

TITLE 15--COMMERCE AND FOREIGN TRADE  
PART 4--DISCLOSURE OF GOVERNMENT INFORMATION--

Subpart A--Freedom of Information Act

Sec. 4.1 General.

- (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 the 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.
- (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).

Sec. 4.2 Public reference facilities.

- (a) The Department maintains public reference facilities (listed in Appendix A to this part) that contain the records the FOIA requires to be made regularly available for public inspection and copying; furnishes information; receives and processes requests for records under the FOIA; and otherwise assists the public concerning Department operations under the FOIA.
- (b) Each component of the Department shall determine which of its records are required to be made available for public inspection and copying, and make those records available either in its own public reference facility or in the Department's Central Reference and Records Inspection Facility. Each component shall maintain and make available for public inspection and copying a current subject-matter index of its public inspection facility records. Each index shall be updated regularly, at least quarterly, with respect to newly included records. In accordance with 5 U.S.C. 552(a)(2), the Department has determined that it is unnecessary and impracticable to publish quarterly or more frequently and distribute copies of the index and supplements thereto.
- (c) Each component shall make public inspection facility records created on or after November 1, 1996 available electronically through the Department's "FOIA Home Page" link found at the Department's World Wide Web site (<http://www.doc.gov>). Information available at the site shall include:
  - (1) Each component's index of its public inspection facility records, which indicates which records are available electronically; and

- (2) The general index referred to in paragraph (d)(3) of this section.’
- (d) The Department shall maintain and make available for public inspection and copying:
  - (1) A current index providing identifying information for the public as to any matter that is issued, adopted, or promulgated after July 4, 1997, and that is retained as a record and is required to be made available or published. Copies of the index are available upon request after payment of the direct cost of duplication;
  - (2) Copies of records that have been released and 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;
  - (3) A general index of the records described in paragraph (d)(2) of this section;
  - (4) Final opinions and orders, including concurring and dissenting opinions made in the adjudication of cases;
  - (5) Those statements of policy and interpretations that have been adopted by a component and are not published in the Federal Register; and
  - (6) Administrative staff manuals and instructions to staff that affect a member of the public.

#### Sec. 4.3 Records under the FOIA.

- (a) Records under the FOIA include all Government records, regardless of format, medium or physical characteristics, and include electronic records and information, audiotapes, videotapes, and photographs.
- (b) Under the FOIA, the Department has no obligation to create, compile, or obtain from outside the Department a record to satisfy a request. In complying with a request for electronic data, whether the Department creates or compiles records (as by undertaking significant programming work) or merely extracts them from an existing database may be unclear. The Department shall in any case undertake reasonable efforts to search for the information in electronic format.
- (c) Department officials may, upon request, create and provide new records pursuant to user fee statutes, 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 14. Components shall not

dispose of records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

Sec. 4.4 Requirements for making requests.

- (a) A request for records of the Department which are not customarily made available to the public as part of the Department's regular informational services must be in writing (and may be sent by mail, facsimile, or E-mail), and shall be processed under the FOIA, regardless whether the FOIA is mentioned in the request. Requests should be mailed to the Department component identified in Appendix A to this part that maintains those records, or may be sent by facsimile or E-mail to the numbers or addresses, respectively, listed at the Department's "FOIA Home Page" link found at the Department's World Wide Web site (<http://www.doc.gov>). 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. For the quickest handling, the request (and envelope, if the request is mailed) should be marked "Freedom of Information Act Request." -----  
----- \1\ The 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 FOIA regulations at 37 CFR part 102, subpart A. Accordingly, requests for USPTO records should be sent directly to the USPTO. -----
- (b) For requests for records about oneself, Sec. 4.24 contains additional requirements. For requests for records about another individual, either a written authorization signed by the individual permitting disclosure of his or her records to the requester or proof that the individual is deceased (for example, a copy of a death certificate or an obituary) facilitates processing the request.
- (c) The records requested must be described in enough detail to enable Department personnel to locate them with a reasonable amount of effort. If possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record, and the name and location of the office where the record is located. Also, if records about a court case are sought, the title of the case, the court in which the case was filed, and the nature of the case should be included. If known, any file designations or descriptions of the requested records should be included. In general, the more specifically the request describes the records sought, the greater the likelihood that the Department will be able to locate those records. If a component determines that a request does not reasonably describe records, 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.

Sec. 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 the component to which the Departmental Freedom of Information Officer assigns lead responsibility for responding to the request. Records responsive to a request shall include only those records within the Department's possession and control as of the date the proper component receives the request.

