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from the American Board of Psychiatry and Neurology (ABPN), the American Osteopathic Board of Neurology and Psychiatry (AOBNP), the American Board of Physical Medicine and Rehabilitation (ABPMR), or the American Board of Physical Medicine and Rehabilitation (AOBPMR); and occurred on or after January 1, 2016, and while the individual was a covered employee of the Department of Commerce.

(b) The Department of Commerce may provide a payment to covered employees, as defined in this section, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified physician from ABPN, AOBNP, ABPMR, or AOBPMR; and occurred on or after January 1, 2016, and while the employee was a covered employee of the Department.

(c) The Department of Commerce may provide a payment to a covered dependent, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified physician from the ABPN, AOBNP, ABPMR, or AOBMR; and occurred on or after January 1, 2016, and while the dependent's sponsor was a covered employee of the Department.

(d) Payment for a qualifying injury to the brain will be a non-taxable, one-time lump sum payment.

(e) The Department will determine the amount paid to each eligible person based on the following factors:

(1) The responses on Form CD-350, "Eligibility Questionnaire for HAVANA Act Payments"; and

(2) Whether the Department of Labor has determined that the requestor has no reemployment potential, or the Social Security Administration has approved the requestor for Social Security Disability Insurance or Supplemental Security Insurance (SSI) benefits; or the requestor's ABPN, AOBNP, ABPMR, or AOBPMR-certified physician has certified that the individual requires a full-time caregiver for activities of daily living, as defined by the Katz Index of Independence of Daily Living.

(3) The award thresholds are based on the Level III of the Executive Schedule: Base payment will be 75 percent of

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Level III pay, and Base Plus payment will be 100 percent of Level III pay. If the requestor meets any of the criteria listed in paragraph (e)(2) of this section, the requestor will be eligible to receive a Base Plus payment. Requestors who are otherwise eligible for payment for a qualifying injury to the brain (defined in §3.2(e)) but do not meet any of the criteria listed in paragraph (e)(2) of this section will be eligible to receive a Base payment. If a requestor who received a Base payment later meets any of the criteria listed in paragraph (e)(2) of this section, the requestor may apply for an additional payment that will be the difference between the Base and Base Plus payment.

(f) The Director, Office of Human Resources Management may approve payments under this section. The Office of Human Resources Management will notify individuals of the decision in writing.

(g) An appeal of a decision made by the Director, Office of Human Resources Management may be directed to the Deputy Assistant Secretary for Administration in writing. The Deputy Assistant Secretary for Administration is the final appeal authority. The Office of Human Resources Management will notify individuals of the decision in writing.

§ 3.4 Consultation with other agencies.

The Department may consult with the appropriate officials in other Federal agencies to identify their current and former covered employees, and current and former dependents who reported an anomalous health incident. The Department will not process payment for employees, former employees, or dependents of current or former employees of other agencies.

PART 4—DISCLOSURE OF GOVERNMENT INFORMATION

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APPENDIX A TO PART 4—FREEDOM OF INFORMATION PUBLIC INSPECTION FACILITIES, AND ADDRESSES FOR REQUESTS FOR RECORDS UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT, AND REQUESTS FOR CORRECTION OR AMENDMENT UNDER THE PRIVACY ACT

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APPENDIX C TO PART 4—SYSTEMS OF RECORDS NOTICED BY OTHER FEDERAL AGENCIES AND APPLICABLE TO RECORDS OF THE DEPARTMENT, AND APPLICABILITY OF THIS PART THERETO.

AUTHORITY: 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 553; 31 U.S.C. 3717; 44 U.S.C. 3101; Reorganization Plan No. 5 of 1950.

SOURCE: 66 FR 65632, Dec. 20, 2001, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 4 appear at 80 FR 70154, Nov. 13, 2015.

Subpart A—Freedom of Information Act

§ 4.1 General provisions.

(a) The information in this part is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information

Act (FOIA), as amended (5 U.S.C. 552). This part sets forth the procedures the Department of Commerce (Department) and its components follow to make publicly available materials and indices specified in 5 U.S.C. 552(a)(2) and records requested under 5 U.S.C. 552(a)(3). Information routinely provided to the public as part of a regular Department activity (for example, press releases issued by the Office of Public Affairs) may be provided to the public without following this part. In addition, as a matter of policy, the Department shall make discretionary releases of records or information exempt from disclosure under the FOIA when required to do so in accordance with current law and/or Executive Branch policy. This policy does not create any right enforceable in court.

(b) As used in this subpart, *component* means any office, division, bureau or other unit of the Department listed in Appendix A to this part (except that a regional office of a larger office or other unit does not constitute a separate component).

(c) The Department has a FOIA Requester Service Center with at least one FOIA Public Liaison. Each Department component may have a FOIA Requester Service Center with at least one FOIA Public Liaison. FOIA Public Liaisons are responsible for: Working with requesters that have any concerns about the service received from a FOIA component, reducing delays in the processing of FOIA requests, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes. Contact information for the relevant component FOIA Requester Service Centers, FOIA Public Liaisons, and component FOIA offices and contacts is available at <http://www.osec.doc.gov/opog/contacts.html>.

(d) The Office of Government Information Services (OGIS) within the National Archives and Records Administration offers mediation services to resolve disputes between requesters and agencies as a non-exclusive alternative to litigation. Requesters with concerns

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about the handling of their requests may contact OGIS.

[66 FR 65632, Dec. 20, 2001, as amended at 79 FR 62557, Oct. 20, 2014; 83 FR 39589, Aug. 10, 2018]

§ 4.2 Public reading rooms.

(a) Records that the FOIA requires to be made available for public inspection and copying are accessible electronically through the Department's "Electronic FOIA Library" on the Department's website, <http://www.doc.gov>, which includes links to websites for those components that maintain Electronic FOIA Libraries. Each component of the Department is responsible for determining which of its records are required to be made available, as well as identifying additional records of interest to the public that are appropriate for disclosure, and for making those records available either in its own Electronic Library or in the Department's central Electronic FOIA Library. Components that maintain their own Electronic FOIA Libraries are designated as such in Appendix A to this part. Each component shall also maintain and make available electronically a current subject-matter index of the records made available electronically. Each component shall ensure that posted records and indices are updated regularly, at least quarterly.

(b) If the requester does not have access to the Internet and wishes to obtain information regarding publicly available information, he or she may contact the component's FOIA office. Appendix A to this part contains the contact information for the components' FOIA offices. Some components may also maintain physical public reading rooms. These components and their contact information are listed in Appendix A to this part.

(c) The Department and its components shall maintain and make available electronically for public inspection:

(1) Copies of records that have been released and—

(i) That the component that maintains them determines, because of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records by other requesters, or

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(ii) That have been requested three or more times by different requesters;

(2) A general index of the records available for public inspection—for purposes of these regulations, a general index includes records available through a search capability on the Department or component's website, such as a person finder;

(3) Final opinions and orders, including concurring and dissenting opinions made in the adjudication of cases;

(4) Those statements of policy and interpretations that have been adopted by a component and are not published in the FEDERAL REGISTER; and

(5) Administrative staff manuals and instructions to staff that affect a member of the public.

[79 FR 62558, Oct. 20, 2014, as amended at 83 FR 39589, Aug. 10, 2018]

§ 4.3 Records under the FOIA.

(a) Records under the FOIA include all Government records, regardless of format, medium or physical characteristics, and electronic records and information, audiotapes, videotapes, Compact Disks, DVDs, and photographs.

(b) In response to a FOIA request, the Department has no obligation to create, compile, or obtain from outside the Department a record to satisfy a request (for example, extrapolating information from existing agency records, reformatting available information, preparing new electronic programs or databases, or creating data through calculations of ratios, proportions, percentages, trends, frequency distributions, correlations, or comparisons). In complying with a request for records (including data and other electronically-stored information), whether the Department creates or compiles records (as by undertaking significant programming work) or merely extracts them from an existing database is fact dependent. The Department shall undertake reasonable efforts to search for records stored in electronic format (including data and other electronically-stored information).

(c) Department officials may, upon request, create and provide new records to the public pursuant to statutes that authorize the creation and provision of new records for a fee, such as the first

paragraph of 15 U.S.C. 1525, or in accordance with authority otherwise provided by law. Such creation and provision of records is outside the scope of the FOIA.

(d) Components shall preserve all correspondence pertaining to the requests they receive under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by Title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 4.2, Information Access and Protection Records. Components shall not dispose of records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

[66 FR 65632, Dec. 20, 2001, as amended at 79 FR 62558, Oct. 20, 2014; 83 FR 39589, Aug. 10, 2018]

§ 4.4 Requirements for making requests.

(a) *How made and addressed.* The Department has a decentralized system for responding to FOIA requests, with each component designating a FOIA office to process records from that component. All components have the capability to receive requests electronically through electronic mail (email). A request for Department records that are not customarily made available to the public as part of the Department's regular informational services (or pursuant to a user fee statute), must be in writing and shall be processed under the FOIA, regardless of whether the FOIA is mentioned in the request. Requests must include the requester's full name and a valid return address. Requesters may also include other contact information, such as an email address and a telephone number. For the quickest handling, the request (and envelope, if the request is mailed or hand delivered) should be marked "Freedom of Information Act Request." Requests may be submitted by U.S. mail, delivery service, email, or online case management system. Requests may also be submitted to some components, identified in Appendix A to this part, by facsimile. Requests should be sent to the Department component identified in Appendix A to this part that maintains those records requested, and should be

sent to the addresses, email addresses, or numbers listed in Appendix A to this part or the Department's website, <http://www.doc.gov>.¹ If the proper component cannot be determined, the request should be sent to the central facility identified in Appendix A to this part. The central facility will forward the request to the component(s) it believes most likely to have the requested records. Requests will be considered received for purposes of the 20-day time limit of § 4.6 as of the date it is received by the proper component's FOIA office, but in any event not later than ten working days after the request is first received by any Department component identified in Appendix A to this part.

(b) *Requests for records about an individual or oneself.* For requests for records about oneself, § 4.24 contains additional requirements. For requests for records about another individual, either a notarized authorization signed by that individual or a declaration by that individual made under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization, permitting disclosure of the individual's records to the requester, or proof that the individual is deceased (for example, a copy of a death certificate or an obituary) will facilitate processing the request.

(c) *Description of records sought.* (1) A FOIA request must reasonably describe the agency records sought, to enable Department personnel to locate them with a reasonable amount of effort.

(2) Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number, and the name and location of the office where the record(s) might be found.

(i) In addition, if records about a court case are sought, the title of the case, the court in which the case was

¹The USPTO, which is established as an agency of the United States within the Department, operates under its own FOIA regulations at 37 CFR part 102, subpart A. Accordingly, requests for USPTO records, and any appeals thereof, should be sent directly to the USPTO.

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filed, and the nature of the case should be included.

(ii) If known, any file designations or descriptions of the requested records should be included.

(iii) As a general rule, the more specifically the request describes the records sought, the greater the likelihood that the Department will be able to locate those records.

(3) Before submitting their requests, requesters may first contact the Department's or the component's FOIA contact to discuss the records they are seeking and to receive assistance in describing the records.

(4) For further assistance, requesters may also contact the relevant FOIA Requester Service Center or FOIA Public Liaison. Contact information for relevant FOIA Requester Service Centers and FOIA Public Liaisons is contained on the Department's website, <http://www.osec.doc.gov/opog/contacts.html> and Appendix A to this part.

(5) If a component determines that a request does not reasonably describe the records sought, it shall inform the requester what additional information is needed or how the request is otherwise insufficient, to enable the requester to modify the request to meet the requirements of this section.

(6) Requesters who are attempting to reformulate or modify such a request may discuss their request first with the relevant FOIA Contact, or if unresolved, with the relevant Requester Service Center or FOIA Public Liaison to discuss the records they are seeking and to receive assistance in describing the records.

(7) When a requester fails to provide sufficient detail within 30 calendar days after having been asked to reasonably describe the records sought, the component shall notify the requester in writing that the request has not been properly made, that no further action will be taken, and that the FOIA request is closed. Such a notice constitutes an adverse determination under § 4.7(c)(2) for which components shall follow the procedures for a denial letter under § 4.7(c)(3).

(8) In cases where a requester has modified his or her request, the date of receipt for purposes of the 20-day time

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limit of § 4.6 shall be the date of receipt of the modified request.

[83 FR 39590, Aug. 10, 2018, as amended at 88 FR 36470, June 5, 2023]

§ 4.5 Responsibility for responding to requests.

(a) *In general.* Except as stated in paragraph (b) of this section, the proper component of the Department to respond to a request for records is the component that first receives the request and has responsive records (or in the instance of where no records exist, the component that first receives the request and is likely to have responsive records), or the component to which the Departmental FOIA Officer or component FOIA Officer assigns lead responsibility for responding to the request. Where a component's FOIA office determines that a request was misdirected within the Department, the receiving component's FOIA office shall route the request to the FOIA office of the proper component(s). Records responsive to a request shall include those records within the Department's possession and control as of the date the Department begins its search for them. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), is not considered responsive to a request.

(b) *Consultations and referrals.* When the Department or a component receives a request for a record (or a portion thereof) in its possession that originated with another Departmental component or Federal agency subject to the FOIA, the Department or component should typically refer the record to the component or originating agency for direct response to the requester (see § 4.8 for additional information about referrals of classified information). When the Department or a component receives a request for a record (or a portion thereof) in its possession that originated with another Departmental component, Federal agency, or executive branch office that is not subject to the FOIA, the Department or component shall consult with that component, Federal agency, or executive branch office before responding to the requester. In instances where a record is requested that originated with the Department or component and

another component, Federal agency, or executive branch office has substantial interest in the record (or a portion thereof), the Department or component should typically consult with that component, Federal agency, or executive branch office before responding to the requester.

