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request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated. Components shall not aggregate multiple requests involving unrelated matters.

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

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

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exists possible questions about the government's integrity which affect public confidence.

(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 must be received by the proper component. Requests based on paragraphs (e)(1)(i) through (iv) of this section must be submitted to the component 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 in paragraph (e)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that goes beyond the public's general right to know about government activity. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an ''urgency to inform'' the public on a topic. As a matter of administrative discretion, a component may waive the formality of certification.

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

§ 70.26 Confidential commercial information.

(a) *In general.* Confidential commercial information will be disclosed under the FOIA only in accordance with this section and Executive Order 12,600, ''Predisclosure Notification Procedures for Confidential Commercial Information'' (3 CFR 1988 Comp., p.235).

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

(c) *Notice to submitters.* A component will provide a submitter with prompt written notice of a FOIA request 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 to object in writing to disclosure of any specified portion of that information under paragraph (e) of this section. The notice will either describe the confidential commercial information requested or include copies of the requested records or record portions containing the information. When notification to a voluminous number of

submitters is required, notification may be made by posting or publishing notice reasonably likely to accomplish such notification.

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

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

(2) A component has reason to believe that the information requested under the FOIA may be protected from disclosure under Exemption 4, but has not yet determined whether the information is protected from disclosure under that exemption or any other applicable exemption.

(e) *Opportunity to object to disclosure.* A component will allow a submitter a reasonable time to respond to the notice described in paragraph (c) of this section taking into account the amount of material the submitter has to review and the deadlines imposed by the FOIA or agreed to with the requester. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to disclosure of the information. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(f) *Notice of intent to disclose.* A component will consider a submitter's timely objections and specific grounds for non-disclosure in deciding whether to disclose confidential commercial information. Whenever a component decides to disclose confidential commercial information over the objection of a submitter, the component will give the submitter written notice, which will include:

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

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

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

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

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

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

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

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

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

(i) *Corresponding notice to requesters.* Whenever a component provides a submitter with notice and an opportunity to object to disclosure under paragraphs (d) and (e) of this section, the component will also notify the requester(s). Whenever a component notifies a submitter of its intent to disclose requested information under paragraph (f) of this section, the component will also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of confidential commercial information, the component will notify the requester(s).

(j) *Notice requirements.* The component will fulfill the notice requirements of this section by addressing the notice to the confidential commercial submitter or its legal successor at the address indicated on the records, or the

last known address. If the notice is returned, the component will make a reasonable effort to locate the confidential commercial submitter or its legal successor. Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting and publishing the notice in a place reasonably calculated to accomplish notification.

§ 70.27 Preservation of records.

Each component will preserve all correspondence relating to the requests it receives under this part, and all records processed pursuant to such requests, until disposition or destruction of such correspondence and records is authorized by Title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 4.2. Records are not to be destroyed while they are the subject of a pending request, appeal, or lawsuit under the Act.

§§ 70.28–70.37 [Reserved]

Subpart C—Costs for Production of Records

§ 70.38 Definitions related to costs.

The following definitions apply to this subpart:

(a) *Request*, in this subpart, includes any request, as defined by § 70.2(f) of this part.

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

(c) *Duplication* means the process of making a copy of a record necessary to respond to a request. Such copy can take the form of paper, microform, audio-visual materials or electronic records (such as a CD or other media).

(d) *Search* means the process of looking for and retrieving records or information that are responsive to a FOIA request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. FOIA components will ensure that searches are done in the most efficient and least expensive manner reasonably possible. A search does not include the review of material, as defined in paragraph (e) of this section, which is performed to determine whether material is exempt from disclosure.

(e) *Review* means the process of examining records, including audio-visual, electronic mail, etc., located in response to a request to determine whether any portion of the located record is exempt from disclosure, and accordingly may be withheld. It also includes the act of preparing materials for disclosure, *i.e.*, doing all that is necessary to excise them and otherwise prepare them for release. Review time includes time spent contacting any submitter, and considering and responding to any objections to disclosure made by a submitter under Sec. 70.26, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(f) *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. When considering fee issues, components will determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because a component has reasonable cause to doubt a requester's stated use, the component will provide the requester a reasonable opportunity to submit further clarification.

(g) *Educational institution* means an institution which: