

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting lawful national security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

(h) *Exemption 8.* Exemption 8 authorizes our agency to withhold records that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

(i) *Exemption 9.* Exemption 9 authorizes our agency to withhold geological and geophysical information and data, including maps, concerning wells.

§ 5.32 Records not subject to the requirements of the FOIA—law enforcement exclusions.

Under the FOIA, there is special protection for narrow categories of law enforcement and national security records. The provisions protecting those records are known as “exclusions” and are described in 5 U.S.C. 552(c). These exclusions expressly authorize Federal law enforcement agencies, under these exceptional circumstances, to treat the records as not subject to the requirements of the FOIA.

(a) Should an HHS OpDiv or StaffDiv maintain records which are subject to a FOIA exclusion, and consider employing an exclusion or have a question as

to the implementation of an exclusion, the OpDiv or StaffDiv will consult with the Office of Information Policy, U.S. Department of Justice.

(b) Because records falling within an exclusion are not subject to the requirements of the FOIA, should any HHS OpDiv or StaffDiv maintain such excluded records, the OpDiv or StaffDiv will limit its response to those records that are subject to the FOIA.

Subpart D—Confidential Commercial Information

§ 5.41 How does a submitter identify records containing confidential commercial information?

A person who submits records to the government may designate part or all of the information in such records that they may consider to be exempt from disclosure under Exemption 4 of the FOIA. The person may make this designation either at the time the records are submitted to the government or within a reasonable time thereafter. The designation must be in writing. Any such designation will expire 10 years after the records were submitted to the government.

§ 5.42 How does HHS process FOIA requests for confidential commercial information?

(a) *Predisclosure notification.* The procedures in this section apply to records on which the submitter has designated information as provided in § 5.41. They also apply to records that were submitted to the government where we have substantial reason to believe that information in the records could reasonably be considered exempt under Exemption 4. Certain exceptions to these procedures are stated in paragraph (b) of this section.

(1) When we receive a request for such records, and we determine that we may be required to disclose them, we will make reasonable efforts to notify the submitter about these facts. The notice will include a copy of the request, and it will inform the submitter about the procedures and time limits for submission and consideration of objections to disclosure. If we must notify a large number of submitters, we may do this by posting or publishing a