or time period, and/or location of the record; and any other pertinent data that would assist in identifying the record(s) sought. If after receiving a request IPEC determines that the request does not reasonably describe the record(s) sought, IPEC will inform the requester what additional information is needed or why the request is otherwise insufficient. Before or after submitting their requests, requesters may contact IPEC’s FOIA contact or FOIA Public Liaison to discuss the record(s) they seek and for assistance in describing the record(s).

(b)(1) If an individual is making a request for records that are about the individual, the requester must comply with the verification of identity provision set forth in § 10400.21(f).

(2) If a request for records pertains to a third party, the requester may receive greater access by submitting either a notarized authorization signed by that individual or an unsworn declaration under 26 U.S.C. 1746 by that individual authorizing disclosure of the records to the requester. As an exercise of administrative discretion, IPEC may require the requester to provide additional information if necessary in order to verify that a particular individual has consented to disclosure. If the records that are requested pertain

to an individual who is deceased, the requester should submit proof of death such as a copy of the death certificate or an obituary.

(c) Requesters may specify the preferred form or format (including electronic formats) for the records they seek. IPEC will accommodate formatting requests if the record is readily reproducible in that form or format.

(d) Whenever it is appropriate to do so, IPEC automatically processes a Privacy Act request for access to records under both the Privacy Act and the FOIA, following the rules contained in this part. IPEC processes a request under both the FOIA and Privacy Act so that requesters will receive the maximum amount of information available by law.

(e) Requests must be received by IPEC through methods specified on the FOIA page of IPEC's website: <https://www.whitehouse.gov/ipeec>. Requests may be emailed at any time to [ipeecfoia@ipeec.eop.gov](mailto:ipeecfoia@ipeec.eop.gov) or mailed to Office of the Intellectual Property Enforcement Coordinator, Executive Office of the President, Washington, DC 20503, Attn: FOIA Officer. Emailed requests are strongly preferred.

(f) The words "FOIA REQUEST" or "REQUEST FOR RECORDS" should be clearly marked on all FOIA request communications.

(g) The requester must provide contact information, such as the requester's phone number, email address or mailing address, so that IPEC will be able to communicate with the requester about the request and provide released records. If IPEC cannot contact the requester, or the requester does not respond within 30 working days to our request for clarification, IPEC will close the request.

(h) To protect our computer systems, IPEC reserves the right to not open attachments to emailed requests. Please include the request within the body of the email, along with such additional information that is relevant, such as information in support of a request for expedited processing, for a fee categorization, or for a fee waiver. If after receiving a request IPEC determines that it does not include sufficient information on which to grant, or deny, a request for expedited process, a fee categorization, or a fee waiver, IPEC will so inform the requester and provide the requester an opportunity to submit additional information in support of such request.

#### **§ 10400.7 Responses—form and content.**

(a) *Determinations.* (1) In determining which records are responsive to a request, IPEC will include only records that were in its possession as of the date

of the search. If any other date is used, IPEC will inform the requester of that date.

(2) Under the FOIA, an agency is to make an initial determination acknowledging and granting, partially granting, or denying a request for records within 20 working days after the agency receives a FOIA request (an agency may extend this period for "unusual circumstances"; see § 10400.9). The FOIA Officer or designee will determine whether to grant the request and will provide written notification to the person making the request. The notification shall also advise the person making the request of any fees assessed under §§ 10400.11 through 10400.16. IPEC will inform the requester of the availability of its FOIA Public Liaison.

(b) *Tracking number.* IPEC will assign a request an individualized tracking number if it will take longer than 10 working days to process the request. IPEC may assign, at our discretion, such a tracking number for a request that will take less than 10 working days to process.

(c) *Estimated dates of completion and interim responses.* Upon request, IPEC will provide an estimated date by which IPEC expects to provide a response to the requester. If a request involves a voluminous amount of material, or searches in multiple locations, IPEC may provide interim responses, including on a rolling basis.