- (b) Consultations and referrals. If a component receives a request for a record in its possession in which another Federal agency subject to the FOIA has the primary interest, the component shall refer the record to that agency for direct response to the requester. Ordinarily, the agency that originated a record will be presumed to have the primary interest in it. A component shall consult with another Federal agency before responding to a requester if the component receives a request for a record in which another Federal agency subject to the FOIA has a significant interest, but not the primary interest; or another Federal agency not subject to the FOIA has the primary interest or a significant interest (see Sec. 4.8 for additional information about referrals of classified information).
- (c) Notice of referral. Whenever a component refers a document to another Federal agency for direct response to the requester, it ordinarily shall notify the requester in writing of the referral and inform the requester of the name of the agency to which the document was referred.
- (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 consultations or referrals for particular types of records.

#### Sec. 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. Subject to paragraph (c)(1) of this section, an initial response shall be made 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 Sec. 4.5(a), and an appeal shall be decided within 20 working days of its receipt by the Office of the General Counsel.
- (c) Unusual circumstances.
  - (1) In unusual circumstances as specified in paragraph (c)(2) of this section, an official listed in Appendix B to this part may extend the time limits in paragraph (b) of this section by notifying the requester in writing as soon as practicable of

the unusual circumstances and of 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 an opportunity either to modify the request so that it may be processed within the applicable time limit, or to arrange an alternative time frame for processing the request or a modified request.

- (2) As used in this section, unusual circumstances means, but only to the extent reasonably necessary to properly process the particular request:
    - (i) The need to search for and collect the requested records from field facilities or other establishments 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 for consultation, which shall be conducted with all practicable speed, with another component or Federal agency having 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 [[Page 33]] 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.
- (d) Multitrack processing.
- (1) A component may use two or more processing tracks by distinguishing between simple and more complex requests based on the number of pages involved, or some other measure of the amount of work and/or time needed to process the request, and whether the request qualifies for expedited processing as described in paragraph (e) of this section.
  - (2) component using multitrack 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, E-mail, or letter, whichever is most efficient in each case.
- (e) 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 (e)(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 main 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 (e)(1)(iv) of this section must also establish a particular urgency to inform the public about the Government activity involved in the request, beyond the public's right to know about Government activity generally.
- (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 Sec. 4.11(i). If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

#### Sec. 4.7 Responses to requests.

- (a) 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. The component shall inform the requester in the notice of any fee to be charged under Sec. 4.11 and disclose records to the requester promptly upon payment of any applicable fee. 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.

- (b) Adverse determinations of requests. If a component makes an adverse determination regarding a request, it shall notify the requester of that determination in writing. An adverse determination is a denial of a request in any [[Page 34]] respect, namely: a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA (except that a determination under Sec. 4.11(j) that records are to be made available under a fee statute other than the FOIA is not an adverse determination); a determination against the requester on any disputed fee matter, including a denial of a request for a reduction or waiver of fees; or a denial of a request for expedited processing. Each denial letter shall be signed by an official listed in Appendix B to this part, and shall include:
- (1) The name and title or position of the denying official;
  - (2) A brief statement of the reason(s) for the denial, including applicable FOIA exemption(s);
  - (3) An estimate of the volume of records or information withheld, in number of pages or some other reasonable form of estimation. This estimate need not be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable FOIA exemption; and
  - (4) A statement that the denial may be appealed, and a list of the requirements for filing an appeal under Sec. 4.10(b).

#### Sec. 4.8 Classified Information.

In processing a request for information classified under Executive Order 12958 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 exemptions should be invoked. Appeals involving classified information shall be processed in accordance with Sec. 4.10(c).

Sec. 4.9 Business Information.

- (a) In general. Business information obtained by the Department from a submitter will be disclosed under the FOIA only under this section.
- (b) Definitions. For the purposes of this section:
  - (1) Business 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 business information, directly or indirectly. The term includes corporations; state, local and tribal governments; and foreign governments.
- (c) Designation of business information. A submitter of business information should designate by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers 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.
- (d) Notice to submitters. A component shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information whenever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity under paragraph (f) of this section to object to disclosure of any specified portion of that information. Such written notice shall be sent via certified mail, return receipt requested, or similar means. The notice shall either describe the business information requested or include copies of the requested records containing the [[Page 35]] 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.
- (e) 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).
- (f) Opportunity to object to disclosure. A component shall allow a submitter seven working days (i.e., excluding Saturdays, Sundays, and legal public holidays) from the date of receipt of the written notice described in paragraph (d) of this section to provide the



component with a statement of any objection to disclosure. The statement 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.