(c) *Notice of referral.* Whenever a component refers a record to another Federal agency or Department component for direct response to the requester, the component's FOIA Officer should typically notify the requester in writing of the referral and inform the requester of the name(s) of the agency or Department component to which the record was referred, including that agency's or component's FOIA contact information. The standard referral procedure is not appropriate where disclosure of the identity of the agency or Department component to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement agency responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party were not publicly known, then to disclose that law enforcement interest by providing notice of a referral could cause an unwarranted invasion of the personal privacy of the third party. In such cases, the agency that received the request should consult with the originating agency to seek its views on the disclosability of the record and the release determination should then be conveyed to the requester by the agency that originally received the request.

(d) *Timing of responses to consultations and referrals.* All consultations and referrals shall be handled in chronological order, based on when the FOIA request was received by the first Federal agency.

(e) *Agreements regarding consultations and referrals.* Components may make agreements with other Federal agencies to eliminate the need for consulta-

tions or referrals for particular types of records.

[66 FR 65632, Dec. 20, 2001, as amended at 71 FR 31073, June 1, 2006; 79 FR 62559, Oct. 20, 2014; 83 FR 39590, Aug. 10, 2018]

§ 4.6 Time limits and expedited processing.

(a) *In general.* Components ordinarily shall respond to requests according to their order of receipt.

(b) *Initial response and appeal.* Unless the component and the requester have agreed otherwise, or when "unusual circumstances" exist as provided in paragraph (d) of this section, a determination whether to comply with a FOIA request shall be made by components within 20 working days (*i.e.*, excluding Saturdays, Sundays, and legal public holidays) of the receipt of a request for a record under this part by the proper component identified in accordance with § 4.5(a). In instances involving misdirected requests that are re-routed pursuant to § 4.5(a), the response time shall commence on the date that the request is received by the proper component, but in any event not later than ten working days after the request is first received by any designated component. An administrative appeal, other than an appeal from a request made to the Office of the Inspector General, shall be decided within 20 working days of its receipt by the Office of the General Counsel. An administrative appeal from a request made to the Office of the Inspector General shall be decided within 20 working days of its receipt by the Office of the Inspector General Office of Counsel. The Department's failure to comply with the time limits identified in this paragraph constitutes exhaustion of the requester's administrative remedies for the purposes of judicial action to compel disclosure.

(c) *Clarification of request.* Components may seek a one-time clarification of a request for records under this part. The component's request for clarification must be in writing. When a component seeks clarification of a request, the time for responding to a request set forth in § 4.6(b) is tolled until the requester responds to the clarification request. The tolled period will end when the component that sought the

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clarification receives a response from the requester. If a component asks for clarification and does not receive a written response from the requester within 30 calendar days from the date of the component's clarification request, the component will presume that the requester is no longer interested and notify the requester that the request will be closed.

(d) *Unusual circumstances.* (1) Components may extend the time period for processing a FOIA request only in "unusual circumstances," as described in paragraph (d)(2) of this section, in which the component shall, before expiration of the twenty-day period to respond, notify the requester of the extension in writing of the unusual circumstances involved and the date by which processing of the request is expected to be completed. If the extension is for more than ten working days, the component shall provide the requester with an opportunity to modify the request or agree to an alternative time period for processing the original or modified request. Furthermore, the requester will be advised that the relevant FOIA Public Liaison or FOIA contact is available for this purpose and of the requester's right to seek dispute resolution services from the Office of Government Information Services (OGIS).

(2) For purposes of this section, "unusual circumstances" include:

(i) The need to search for and collect the requested agency records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are the subject of a single request; or

(iii) The need to consult, which shall be conducted with all practicable speed, with another Federal agency having a substantial interest in the determination of the FOIA request or with another component of the Department which has a substantial interest in the determination of the request.

(3) If a component reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a

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single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, the component may aggregate them. Multiple requests involving unrelated matters will not be aggregated.

(e) *Multi-track processing.* (1) A component must use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, including the amount of pages involved, the need to consult with or refer to other agencies or Department components or for commercial confidential information to a third party, or whether the request qualifies for unusual circumstances as described in paragraph (d)(2) of this section, and whether the request qualifies for expedited processing as described in paragraph (f) of this section.

(2) A component using multi-track processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing. A component doing so shall contact the requester by telephone, email, letter, or online FOIA case management system, whichever is the most efficient in each case.

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

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

(ii) The loss of substantial due process rights;

(iii) A matter of widespread and exceptional media interest involving questions about the Government's integrity which affect public confidence; or

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

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing should

be sent to the component listed in Appendix A to this part that maintains the records requested.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category described in paragraph (f)(1)(iv) of this section, if not a full-time member of the news media, must establish that he or she is a person whose primary professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category described in paragraph (f)(1)(iv) of this section must also establish a particular urgency to inform the public about the Government activity involved in the request—one that extends beyond the public's right to know about Government activity generally. The existence of numerous articles published on a given subject can be helpful to establishing the requirement that there be an "urgency to inform" the public on a topic. As a matter of administrative discretion, a component may waive the formal certification requirement.

(4) Within ten calendar days of its receipt of a request for expedited processing, the proper component shall decide whether to grant it and shall notify the requester of the decision. Solely for purposes of calculating the foregoing time limit, any request for expedited processing shall always be considered received on the actual date of receipt by the proper component. If a request for expedited processing is granted, the request shall be given priority and processed as soon as practicable, subject to § 4.11(i). If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

[66 FR 65632, Dec. 20, 2001, as amended at 79 FR 62559, Oct. 20, 2014; 83 FR 39591, Aug. 10, 2018; 88 FR 36470, June 5, 2023]

§ 4.7 Responses to requests.

(a) *Acknowledgment of requests.* Upon receipt of a request, a component ordinarily shall send an acknowledgement to the requester which shall provide an

assigned tracking request number for further reference and, if necessary, confirm whether the requester is willing to pay fees. A component must send this acknowledgment if the request will take longer than ten working days to process. In most cases, the acknowledgment email, generated by the FOIA electronic case management system, that is sent to requesters who provide an email address will suffice for this requirement.

(b) *Interim responses.* If a request involves voluminous records or requires searches in multiple locations, to the extent feasible, a component shall provide the requester with interim responses. Such responses may include records that are fully releasable or records that have been withheld in part under one or more applicable FOIA exemptions set forth at 5 U.S.C. 552(b). Bureaus will make reasonable efforts to provide to requesters an estimated date when a determination will be provided. An interim response is not a determination and appeal rights need not be provided with the interim response.

(c) *Determination*—(1) *Grants of requests.* If a component makes a determination to grant a request in whole or in part, it shall notify the requester in writing of such determination.

(i) A component shall inform the requester:

(A) Of any fees charged under § 4.11; and

(B) That the requester may contact the relevant FOIA Public Liaison or FOIA contact for further assistance.

(ii) The component shall also disclose records to the requester promptly upon payment of any applicable fees.

(iii) Records disclosed in part shall be marked or annotated to show the applicable FOIA exemption(s) and the amount of information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the record, if feasible.

(2) *Adverse determinations of requests.* If a component makes an adverse determination regarding a request, it shall notify the requester of that determination in writing.

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(i) An adverse determination may be a denial of a request and includes decisions that:

(A) The requested record is exempt, in whole or in part.

(B) The request does not reasonably describe the records sought and the requester is unwilling to further clarify the request.

(C) The information requested is not a record subject to the FOIA.

(D) The requested record does not exist, cannot be located, or has previously been destroyed.

(E) The requested record is not readily reproducible in the form or format sought by the requester.

(ii) Adverse determinations may also include:

(A) Denials of requested fee category status.

(B) Denials of requests for fee waivers.

(C) Denials of requests for expedited processing.

(D) Denials of requests for reduction of fees.

(3) *Content of denial.* The denial letter shall be signed by an official listed in Appendix B to this part (or a designee), and shall include:

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

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

(iii) An estimate of the volume of any records or information withheld, by providing the number of pages or some other reasonable form of estimation. This 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 FOIA exemption;

(iv) A statement advising the requester of the right to seek dispute resolution services from the Department FOIA Public Liaison, the relevant component FOIA Public Liaison or FOIA contact, or OGIS; and

(v) A statement that the denial may be appealed under § 4.10, and a list of the requirements for filing an appeal set forth in § 4.10(b).

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(d) All responses shall be made subject to the provisions of § 4.25(b)(2)(iv).

[83 FR 39591, Aug. 10, 2018, as amended at 86 FR 21934, Apr. 26, 2021; 88 FR 36471, June 5, 2023]

§ 4.8 Classified information.

In processing a request for information classified under Executive Order 13526 or any other executive order concerning the classification of records, the information shall be reviewed to determine whether it should remain classified. Ordinarily the component or other Federal agency that classified the information should conduct the review, except that if a record contains information that has been derivatively classified by a component because it contains information classified by another component or agency, the component shall refer the responsibility for responding to the request to the component or agency that classified the underlying information. Information determined to no longer require classification shall not be withheld on the basis of FOIA exemption (b)(1) (5 U.S.C. 552(b)(1)), but should be reviewed to assess whether any other FOIA exemption should be invoked. Appeals involving classified information shall be processed in accordance with § 4.10(c).

[79 FR 62560, Oct. 20, 2014]

§ 4.9 Confidential commercial information.

(a) *Definitions.* For the purposes of this section:

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

(2) *Submitter* means any person or entity outside the Federal Government from which the Department obtains confidential commercial information, directly or indirectly. The term includes U.S. or foreign persons, U.S. or foreign corporations; state, local and tribal governments; and foreign governments.

(b) *Designation of confidential commercial information.* A submitter of confidential commercial information should be encouraged to use good-faith

efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under FOIA exemption (b)(4). These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer period.

(c) *Notice to submitters.* (1) A component shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its confidential commercial information whenever required under paragraph (d) of this section, except as provided in paragraph (g) of this section, in order to give the submitter an opportunity under paragraph (e) of this section to object to disclosure of any specified portion of that information.

(2) Such written notice shall be sent via certified mail, return receipt requested, or similar means.

(3) Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

(4) The notice shall either describe the confidential commercial information requested or include copies of the requested records or portions of the records containing the information. If notification of a large number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish notification, instead of sending individual notifications.

(d) *When notice is required.* Notice shall be given to the submitter whenever:

(1) The submitter has designated the information in good faith as protected from disclosure under FOIA exemption (b)(4); or

(2) The component has reason to believe that the information may be protected from disclosure under FOIA exemption (b)(4), but has not yet determined whether the information is protected from disclosure.

(e) *Opportunity to object to disclosure.* A component shall allow a submitter seven working days (*i.e.*, excluding Saturdays, Sundays, and legal public holi-

days) from the date of receipt of the written notice described in paragraph (c) of this section to provide the component with a statement of any objection to disclosure. A FOIA Officer may extend the comment period from seven to ten working days, if a submitter requests an extension. The statement from a submitter must identify any portions of the information the submitter requests to be withheld under FOIA exemption (b)(4), and describe how each qualifies for protection under the exemption: That is, why the information is a trade secret, or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to disclosure of the information. Information a submitter provides under this paragraph may itself be subject to disclosure under the FOIA.

(f) *Notice of intent to disclose.* A component shall consider a submitter's objections and specific grounds under the FOIA for nondisclosure in deciding whether to disclose confidential commercial information. If a component decides to disclose confidential commercial information over a submitter's objection, the component shall give the submitter written notice via certified mail, return receipt requested, or similar means, which shall include:

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

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

(3) A statement that the component intends to disclose the information seven working days, or ten working days if an extension is granted, from the date the submitter receives the notice.

(g) *Exceptions to notice requirements.* The notice requirements of paragraphs (c) and (f) of this section shall not apply if:

(1) The component determines that the information is exempt and will be withheld under a FOIA exemption;

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

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

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous, except that, in such a case, the component shall provide the submitter written notice of any final decision to disclose the information seven working days after the date the submitter receives the notice.

(h) *Notice to submitter of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the component shall promptly notify the submitter. Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

(i) *Corresponding notice to requester.* Whenever a component provides a submitter with notice and an opportunity to object to disclosure under paragraph (c) of this section, the component shall notify the requester that the request is being processed under the provisions of this regulation and, as a consequence, there may be a delay in receiving a response. The notice to the requester will not include any of the specific information contained in the records being requested. Whenever a submitter files a lawsuit seeking to prevent the disclosure of confidential commercial information, the component shall notify the requester of such action and, as a consequence, there may be further delay in receiving a response.

[83 FR 39592, Aug. 10, 2018]

§ 4.10 Appeals from initial determinations or untimely delays.

(a)(1) If a request for records to a component other than the Office of Inspector General is initially denied in whole or in part, or has not been timely determined, or if a requester receives an adverse determination regarding any other matter listed under this subpart (as described in § 4.7(c)), the requester may file an appeal. Appeals can be submitted in writing or electronically, as described in paragraph (b)(1) of this section. For re-

quests filed on or after July 1, 2016, the appeal must be received by the Office of the General Counsel during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday) within 90 calendar days of the date of the written denial of the adverse determination or, if there has been no determination, an appeal may be submitted any time after the due date of the request, including the last extension under § 4.6(d), of a request due date. Written or electronic appeals arriving after normal business hours will be deemed received on the next normal business day. If the 90th calendar day falls on a Saturday, Sunday, or a legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely. Appeals received after the 90-day limit will not be considered.

(2) If a request for records to the Office of Inspector General is initially denied in whole or in part, or has not been timely determined, or if a requester receives an adverse determination regarding any other matter listed under this subpart (as described in § 4.7(c)), the requester may file an appeal. Appeals can be submitted in writing or electronically, as described in paragraph (b)(2) of this section. For requests submitted on or after July 1, 2016, the appeal must be received by the Office of Inspector General, Office of Counsel, during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday) within 90 calendar days of the date of the written denial of the adverse determination or, if there has been no determination, an appeal may be submitted any time after the due date, including the last extension under § 4.6(d), of the adverse determination. Written or electronic appeals arriving after normal business hours will be deemed received on the next normal business day. If the 90th calendar day falls on a Saturday, Sunday, or a legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely. Appeals received after the 90-day limit will not be considered.

(b)(1) Appeals, other than appeals from requests made to the Office of Inspector General, shall be decided by the

Assistant General Counsel for Employment, Litigation, and Information (AGC-ELI). Written appeals should be addressed to the Assistant General Counsel for Employment, Litigation, and Information, at the U.S. Department of Commerce, Office of the General Counsel, Room 5896, 1401 Constitution Avenue NW, Washington, DC 20230. For a written appeal, both the letter and the appeal envelope should be clearly marked "Freedom of Information Act Appeal." Appeals may also be submitted electronically by email to *FOIAAppeals@doc.gov* or through the online case management system. In all cases, the appeal (written or electronic) should include a copy of the original request and initial denial, if any. All appeals should include a statement of the reasons why the records requested should be made available and why the adverse determination was in error. No opportunity for personal appearance, oral argument or hearing on appeal is provided. Upon receipt of an appeal, the AGC-ELI ordinarily shall send an acknowledgement letter to the requester which shall confirm receipt of the requester's appeal.

(2) Appeals of initial and untimely determinations by the OIG shall be decided by the Counsel to the Inspector General, except that appeals of records requests that were initially denied by the Counsel to the Inspector General shall be decided by the Deputy Inspector General. Written appeals should be addressed to the Counsel to the Inspector General, or the Deputy Inspector General if the records were initially denied by the Counsel to the Inspector General. The address of both is: U.S. Department of Commerce, Office of the Inspector General, Office of Counsel, Room 7898C, 1401 Constitution Avenue NW, Washington, DC 20230. For a written appeal, both the letter and the appeal envelope should be clearly marked "Freedom of Information Act Appeal." Appeals may also be submitted electronically by email to *FOIA@oig.doc.gov* or through the online case management system. In all cases, the appeal (written or electronic) should include a copy of the original request and initial denial, if any. All appeals should include a statement of the reasons why the records requested

should be made available and why the adverse determination was in error. No opportunity for personal appearance, oral argument or hearing on appeal is provided. Upon receipt of an appeal, the Counsel to the Inspector General, or the Deputy Inspector General if the records were initially denied by the Counsel to the Inspector General, ordinarily shall send an acknowledgement letter to the requester which shall confirm receipt of the requester's appeal.

(c) Upon receipt of an appeal involving records initially denied on the basis of FOIA exemption (b)(1), the records shall be forwarded to the Deputy Assistant Secretary for Security (DAS) for a declassification review. The DAS may overrule previous classification determinations in whole or in part if continued protection in the interest of national security is no longer required, or no longer required at the same level. The DAS shall advise the AGC-ELI, the General Counsel, Counsel to the Inspector General, or Deputy Inspector General, as appropriate, of his or her decision.

(d) If an appeal is granted, the notification letter may include documents to be released or the request may be referred back to the component for further action consistent with the determination on the appeal.

(e) If no determination on an appeal has been sent to the requester within the twenty working day period specified in § 4.6(b) or the last extension thereof, the requester is deemed to have exhausted all administrative remedies with respect to the request, giving rise to a right of judicial review under 5 U.S.C. 552(a)(6)(C). If the requester initiates a court action against the Department based on the provision in this paragraph, the administrative appeal process may continue.

(f) The determination on an appeal shall be in writing and, when it denies records in whole or in part, the letter to the requester shall include:

- (1) A brief explanation of the basis for the denial, including a list of the applicable FOIA exemptions and a description of how they apply;
- (2) A statement that the decision is final for the Department;
- (3) Notification that dispute resolution services are offered by the Office

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of Government Information Services (OGIS) of the National Archives and Records Administration as a non-exclusive alternative to litigation, informing the requester that dispute resolution is a voluntary process, and if the Department and requester agree to participate in the dispute resolution services provided by OGIS, the Department will actively engage as a partner to the process in an attempt to resolve the dispute.

(4) Notification that judicial review of the denial is available in the district court of the United States in the district in which the requester resides, or has his or her principal place of business, or in which the agency records are located, or in the District of Columbia; and

(5) The name and title or position of the official responsible for denying the appeal.

[66 FR 65632, Dec. 20, 2001, as amended at 69 FR 49784, Aug. 12, 2004; 79 FR 62561, Oct. 20, 2014; 80 FR 70153, Nov. 13, 2015; 83 FR 39593, Aug. 10, 2018; 88 FR 36471, June 5, 2023]

§4.11 Fees.

(a) *In general.* Components shall charge fees for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or when a waiver or reduction is granted under paragraph (1) of this section. A component shall collect all applicable fees before processing a request if a component determines that advance payment is re-

quired in accordance with paragraphs (i)(2) and (i)(3) of this section. If advance payment of fees is not required, a component shall collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

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

(1) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. Components shall determine, whenever reasonably possible, the use to which a requester will put the requested records. If it appears that the requester will put the records to a commercial use, or if a component has reasonable cause to doubt a requester’s asserted non-commercial use, the component shall provide the requester a reasonable opportunity to submit further clarification.

(2) *Direct costs* means those expenses a component incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. The hourly processing fees for calculating direct costs for Department or component personnel searching for, duplication, and reviewing records are reflected in Table 1. Note that the 16% overhead has already been included in the hourly rates identified in Table 1.

TABLE 1—FOIA HOURLY PROCESSING FEES

Type	Grade	Hourly rate
Administrative	E–9/GS–8 and below	\$28
Professional	Contractor/O–1 to O–6/W–1 to W–5/GS–9 to GS–15	56
Executive	O–7 and above and Senior Executive Service	128

(3) *Duplication* means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies may take the form of paper, microform, audiovisual materials, or electronic records, among others. A component shall honor a requester’s specified preference of form or format of disclosure if the record is

readily reproducible with reasonable efforts in the requested form or format.

(4) *Educational institution* 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 his or her role at the educational institution. Educational institutions may include a

preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education. A Department component may seek verification from the requester that the request is in furtherance of scholarly research and agencies will advise requesters of their placement in this category. Verification may be supported by a letter from a teacher, instructor, or professor written on the institution's letterhead or from an institutional email address and in which the body of the email outlines the research to be conducted. Student requests may be supported by evidence that the records are sought for the student's academic research purposes, for example, through evidence of a class assignment or a letter from a teacher, instructor, or professor. A component's decision to grant a requester educational institution status will be made on a case-by-case basis based upon the requester's intended use of the material.

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

Example 2. A request from the same professor or student of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional letterhead.

Example 3. A student who makes a request in furtherance of their coursework or other school-sponsored activities and provides a copy of a course syllabus or other reasonable documentation to indicate the research purpose for the request, would qualify as part of this fee category.

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

stitution and that the records are sought to further scientific research rather than for a commercial use.

(6) *Representative of the news media, or news media requester*, means any person or entity that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting 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. To be in this category, a requester must not be seeking the requested records for a commercial use. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would be the clearest proof, but components shall also look to the past publication record of a requester in making this determination. A component's decision to grant a requester media status will be made on a case-by-case basis based upon the requester's intended use of the material. The mere fact that a person or entity has been classified as news media with respect to one request does not mean they will be so considered as news media with respect to any other requests.

(7) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. 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 it and marking any applicable exemptions. Review

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costs are recoverable even if a record ultimately is not disclosed. Review time includes time spent obtaining and considering any formal objection to disclosure made by a submitter under §4.9, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* means the process of looking for and retrieving records or information responsive to a request. It includes identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained

in electronic form or format. Components shall ensure that searches are done in the most efficient and least expensive manner reasonably possible.

(c) *Fees*. In responding to FOIA requests, components shall charge the fees summarized in chart form in paragraphs (c)(1) and (c)(2) of this section and explained in paragraphs (c)(3) through (c)(5) of this section, unless a waiver or reduction of fees has been granted under paragraph (1) of this section.

(1) The four categories and chargeable fees are:

Category	Chargeable fees
(i) Commercial Use Requesters	Search, Review, and Duplication.
(ii) Educational and Non-commercial Scientific Institution Requesters.	Duplication (excluding the cost of the first 100 pages).
(iii) Representatives of the News Media	Duplication (excluding the cost of the first 100 pages).
(iv) All Other Requesters	Search and Duplication (excluding the cost of the first 2 hours of search and 100 pages).

(2) Uniform fee schedule.

Service	Rate
(i) Manual search	Hourly rate from Table 1 of employee involved.
(ii) Computerized search	Actual direct cost, including operator time, using the hourly rate from Table 1, of the employee involved.
(iii) Review of records	Hourly rate from Table 1 of employee involved.
(iv) Duplication of records:	
(A) Paper copy reproduction	\$.08 per page.
(B) Other reproduction (e.g., converting paper into an electronic format (e.g., scanning), computer disk or printout, or other electronically-formatted reproduction (e.g., uploading records made available to the requester)).	Actual direct cost, including operator time, using the hourly rate from Table 1, of the employee involved.

(3) *Search*. (i) Search fees shall be charged for all requests—other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media—subject to the limitations of paragraph (d) of this section. Components shall charge for time spent searching even if they do not locate any responsive records or if they withhold any records located as entirely exempt from disclosure. Search fees shall be the direct costs of conducting the search by the involved employees.

(ii) For computer searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (d)(1) of this section) will be charged no search fee and certain

other requesters (as provided in paragraph (d)(3) of this section) are entitled to the cost equivalent of two hours of manual search time without charge. These direct costs will include the costs of the operator/programmer FOIA hourly processing rate apportionable to the search and any other tangible direct costs associated with a computer search.

(4) *Duplication*. Duplication fees shall be charged to all requesters, subject to the limitations of paragraph (d) of this section. A component shall honor a requester’s preference for receiving a record in a particular form or format where it is readily producible by the component in the form or format requested. For either a photocopy or a computer-generated printout of a

record (no more than one copy of which need be supplied), the fee shall be \$.08 per page. Requesters may reduce costs by specifying double-sided duplication, except where this is technically not feasible. For electronic forms of duplication, other than a computer-generated printout, components will charge the direct costs of that duplication. Such direct costs will include the costs of the requested electronic medium on which the copy is to be made and the actual operator time and computer resource usage required to produce the copy, to the extent they can be determined.

(5) *Review.* Review fees shall be charged to requesters who make a commercial use request. Review fees shall be charged only for the initial record review, in which a component determines whether an exemption applies to a particular record at the initial request level. No charge shall be imposed for review at the administrative appeal level for an exemption already applied. However, records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies, and the costs of that review are chargeable. Review fees shall be the direct costs of conducting the review by the involved employees.

(d) *Limitations on charging fees.* (1) No search fees shall be charged for requests from educational institutions, non-commercial scientific institutions, or representatives of the news media.

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

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

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

(ii) The first two hours of search (or the cost equivalent).

(4) If a total fee calculated under paragraph (c) of this section is \$20.00 or less for any request, no fee shall be charged. If such total fee is more than \$20.00, the full amount of such fee shall be charged.

(5) The provisions of paragraphs (d) (3) and (4) of this section work to-

gether. This means that for requesters other than those seeking records for a commercial use, no fee shall be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than \$20.00.

(6) No search fees shall be charged to a FOIA requester when a component does not comply with the statutory time limits at 5 U.S.C. 552(a)(6) in which to respond to a request (this section only applies to FOIA requests, not appeals), except as described in paragraph (d)(8) of this section.

(7) No duplication fees shall be charged to requesters in the fee category of a representative of the news media or an educational or non-commercial scientific institution when a component does not comply with the statutory time limits at 5 U.S.C. 552(a)(6) in which to respond to a request, except as described in paragraph (d)(8) of this section.

(8)(i) When a Department component determines that unusual circumstances, as those terms are defined in §4.6(d)(2), apply to the processing of the request, and provides timely written notice to the requester in accordance with the FOIA, then the Department component is granted an additional ten days until the fee restrictions in paragraphs (d)(6) and (7) of this section apply.

(ii) The fee restrictions in paragraphs (d)(6) and (7) of this section do not apply:

(A) When a Department component determines that unusual circumstances, as those terms are defined in §4.6(d)(2), apply to the processing of the request;

(B) More than 5,000 pages are necessary to respond to the request;

(C) The Department component provides timely written notice to the requester in accordance with the FOIA; and

(D) The Department component has discussed with the requester (or made three good faith attempts to do so) on how the requester can effectively limit the scope of the request.

(e) *Notice of anticipated fees in excess of \$20.00.* (1) When a component determines or estimates that the fees for processing a FOIA request will total

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more than \$20.00 or total more than the amount the requester indicated a willingness to pay, the component shall notify the requester of the actual or estimated amount of the fees, unless the requester has stated in writing a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component shall advise the requester that the estimated fee may be only a portion of the total fee. A notice under this paragraph shall offer the requester an opportunity to discuss the matter with Departmental personnel in order to modify the request in an effort to meet the requester's needs at a lower cost. The requester may also contact the Department FOIA Public Liaison, the relevant component's FOIA Public Liaison or FOIA contact, or OGIS for further assistance, or file an administrative appeal of the fee estimate amount in accordance with §4.10.

(2) When a requester has been notified that the actual or estimated fees will amount to more than \$20.00, or amount to more than the amount the requester indicated a willingness to pay, the component will do no further work on the request until the requester agrees in writing to pay the actual or estimated total fee. The component will toll the processing of the request when it notifies the requester of the actual or estimated amount of fees and this time will be excluded from the twenty (20) working day time limit (as specified in §4.6(b)). The requester's agreement to pay fees must be made in writing, must designate an exact dollar amount the requester is willing to pay, and must be received within 30 calendar days from the date of the notification of the fee estimate. If the requester fails to submit an agreement to pay the anticipated fees within 30 calendar days from the date of the component's fee notice, the component will presume that the requester is no longer interested and notify the requester that the request will be closed.

(f) *Charges for other services.* Apart from the other provisions of this section, if a component decides, as a matter of administrative discretion, to comply with a request for special services, the component shall charge the direct cost of providing them. Such

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services could include certifying that records are true copies or sending records by other than ordinary mail.

(g) *Charging interest.* Components shall charge interest on any unpaid bill starting on the 31st calendar day following the date of billing the requester. Interest charges shall be assessed at the rate provided in 31 U.S.C. 3717 and accrue from the date of the billing until the component receives payment. Components shall take all steps authorized by the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996, to effect payment, including offset, disclosure to consumer reporting agencies, and use of collection agencies.

(h) *Aggregating requests.* If a component reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the component may aggregate those requests and charge accordingly. Among the factors a component shall consider in deciding whether to aggregate are the closeness in time between the component's receipt of the requests, and the relatedness of the matters about which the requests are made. A component may generally presume that multiple requests that involve related matters made by the same requester or a closely related group of requesters within a 30 calendar day period have been made in order to avoid fees. If requests are separated by a longer period, a component shall aggregate them only if a solid basis exists for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters shall not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) and (3) of this section, a component shall not require the requester to make an advance payment (*i.e.*, a payment made before a component begins to process or continues work on a request). Payment owed for work already completed (*i.e.*, a pre-payment before copies of responsive records are sent to a requester) is not an advance payment.

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(2) When a component determines or estimates that the total fee for processing a FOIA request will be \$250.00 or more, the component shall notify the requester of the actual or estimated fee and require the requester to make an advance payment of the entire anticipated fee before beginning to process the request. A notice under this paragraph shall offer the requester an opportunity to discuss the matter with Departmental personnel in order to modify the request in an effort to meet the requester's needs at a lower cost.

(3) When a requester has previously failed to pay a properly charged FOIA fee to any component or other Federal agency within 30 calendar days of the date of billing, the component shall notify the requester that he or she is required to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the component begins to process a new request or continues to process a pending request from that requester. A notice under this paragraph shall offer the requester an opportunity to discuss the matter with Departmental personnel in order to modify the request in an effort to meet the requester's needs at a lower cost.

(4) When the component requires advance payment or payment due under paragraphs (i)(2) and (i)(3) of this section, the component will not further process the request until the required payment is made. The component will toll the processing of the request when it notifies the requester of the advanced payment due and this time will be excluded from the twenty (20) working day time limit (as specified in §4.6(b)). If the requester does not pay the advance payment within 30 calendar days from the date of the component's fee notice, the component will presume that the requester is no longer interested and notify the requester that the request will be closed.

(j) *Tolling.* When necessary for the component to clarify issues regarding fee assessment with the FOIA requester, the time limit for responding to the FOIA request is tolled until the component resolves such issues with the requester. The tolling period is from the day a requester was contacted

through the working day (*i.e.*, excluding Saturdays, Sundays, and legal public holidays) on which a response was received by the responsible component.

(k) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute (except for the FOIA) that specifically requires an agency to set and collect fees for particular types of records. If records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, components shall inform requesters how to obtain records from those sources. Provision of such records is not handled under the FOIA.

(1) *Requirements for waiver or reduction of fees.* (1) Records responsive to a request will be furnished without charge, or at a charge reduced below that established under paragraph (c) of this section, if the requester asks for such a waiver in writing and the responsible component determines, after consideration of information provided by the requester, that the requester has demonstrated that:

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

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

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

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

(ii) *The informative value of the information to be disclosed:* whether the disclosure is "likely to contribute" to an understanding of Government operations or activities. The disclosable portions of the requested records must be meaningfully informative about Government operations or activities in order to be "likely to contribute" to an

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increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding.

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

(iv) *The significance of the contribution to public understanding:* whether the disclosure is likely to contribute "significantly" to public understanding of Government operations or activities. The public's understanding of the subject in question prior to the disclosure must be significantly enhanced by the disclosure.

(3) To determine whether the second fee waiver requirement (*i.e.*, that disclosure is not primarily in the commercial interest of the requester) is met, components shall consider the following factors:

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

(ii) *The primary interest in disclosure:* Whether any identified commercial interest of the requester is sufficiently great, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." A fee waiver or

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reduction is justified if the public interest standard (paragraph (1)(1)(i) of this section) is satisfied and the public interest is greater than any identified commercial interest in disclosure. Components ordinarily shall presume that if a news media requester has satisfied the public interest standard, the public interest is the primary interest served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market Government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) If only some of the records to be released satisfy the requirements for a fee waiver, a waiver shall be granted for those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (1)(2) and (3) of this section, insofar as they apply to each request.

[66 FR 65632, Dec. 20, 2001, as amended at 79 FR 62562, Oct. 20, 2014; 83 FR 39594, Aug. 10, 2018; 88 FR 36471, June 5, 2023]

Subpart B—Privacy Act

§ 4.21 Purpose and scope.

(a) This subpart establishes policies and procedures for implementing the Privacy Act of 1974, as amended (5 U.S.C. 552a). The main objectives of the subpart are to facilitate full exercise of rights conferred on individuals under the Act, and to protect the privacy of individuals on whom the Department maintains records in systems of records under the Act.

(b) The Department shall act promptly and in accordance with the Act upon receipt of any inquiry, request or appeal from a citizen of the United States or an alien lawfully admitted for permanent residence into the United States, regardless of the individual's age. Further, the Department shall maintain only such information on individuals as is relevant and necessary to the performance of its lawful functions; maintain that information with such accuracy, relevancy, timeliness, and completeness as is reasonably necessary to assure fairness in determinations made by the Department about the individual; obtain information

from the individual to the extent practicable; and take every reasonable step to protect that information from unwarranted disclosure. The Department shall maintain no record describing how an individual exercises rights guaranteed by the First Amendment unless expressly authorized to do so by statute or by the individual about whom the record is maintained, or unless to do so is pertinent to and within the scope of an authorized law enforcement activity. An individual's name and address shall not be sold or rented by the Department unless such action is specifically authorized by law.

(c) This subpart applies to all components of the Department. Components may promulgate supplementary orders and rules not inconsistent with this subpart.

(d) The Assistant Secretary for Administration is delegated responsibility for maintaining this subpart, for issuing such orders and directives internal to the Department as are necessary for full compliance with the Act, and for publishing all required notices concerning systems of records.

(e) Matters outside the scope of this subpart include:

(1) Requests for records that do not pertain to the requester, or to the individual about whom the request is made if the requester is the parent or guardian of the individual;

(2) Requests involving information pertaining to an individual that is in a record or file but not within the scope of a system of records notice published in the FEDERAL REGISTER;

(3) Requests to correct a record if a grievance procedure is available to the individual either by regulation or through a provision in a collective bargaining agreement with the Department or a component of the Department, and the individual has initiated, or expressed in writing the intention of initiating, such a grievance procedure; and

(4) Requests for employee-employer services and counseling that were routinely granted prior to enactment of the Act, including, but not limited to, test calculations of retirement benefits, explanations of health and life insurance programs, and explanations of tax withholding options.

(f) Any request for records that pertains to the requester, or to the individual about whom the request is made if the requester is the parent or guardian of the individual, shall be processed under the Act and this subpart and under the Freedom of Information Act and the Department's implementing regulations at subpart A of this part, regardless whether the Act or the Freedom of Information Act is mentioned in the request.

§ 4.22 Definitions.

(a) All terms used in this subpart which are defined in 5 U.S.C. 552a shall have the same meaning herein.

(b) As used in this subpart:

(1) *Act* means the "Privacy Act of 1974, as amended (5 U.S.C. 552a)".

(2) *Appeal* means a request by an individual to review and reverse an initial denial of a request from that individual for correction or amendment.

(3) *Component* means any office, division, bureau or other unit of the Department listed in Appendix A to this part (except that a regional office of a larger office or other unit does not constitute a separate component).

(4) *Department* means the Department of Commerce.

(5) *Inquiry* means either a request for general information regarding the Act and this subpart or a request from an individual (or that individual's parent or guardian) that the Department determine whether it has any record in a system of records that pertains to that individual.

(6) *Person* means any human being and also shall include, but is not limited to, corporations, associations, partnerships, trustees, receivers, personal representatives, and public or private organizations.

(7) *Privacy Act Officer* means those officials, identified in Appendix B to this part, who are authorized to receive and act upon inquiries, requests for access, and requests for correction or amendment.

(8) *Request for access* means a request from an individual or an individual's parent or guardian to see a record pertaining to that individual in a particular system of records.

(9) *Request for correction or amendment* means a request from an individual or

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an individual's parent or guardian that the Department change (by correction, amendment, addition or deletion) a particular record pertaining to that individual in a system of records.

(10) *Un-redacted SSN Mailed Documents Listing (USMDL)* means the Department approved list, as posted at www.commerce.gov/privacy, designating those documents for which the inclusion of SSN is determined to be necessary to fulfill a compelling Department business need when the documents are requested by individuals outside the Department or other Federal agencies, as determined jointly by the Senior Agency Official for Privacy and the Departmental Privacy Act Officer.

[66 FR 65632, Dec. 20, 2001, as amended at 86 FR 21935, Apr. 26, 2021]

§ 4.23 Procedures for making inquiries.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit an inquiry to the Department. The inquiry should be made either in person or by mail addressed to the appropriate component identified in Appendix A to this part or to the official identified in the notification procedures paragraph of the systems of records notice published in the FEDERAL REGISTER.² If an individual believes the Department maintains a record pertaining to him or her but does not know which system of records might contain such a record and/or which component of the Department maintains the system of records, assistance in person or by mail will be provided at the first address listed in Appendix A to this part.

(b) Inquiries submitted by mail should include the words "PRIVACY ACT INQUIRY" in capital letters at the top of the letter and on the face of the envelope. If the inquiry is for general information regarding the Act and

²The United States Patent and Trademark Office (USPTO), which is established as an agency of the United States within the Department of Commerce, operates under its own PA regulations at 37 CFR part 102, subpart B. Accordingly, requests concerning records maintained by the USPTO should be sent directly to the USPTO.

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this subpart, no particular information is required. The Department reserves the right to require compliance with the identification procedures appearing at § 4.24(d). If the inquiry is a request that the Department determine whether it has a record pertaining to the individual, the following information should be submitted:

(1) Name of individual whose record is sought;

(2) Statement that individual whose record is sought is either a U.S. citizen or an alien lawfully admitted for permanent residence;

(3) Identifying data that will help locate the record (for example, maiden name, occupational license number, period or place of employment, etc.);

(4) Record sought, by description and by record system name, if known;

(5) Action requested (that is, sending information on how to exercise rights under the Act; determining whether requested record exists; gaining access to requested record; or obtaining copy of requested record);

(6) Copy of court guardianship order or minor's birth certificate, as provided in § 4.24(d)(3), but only if requester is guardian or parent of individual whose record is sought;

(7) Requester's name (printed), signature, address, and (optional) telephone number;

(8) Date; and,

(9) Certification of request by notary or other official, but only if

(i) Request is for notification that requested record exists, for access to requested record, or for copy of requested record;

(ii) Record is not available to any person under 5 U.S.C. 552; and

(iii) Requester does not appear before an employee of the Department for verification of identity.

(c) Any inquiry which is not addressed as specified in paragraph (a) of this section or which is not marked as specified in paragraph (b) of this section will be so addressed and marked by Department personnel and forwarded immediately to the responsible Privacy Act Officer. An inquiry which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring

the time period for response until actual receipt by the Privacy Act Officer. In each instance when an inquiry so forwarded is received, the Privacy Act Officer shall notify the individual that his or her inquiry was improperly addressed and the date the inquiry was received at the proper address.

(d)(1) Each inquiry received shall be acted upon promptly by the responsible Privacy Act Officer. Every effort will be made to respond within ten working days (*i.e.*, excluding Saturdays, Sundays and legal public holidays) of the date of receipt at the proper address. If a response cannot be made within ten working days, the Privacy Act Officer shall send an acknowledgment during that period providing information on the status of the inquiry and asking for such further information as may be necessary to process the inquiry. The first correspondence sent by the Privacy Act Officer to the requester shall contain the Department's control number assigned to the request, as well as a statement that the requester should use that number in all future contacts with the Department. The Department shall use that control number in all subsequent correspondence.

(2) If the Privacy Act Officer fails to send an acknowledgment within ten working days, as provided in paragraph (d)(1) of this section, the requester may ask the Assistant General Counsel for Litigation, Employment, and Oversight to take corrective action. No failure of a Privacy Act Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(e) An individual shall not be required to state a reason for or otherwise justify his or her inquiry.

(f) Special note should be taken that certain agencies are responsible for publishing notices of systems of records having Government-wide application to other agencies, including the Department. The agencies known to be publishing these general notices and the types of records covered therein appear in Appendix C to this part. These general notices do not identify the Privacy Act Officers in the Department to whom inquiries should be presented or mailed. The provisions of this section, and particularly paragraph (a) of this

section, should be followed in making inquiries with respect to such records. Such records in the Department are subject to the provisions of this part to the extent indicated in Appendix C to this part. The exemptions, if any, determined by the agency publishing a general notice shall be invoked and applied by the Department after consultation, as necessary, with that other agency.

§ 4.24 Procedures for making requests for records.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit a request to the Department for access to records. The request should be made either in person or by mail addressed to the appropriate office listed in Appendix A to this part.

(b) Requests submitted by mail should include the words "PRIVACY ACT REQUEST" in capital letters at the top of the letter and on the face of the envelope. Any request which is not addressed as specified in paragraph (a) of this section or which is not marked as specified in this paragraph will be so addressed and marked by Department personnel and forwarded immediately to the responsible Privacy Act Officer. A request which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring time periods for response until actual receipt by the Privacy Act Officer. In each instance when a request so forwarded is received, the Privacy Act Officer shall notify the individual that his or her request was improperly addressed and the date the request was received at the proper address.

(c) If the request follows an inquiry under § 4.23 in connection with which the individual's identity was established by the Department, the individual need only indicate the record to which access is sought, provide the Department control number assigned to the request, and sign and date the request. If the request is not preceded by an inquiry under § 4.23, the procedures of this section should be followed.

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(d) The requirements for identification of individuals seeking access to records are:

(1) *In person*. Each individual making a request in person shall be required to present satisfactory proof of identity. The means of proof, in the order of preference and priority, are:

(i) A document bearing the individual's photograph (for example, driver's license, passport or military or civilian identification card);

(ii) A document, preferably issued for participation in a Federally-sponsored program, bearing the individual's signature (for example, unemployment insurance book, employer's identification card, national credit card, and professional, craft or union membership card); and,

(iii) A document bearing neither the photograph nor the signature of the individual, preferably issued for participation in a Federally-sponsored program (for example, Medicaid card). If the individual can provide no suitable documentation of identity, the Department will require a signed statement asserting the individual's identity and stipulating that the individual understands the penalty provision of 5 U.S.C. 552a(i)(3) recited in § 4.32(a). In order to avoid any unwarranted disclosure of an individual's records, the Department reserves the right to determine the adequacy of proof of identity offered by any individual, particularly if the request involves a sensitive record.