(d) *Use of record exclusions.* A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c) is not considered responsive to a request. In the event that IPEC identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), IPEC will confer with the Department of Justice, Office of Information Policy (OIP), to obtain approval to apply the exclusion, and IPEC will maintain an administrative record of the process of invocation and approval of the exclusion by OIP.

(e) *Adverse determinations.* If IPEC makes an adverse determination denying a request in any respect, it must notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse

determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(f) *Content of denial.* The denial must be signed by the FOIA Officer or designee and must include:

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

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

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

(4) A statement that the denial may be appealed to the FOIA Appeals Officer (the IPEC Legal Advisor or a designee) within 90 calendar days of the date of the response (the requirements for making an appeal are specified in § 10400.10); and

(5) A statement notifying the requester of the assistance available from the IPEC's FOIA Public Liaison and the dispute resolution services offered by OGIS.

#### **§ 10400.8 Expedited and multi-track processing, and aggregation of requests for processing.**

(a) *Expedited processing.* (1) A request for expedited processing may be made at any time. IPEC must process requests and appeals on an expedited basis whenever it is determined that they involve:

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

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, beyond the public's right to know about government activity generally, and the request is made by a person primarily engaged in disseminating information.

(2) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for requesting expedited processing. For example, under paragraph (a)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that the requester is a person who is primarily engaged in information dissemination, though it need not be the requester's sole

occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an "urgency to inform" the public on the topic. The formality of certification may be waived as a matter of administrative discretion.

(3) Within 10 calendar days of IPEC's receipt of a request for expedited processing, IPEC will decide whether to grant it and will notify the requester of the decision. If a request for expedited processing is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

(b) *Multi-track processing.* IPEC will ordinarily respond to requests in order of their receipt. However, IPEC may use multi-track processing in responding to requests. Multi-track processing means placing requests in a track based on the estimated amount of work or time involved in processing the request. Thus, simple requests that require a limited review would be placed in one processing track, and more voluminous and complex requests would be placed in other processing tracks. Requests in each track are processed on a first-in, first-out basis and, if a request is placed in a track, IPEC will inform the requester of the track placement. Track one is for requests that have received expedited processing under this section. Track two is for requests of simple-to-moderate complexity that do not involve voluminous records and do not require consultation or coordination with other entities or submitter review under § 10400.18. Track three is for complex requests that involve voluminous records, require lengthy or numerous consultations or coordination, raise unique or novel legal questions, or require submitter review under § 10400.18. In the case of requests in tracks two and three, IPEC may provide requesters the opportunity to limit the scope of their requests in order to qualify for faster processing. IPEC will do so by contacting the requester by letter, telephone, email, or facsimile (whichever is more efficient in each case). When providing a requester with the opportunity to limit the scope of a request, IPEC shall also advise the requester of IPEC's FOIA Public Liaison to aid in the resolution of any dispute arising between the requester and IPEC as well as the requester's right to seek

dispute resolution services from the Office of Government Information Services.

(c) *Aggregating requests.* IPEC may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, involve related matters and constitute a single request that otherwise would involve "unusual circumstances" under § 10400.9. For example, IPEC may aggregate multiple requests for similar information filed by a single requester within a short period of time. In addition, as discussed in § 10400.16, IPEC may aggregate requests for fee purposes.

#### § 10400.9 Extension of time.

(a) In unusual circumstances, IPEC may extend the time limits prescribed in §§ 10400.7 and 10400.8 by written notice to the FOIA requester. The notice will state the reasons for the extension.

(b) The phrase "unusual circumstances" means:

(1) The requested records are located in establishments that are separated from the office processing the request;

(2) A single request seeks a voluminous amount of separate and distinct records; or

(3) Another agency has a substantial interest in the determination of the request.

(c) Whenever IPEC cannot meet the 20 working-day time limit under § 10400.7 for processing a request because of "unusual circumstances," and IPEC extends the time limit on that basis, IPEC shall promptly notify the requester (before the expiration of the 20 working-day period) in writing of the unusual circumstances involved, that an extension of 10 working days has been made, and of the date by which IPEC estimates that it will complete the processing of the request (if completion is not estimated to occur within the 10 working-day extension period). For those requests for which the extension exceeds 10 working days, IPEC will provide the requester an opportunity to modify the request (so that it may be processed within an extension of 10 working days) or arrange an alternative time period for processing the original or modified request. IPEC will make available its designated FOIA contact or its FOIA Public Liaison for this purpose. IPEC will also alert requesters to the availability of the Office of Government Information Services (OGIS) to provide dispute resolution services.

#### § 10400.10 Appeal procedures.

(a) An appeal to the IPEC must explain the reasoning and factual basis

for the appeal. It must be received by email at [ipecfia@ippec.eop.gov](mailto:ipecfia@ippec.eop.gov) or another method specified on the FOIA page of IPEC's website within 90 calendar days of the date of the response. The appeal must be in writing, addressed to the FOIA Appeals Officer, Office of the Intellectual Property Enforcement Coordinator, Executive Office of the President, Washington, DC 20503, Attn: Legal Advisor. The communication should clearly be labeled as a "Freedom of Information Act Appeal."

(b) The FOIA Appeals Officer (the Legal Advisor or a designee) will decide the appeal within 20 working days. If the FOIA Appeals Officer denies an appeal in whole or in part, the written determination will contain the reason for the denial, the name and title of the person responsible for the denial, any FOIA exemptions applied, and the provisions for judicial review of the denial and ruling on appeal provided in 5 U.S.C. 552(a)(4). The denial will also inform the requestor of the dispute resolution services offered by OGIS as a non-exclusive alternate to litigation. If IPEC agrees to participate in voluntary dispute resolution services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

#### § 10400.11 Fees to be charged—general.

IPEC will assess a fee to process FOIA requests in accordance with the provisions of this section and the "Uniform Freedom of Information Fee Schedule and Guidelines" issued by the Office of Management and Budget. IPEC shall ensure that searches, review, and duplication are conducted in the most efficient and the least expensive manner. IPEC will charge the following fees unless a waiver or reduction of fees is granted under § 10400.15, or the total fee to be charged is less than \$25.00. IPEC will notify the requester if IPEC estimates that charges will exceed \$25.00 including a breakdown of the fees for search, review, or duplication and whether applicable entitlements to duplication and search at no charge have been provided. IPEC will not process the request until the requester either commits in writing to pay the actual or estimated total fee, or designates some amount of fees that it is willing to pay.

(a) *Search for records.* IPEC will charge \$77.00 per hour, which is a blended hourly rate for all personnel that respond to FOIA requests plus 16 percent of that rate to cover benefits.

(b) *Review of records.* IPEC will charge \$77.00 per hour, which is a blended hourly rate for all personnel

that responded to FOIA requests plus 16 percent of that rate to cover benefits. Records or portions of records withheld under an exemption subsequently determined not to apply may be reviewed to determine the applicability of exemptions not considered. The cost for a subsequent review is assessable.

(c) *Duplication of records.* IPEC will charge duplication fees to all requesters. IPEC will honor a requester's preference for receiving a record in a particular format if IPEC can readily reproduce it in the form or format requested. If IPEC provides photocopies, IPEC will make one copy per request at the cost of \$.10 per page. For copies of records produced on tapes, disks or other media, IPEC will charge the direct costs of producing the copy, including operator time. Where IPEC must scan paper documents in order to comply with a requester's preference to receive the records in an electronic format, IPEC will charge the direct costs associated with scanning those materials. For other forms of duplication, IPEC will charge the direct costs. IPEC will provide the first 100 pages of duplication (or the cost equivalent for other media) without charge except for requesters seeking records for a commercial use.

(d) *Other charges.* IPEC will recover the costs of providing other services such as certifying records or sending records by special methods.

**§ 10400.12 Fees to be charged—miscellaneous provisions.**

(a) Payment for FOIA services may be made by check or money order made payable to the Treasury of the United States. IPEC will provide the requester with instructions on how to make the payment. IPEC will provide a receipt for fees paid upon request. IPEC will not refund fees paid for services actually rendered.