- (g) 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 business information. If a component decides to disclose business 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 business information to be disclosed; and
  - (3) A statement that the component intends to disclose the information seven working days from the date the submitter receives the notice.
- (h) Exceptions to notice requirements. The notice requirements of paragraphs (d) and (g) of this section shall not apply if:
  - (1) The component determines that the information should not be disclosed;
  - (2) The information has been lawfully published or has been officially made available to the public;
  - (3) Disclosure of the information is required by 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 (c) of this section appears obviously frivolous, in which case the component shall provide the submitter written notice of any final decision to disclose the information seven working days from the date the submitter receives the notice.
- (i) Notice to submitter of FOIA lawsuit. Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the component shall promptly notify the submitter.
- (j) Corresponding notice to requester. Whenever a component provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the

component shall also notify the requester. Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the component shall notify the requester.

Sec. 4.10 Appeals from initial determinations or untimely delays.

- (a) If a request for records is initially denied in whole or in part, or has not been timely determined, or if a requester receives an adverse initial determination regarding any other matter under this subpart (as described in Sec. 4.7(b)), the requester may file a written appeal, which must be received by the Office of General Counsel within thirty calendar days of the date of the written denial or, if there has been no determination, may be submitted anytime after the due date, including the last extension under Sec. 4.6(c), of the determination. [[Page 36]]
- (b) Appeals shall be decided by the Assistant General Counsel for Administration (AGC-Admin), except that appeals from requests initially denied by the AGC-Admin shall be decided by the General Counsel. Appeals should be addressed to the AGC-Admin, or the General Counsel if the records were initially denied by the AGC-Admin. The address of both is: U.S. Department of Commerce, Office of General Counsel, Room 5875, 14th Street and Constitution Avenue NW, Washington, DC 20230. Both the letter and the appeal envelope should be clearly marked "Freedom of Information Appeal". The appeal must include a copy of the original request, the initial denial, if any, and a statement of the reasons why the records requested should be made available and why the initial denial, if any, was in error. No opportunity for personal appearance, oral argument or hearing on appeal is provided.
- (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-Admin, or the General Counsel, as appropriate, of his or her decision.
- (d) If an appeal is granted, the person who filed the appeal shall be immediately notified and copies of the releasable documents shall be made available promptly thereafter upon receipt of appropriate fees determined in accordance with Sec. 4.11.
- (e) If no determination on an appeal has been sent to the requester within the twenty working day period specified in Sec. 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 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
  - (4) The name and title or position of the official responsible for denying the appeal.

#### Sec. 4.11 Fees.

- (a) In general. Components shall charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except when fees are limited under paragraph (d) of this section or when a waiver or reduction of fees is granted under paragraph (k) of this section. 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 providing a particular service. Such expenses would include, for example, the labor costs of [[Page 37]] the employee performing the service (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits). Not included in direct costs are overhead expenses such as the costs of space, heating, or lighting of the facility in which the service is performed.
  - (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 (for

example, magnetic tape or disk), among others. A component shall honor a requester's specified preference of form or format of disclosure if the component can reproduce the record in the requested form or format with reasonable effort.

- (4) Educational institution means 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, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution, and that the records are sought to further scholarly research rather than for a commercial use.
- (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 institution 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 actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. 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 include television or radio stations broadcasting to the public at large and publishers of periodicals (but only if they can qualify as disseminators of "news") that make their products available for purchase or subscription by the general public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. 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. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.
- (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. It also includes processing any record for disclosure, for example, redacting it and marking any applicable exemptions. Review costs are recoverable even if a record ultimately is not disclosed. Review time 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 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. 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 (k) of this section.

(1) The four categories and chargeable fees are: [[Page 38]] -----  
----- Category Chargeable fees -----  
----- (i) Commercial Use Requesters.....  
Search, Review, and Duplication. (ii) Educational and Non-commercial  
Duplication (excluding the cost Scientific Institution Requesters. 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). -----  
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(2) Uniform fee schedule. -----  
-- Service Rate ----- (i)  
Manual search..... Actual salary rate of employee involved, plus 16  
percent of salary rate. (ii) Computerized search..... Actual direct cost,  
including operator time. (iii) Duplication of records: (A) Paper copy  
reproduction..... \$.16 per page (B) Other reproduction (e.g., Actual direct cost,  
including computer disk or printout, operator time. microfilm, microfiche, or  
microform). (iv) Review of records (including Actual salary rate of employee  
redaction). conducting review, plus 16 percent of salary rate. -----  
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(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.