(2) *Not in person*. If the individual making a request does not appear in person before a Privacy Act Officer or other employee authorized to determine identity, then identity must be determined by:

(i) A certification of a notary public or equivalent officer empowered to administer oaths must accompany the request under the circumstances prescribed in § 4.23(b)(9). The certification in or attached to the letter must be substantially in accordance with the following text:

City of ____ County of ____ (Name of individual), who affixed (his) (her) signature below in my presence, came before me, a (title), in and for the aforesaid County and State, this ____ day of __, 20__, and established (his) (her) identity to my satisfaction. My commission expires ____.

Signature: ____; or

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(ii) Statement of identity made under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization.

(3) *Parents of minors and legal guardians*. An individual acting as the parent of a minor or the legal guardian of the individual to whom a record pertains shall establish his or her personal identity in the same manner prescribed in either paragraph (d)(1) or (d)(2) of this section. In addition, such other individual shall establish his or her identity in the representative capacity of parent or legal guardian. In the case of the parent of a minor, the proof of identity shall be a certified or authenticated copy of the minor's birth certificate. In the case of a legal guardian of an individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, the proof of identity shall be a certified or authenticated copy of the court's order. For purposes of the Act, a parent or legal guardian may represent only a living individual, not a decedent. A parent or legal guardian may be accompanied during personal access to a record by another individual, provided the provisions of § 4.25(f) are satisfied.

(e) If the provisions of this subpart are alleged to impede an individual in exercising his or her right to access, the Department will consider, from an individual making a request, alternative suggestions regarding proof of identity and access to records.

(f) An individual shall not be required to state a reason for or otherwise justify his or her request for access to a record.

[66 FR 65632, Dec. 20, 2001, as amended at 73 FR 10381, Feb. 27, 2008]

§ 4.25 Disclosure of requested records to individuals.

(a)(1) The responsible Privacy Act Officer shall act promptly upon each request. Every effort will be made to respond within ten working days (*i.e.*, excluding Saturdays, Sundays and legal public holidays) of the date of receipt. If a response cannot be made within ten working days due to unusual circumstances, the Privacy Act Officer shall send an acknowledgment during

that period providing information on the status of the request and asking for any further information that may be necessary to process the request. “Unusual circumstances” shall include circumstances in which:

(i) A search for and collection of requested records from inactive storage, field facilities or other establishments is required;

(ii) A voluminous amount of data is involved;

(iii) Information on other individuals must be separated or expunged from the particular record; or

(iv) Consultations with other agencies having a substantial interest in the determination of the request are necessary.

(2) If the Privacy Act Officer fails to send an acknowledgment within ten working days, as provided in paragraph (a)(1) of this section, the requester may ask the Assistant General Counsel for Litigation, Employment, and Oversight to take corrective action. No failure of a Privacy Act Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(3) Inclusion of SSNs on responsive documents.

(i) The Department shall redact SSNs from responsive documents provided to requesters where feasible. Where full redaction is not feasible, partial redaction to create a truncated SSN shall be preferred to no redaction. The following conditions must be met for the inclusion of an unredacted (full) SSN or partially redacted (truncated) SSN on a responsive document:

(ii) The inclusion of the full SSN or truncated SSN of an individual must be required or authorized by law,

(iii) The inclusion of the full SSN or truncated SSN of an individual must be determined by the Senior Agency Official for Privacy and Departmental Privacy Act Officer to be necessary to fulfill a compelling Department business need; and

(iv) The full SSN of an individual may be included only on documents listed on the USMDL.

(4) The following requirements apply when the Department mails or delivers responsive documents containing SSNs or truncated SSNs:

(i) The full SSN of an individual may be included only on documents listed on the USMDL.

(ii) For documents that are listed on the USMDL and that include the full SSN of an individual, the signature of the recipient is required upon delivery.

(iii) For documents that include the truncated form of the SSN of an individual, the signature of the recipient is required upon delivery.

(iv) The full SSN, the truncated SSN, any part of the SSN of an individual must not be visible from the outside of the envelope or package.

(b) Grant of access: (1) *Notification.* An individual shall be granted access to a record pertaining to him or her, unless the provisions of paragraph (g)(1) of this section apply. The Privacy Act Officer shall notify the individual of a determination to grant access, and provide the following information:

(i) The methods of access, as set forth in paragraph (b)(2) of this section;

(ii) The place at which the record may be inspected;

(iii) The earliest date on which the record may be inspected and the period of time that the records will remain available for inspection. In no event shall the earliest date be later than thirty calendar days from the date of notification;

(iv) The estimated date by which a copy of the record will be mailed and the fee estimate pursuant to § 4.31. In no event shall the estimated date be later than thirty calendar days from the date of notification;

(v) The fact that the individual, if he or she wishes, may be accompanied by another individual during personal access, subject to the procedures set forth in paragraph (f) of this section; and,

(vi) Any additional prerequisites for granting access to a specific record.

(2) *Methods of access.* The following methods of access to records by an individual may be available depending on the circumstances of a given situation:

(i) Inspection in person may be had in the office specified by the Privacy Act Officer granting access, during the hours indicated in Appendix A to this part;

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(ii) Transfer of records to a Federal facility more convenient to the individual may be arranged, but only if the Privacy Act Officer determines that a suitable facility is available, that the individual's access can be properly supervised at that facility, and that transmittal of the records to that facility will not unduly interfere with operations of the Department or involve unreasonable costs, in terms of both money and manpower; and,

(iii) Copies of documents may be mailed at the request of the individual and may be subject to payment of the fees prescribed in §§ 4.25(a)(3) and 4.31. In the event that the Department, at its own initiative, elects to provide a copy by mail, no fee will be charged to the individual.

(iv) Copies of documents listed on the USMDL that include full SSNs and that are requested by an individual are subject to payment of the fees prescribed in § 4.31.

(v) Documents containing SSNs or truncated SSNs that are required to be returned by the individual to the Department will be mailed or delivered along with a prepaid mail or delivery service envelope at the expense of the Department.

(c) Access to medical records is governed by the provisions of § 4.26.

(d) The Department shall supply such other information and assistance at the time of access as to make the record intelligible to the individual.

(e) The Department reserves the right to limit access to copies and abstracts of original records, rather than the original records. This election would be appropriate, for example, when the record is in an automated data medium such as tape or disc, when the record contains information on other individuals, and when deletion of information is permissible under exemptions (for example, 5 U.S.C. 552a(k)(2)). In no event shall original records of the Department be made available to the individual except under the immediate supervision of the Privacy Act Officer or his or her designee.

(f) Any individual who requests access to a record pertaining to that individual may be accompanied by another individual of his or her choice. "Ac-

companied" includes discussing the record in the presence of the other individual. The individual to whom the record pertains shall authorize the presence of the other individual in writing. The authorization shall include the name of the other individual, a specific description of the record to which access is sought, the Department control number assigned to the request, the date, and the signature of the individual to whom the record pertains. The other individual shall sign the authorization in the presence of the Privacy Act Officer. An individual shall not be required to state a reason or otherwise justify his or her decision to be accompanied by another individual during personal access to a record.

(g) Initial denial of access: (1) *Grounds.* Access by an individual to a record that pertains to that individual will be denied only upon a determination by the Privacy Act Officer that:

(i) The record is exempt under § 4.33 or 4.34, or exempt by determination of another agency publishing notice of the system of records, as described in § 4.23(f);

(ii) The record is information compiled in reasonable anticipation of a civil action or proceeding;

(iii) The provisions of § 4.26 pertaining to medical records have been invoked; or

(iv) The individual unreasonably has failed to comply with the procedural requirements of this part.

(2) *Notification.* The Privacy Act Officer shall give notice of denial of access to records to the individual in writing, and the notice shall include the following information:

(i) The Privacy Act Officer's name and title or position;

(ii) The date of the denial;

(iii) The reasons for the denial, including citation to the appropriate section of the Act and this part;

(iv) The individual's opportunities, if any, for further administrative consideration, including the identity and address of the responsible official. If no further administrative consideration within the Department is available, the notice shall state that the denial is administratively final; and,

(v) If stated to be administratively final within the Department, the individual's right to judicial review provided under 5 U.S.C. 552a(g)(1), as limited by 5 U.S.C. 552a(g)(5).

(3) *Administrative review.* If a Privacy Act Officer issues an initial denial of a request, the individual's opportunities for further consideration shall be as follows:

(i) As to denial under paragraph (g)(1)(i) of this section, two opportunities for further consideration are available in the alternative:

(A) If the individual contests the application of an exemption to the records, the review procedures in § 4.25(g)(3)(ii) shall apply; or,

(B) If the individual challenges the validity of the exemption itself, the individual must file a petition for the issuance, amendment, or repeal of a rule under 5 U.S.C. 553(e). If the exemption was determined by the Department, such petition shall be filed with the Assistant Secretary for Administration. If the exemption was determined by another agency (as described in § 4.23(f)), the Department will provide the individual with the name and address of the other agency and any relief sought by the individual shall be that provided by the regulations of the other agency. Within the Department, no such denial is administratively final until such a petition has been filed by the individual and disposed of on the merits by the Assistant Secretary for Administration.

(ii) As to denial under paragraphs (g)(1)(ii) of this section, (g)(1)(iv) of this section or (to the limited extent provided in paragraph (g)(3)(i)(A) of this section) paragraph (g)(1)(i) of this section, the individual may file for review with the Assistant General Counsel for Litigation, Employment, and Oversight, as indicated in the Privacy Act Officer's initial denial notification. The individual and the Department shall follow the procedures in § 4.28 to the maximum extent practicable.

(iii) As to denial under paragraph (g)(1)(iii) of this section, no further administrative consideration within the Department is available because the denial is not administratively final until expiration of the time period indicated in § 4.26(a).

(h) If a request is partially granted and partially denied, the Privacy Act Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

[66 FR 65632, Dec. 20, 2001, as amended at 79 FR 62564, Oct. 20, 2014; 86 FR 21935, Apr. 26, 2021]

§ 4.26 Special procedures: Medical records.

When a request for access involves medical or psychological records, the records will be reviewed by the Department's medical officer for a determination on whether disclosure would be harmful to the individual to whom they relate. If it is determined that disclosure would be harmful, the Department may refuse to disclose the records directly to the requester but shall transmit them to a doctor authorized in writing by the individual to whom the records relate to receive the documents. If an individual refuses to provide written authorization to release his or her medical records to a doctor, barring any applicable exemption, the Department shall give the individual access to his or her records by means of a copy, provided without cost to the requester, sent registered mail, return receipt requested.

[79 FR 62564, Oct. 20, 2014]

§ 4.27 Procedures for making requests for correction or amendment.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit a request for correction or amendment to the Department. The request should be made either in person or by mail addressed to the Privacy Act Officer who processed the individual's request for access to the record, and to whom is delegated authority to make initial determinations on requests for correction or amendment. The offices of Privacy Act Officers are open to the public between the hours of 9 a.m. and 4 p.m. Monday through Friday (excluding Saturdays, Sundays, and legal public holidays).

(b) Requests submitted by mail should include the words "PRIVACY ACT REQUEST" in capital letters at

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the top of the letter and on the face of the envelope. Any request that is not addressed as specified in paragraph (a) of this section or that is not marked as specified in this paragraph will be so addressed and marked by Department personnel and forwarded immediately to the responsible Privacy Act Officer. A request that is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring the time period for response until actual receipt by the Privacy Act Officer. In each instance when a request so forwarded is received, the Privacy Act Officer shall notify the individual that his or her request was improperly addressed and the date the request was received at the proper address.

(c) Since the request, in all cases, will follow a request for access under § 4.25, the individual's identity will be established by his or her signature on the request and use of the Department control number assigned to the request.

(d) A request for correction or amendment should include the following:

(1) Specific identification of the record sought to be corrected or amended (for example, description, title, date, paragraph, sentence, line and words);

(2) The specific wording to be deleted, if any;

(3) The specific wording to be inserted or added, if any, and the exact place at which it is to be inserted or added; and,

(4) A statement of the basis for the requested correction or amendment, with all available supporting documents and materials that substantiate the statement. The statement should identify the criterion of the Act being invoked, that is, whether the information in the record is unnecessary, inaccurate, irrelevant, untimely or incomplete.

§ 4.28 Agency review of requests for correction or amendment.

(a)(1)(i) Not later than ten working days (*i.e.*, excluding Saturdays, Sundays and legal public holidays) after receipt of a request to correct or amend a record, the Privacy Act Offi-

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cer shall send an acknowledgment providing an estimate of time within which action will be taken on the request and asking for such further information as may be necessary to process the request. The estimate of time may take into account unusual circumstances as described in § 4.25(a). No acknowledgment will be sent if the request can be reviewed, processed and the individual notified of the results of review (either compliance or denial) within the ten working days. Requests filed in person will be acknowledged in writing at the time submitted.

(ii) If the Privacy Act Officer fails to send the acknowledgment within ten working days, as provided in paragraph (a)(1)(i) of this section, the requester may ask the Assistant General Counsel for Litigation, Employment, and Oversight, or in the case of a request to the Office of the Inspector General, the Counsel to the Inspector General, to take corrective action. No failure of a Privacy Act Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(2) Promptly after acknowledging receipt of a request, or after receiving such further information as might have been requested, or after arriving at a decision within the ten working days, the Privacy Act Officer shall either:

(i) Make the requested correction or amendment and advise the individual in writing of such action, providing either a copy of the corrected or amended record or, in cases in which a copy cannot be provided, a statement as to the means by which the correction or amendment was effected; or

(ii) Inform the individual in writing that his or her request is denied and provide the following information:

(A) The Privacy Act Officer's name and title or position;

(B) The date of the denial;

(C) The reasons for the denial, including citation to the appropriate sections of the Act and this subpart; and

(D) The procedures for appeal of the denial as set forth in § 4.29, including the address of the Assistant General Counsel for Litigation, Employment, and Oversight, or in the case of a request to the Office of the Inspector

General, the address of the Counsel to the Inspector General.