(b) IPEC may require advance payment (or a satisfactory written assurance of full payment) where the estimated fee exceeds \$250, or a requester previously failed to pay within 30 calendar days of the billing date. IPEC will not process the request until the requester either makes the advance payment or provides a satisfactory written assurance.

(c) IPEC may assess interest charges beginning the 31st day of billing. Interest will be at the rate prescribed in section 3717 of Title 31, United States Code, and will accrue from the date of the billing.

(d) IPEC may assess search charges where records are not located or where records are exempt from disclosure.

**§ 10400.13 Fees to be charged—categories of requesters.**

(a) For fees, there are four categories of FOIA requesters: commercial use requests; educational and non-commercial scientific institution requests; requests from representatives of the news media; and all other requesters.

(b) The specific levels of fees for each of these categories are:

(1) *Commercial use request.* IPEC will recover the full direct cost of providing search, review, and duplication services. Commercial use requests will not receive free search-time or free duplication of documents.

(2) *Educational and non-commercial scientific institution requests.* IPEC will charge the cost of duplication, excluding charges for the first 100 pages. Requesters must demonstrate the request is authorized by and under the auspices of a qualifying institution and that the records are sought for scholarly or scientific research not a commercial use.

(3) *Requests from representatives of the news media.* IPEC will charge the cost of duplication, excluding charges for the first 100 pages. Requesters must meet the criteria in § 10400.3, and the request must not be made for a commercial use. A request that supports the news dissemination function of the requester shall not be considered a commercial use.

(4) *All other requesters.* IPEC will recover the full direct cost of the search and the duplication of records, excluding the first 100 pages of duplication and the first two hours of search time.

**§ 10400.14 Restrictions on charging fees.**

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

(b) If IPEC fails to comply with the FOIA's time limits in which to respond to a request, it may not charge search fees, or, in the instances of requests from requesters described in § 10400.13(b)(2) and (3), may not charge duplication fees, except as described in paragraphs (c), (d), and (e) of this section.

(c) If IPEC determines that unusual circumstances as defined by the FOIA apply and the agency provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional 10 days.

(d) If IPEC determines that unusual circumstances as defined by the FOIA

apply, and more than 5,000 pages are necessary to respond to the request, the agency may charge search fees, or, in the case of requesters described in § 10400.13(b)(2) and (3), may charge duplication fees if the following steps are taken. IPEC must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and the agency must have discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, IPEC may charge all applicable fees incurred in the processing of the request.

(e) If a court has determined that exceptional circumstances exist as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

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

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

**§ 10400.15 Waiver or reduction of fees.**

Requirements for waiver or reduction of fees:

(a) Requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(b) IPEC must furnish records responsive to a request without charge or at a reduced rate when it determines, based on all available information, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. In deciding whether this standard is satisfied the agency must consider the factors described in paragraphs (b)(1) through (3) of this section:

(1) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request must concern identifiable operations or

activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.

(2) Disclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(i) Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.

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

(3) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, IPEC will consider the following criteria:

(i) IPEC must identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters must be given an opportunity to provide explanatory information regarding this consideration.

(ii) If there is an identified commercial interest, IPEC must determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraph (a) of this section are satisfied and any commercial interest is not the primary interest furthered by the request. IPEC ordinarily will presume that when a news media requester has satisfied the requirements of paragraph (a) of this section, the request is not primarily in the commercial interest of the requester. 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.

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

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

#### **§ 10400.16 Aggregation of requests for fees.**

When IPEC reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, IPEC may aggregate those requests and charge accordingly. IPEC may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. For requests separated by a longer period, IPEC will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters cannot be aggregated.

#### **§ 10400.17 Markings on released documents.**

When requested records contain matters that are exempted under 5 U.S.C. 552(b), but such exempted matters can be reasonably segregated from the remainder of the records, the records shall be disclosed by IPEC with the necessary redactions. If records are disclosed in part, IPEC will mark them to show the amount and location of information redacted and the exemption(s) under which the redactions were made unless doing so would harm an interest protected by an applicable exemption.