(4) Duplication. Duplication fees shall be charged to all requesters, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be \$.16 cents per page. For copies produced by computer, such as tapes or printouts, components shall charge the direct costs, including operator time, of producing the copy. For

other forms of duplication, components shall charge the direct costs of that duplication.

- (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 fee shall be charged for requests from educational institutions, noncommercial 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 [[Page 39]] 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 together. 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.
- (e) Notice of anticipated fees over \$20.00. If a component determines or estimates that the total fee to be charged under this section will be more than \$20.00, the component shall notify the requester of the actual or estimated fee, unless the requester has stated in writing a willingness to pay a fee as high as that 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. If the component has notified a requester that the actual or estimated fee is more than \$20.00, the component shall not consider the request received for purposes of calculating the time limit in Sec. 4.6(b) to respond to a request, or process it further, until the requester agrees to pay the anticipated total fee. Any agreement to pay should be memorialized in writing. A notice under this paragraph shall offer the requester an opportunity to contact Departmental personnel to discuss modifying the request to meet the requester's needs at a lower cost.

- (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 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: a payment made before work is begun or continued on a request. Payment owed for work already completed (i.e., a payment before copies are sent to a requester) is not an advance payment.
- (2) If a component determines or estimates that a total fee to be charged under this section will be more than \$250.00, the component shall not consider the request received for purposes of calculating the time limit in Sec. 4.6(b) to respond to a request, or process it further, until it receives payment from the requester of the entire anticipated fee.
- (3) If 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, a component shall require the requester to pay the full amount [[Page 40]] 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. For purposes of calculating the time limit in Sec. 4.6(b) to respond to a request, the component shall not consider the request received until it receives full payment of all applicable fees and interest in this paragraph.

- (4) Upon the completion of processing of a request, if a specific fee is determined to be payable and appropriate notice has been given to the requester, a component shall make records available to the requester only upon receipt of full payment of the fee.
- (j) 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.
- (k) 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 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. Merely providing information to media sources is insufficient to satisfy 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 [\[Page 41\]](#) 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 reduction is justified if the public interest standard (paragraph (k)(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 (k)(2) and (3) of this section, insofar as they apply to each request.

#### Sec. 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 [[Page 42]] 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.

#### Subpart B--Privacy Act

##### Sec. 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 [[Page 42]] 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.

#### Sec. 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 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 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.

Sec. 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. -----  
\2\ The 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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- (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 [[Page 43]] this subpart, no particular information is required. The Department reserves the right to require compliance with the identification procedures appearing at Sec. 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 Sec. 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 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 Officer. In each instance when an inquiry so forwarded is received, the Privacy 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 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 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 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 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 Administration to take corrective action. No failure of a Privacy 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 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. [[Page 44]] 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.

1.

Sec. 4.25 Disclosure of requested records to individuals.

- (a) (1) The responsible Privacy 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 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 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 Administration to take corrective action. No failure of a Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.
- (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 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 Sec. 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 Officer granting access, during the hours indicated in Appendix A to this part; [[Page 46]]
  - (ii) Transfer of records to a Federal facility more convenient to the individual may be arranged, but only if the Privacy 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 may be mailed at the request of the individual, subject to payment of the fees prescribed in Sec. 4.31. The Department, at its own initiative, may elect to provide a copy by mail, in which case no fee will be charged the individual.
- (c) Access to medical records is governed by the provisions of Sec. 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 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. "Accompanied" 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 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 Officer that:
    - (i) The record is exempt under Sec. 4.33 or 4.34, or exempt by determination of another agency publishing notice of the system of records, as described in Sec. 4.23(f);
    - (ii) The record is information compiled in reasonable anticipation of a civil action or proceeding;
    - (iii) The provisions of Sec. 4.26 pertaining to medical records temporarily have been invoked; or,
    - (iv) The individual unreasonably has failed to comply with the procedural requirements of this part.
  
  - (2) Notification. The Privacy 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 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 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 [[Page 47]] records, the review procedures in Sec. 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 Sec. 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 Administration, as indicated in the Privacy Officer's initial denial notification. The individual and the Department shall follow the procedures in Sec. 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 Sec. 4.26(a).

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

1.

Sec. 4.26 Special procedures: Medical records.

(a) No response to any request for access to medical records from an individual will be issued by the Privacy Officer for a period of seven working days (i.e., excluding Saturdays, Sundays and legal public holidays) from the date of receipt.