(3) The term *promptly* in this section means within thirty working days (*i.e.*, excluding Saturdays, Sundays and legal public holidays). If the Privacy Act Officer cannot make the determination within thirty working days, the individual will be advised in writing of the reason for the delay and of the estimated date by which the determination will be made.

(b) Whenever an individual's record is corrected or amended pursuant to a request from that individual, the Privacy Act Officer shall notify all persons and agencies to which the corrected or amended portion of the record had been disclosed prior to its correction or amendment, if an accounting of such disclosure required by the Act was made. The notification shall require a recipient agency maintaining the record to acknowledge receipt of the notification, to correct or amend the record, and to apprise any agency or person to which it had disclosed the record of the substance of the correction or amendment.

(c) The following criteria will be considered by the Privacy Act Officer in reviewing a request for correction or amendment:

(1) The sufficiency of the evidence submitted by the individual;

(2) The factual accuracy of the information to be corrected or amended;

(3) The relevance and necessity of the information in terms of the purpose for which it was collected;

(4) The timeliness and currency of the information in light of the purpose for which it was collected;

(5) The completeness of the information in terms of the purpose for which it was collected;

(6) The degree of risk that denial of the request could unfairly result in determinations adverse to the individual;

(7) The character of the record sought to be corrected or amended; and,

(8) The propriety and feasibility of complying with the specific means of correction or amendment requested by the individual.

(d) The Department will not undertake to gather evidence for the individual, but does reserve the right to

verify the evidence the individual submits.

(e) Correction or amendment of a record requested by an individual will be denied only upon a determination by the Privacy Act Officer that:

(1) The individual has failed to establish, by a preponderance of the evidence, the propriety of the correction or amendment in light of the criteria set forth in paragraph (c) of this section;

(2) The record sought to be corrected or amended is part of the official record in a terminated judicial, quasi-judicial or quasi-legislative proceeding to which the individual was a party or participant;

(3) The information in the record sought to be corrected or amended, or the record sought to be corrected or amended, is the subject of a pending judicial, quasi-judicial or quasi-legislative proceeding to which the individual is a party or participant;

(4) The correction or amendment would violate a duly enacted statute or promulgated regulation; or,

(5) The individual unreasonably has failed to comply with the procedural requirements of this part.

(f) If a request is partially granted and partially denied, the Privacy Act Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

[66 FR 65632, Dec. 20, 2001, as amended at 79 FR 62564, Oct. 20, 2014]

§ 4.29 Appeal of initial adverse agency determination on correction or amendment.

(a) If a request for correction or amendment is denied initially under § 4.28, the individual may submit a written appeal within thirty calendar days of the date of the initial denial. The appeal must be received by the General Counsel, or by the Counsel to the Inspector General in the case of an appeal of an initial adverse determination by the Office of Inspector General, during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday) within 30 calendar days of the date of the initial denial. Appeals arriving after normal business hours will be deemed received on the

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next normal business day. If the 30th calendar day falls on a Saturday, Sunday, or a legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

(b)(1) An appeal from a request to a component other than the Office of the Inspector General should be addressed to the Assistant General Counsel for Litigation, Employment, and Oversight, U.S. Department of Commerce, Room 5875, 14th and Constitution Avenue NW., Washington, DC 20230. An appeal should include the words "Privacy Act Appeal" at the top of the letter and on the face of the envelope. An appeal not addressed and marked as provided herein will be so marked by Department personnel when it is so identified, and will be forwarded immediately to the Assistant General Counsel for Litigation, Employment, and Oversight. An appeal which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring the time periods in this section until actual receipt by the Assistant General Counsel for Litigation, Employment, and Oversight. In each instance when an appeal so forwarded is received, the Assistant General Counsel for Litigation, Employment, and Oversight shall notify the individual that his or her appeal was improperly addressed and the date on which the appeal was received at the proper address.

(2) An appeal of an initial adverse determination on correction or amendment by the Office of Inspector General should be addressed to the Counsel to the Inspector General, U.S. Department of Commerce, Room 7898C, 14th and Constitution Avenue NW., Washington, DC 20230. An appeal should include the words "Privacy Act Appeal" at the top of the letter and on the face of the envelope. An appeal not addressed and marked as provided herein will be so marked by Department personnel when it is so identified, and will be forwarded immediately to the Counsel to the Inspector General. An appeal which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring the time periods in this section until actual receipt by the Counsel to

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the Inspector General. In each instance when an appeal so forwarded is received, the Counsel to the Inspector General shall notify the individual that his or her appeal was improperly addressed and the date on which the appeal was received at the proper address.

(c) The individual's appeal shall be signed by the individual, and shall include a statement of the reasons for why the initial denial is believed to be in error, and the Department's control number assigned to the request. The Privacy Act Officer who issued the initial denial shall furnish to the Assistant General Counsel for Litigation, Employment, and Oversight, or in the case of an initial denial by the Office of the Inspector General, to the Counsel to the Inspector General, the record(s) the individual requests to be corrected or amended, and all correspondence between the Privacy Act Officer and the requester. Although the foregoing normally will comprise the entire record on appeal, the Assistant General Counsel for Litigation, Employment, and Oversight, or in the case of an initial denial by the Office of the Inspector General, the Counsel to the Inspector General, may seek any additional information necessary to ensure that the final determination is fair and equitable and, in such instances, disclose the additional information to the individual to the greatest extent possible, and provide an opportunity for comment thereon.

(d) No personal appearance or hearing on appeal will be allowed.

(e) The Assistant General Counsel for Litigation, Employment, and Oversight, or in the case of an initial denial by the Office of the Inspector General, the Counsel to the Inspector General, shall act upon the appeal and issue a final determination in writing not later than thirty working days (*i.e.*, excluding Saturdays, Sundays and legal public holidays) from the date on which the appeal is received, except that the Assistant General Counsel for Litigation, Employment, and Oversight, or in the case of an initial denial by the Office of the Inspector General, the Counsel to the Inspector General, may extend the thirty days upon deciding that a fair and equitable review cannot be made within that period, but

only if the individual is advised in writing of the reason for the extension and the estimated date by which a final determination will be issued. The estimated date should not be later than the sixtieth day after receipt of the appeal unless unusual circumstances, as described in § 4.25(a), are met.

(f) If the appeal is determined in favor of the individual, the final determination shall include the specific corrections or amendments to be made and a copy thereof shall be transmitted promptly to the individual and to the Privacy Act Officer who issued the initial denial. Upon receipt of such final determination, the Privacy Act Officer shall promptly take the actions set forth in § 4.28(a)(2)(i) and (b).

(g) If the appeal is denied, the final determination shall be transmitted promptly to the individual and state the reasons for the denial. The notice of final determination shall inform the individual that:

(1) The individual has a right under the Act to file with the Assistant General Counsel for Litigation, Employment, and Oversight, or in the case of an initial denial by the Office of the Inspector General, the Counsel to the Inspector General, a concise statement of reasons for disagreeing with the final determination. The statement ordinarily should not exceed one page and the Department reserves the right to reject an excessively lengthy statement. It should provide the Department control number assigned to the request, indicate the date of the final determination and be signed by the individual. The Assistant General Counsel for Litigation, Employment, and Oversight, or in the case of an initial denial by the Office of the Inspector General, the Counsel to the Inspector General, shall acknowledge receipt of such statement and inform the individual of the date on which it was received;

(2) Any such disagreement statement submitted by the individual would be noted in the disputed record, and filed with it;

(3) The purposes and uses to which the statement would be put are those applicable to the record in which it is noted, and that a copy of the statement would be provided to persons and

agencies to which the record is disclosed subsequent to the date of receipt of such statement;

(4) The Department would append to any such disagreement statement a copy of the final determination or summary thereof, which also would be provided to persons and agencies to which the disagreement statement is disclosed; and

(5) The individual has a right to judicial review of the final determination under 5 U.S.C. 552a(g)(1)(A), as limited by 5 U.S.C. 552a(g)(5).

(h) In making the final determination, the Assistant General Counsel for Litigation, Employment, and Oversight, or in the case of an initial denial by the Office of the Inspector General, the Counsel to the Inspector General, shall employ the criteria set forth in § 4.28(c) and shall deny an appeal only on grounds set forth in § 4.28(e).

(i) If an appeal is partially granted and partially denied, the Assistant General Counsel for Litigation, Employment, and Oversight, or in the case of an initial denial by the Office of the Inspector General, the Counsel to the Inspector General, shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

(j) Although a copy of the final determination or a summary thereof will be treated as part of the individual's record for purposes of disclosure in instances where the individual has filed a disagreement statement, it will not be subject to correction or amendment by the individual.

(k) The provisions of paragraphs (g)(1) through (g)(3) of this section satisfy the requirements of 5 U.S.C. 552a(e)(3).

[66 FR 65632, Dec. 20, 2001, as amended at 79 FR 62564, Oct. 20, 2014]

§ 4.30 Disclosure of record to person other than the individual to whom it pertains.

(a) The Department may disclose a record pertaining to an individual to a person other than the individual to whom it pertains only in the following instances:

(1) Upon written request by the individual, including authorization under § 4.25(f);

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(2) With the prior written consent of the individual;

(3) To a parent or legal guardian under 5 U.S.C. 552a(h);

(4) When required by the Act and not covered explicitly by the provisions of 5 U.S.C. 552a(b); and

(5) When permitted under 5 U.S.C. 552a(b)(1) through (12), as follows:³

(i) To those officers and employees of the agency that maintains the record who have a need for the record in the performance of their duties;

(ii) Required under 5 U.S.C. 552;

(iii) For a routine use as defined in 5 U.S.C. 552a(a)(7);

(iv) 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 of the U.S. Code;

(v) To a requester who has provided the agency 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;

(vi) To the National Archives and Records Administration as a record that has sufficient historical or other value to warrant its continued preservation by the United States 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;

(vii) 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 agency which maintains the record, specifying the particular portion desired and the law enforcement activity for which the record is sought;

(viii) 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;

³5 U.S.C. 552a(b)(4) has no application within the Department.

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(ix) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

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

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

(xii) To a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

(b) The situations referred to in paragraph (a)(4) of this section include the following:

(1) 5 U.S.C. 552a(c)(4) requires dissemination of a corrected or amended record or notation of a disagreement statement by the Department in certain circumstances;

(2) 5 U.S.C. 552a(d) requires disclosure of records to the individual to whom they pertain, upon request; and

(3) 5 U.S.C. 552a(g) authorizes civil action by an individual and requires disclosure by the Department to the court.

(c) The Privacy Act Officer shall make an accounting of each disclosure by him of any record contained in a system of records in accordance with 5 U.S.C. 552a(c)(1) and (2). Except for a disclosure made under 5 U.S.C. 552a(b)(7), the Privacy Act Officer shall make such accounting available to any individual, insofar as it pertains to that individual, upon any request submitted in accordance with § 4.24. The Privacy Act Officer shall make reasonable efforts to notify any individual when any record in a system of records is disclosed to any person under compulsory legal process, promptly upon being informed that such process has become a matter of public record.

[66 FR 65632, Dec. 20, 2001, as amended at 67 FR 60282, Sept. 25, 2002]

§ 4.31 Fees.

(a) The only fee to be charged to an individual under this part is for duplication of records at the request of the individual. Components shall charge a fee for duplication of records under the Act in the same way in which they charge a duplication fee under § 4.11.

except as provided in this section. Accordingly, no fee shall be charged or collected for: search, retrieval, or review of records; copying at the initiative of the Department without a request from the individual; transportation of records; or first-class postage.

(b) The Department shall provide an individual one copy of each record corrected or amended pursuant to the individual's request without charge as evidence of the correction or amendment.

(c) As required by the United States Office of Personnel Management in its published regulations implementing the Act, the Department shall charge no fee for a single copy of a personnel record covered by that agency's Government-wide published notice of systems of records.

§ 4.32 Penalties.

(a) The Act provides, in pertinent part:

Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000. (5 U.S.C. 552a(i)(3)).

(b) A person who falsely or fraudulently attempts to obtain records under the Act also may be subject to prosecution under such other criminal statutes as 18 U.S.C. 494, 495 and 1001.

§ 4.33 General exemptions.

(a) Individuals may not have access to records maintained by the Department but which were provided by another agency which has determined by regulation that such information is subject to general exemption under 5 U.S.C. 552a(j). If such exempt records are within a request for access, the Department will advise the individual of their existence and of the name and address of the source agency. For any further information concerning the record and the exemption, the individual must contact that source agency.

(b) The general exemptions determined to be necessary and proper with respect to systems of records maintained by the Department, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the jus-

tification for the exemption, are as follows:

(1) *Individuals identified in Export Transactions—COMMERCE/BIS-1*. Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a(b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i). These exemptions are necessary to ensure the proper functioning of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to maintain the integrity of the law enforcement process, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, to prevent interference with law enforcement proceedings, to avoid disclosure of investigative techniques, and to avoid endangering law enforcement personnel. Section 12(c) of the Export Administration Act of 1979, as amended, also protects this information from disclosure.

(2) *Fisheries Law Enforcement Case Files—COMMERCE/NOAA-5*. Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a (b), (c) (1) and (2), (e) (4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). These exemptions are necessary to ensure the proper functioning of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to prevent interference with law enforcement proceedings, to avoid the disclosure of investigative techniques, to avoid the endangering of law enforcement personnel, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, and to maintain the integrity of the law enforcement process.

(3) *Investigative and Inspection Records—COMMERCE/DEPT-12*. Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). These exemptions are necessary to ensure the proper operation

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of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to prevent interference with law enforcement proceedings, to avoid the disclosure of investigative techniques, to avoid the endangering of law enforcement personnel, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, and to maintain the integrity of the law enforcement process.