#### **§ 10400.18 Confidential commercial information.**

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

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

(b) *Designation of confidential commercial information.* A submitter of

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

(c) *When notice to submitters is required.* (1) IPEC must promptly provide written notice to the submitter of confidential commercial information whenever records containing such information are requested under the FOIA if IPEC determines that it may be required to disclose the records, provided:

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

(ii) IPEC has a reason to believe that the requested information may be protected from disclosure under Exemption 4, but has not yet determined whether the information is protected from disclosure.

(2) The notice must either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, IPEC may post or publish a notice in a place or manner reasonably likely to inform the submitters of the proposed disclosure, instead of sending individual notifications.

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

(1) IPEC determines that the information is exempt under the FOIA, and therefore will not be disclosed;

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

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

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

(e) *Opportunity to object to disclosure.* (1) IPEC must specify a reasonable time period within which the submitter must respond to the notice referenced above.



(2) If a submitter has any objections to disclosure, it should provide IPEC a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as the basis for nondisclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is confidential.

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

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

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

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

(2) A description of the information to be disclosed or copies of the records as IPEC intends to release them; and

(3) A specified disclosure date, which must be a reasonable time after the notice.

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

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

(j) *No right or benefit.* In accordance with Executive Order 12600, the related requirements in this section, such as notification, do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any person.

## Subpart B—Privacy Act Policies and Procedures

### § 10400.19 Definitions.

For purposes of this subpart:

*Access* means making a record available to a subject individual.

*Amendment* means any correction, addition to, or deletion of information in a record.

*Individual* means a natural person who either is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.

*Maintain* includes the term “maintain”, collect, use, or disseminate.

*Privacy Act Office* means the IPEC officials who are authorized to respond to requests and to process requests for amendment of records IPEC maintains under the Privacy Act.

*Record* means any item, collection or grouping of information about an individual that IPEC maintains within a system of records and 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 photograph.

*System of records* means a group of records IPEC maintains or controls from which information is retrieved by the name of an individual or by some identifying number, symbol or other identifying particular assigned to the individual.

### § 10400.20 Purpose and scope.

This subpart implements the Privacy Act, 5 U.S.C. 552a, a Federal law that requires Federal agencies to protect private information about individuals that the agencies collect or maintain. It establishes IPEC's rules for access to records in systems of records we maintain that are retrieved by an individual's name or another personal identifier. It describes the procedures by which individuals may request access to records, request amendment or correction of those records, and request an accounting of disclosures of those records by IPEC. Whenever it is appropriate to do so, IPEC automatically processes a Privacy Act request for access to records under both the Privacy Act and the FOIA, following the rules contained in this part. IPEC processes a request under both the Privacy Act and the FOIA so you will receive the maximum amount of information available to you by law.

### § 10400.21 How do I make a Privacy Act request?

(a) *In general.* You can make a Privacy Act request for records about yourself. You also can make a request on behalf of another individual as the parent or legal guardian of a minor, or as the legal guardian of someone determined by a court to be incompetent.

(b) *How do I make a request?—(1) Where do I send my written request?* To make a request for access to a record, you should write directly to our FOIA Officer. Heightened security delays mail delivery. To avoid mail delivery delays, we strongly suggest that you email your request to [ipeccoia@ipeceop.gov](mailto:ipeccoia@ipeceop.gov). Our mailing address is: Office of the Intellectual Property Enforcement Coordinator, Executive Office of the President, Washington, DC 20503, Attn: FOIA Officer. To make sure that the FOIA Officer receives your request without delay, you should include the notation “Privacy Act Request” in the subject line of your email or on the front of your envelope and also at the beginning of your request.

(2) *Security concerns.* To protect our computer systems, we reserve the right not to open attachments to emailed requests. We request that you include your request within the body of the email.