(b) For every request from an individual for access to medical records, the Privacy Officer shall:

(1) Inform the individual of the waiting period prescribed in paragraph (a) of this section;

(2) Seek from the individual the name and address of the individual's physician and/or psychologist;

(3) Seek from the individual written consent for the Department to consult the individual's physician and/or psychologist, if the Department believes such consultation is advisable;

(4) Seek written consent from the individual for the Department to provide the medical records to the individual's physician or psychologist, if the Department believes access to the record by the individual is best effected under the guidance of the individual's physician or psychologist; and,

(5) Forward the individual's medical record to the Department's medical officer for

review and a determination on whether consultation with or transmittal of the medical records to the individual's physician or psychologist is warranted. If consultation with or transmittal of such records to the individual's physician or psychologist is determined to be warranted, the Department's medical officer shall so consult or transmit. Whether or not such a consultation or transmittal occurs, the Department's medical officer shall provide instruction to the Privacy Officer regarding the conditions of access by the individual to his or her medical records.

- (c) If an individual refuses in writing to give the names and consents set forth in paragraphs (c)(2) through (c)(4) of this section, the Department shall give the individual access to said records by means of a copy, provided without cost to the requester, sent registered mail, return receipt requested.

#### Sec. 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 [[Page 48]] or by mail addressed to the Privacy 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 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 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 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 Officer. In each instance when a request so forwarded is received, the Privacy 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 Sec. 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.

Sec. 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 Officer 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 Sec. 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 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 Administration to take corrective action. No failure of a Privacy 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 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 (for example, erasure of information from a record maintained only in magnetically-recorded computer files), 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: [[Page 49]]

(A) The Privacy 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 Sec. 4.29, including the address of the Assistant General Counsel for Administration.

(3) The term promptly in this section means within thirty working days (i.e., excluding Saturdays, Sundays and legal public holidays). If the Privacy 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 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 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 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 Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

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

- (a) If a request for correction or amendment is denied initially under Sec. 4.28, the individual may submit a written appeal within thirty working days (i.e., excluding Saturdays, Sundays and legal public holidays) of the date of the initial denial. If an appeal [[Page 50]] is submitted by mail, the postmark is conclusive as to timeliness.
- (b) An appeal should be addressed to the Assistant General Counsel for Administration, U.S. Department of Commerce, Room 5875, 14th and Constitution Avenue, NW., Washington, DC 20230. An appeal should include the words ``PRIVACY APPEAL" in capital letters 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 Administration. 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 Administration. In each instance when an appeal so forwarded is received, the Assistant General Counsel for Administration 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 why the initial denial is believed to be in error, and the Department's control number assigned to the request. The Privacy Officer who issued the initial denial shall furnish to the Assistant General Counsel for Administration the record the individual requests to be corrected or amended, and all correspondence between the Privacy Officer and the requester. Although the foregoing normally will comprise the entire record on appeal, the Assistant General Counsel for Administration 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 Administration 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 Administration 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 issue. The estimated date should not be later than the sixtieth working day after receipt of the appeal unless unusual circumstances, as described in Sec. 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 Officer who issued the initial denial. Upon receipt of such final determination, the Privacy Officer shall promptly take the actions set forth in Sec. 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 also shall inform the individual that:
  - (1) The individual has a right under the Act to file with the Assistant General Counsel for Administration 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 Administration 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 [[Page 51]] 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 Administration shall employ the criteria set forth in Sec. 4.28(c) and shall deny an appeal only on the grounds set forth in Sec. 4.28(e).
- (i) If an appeal is partially granted and partially denied, the Assistant General Counsel for Administration 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).

Sec. 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 Sec. 4.25(f);
  - (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\ 5 U.S.C. 552b(b)(4) has  
no application within the Department. -----

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- (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; [[Page 52]]
  - (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 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 Officer shall make such accounting available to any individual, insofar as it pertains to that individual, upon any request submitted in accordance with Sec. 4.24. The Privacy 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.

#### Sec. 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 Sec. 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.

#### Sec. 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.

#### Sec. 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 justification for the exemption, are as follows: [[Page 53]]
  - (1) Individuals identified in Export Transactions--COMMERCE/ITA-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 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.

Sec. 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/ITA-1, COMMERCE/ITA-2, COMMERCE/ITA-3, COMMERCE/NOAA-11, COMMERCE/PAT-TM-4, COMMERCE/DEPT-12, COMMERCE/DEPT-13, and COMMERCE/ DEPT-14.
  
  - (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/ITA-1, and COMMERCE/NOAA-11 under this paragraph are subject to the condition that the general exemption claimed in Sec. 4.33(b)(3) 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 [[Page 54]] 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/ITA-1, but only on condition that the general exemption claimed in Sec. 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-11, but only on condition that the general exemption claimed in Sec. 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 Sec. 4.33(b)(3) is held to be invalid;
  - (E) Investigative Records--Persons Within the Investigative Jurisdiction of the Department--COMMERCE/DEPT-13;
  - (F) Litigation, Claims and Administrative Proceeding Records--COMMERCE/DEPT-14; and
  
- (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) Agriculture Census Records for 1974 and 1978--  
COMMERCE/CENSUS-1;
  - (B) Individual and Household Statistical Surveys and Special Census Studies Records-- COMMERCE/CENSUS-3;
  - (C) Minority-Owned Business Enterprises Survey Records--  
COMMERCE/ CENSUS-4;
  - (D) Population and Housing Census Records of the 1960 and Subsequent Censuses--COMMERCE/ CENSUS-5;
  - (E) Population Census Personal Service Records for 1900 and All Subsequent Decennial Censuses--COMMERCE/CENSUS-6; and
  - (F) Special Censuses of Population Conducted for State and Local Government--COMMERCE/CENSUS-7.
  - (G) Statistical Administrative Records System--  
COMMERCE/CENSUS-8. (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-4;
  - (F) Commissioned Officer Official Personnel Folders--COMMERCE/NOAA- 7;
  - (G) Conflict of Interest Records, Appointed Officials--COMMERCE/DEPT-3;
  - (H) Investigative and Inspection Records--COMMERCE/DEPT-12, but [[Page 55]] only on condition that the general exemption claimed in Sec. 4.33(b)(3) is held to be invalid;
  - (I) Investigative Records--Persons Within the Investigative Jurisdiction of the Department--COMMERCE/DEPT-13; and
  - (J) Litigation, Claims, and Administrative Proceeding Records--COMMERCE/DEPT-14.
- (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).

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 Central Reference and Records Inspection Facility. The telephone number for each component is included after its address. Public inspection facilities are open to the public Monday through Friday (excluding Saturdays, Sundays, and legal public holidays) between 9 a.m. and 4 p.m. local time of the facility at issue. Certain public inspection facility records of components are also available electronically through the Department's "FOIA Home Page" link found at the Department's World Wide Web site (<http://www.doc.gov>), as described in Sec. 4.2(b). The Departmental Freedom of Information Officer is authorized to revise this appendix to reflect changes in the information contained in it. Any such revisions shall be posted at the Department's "FOIA Home Page" link found at the Department's World Wide Web site (<http://www.doc.gov>).

- (1) Department of Commerce Freedom of Information Central Reference and Records Inspection Facility, U.S. Department of Commerce, Room 6022, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-4115. This facility 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 public inspection facilities.
- (2) Bureau of the Census, Policy Office, U.S. Department of Commerce, Federal Building 3, Room 2430, Suitland, Maryland 20233; (301) 457-2520. This agency maintains a separate public inspection facility in Room 2455, Federal Building 3, Suitland, Maryland 20233.
- (3) Bureau of Economic Analysis/Economics and Statistics Administration, Office of the Under Secretary for Economic Affairs, Department of Commerce, Room 4836, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-3308. This component does not maintain a separate public inspection facility.
- (4) Bureau of Export Administration, Office of Administration, U.S. Department of Commerce, Room 6883, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-0500. This component does not maintain a separate public inspection facility.
- (5) Economic Development Administration, Office of the Chief Counsel, U.S. Department of Commerce, Room 7005, 14th and Constitution Avenue, NW, Washington, DC 20230;

(202) 482-4687. Regional EDA offices (none of the following regional EDA offices maintains a separate public inspection facility):