(4) *Access Control and Identity Management System*—COMMERCE/DEPT-25. Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a(b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i). These exemptions are necessary to ensure the proper functioning of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to maintain the integrity of the law enforcement process, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, to prevent interference with law enforcement proceedings, to avoid disclosure of investigative techniques, and to avoid endangering law enforcement personnel.

(5) *Investigation and Threat Management Records*—COMMERCE/DEPT-27. Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a(b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i). These exemptions are necessary to ensure the proper functioning of the law enforcement activity of the agency, to prevent disclosure of classified information as required by Executive Order 13526, to assure the protection of the President, to prevent subjects of investigation from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of information, and to avoid endangering

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these sources and law enforcement personnel.

[66 FR 65632, Dec. 20, 2001, as amended at 79 FR 62565, Oct. 20, 2014; 80 FR 68443, Nov. 5, 2015; 86 FR 49921, Sept. 7, 2021]

§ 4.34 Specific exemptions.

(a)(1) Certain systems of records under the Act that are maintained by the Department may occasionally contain material subject to 5 U.S.C. 552a(k)(1), relating to national defense and foreign policy materials. The systems of records published in the FEDERAL REGISTER by the Department that are within this exemption are: COMMERCE/BIS-1, COMMERCE/ITA-2, COMMERCE/ITA-3, COMMERCE/NOAA-11, COMMERCE/PAT-TM-4, COMMERCE/DEPT-12, COMMERCE/DEPT-13, COMMERCE/DEPT-14, COMMERCE/DEPT-25, and COMMERCE/DEPT-27.

(2) The Department hereby asserts a claim to exemption of such materials wherever they might appear in such systems of records, or any systems of records, at present or in the future. The materials would be exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f), because the materials are required by Executive order to be kept secret in the interest of the national defense and foreign policy.

(b) The specific exemptions determined to be necessary and proper with respect to systems of records maintained by the Department, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, are as follows:

(1) Exempt under 5 U.S.C. 552a(k)(1). The systems of records exempt hereunder appear in paragraph (a) of this section. The claims for exemption of COMMERCE/DEPT-12, COMMERCE/BIS-1, COMMERCE/NOAA-5, COMMERCE/DEPT-25, and COMMERCE/DEPT-27 under this paragraph are subject to the condition that the general exemption claimed in § 4.33(b) is held to be invalid.

(2)(i) Exempt under 5 U.S.C. 552a(k)(2). The systems of records exempt (some only conditionally), the

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sections of the Act from which exempted, and the reasons therefor are as follows:

(A) Individuals identified in Export Administration compliance proceedings or investigations—COMMERCE/BIS-1, but only on condition that the general exemption claimed in § 4.33(b)(1) is held to be invalid;

(B) Individuals involved in export transactions—COMMERCE/ITA-2;

(C) Fisheries Law Enforcement Case Files—COMMERCE/NOAA-5, but only on condition that the general exemption claimed in § 4.33(b)(2) is held to be invalid;

(D) Investigative and Inspection Records—COMMERCE/DEPT-12, but only on condition that the general exemption claimed in § 4.33(b)(3) is held to be invalid;

(E) Investigative Records—Persons Within the Investigative Jurisdiction of the Department—COMMERCE/DEPT-13;

(F) Access Control and Identity Management System—COMMERCE/DEPT-25, but only on condition that the general exemption claimed in § 4.33(b)(4) is held to be invalid;

(G) Investigation and Threat Management Records—COMMERCE/DEPT-27, but only on condition that the general exemption claimed in § 4.33(b)(4) is held to be invalid;

(ii) The foregoing are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The reasons for asserting the exemption are to prevent subjects of investigation from frustrating the investigatory process; to ensure the proper functioning and integrity of law enforcement activities; to prevent disclosure of investigative techniques; to maintain the ability to obtain necessary information; to fulfill commitments made to sources to protect their identities and the confidentiality of information; and to avoid endangering these sources and law enforcement personnel. Special note is taken that the proviso clause in this exemption imports due process and procedural protections for the individual. The existence and general character of the information exempted shall be made known to the individual to whom it pertains.

(3)(i) Exempt under 5 U.S.C. 552a(k)(4). The systems of records exempt, the sections of the Act from which exempted, and the reasons therefor are as follows:

(A) Special Censuses, Surveys, and Other Studies—COMMERCE/CENSUS-3;

(B) Economic Survey Collection—COMMERCE/CENSUS-4;

(C) Decennial Census Program—COMMERCE/CENSUS-5;

(D) Population Census Records for 1910 & All Subsequent Decennial Census—COMMERCE/CENSUS-6;

(E) Other Agency Surveys & Reimbursable—COMMERCE/CENSUS-7;

(F) Statistical Administrative Records System—COMMERCE/CENSUS-8;

(G) Longitudinal Employer-Household Dynamics System—COMMERCE/CENSUS-9; and

(H) Foreign Trade Statistics—COMMERCE/CENSUS-12.

(ii) The foregoing are exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G) (H), and (I), and (f). The reasons for asserting the exemption are to comply with the prescription of Title 13 of the United States Code, especially sections 8 and 9 relating to prohibitions against disclosure, and to avoid needless consideration of these records whose sole statistical use comports fully with a basic purpose of the Act, namely, that no adverse determinations are made from these records as to any identifiable individual.

(4)(i) Exempt under 5 U.S.C. 552a(k)(5). The systems of records exempt (some only conditionally), the sections of the Act from which exempted, and the reasons therefor are as follows:

(A) Applications to U.S. Merchant Marine Academy (USMMA)—COMMERCE/MA-1;

(B) USMMA Midshipman Medical Files—COMMERCE/MA-17;

(C) USMMA Midshipman Personnel Files—COMMERCE/MA-18;

(D) USMMA Non-Appropriated Fund Employees—COMMERCE/MA-19;

(E) Applicants for the NOAA Corps—COMMERCE/NOAA-I;

(F) Commissioned Officer Official Personnel Folders—COMMERCE/NOAA-3;

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(G) Conflict of Interest Records, Appointed Officials—COMMERCE/DEPT-3;

(H) Investigative and Inspection Records—COMMERCE/DEPT-12, but only on condition that the general exemption claimed in §4.33(b)(3) is held to be invalid;

(I) Investigative Records—Persons within the Investigative Jurisdiction of the Department COMMERCE/DEPT-13;

(J) Litigation, Claims, and Administrative Proceeding Records—COMMERCE/DEPT-14;

(K) Access Control and Identity Management System—COMMERCE/DEPT-25, but only on condition that the general exemption claimed in §4.33(b)(4) is held to be invalid; and

(L) Investigation and Threat Management Records—COMMERCE/DEPT-27, but only on condition that the general exemption claimed in §4.33(b)(4) is held to be invalid.

(ii) The foregoing are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). The reasons for asserting the exemption are to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources and, ultimately, to facilitate proper selection or continuance of the best applicants or persons for a given position or contract. Special note is made of the limitation on the extent to which this exemption may be asserted. The existence and general character of the information exempted will be made known to the individual to whom it pertains.

(c) At the present time, the Department claims no exemption under 5 U.S.C. 552a(k) (3), (6) and (7).

[66 FR 65632, Dec. 20, 2001, as amended at 79 FR 62565, Oct. 20, 2014; 80 FR 68443, Nov. 5, 2015; 86 FR 49921, Sept. 7, 2021]

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APPENDIX A TO PART 4—FREEDOM OF INFORMATION PUBLIC INSPECTION FACILITIES, AND ADDRESSES FOR REQUESTS FOR RECORDS UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT, AND REQUESTS FOR CORRECTION OR AMENDMENT UNDER THE PRIVACY ACT

Each address listed below is the respective component's mailing address for receipt and processing of requests for records under the Freedom of Information Act and Privacy Act, for requests for correction or amendment under the Privacy Act and, unless otherwise noted, its public inspection facility for records available to the public under the Freedom of Information Act. Requests should be addressed to the component the requester knows or has reason to believe has possession of, control over, or primary concern with the records sought. Otherwise, requests should be addressed to the Departmental FOIA Office identified in paragraph (1) of this appendix. The telephone and facsimile numbers for each component are included after its address, as well as email addresses for components that maintain an email address for the purposes of receiving of FOIA and Privacy Act requests. Records of components that are required to be made publicly available are available electronically either through the Department's "Electronic FOIA Library" on the Department's Web site, <http://www.doc.gov>, as described in §4.2(a), or the component's separate online Electronic FOIA Library as indicated below. Components that maintain a public inspection facility are designated as such below. These public inspection facilities records are open to the public Monday through Friday (*i.e.*, excluding Saturdays, Sundays, and legal public holidays) between 9:00 a.m. and 4:00 p.m. local time of the facility at issue. The Departmental Freedom of Information Act Officer is authorized to revise this appendix to reflect changes in the information contained in it. Any such revisions shall be posted on the Department's "FOIA Home Page" link found at the Department's Web site, <http://www.doc.gov>.

(1) U.S. Department of Commerce, Office of Privacy and Open Government, Departmental FOIA Office, 14th and Constitution Avenue NW, Room H61025, Washington, DC 20230; Phone: (202) 482-3258; Fax: (202) 482-0827; Email: eFOIA@doc.gov. The Department maintains a list of contact methods on its website at https://osec.doc.gov/opog/FOIA/FOIA_Requests.html#File. This component maintains an online Electronic FOIA Library through the Department's website, <http://www.doc.gov>. This online Electronic

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FOIA Library serves the Office of the Secretary, all other components of the Department not identified below, and those components identified below that do not have separate online Electronic FOIA Libraries.

(2) Bureau of the Census, Policy Coordination Office, U.S. Department of Commerce, Room 8H027, 4600 Silver Hill Road, Suitland, Maryland 20233; Phone: (301) 763-6440; Fax: (301) 763-6239 (ATTN.: FOIA Office); Email: census.foia@census.gov. This component maintains a separate online Electronic FOIA Library through its website, <http://www.census.gov>.

(3) Bureau of Economic Analysis, Office of the Under Secretary for Economic Affairs, U.S. Department of Commerce, Bureau of Economic Analysis, Communications Division, Mail Stop BE-64, Room 8K114F, Washington, DC 20230; Phone: 301-278-9798; Email: FOIA@bea.gov.

(4) Bureau of Industry and Security, Office of Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW, Room H6622, Washington, DC 20230; Phone: (202) 482-0953; Fax: (202) 482-0326; Email: efoiarequest@bis.doc.gov. This component maintains a separate online Electronic FOIA Library through its website, <http://www.bis.doc.gov>.

(5) Economic Development Administration, Office of the Chief Counsel, U.S. Department of Commerce, 14th and Constitution Avenue NW, Room 72023, Washington, DC 20230; Phone: (202) 482-3085; Fax: (202) 482-5671. This component maintains a separate online Electronic FOIA Library through its website, <http://www.eda.gov>. The following Regional Economic Development Administration (EDA) offices do not maintain separate online Electronic FOIA Libraries.

(i) Atlanta Regional Office, EDA, U.S. Department of Commerce, 401 West Peachtree Street NW, Suite 1820, Atlanta, Georgia 30308; Phone: (404) 730-3006.

(ii) Austin Regional Office, EDA, U.S. Department of Commerce, 504 Lavaca Street, Suite 1100, Austin, Texas 78701; Phone: (512) 381-8165.

(iii) Chicago Regional Office, EDA, U.S. Department of Commerce, 111 North Canal Street, Suite 855, Chicago, Illinois 60606; Phone: (312) 353-8143.

(iv) Denver Regional Office, EDA, U.S. Department of Commerce, 410 17th Street, Suite 250, Denver, Colorado 80202; Phone: (303) 844-4404.

(v) Philadelphia Regional Office, EDA, U.S. Department of Commerce, Robert N.C. Nix Federal Building, 900 Market Street, Room 602, Philadelphia, Pennsylvania 19107, Phone: (215) 597-4603.

(vi) Seattle Regional Office, EDA, U.S. Department of Commerce, Jackson Federal Building, Room 1890, 915 Second Avenue, Seattle, Washington 98174; Phone: (206) 220-7663.

(6) International Trade Administration, Office of Strategic Resources, U.S. Department of Commerce, 14th and Constitution Avenue NW, Room 40003, Washington, DC 20230; Phone: (202) 482-7937; Fax: (202) 482-1584; Email: FOIA@trade.gov. This component does not maintain a separate online Electronic FOIA Library.

(7) Minority Business Development Agency, Office of Administration and Employee Support Services, U.S. Department of Commerce, 14th and Constitution Avenue NW, Room 5092, Washington, DC 20230; Phone: (202) 482-2419; Fax: (202) 482-2500; Email: FOIA@mbda.gov. This component maintains a separate online Electronic FOIA Library through its website, <http://www.mbda.gov>.

(8) National Institute of Standards and Technology, Management and Organization Office, U.S. Department of Commerce, 100 Bureau Drive, Room 1710, Gaithersburg, Maryland 20899-1710; Phone: (301) 975-4054; Fax: (301) 975-5301; Email: FOIA@nist.gov. This component maintains a separate public inspection facility at the Administration Building, Gaithersburg, Maryland. Please call (301) 975-4054 for inspection facility directions and hours. This component does not maintain a separate online Electronic FOIA Library.

(9) National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1315 East-West Highway (SSMC3), Room 9719, Silver Spring, Maryland 20910; Phone: (301) 628-5658; Fax: (301) 713-1169; Email: FOIA@noaa.gov. This component maintains a separate online Electronic FOIA Library through its website, <http://www.noaa.gov>.

(10) National Technical Information Service, Office of the Chief Information Officer, U.S. Department of Commerce, 5301 Shawnee Road, Room 227, Alexandria, Virginia 22312; Phone: (703) 605-6710; Fax: (703) 605-6764. This component maintains a separate online Electronic FOIA Library through its website, <http://www.ntis.gov>.

(11) National Telecommunications and Information Administration, Office of the Chief Counsel, U.S. Department of Commerce, 14th and Constitution Avenue NW, Room 4713, Washington, DC 20230; Phone: (202) 482-1816; Fax: (202) 501-8013; Email: eFOIA@NTIA.doc.gov. This component does not maintain a separate online Electronic FOIA Library.

(12) Office of Inspector General, FOIA and Records Management Specialist, U.S. Department of Commerce, 14th and Constitution Avenue NW, Room 7898C, Washington, DC 20230; Phone: (202) 794-8066; Email:

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FOIA@oig.doc.gov. This component maintains a separate online Electronic FOIA Library through its website, <http://www.oig.doc.gov>.

[79 FR 62566, Oct. 20, 2014, as amended at 83 FR 39596, Aug. 10, 2018; 88 FR 36471, June 5, 2023]

APPENDIX B TO PART 4—OFFICIALS AUTHORIZED TO DENY REQUESTS FOR RECORDS UNDER THE FREEDOM OF INFORMATION ACT, AND REQUESTS FOR RECORDS AND REQUESTS FOR CORRECTION OR AMENDMENT UNDER THE PRIVACY ACT

The officials of the Department listed below and their superiors have authority, with respect to the records for which each is responsible, to deny requests for records under the FOIA,¹ and requests for records and requests for correction or amendment under the PA. In addition, the Departmental Freedom of Information Act Officer and the Freedom of Information Act Officer for the Office of the Secretary have the foregoing FOIA and PA denial authority for all records of the Department. The Departmental Freedom of Information Act Officer is authorized to assign that authority, on a case-by-case basis only, to any of the officials listed below, if the records responsive to a request include records for which more than one official listed below is responsible. The Departmental Freedom of Information Act Officer is authorized to revise this appendix to reflect changes in designation of denial officials. Any such revisions shall be posted on the Department's "FOIA Home Page" link found at the Department's Web site, <http://www.doc.gov>.

OFFICE OF THE SECRETARY

Office of the Secretary: Executive Secretary; Freedom of Information Act Officer
Office of Business Liaison: Director
Office of Public Affairs: Director; Deputy Director; Press Secretary; Deputy Press Secretary
Assistant Secretary for Legislative and Intergovernmental Affairs; Deputy Assistant Secretary for Legislative and Intergovernmental Affairs
Office of Inspector General: Freedom of Information Act Officer
Office of the General Counsel: Deputy General Counsel; Assistant General Counsel for Litigation, Employment, and Oversight
Office of Executive Support: Director
Office of Chief Information Officer: Director

¹The foregoing officials have sole authority under §4.7(c) to deny requests for records in any respect, including, for example, denying requests for reduction or waiver of fees.

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ASSISTANT SECRETARY FOR ADMINISTRATION

Office of Civil Rights: Director
Office of Budget: Director
Office of Privacy and Open Government: Director; Departmental Freedom of Information Act Officer
Office of Program Evaluation and Risk Management: Director
Office of Financial Management: Director
Office of Human Resources Management: Director; Deputy Director
Office of Administrative Services: Director
Office of Security: Director
Office of Acquisition Management: Director
Office of Acquisition Services: Director
Office of Small and Disadvantaged Business Utilization: Director

BUREAU OF INDUSTRY AND SECURITY

Under Secretary
Deputy Under Secretary
Director, Office of Administration
Director, Office of Planning, Evaluation and Management
Assistant Secretary for Export Administration
Deputy Assistant Secretary for Export Administration
Director, Office of Strategic Industries and Economic Security
Director, Office of Nonproliferation Controls and Treaty Compliance
Director, Office of Exporter Services
Assistant Secretary for Export Enforcement
Deputy Assistant Secretary for Export Enforcement
Director, Office of Export Enforcement
Director, Office of Enforcement Analysis
Director, Office of Antiboycott Compliance

ECONOMICS AND STATISTICS ADMINISTRATION

Office of Administration: Director
Bureau of Economic Analysis: Director
Bureau of the Census: Freedom of Information Act Officer

ECONOMIC DEVELOPMENT ADMINISTRATION

Freedom of Information Officer

INTERNATIONAL TRADE ADMINISTRATION

Executive Administration

Under Secretary for International Trade
Deputy Under Secretary for International Trade
Trade
Chief Counsel for International Trade
Chief Counsel for Enforcement and Compliance
Trade Promotion Coordinating Committee Secretariat
Director, Office of Public Affairs

Office of the Secretary, Commerce

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Director, Office of Legislative and Intergovernmental Affairs
Chief Information Officer
Deputy Chief Information Officer
Chief Administrative Officer, Office of the Chief Information Officer
Chief Financial and Administration Officer
Deputy Chief Financial Administrative Officer
Director, Budget Division
Director, Financial Management and Administrative Oversight Division
Director, Business Operations and Policy Compliance Division
Director, Performance Management and Employee Programs Division
Freedom of Information Act Officer

Enforcement and Compliance

Assistant Secretary for Enforcement and Compliance
Deputy Assistant Secretary for Enforcement and Compliance
Director, Office of Foreign Trade Zones Staff
Director, Office of Operations Support
Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations
Executive Director, Antidumping and Countervailing Duty Operations
Director, Office of Antidumping and Countervailing Duty Enforcement I
Director, Office of Antidumping and Countervailing Duty Enforcement II
Director, Office of Antidumping and Countervailing Duty Enforcement III
Director, Office of Antidumping and Countervailing Duty Enforcement IV
Director, Office of Antidumping and Countervailing Duty Enforcement V
Director, Office of Antidumping and Countervailing Duty Enforcement VI
Director, Office of Antidumping and Countervailing Duty Enforcement VII
Deputy Assistant Secretary for Policy & Negotiations
Director, Office of Trade Agreements Negotiations and Compliance
Director, Office of Accounting
Director, Office of Policy

Global Markets

Assistant Secretary of Global Markets and Director General for the US&FCS
Deputy Director General
Principal Deputy Assistant Secretary
Executive Director, Advocacy Center
Director, Business Information and Technology Office
Director, Global Knowledge Center
Director, Office of Budget
Director, Office of Foreign Service Human Capital
Director, Office of Strategic Planning
Director, Office of Administrative Services
Executive Director, SelectUSA
Deputy Assistant Secretary for U.S. Field

National U.S. Field Director
Deputy Assistant Secretary for Asia
Executive Director for Asia
Director, Office of the ASEAN and Pacific Basin
Director, Office of East Asia and APEC
Director, Office of South Asia
Deputy Assistant Secretary for China, Hong Kong, and Mongolia
Executive Director for China, Hong Kong, and Mongolia
Director, Office of China, Hong Kong, and Mongolia
Deputy Assistant Secretary for Western Hemispheres
Executive Director for Western Hemispheres
Director, Office of North and Central America
Director, Office of South America
Deputy Assistant Secretary for Europe, Middle East, and Africa
Executive Deputy Assistant Secretary for Europe, Middle East, and Africa
Executive Director for Europe and Eurasia
Director, Office of Europe Country Affairs
Director, Office of the European Union
Director, Office of Russia, Ukraine, and Eurasia
Executive Director for Africa and Middle East
Director, Office of the Middle East and North Africa
Director, Office of Sub-Saharan Africa

Industry and Analysis

Assistant Secretary for Industry and Analysis
Deputy Assistant Secretary for Industry and Analysis
Trade Agreements Secretariat
Executive Director, Office of Trade Programs and Strategic Partnerships
Director, Trade Promotion Programs
Director, Strategic Partnerships
Director, Office of Advisory Committees and Industry Outreach
Director, Office of Planning, Coordination and Management
Deputy Assistant Secretary for Services
Director, Office of Financial and Insurance Industries
Director, Office of Digital Service Industries
Director, Office of Supply Chain, Professional and Business Services
Executive Director for National Travel and Tourism Office
Director, Office of Travel and Tourism Industries
Deputy Assistant Secretary for Trade Policy and Analysis
Director, Office of Standards and Investment Policy
Director, Office of Trade and Economic Analysis
Director, Office of Trade Negotiations and Analysis

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Director, Office of Intellectual Property Rights
 Deputy Assistant Secretary for Manufacturing
 Director, Office of Energy and Environmental Industries
 Director, Office of Transportation and Machinery
 Director, Office of Health and Information Technologies
 Deputy Assistant Secretary for Textiles, Consumer Goods, and Materials
 Director, Office of Textiles and Apparel
 Director, Office of Materials
 Director, Office of Consumer Goods

MINORITY BUSINESS DEVELOPMENT AGENCY

Chief Counsel
 Freedom of Information Officer

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

Chief, Management and Organization Office
 NIST Counsel

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Under Secretary
 Deputy Under Secretary for Operations
 Chief, Resource and Operations Management
 Director, Office of Communications and External Affairs
 Director, Office of Marine and Aviation Operations
 General Counsel
 Deputy General Counsel
 Assistant Administrator for National Ocean Services
 Deputy Assistant Administrator for National Ocean Services
 Assistant Administrator for National Marine Fisheries Service
 Deputy Assistant Administrator for Operations for National Marine Fisheries Service
 Deputy Assistant Administrator for Regulatory Programs for National Marine Fisheries Service

Assistant Administrator for National Weather Services
 Deputy Assistant Administrator for National Weather Services
 Assistant Administrator for National Environmental Satellite, Data, and Information Service
 Deputy Assistant Administrator for National Environmental Satellite, Data, and Information Service
 Assistant Administrator for Oceanic and Atmospheric Research
 Deputy Assistant Administrator for Programs & Administration (Oceanic and Atmospheric Research)
 Assistant Administrator for Program, Planning and Integration
 Chief Administrative Officer
 Chief Financial Officer
 Chief Information Officer
 Director, Acquisition and Grants Office
 Deputy Director, Acquisition and Grants Office
 Head of Contracting Offices, Acquisition and Grants Office
 Director, Workforce Management Office
 Senior Advisor for International Affairs
 Director, Office of Legislation & Intergovernmental Affairs
 Freedom of Information Officer

NATIONAL TECHNICAL INFORMATION SERVICE

Director
 Deputy Director
 Chief Financial Officer/Associate Director for Finance and Administration

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

Deputy Assistant Secretary
 Chief Counsel
 Deputy Chief Counsel

[79 FR 62567, Oct. 20, 2014, as amended at 86 FR 21935, Apr. 26, 2021]

APPENDIX C TO PART 4—SYSTEMS OF RECORDS NOTICED BY OTHER FEDERAL AGENCIES AND APPLICABLE TO RECORDS OF THE DEPARTMENT AND APPLICABILITY OF THIS PART THERETO

Category of records	Other Federal Agency
Federal Personnel Records	Office of Personnel Management. ¹
Federal Employee Compensation Act Program	Department of Labor. ²
Equal Employment Opportunity Appeal Complaints	Equal Employment Opportunity Commission. ³
Formal Complaints/Appeals of Adverse Personnel Actions	Merit Systems Protection Board. ⁴

¹The provisions of this part do not apply to these records covered by notices of systems of records published by the Office of Personnel Management for all agencies. The regulations of OPM alone apply.

²The provisions of this part apply only initially to these records covered by notices of systems of records published by the U.S. Department of Labor for all agencies. The regulations of that Department attach at the point of any denial for access or for correction or amendment.

³The provisions of this part do not apply to these records covered by notices of systems of records published by the Equal Employment Opportunity Commission for all agencies. The regulations of the Commission alone apply.

⁴The provisions of this part do not apply to these records covered by notices of systems of records published by the Merit Systems Protection Board for all agencies. The regulations of the Board alone apply.

PART 4a—CLASSIFICATION, DECLASSIFICATION, AND PUBLIC AVAILABILITY OF NATIONAL SECURITY INFORMATION

Sec.

- 4a.1 General.
- 4a.2 Director for Security.
- 4a.3 Classification levels.
- 4a.4 Classification authority.
- 4a.5 Duration of classification.
- 4a.6 General.
- 4a.7 Mandatory review for declassification.
- 4a.8 Access to classified information by individuals outside the Government.

AUTHORITY: E.O. 13526; 75 FR 707, January 5, 2010 (as corrected at 75 FR 1013, January 8, 2010).

SOURCE: 66 FR 65650, Dec. 20, 2001, unless otherwise noted.

§ 4a.1 General.

Executive Order 13526 provides the only basis for classifying information within the Department of Commerce (Department), except as provided in the Atomic Energy Act of 1954, as amended. The Department's policy is to make information concerning its activities available to the public, consistent with the need to protect the national defense and foreign relations of the United States. Accordingly, security classification shall be applied only to protect the national security.

[85 FR 35375, June 10, 2020]

§ 4a.2 Director for Security.

The Director for Security is responsible for implementing and ensuring compliance with E.O. 13526 and this part.

[85 FR 35375, June 10, 2020]

§ 4a.3 Classification levels.

Information may be classified as national security information by a designated original classifier of the Department if it is determined the information concerns one or more of the categories described in section 1.4 of E.O. 13526. The levels established in section 1.2 of E.O. 13526 (Top Secret,

Secret, and Confidential) are the only terms that may be applied to national security information. Except as provided by statute, no other terms shall be used within the Department for the three classification levels.

[85 FR 35375, June 10, 2020]

§ 4a.4 Classification authority.

(a) Authority to originally classify information as Secret or Confidential may be exercised only by the Secretary of Commerce and by officials to whom such authority is specifically delegated. No official of the Department is authorized to originally classify information as Top Secret.

(b) In accordance with section 1.3(c)(1) of E.O. 13526, delegations of original classification authority shall be limited to the minimum required to administer E.O. 13526. The Secretary of Commerce shall ensure that designated subordinate officials have a demonstrable and continuing need to exercise delegated original classification authority.

(c) In accordance with section 1.3(c)(4) of E.O. 13526, each delegation of original classification authority shall be in writing and the authority shall not be redelegated except as provided in E.O. 13526.

(d) In accordance with section 1.3(c)(4) of E.O. 13526, each delegation shall identify the official by name or position.

(e) In accordance with section 1.3(c)(5) of E.O. 13526, delegations of original classification authority shall be reported or made available by name or position to the Director of the Information Security Oversight Office in the National Archives and Records Administration.

(f) In accordance with section 1.3(d) of E.O. 13526, all original classification authorities and their designates shall receive training in proper classification (including the avoidance of overclassification) and declassification as