(c) *What should my request include?* You must describe the record that you seek in enough detail to enable IPEC to locate the system of records containing the record with a reasonable amount of effort. Include specific information about each record sought, such as the time period in which you believe it was compiled, the name or identifying number of each system of records in which you believe it is kept, and the date, title or name, author, recipient, or subject matter of the record. As a general rule, the more specific you are about the record that you seek, the more likely we will be able to locate it in response to your request.

(d) *How do I request amendment of a record?* If you are requesting an amendment of an IPEC record, you must identify each particular record in question and the system of records in which the record is located, describe the amendment that you seek, and state why you believe that the record is not accurate, relevant, timely or complete. You may submit any documentation that you think would be helpful, including an annotated copy of the record.

(e) *How do I request an accounting of record disclosures?* If you are requesting an accounting of disclosures made by IPEC to another person, organization or Federal agency, you must identify each system of records in question. An accounting generally includes the date, nature and purpose of each disclosure, as well as the name and address of the person, organization, or Federal agency to which the disclosure was made.

(f) *Verification of identity.* When making a Privacy Act request, you must verify your identity in accordance with

these procedures to protect your privacy or the privacy of the individual on whose behalf you are acting. If you make a Privacy Act request and you do not follow these identity verification procedures, IPEC cannot process your request.

(1) *How do I verify my own identity?* You must include in your request your full name, current address, and date and place of birth. We may request additional information to verify your identity. To verify your own identity, you must provide an unsworn declaration under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury. To fulfill this requirement, you must include the following statement just before the signature on your request:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on [date].

(2) *How do I verify parentage or guardianship?* If you make a request as the parent or legal guardian of a minor, or as the legal guardian of someone determined by a court to be incompetent, for access to records or information about that individual, you must establish:

(i) The identity of the individual who is the subject of the record, by stating the individual's name, current address, and date and place of birth;

(ii) Your own identity, as required in paragraph (f)(1) of this section;

(iii) That you are the parent or legal guardian of the individual, which you may prove by providing a copy of the individual's birth certificate showing your parentage or a court order establishing your guardianship; and

(iv) That you are acting on behalf of the individual in making the request.

#### **§ 10400.22 How will IPEC respond to my Privacy Act request?**

(a) *When will we respond to your request?* We will search to determine if the requested records exist in a system of records IPEC owns or controls. The FOIA Officer will respond to you in writing within 20 days after we receive your request and/or within 10 working days after we receive your request for an amendment, if it meets the requirements of this subpart. We may extend the response time in unusual circumstances, such as the need to consult with another agency about a record or to retrieve a record that is in storage.

(b) *What will our response include?*

(1) Our written response will include our determination whether to grant or deny your request in whole or in part, a brief explanation of the reasons for the determination, and the amount of the

fee charged, if any, under § 10400.24. If you requested access to records, we will make the records, if any, available to you. If you requested amendment of a record, the response will describe any amendments made and advise you of your right to obtain a copy of the amended record.

(2) We will also notify the individual who is subject to the record in writing, if, based on your request, any system of records contains a record pertaining to him or her.

(3) If IPEC makes an adverse determination with respect to your request, our written response will identify the name and address of the person responsible for the adverse determination, that the adverse determination is not a final agency action, and describe the procedures by which you may appeal the adverse determination under § 10400.23.

(4) An adverse determination is a response to a Privacy Act request that:

(i) Withholds any requested record in whole or in part;

(ii) Denies a request to amend a record in whole or in part;

(iii) Declines to provide an accounting of disclosures;

(iv) Advises that a requested record does not exist or cannot be located;

(v) Finds that what you requested is not a record subject to the Privacy Act; or

(vi) Advises on any disputed fee matter.

#### **§ 10400.23 What can I do if I am dissatisfied with IPEC's response to my Privacy Act request?**

(a) *What can I appeal?* You can appeal any adverse determination in writing to the Privacy Act Appeals Officer (the Legal Advisor or a designee) within ninety calendar days after the date of our response. We provide a list of adverse determinations in § 10400.22(b)(4).

(b) *How do I make an appeal?—(1) What should I include?* You may appeal by submitting a written statement giving the reasons why you believe the Privacy Act Appeals Officer should overturn the adverse determination. Your written appeal may include as much or as little related information as you wish to provide, as long as it clearly identifies the determination (including the request number, if known) that you are appealing.