- (i) Philadelphia Regional Office, EDA, U.S. Department of Commerce, Curtis Center, Suite 140 South, Independence Square West, Philadelphia, Pennsylvania 19106; (215) 597-7896.
  - (ii) Atlanta Regional Office, EDA, U.S. Department of Commerce, 401 West Peachtree Street, NW, Suite 1820, Atlanta, GA 30308; (404) 730- 3006.
  - (iii) Denver Regional Office, EDA, U.S. Department of Commerce, Room 670, 1244 Speer Boulevard, Denver, Colorado 80204; (303) 844-4716.
  - (iv) Chicago Regional Office, EDA, U.S. Department of Commerce, 111 North Canal [[Page 56]] Street, Suite 855, Chicago, IL 60606; (312) 353-8580.
  - (v) Seattle Regional Office, EDA, U.S. Department of Commerce, Jackson Federal Building, Room 1856, 915 Second Avenue, Seattle WA 98174; (206) 220-7701.
  - (vi) Austin Regional Office, EDA, U.S. Department of Commerce, 327 Congress Avenue, Suite 200, Austin, Texas 78701; (512) 381-8169.
- (6) International Trade Administration, Office of Organization and Management Support, U.S. Department of Commerce, Room 4001, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-3032.
- (7) Minority Business Development Agency, Data Resources Division, U.S. Department of Commerce, Room 5084, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-2025. This agency does not maintain a separate public inspection facility.
- (8) National Institute of Standards and Technology, Management and Organization Division, Administration Building, Room A525, 100 Bureau Drive, Gaithersburg, Maryland 20899; (301) 975-4054. This agency maintains a separate public inspection facility in Room E-106, Administration Building, Gaithersburg, Maryland.
- (9) National Oceanic and Atmospheric Administration, Public Reference Facility (OFAx2) 1315 East West Highway (SSMC3), Room 10730, Silver Spring, Maryland 20910; (301) 713-3540.

- (10) National Technical Information Service, Office of Administration, 5285 Port Royal Road, Springfield, Virginia 22161; (703) 605-6449. This agency does not maintain a separate public inspection facility.
- (11) National Telecommunications and Information Administration, Office of the Chief Counsel, U.S. Department of Commerce, Room 4713, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-1816. This component does not maintain a separate public inspection facility.
- (12) Office of Inspector General, Counsel to the Inspector General, U.S. Department of Commerce, Room 7892, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-5992. This component does not maintain a separate public inspection facility.
- (13) Technology Administration, Office of the Under Secretary, U.S. Department of Commerce, Room 4835, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-1984. This component does not maintain a separate public inspection facility.

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 Officer and the Freedom of Information Officer for the Office of the Secretary have the foregoing FOIA and PA denial authority for all records of the Department, and the Departmental Freedom of Information 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 Officer is authorized to revise this appendix to reflect changes in designation of denial officials. Any such revisions shall be posted at the Department's ``FOIA Home Page" link found at the Department's World Wide Web site (<http://www.doc.gov>). -----

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

Office of the Secretary Office of the Secretary: Executive Secretary; Freedom of Information 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 the Inspector General: Counsel to the Inspector General; Deputy Counsel to the Inspector General Office of the General Counsel: Deputy General Counsel; Assistant General Counsel for Administration Office of Executive Support: Director [[Page 57]] Assistant Secretary for Administration Office of Civil Rights: Director Office of Budget: Director Office of Management and Organization: Director Office of Chief Information Officer: Director Office of

Executive Budgeting and Assistance Management: Director Office of Executive Assistance Management: Director; Grants Officer Departmental Freedom of Information Officer. Office of Financial Management: Director Office of Human Resources Management: Director; Deputy Director. Office of Administrative Services: Director Office of Security: Director, Deputy Director Office of Acquisition Management: Director Office of Acquisition Services: Director Office of Small and Disadvantaged Business Utilization: Director Bureau of Export Administration 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 Strategic Trade and Foreign Policy Controls 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: Chief, Policy Office Economic Development Administration Freedom of Information Officer International Trade Administration Under Secretary for International Trade Deputy Under Secretary for International Trade Counselor to the Department Director, Trade Promotion Coordinating Committee Secretariat Director, Office of Public Affairs Director, Office of Legislative and Intergovernmental Affairs Administration Chief Financial Officer and Director of Administration Director, Office of Organization and Management Support Director, Office of Human Resources Management Director, Office of Information Resources Management ITA Freedom of Information Officer Import Administration Assistant Secretary for Import Administration Deputy Assistant Secretary for Antidumping and Countervailing Duty Enforcement I Deputy Assistant Secretary for Antidumping and Countervailing Duty Enforcement II Deputy Assistant Secretary for Antidumping and Countervailing Duty Enforcement III Director for Policy and Analysis Director, Office of Policy Director, Office of Accounting Director, Central Records Unit Director, Foreign Trade Zones Staff Director, Statutory Import Programs Staff Director, Office of Antidumping Countervailing Duty Enforcement I Director, Office of Antidumping Countervailing Duty Enforcement II Director, Office of Antidumping Countervailing Duty Enforcement III Director, Office of Antidumping Countervailing Duty Enforcement IV Director, Office of Antidumping Countervailing Duty Enforcement V Director, Office of Antidumping Countervailing Duty Enforcement VI Director, Office of Antidumping Countervailing Duty Enforcement VII Director, Office of Antidumping Countervailing Duty Enforcement VIII Director, Office of Antidumping Countervailing Duty Enforcement IX Market Access and Compliance Assistant Secretary for Market Access and Compliance Deputy Assistant Secretary for Agreements Compliance Deputy Assistant Secretary for the Middle East and North Africa Deputy Assistant Secretary for Europe Deputy Assistant Secretary for the Western Hemisphere Deputy Assistant Secretary for Asia and the Pacific Deputy Assistant Secretary for Africa Director, Office of Policy Coordination Director, Office of Multilateral Affairs Director, Trade Compliance Center Director, Office of the Middle East and North Africa Director, Office of European Union and Regional Affairs [[Page 58]] Director, Office of Eastern Europe, Russia and Independent States Director, Office of Latin America and the Caribbean Director, Office of NAFTA and Inter-American Affairs Director, Office of China Economic Area Director, Office of the Pacific Basin Director, Office of South Asia and Oceania Director, Office of Japan Director, Office of Africa Trade Development

Assistant Secretary for Trade Development Deputy Assistant Secretary for Transportation and Technology Industries Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries Deputy Assistant Secretary for Service Industries and Finance Deputy Assistant Secretary for Basic Industries Deputy Assistant Secretary for Information Technology Industries Deputy Assistant Secretary for Environmental Technologies Industries Deputy Assistant Secretary for Tourism Industries Director, Office of Export Promotion Coordination Director, Trade Information Center Director, Office of Trade and Economic Analysis Director, Advocacy Center Director, Office of Planning, Coordination and Resource Management Director, Office of Aerospace Director, Office of Automotive Affairs Director, Office of Microelectronics, Medical Equipment and Instrumentation Director, Office of Textiles and Apparel Director, Office of Consumer Goods Director, Office of Environmental Technologies Director, Office of Export Trading Company Affairs Director, Office of Finance Director, Office of Service Industries Director, Office of Metals, Materials and Chemicals Director, Office of Energy, Infrastructure and Machinery Director, Office of Electronic Commerce Director, Office of Information Technologies Director, Office of Telecommunications Technologies U.S. and Foreign Commercial Service Assistant Secretary and Director General Deputy Director General Deputy Assistant Secretary for International Operations Deputy Assistant Secretary for Export Promotion Services Deputy Assistant Secretary for Domestic Operations Director, Office of Information Systems Director, Office of Planning Director, Office of Foreign Service Human Resources Director for Europe Director for Western Hemisphere Director for East Asia and the Pacific Director, Multilateral Development Bank Operations Director, Office of Public/Private Initiatives Director, Office of Export Information and Marketing Services Director, Office of Operations Minority Business Development Administration Freedom of Information Officer National Oceanic and Atmospheric Administration Under Secretary Assistant Secretary Director, Office of Public and Constituent Affairs Director, Office of Marine and Aviation Operations General Counsel Assistant Administrator for Ocean Services and Coastal Zone Management Assistant Administrator for Fisheries Assistant Administrator for Weather Services Assistant Administrator for Satellite and Information Services Assistant Administrator for Oceanic and Atmospheric Research Office of Finance and Administration: Chief Financial Officer/Chief Administrative Officer Director, Acquisition and Grants Office Director, Systems Acquisition Office Director, Human Resources Management Office Director, Office of Finance Director, Budget Office Director, Facilities Office Director, Information Systems Management Office Director, Eastern Administrative Support Center Director, Central Administrative Support Center Director, Mountain Administrative Support Center Director, Western Administrative Support Center Freedom of Information Officer National Telecommunications and Information Administration Deputy Assistant Secretary Chief Counsel Deputy Chief Counsel Technology Administration Under Secretary for Technology [[Page 59]] Deputy Under Secretary for Technology Assistant Secretary for Technology Policy Chief Counsel Deputy Chief Counsel Senior Counsel for Internet Technology National Institute of Standards and Technology: Director for Administration and Chief Financial Officer; Chief, Management and Organization Division; NIST Counsel. National Technical Information Service: Director; Deputy Director; Chief Financial Officer/Associate Director for Finance and Administration. 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 Department of Labor.\2\ Program Program. Equal  
Employment Opportunity Equal Employment Opportunity Appeal Complaints. Commission.\3\  
Formal Complaints/Appeals of Merit Systems Protection Board.\4\ Adverse Personnel Actions.

----- \1\ The 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. \2\ The  
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. \3\ The  
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. \4\ The 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.