(2) *Where do I send my appeal?* You should mark both your letter and the envelope, or the subject of your email, "Privacy Act Appeal." To avoid mail delivery delays caused by heightened security, we strongly suggest that you email any appeal to [ipcfaoia@ipcc.eop.gov](mailto:ipcfaoia@ipcc.eop.gov).

*ipcc.eop.gov*. Our mailing address is: Office of the Intellectual Property Enforcement Coordinator, Executive Office of the President, Washington, DC 20503, Attn: Privacy Act Appeals Officer.

(c) *Who will decide your appeal?* (1) The Privacy Act Appeals Officer will act on all appeals under this section.

(2) We ordinarily will not adjudicate an appeal if the request becomes a matter of litigation.

(3) On receipt of any appeal involving classified information, the Privacy Act Appeals Officer must take appropriate action to ensure compliance with applicable classification rules.

(d) *When will we respond to your appeal?* The Privacy Act Appeals Officer will notify you of its appeal decision in writing within 30 days from the date it receives an appeal that meets the requirements of paragraph (b) of this section. We may extend the response time in unusual circumstances, such as the need to consult with another agency about a record or to retrieve a record shipped offsite for storage.

(e) *What will our response include?* The written response will include the Privacy Act Appeals Officer's determination whether to grant or deny your appeal in whole or in part, a brief explanation of the reasons for the determination, and information about the Privacy Act provisions for court review of the determination.

(1) *Appeals concerning access to records.* If your appeal concerns a request for access to records and the appeal is granted in whole or in part, we will make the records, if any, available to you.

(2) *Appeals concerning amendments.* If your appeal concerns amendment of a record, the response will describe any amendment made and advise you of your right to obtain a copy of the amended record. We will notify all persons, organizations or Federal agencies to which we previously disclosed the record, if an accounting of that disclosure was made, that the record has been amended. Whenever the record is subsequently disclosed, the record will be disclosed as amended. If our response denies your request for an amendment to a record, we will advise you of your right to file a statement of disagreement under paragraph (f) of this section.

(f) *Statements of disagreement—(1) What is a statement of disagreement?* A statement of disagreement is a concise written statement in which you clearly identify each part of any record that you dispute and explain your reason(s) for disagreeing with our denial in whole or

in part of your appeal requesting amendment.

(2) *How do I file a statement of disagreement?* You should mark both your letter and the envelope, or the subject of your email, “Privacy Act Statement of Disagreement.” To avoid mail delivery delays caused by heightened security, we strongly suggest that you email a statement of disagreement to [ipcfia@ipcc.eop.gov](mailto:ipcfia@ipcc.eop.gov). Our mailing address is: Office of the Intellectual Property Enforcement Coordinator, Executive Office of the President, Washington, DC 20503, Attn: Privacy Act Appeals Officer.

(3) *What will we do with your statement of disagreement?* We shall clearly note any portion of the record that is disputed and provide copies of the statement and, if we deem appropriate, copies of our statement that denied your request for an appeal for amendment, to persons or other agencies to whom the disputed record has been disclosed.

(g) *When appeal is required.* Under this section, you generally first must submit a timely administrative appeal, before seeking review of an adverse determination or denial request by a court.

#### **§ 10400.24 What does it cost to get records under the Privacy Act?**

(a) *Agreement to pay fees.* Your request is an agreement to pay fees. We consider your Privacy Act request as your agreement to pay all applicable fees unless you specify a limit on the amount of fees you agree to pay. We will not exceed the specified limit without your written agreement.

(b) *How do we calculate fees?* We will charge a fee for duplication of a record under the Privacy Act in the same way we charge for duplication of records under the FOIA in § 10400.11(c). There are no fees to search for or review records requested under the Privacy Act.

**Steven D. Aitken,**

*Legal Advisor, and Performing the Functions and Duties of the Intellectual Property Enforcement Coordinator, Office of the Intellectual Property Enforcement Coordinator.*

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## **DEPARTMENT OF ENERGY**

### **10 CFR Part 810**

**RIN 1994-AA04**

#### **Assistance to Foreign Atomic Energy Activities**

**AGENCY:** National Nuclear Security Administration (NNSA), Department of Energy (DOE).

**ACTION:** Final rule.

**SUMMARY:** On December 29, 2022, the Secretary of Energy (“Secretary”) issued determinations modifying the generally authorized destination status of Mexico and revoking the general authorizations for exports of controlled nuclear technology and assistance to Colombia and Egypt under DOE’s regulation on Assistance to Foreign Atomic Energy Activities. Accordingly, DOE is issuing this final rule to remove the restriction on the general authorization previously applicable to Mexico and to remove Colombia and Egypt from the generally authorized destinations list in appendix A.

**DATES:** This rule is effective on February 8, 2023.

**FOR FURTHER INFORMATION CONTACT:** Ms. Katie Strangis, Deputy Director, Office of Nonproliferation and Arms Control (NPAC), National Nuclear Security Administration, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, telephone (202) 586-8623; Mr. Thomas Reilly, Office of the General Counsel, GC-53, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, telephone (202) 586-3417; or Mr. Zachary Stern, Office of the General Counsel, National Nuclear Security Administration, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, telephone (202) 586-8627.

#### **SUPPLEMENTARY INFORMATION:**

- I. Background and Discussion of Final Rule
- II. Good Cause for Dispensing With Notice and Comment
- III. Regulatory Review
- IV. Approval of the Office of the Secretary

#### **I. Background and Discussion of Final Rule**

On December 29, 2022, the Secretary issued two determinations, (1) “determination and authorization pursuant to section 57 b.(2) of the *Atomic Energy Act of 1954*, as amended, regarding exports of nuclear technology and assistance to Mexico” and (2) “determination and revocation of general authorizations pursuant to Department of Energy regulations at 10 CFR part 810 regarding exports of

nuclear technology and assistance to Colombia and Egypt,” modifying the generally authorized destination status of Mexico and revoking the general authorizations for exports to Colombia and Egypt of controlled nuclear technology and assistance, which were published in the **Federal Register** on January 31, 2023 (88 FR 6243–6244); (88 FR 6247). *The Atomic Energy Act of 1954*, as amended (42 U.S.C. 2077) (AEA), enables peaceful nuclear trade by helping to assure that nuclear technologies exported from the United States will not be used for non-peaceful purposes.

Part 810 of title 10, Code of Federal Regulations (part 810) implements section 57 b.(2) of the AEA, pursuant to which the Secretary has granted a general authorization for certain categories of activities which the Secretary has found to be non-inimical to the interest of the United States—including assistance or transfers of technology to the generally authorized destinations listed in appendix A to part 810. The Appendix A list currently includes Colombia, Egypt, and Mexico, with Mexico currently listed as a generally authorized destination only for activities related to INFCIRC/203 Parts 1 and 2 and INFCIRC/825. In light of the Secretary’s Determinations to expand Mexico’s generally authorized status to cover the full scope of exports of part 810-controlled nuclear technology and assistance, and to revoke the general authorizations for exports of part 810-controlled nuclear technology and assistance to Colombia and Egypt, DOE is amending the generally authorized destinations list in appendix A by removing the restrictive language after Mexico and removing Colombia and Egypt from Appendix A.

#### **II. Good Cause for Dispensing With Notice and Comment**

In accordance with the *Administrative Procedure Act* (APA), an agency may waive the notice and comment procedure if it finds, for good cause, that it is “impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b). Additionally, 5 U.S.C. 553(d) provides that an agency may waive the 30-day delayed effective date upon finding of good cause.

DOE finds good cause that notice and comment for this rule is unnecessary due to the nature of the revisions. This final rule simply makes ministerial changes to appendix A by removing the restriction on the general authorization previously applicable to Mexico and by removing Colombia and Egypt from the generally authorized destinations list. Comments cannot alter the regulation