



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, D.C. 20350-2000

IN REPLY REFER TO

5720
Ser N09B10/2U513175
20 May 02

From: Chief of Naval Operations
To: E-Mail Distribution List (FOIA)

Subj: FOIA POLICY ISSUES (CBRN WEAPONS INFORMATION, FOIA FEES, FOIA RESPONSE LETTERS, UNIT PRICES, FOUO)

Ref: (a) SECNAVINST 5720.42F

Encl: (1) SECDEF Msg, 151629Z May 02, Subj: Action to Safeguard Information Regarding Weapons of Mass Destruction and Sensitive Homeland Security Information

(2) Federal Register of 9 May 02, pages 31127-28

1. This policy memo is being e-mailed/faxed to you. It will be posted on our web site at foia.navy.mil under Resource Materials. Please ensure your subordinates are promptly made aware of this information.

2. **CHEMICAL, BIOLOGICAL, RADIOLOGICAL, AND NUCLEAR (CBRN) WEAPONS INFORMATION:** The Department of Defense (DoD) has recently issued interim guidance related to the release of CBRN weapons information [see enclosure (1)]. Accordingly, DON components shall process FOIA requests for CBRN weapons information as follows:

a. Total denials of CBRN weapons information can continue to be handled by the appropriate DON initial denial authority (IDA).

b. The DON is required to coordinate all proposed releases (to include partial denials) with the Director, Freedom of Information and Security Review (DFOISR). To facilitate this coordination, DON activities planning to release any information concerning CBRN weapons in response to a FOIA or Mandatory Declassification Review (MDR) request will forward the request, applicable documents, and a proposed response package to CNO (N09B10) along with the name of their IDA (in the case of FOIA requests). This process is not intended to create an avenue for DON activities to dispose of all their FOIA requests concerning CBRN weapons information, but rather a method to ensure CBRN weapons information is not inadvertently released.

c. This policy will remain in effect only until such time as the classification guidelines are completed by the DoD working group. When the classification guidelines are issued, DON activities will be instructed that they are to employ the guidelines and make independent release determinations.

3. FOIA FEES

a. On 9 May 02, DFOISR published a final rule in the Federal Register regarding a change in FOIA search and review fees [see enclosure (2)]. Duplication and technical data fees remain unchanged. The new fee schedule change takes effect on 1 Jul 02, which means that requests received on or after that date will fall under the new FOIA fee schedule. Please note that the new fee schedule allows activities to recoup search and review costs for contractors at \$44 per hour [Note: This does not include submitter notice reviews.] With regard to DD Form 2086, it is being redesigned to capture the new fees. This advance notice is provided to enable activities to update any software that tracks fees.

b. It is imperative that DON activities keep an accurate accounting of all FOIA processing fees. While all processing fees are captured for inclusion in the Annual FOIA Report, only certain fees may be charged to a requester. When charging fees to a requester, DON activities shall apprise the requester what "category" he/she has been placed and provide a breakdown of the fees being charged. For example, "You have been placed in the "All Other" category for the purposes of fees. As such, you are entitled to the first 2 hours of search and 100 pages of duplication for free. The costs involved in processing your request total \$____, which is based on an additional two hours of search by a _____ at \$____ per hour and an additional ____ pages of duplication at 15 cents per page."

c. Do not begin processing a FOIA request until the FOIA fee issue has been resolved. DON activities who process a request without first resolving the FOIA fee issue may find that they have done the work only to have the requester state he/she does not want the product because of the costs involved. Such a practice is self-defeating and time-consuming.

d. DON activities receive numerous requests that seek FOIA fee waivers. Many contain insufficient justification on which to grant a waiver of fees. Rather than denying the request for waiver and apprising the requester of his/her right to appeal, DON activities are encouraged to pick up the phone and discuss the issue with the requester or return the request and provide the requester with guidance from the FOIA handbook at foia.navy.mil or SECNAVINST 5720.42F on what they need to include in the way of justification so that their request for fee waiver may be considered.

e. There are instances where individuals have outstanding FOIA fees that they owe the Government. In such instances, fees must be resolved before processing additional requests. For example, DON activities receiving FOIA requests from Ms. Barbara Schwarz are advised that she owes FOIA fees to the Department of Veterans Affairs. Accordingly, no action need be taken on any of her requests until such time as she provides proof that the bill has been paid.

f. There are individuals who file numerous requests with an agency. Those individuals may be attempting to break their requests down into a series of requests for the sole purpose of avoiding processing fees. In such instances, SECNAVINST 5720.42F allows DON activities to aggregate requests for the purpose of fees. DON activities receiving FOIA requests from Mr. Glen Milner, a frequent requester, are asked to provide a copy of any current or future requests they receive from Mr. Milner to CNO (N09B10), along with a breakdown of estimated search and reproduction costs. This is being done since many of his requests relate to the same subject matter and we are considering whether aggregation of FOIA processing fees under paragraph 6i of enclosure (3) to SECNAVINST 5720.42F is appropriate. You may fax the

information to 202-685-6580/DSN 325-6580 or e-mail it to navyfoia@hq.navy.mil/. Once received and reviewed, I will apprise you if aggregation is appropriate.

g. The fee category of a FOIA requester can change. DON activities are to determine a requester's fee category based on the subject matter of the requested documents and the requester's intended use of the information.

4. FOIA RESPONSE LETTERS

a. Sample FOIA response letters are available on foia.navy.mil under Resource Materials.

b. When responding to a request wherein no records were found, apprise the requester in your response letter where you conducted your search and if possible indicate the lifecycle for these kinds of records as stated in the records disposal instruction (SECNAVINST 5212.5D).

c. Your response letter is your administrative record. Ensure you include references to all correspondence and telephone calls. Also, when claiming an exemption such as exemption (b)(6), apprise the requester of the kinds of information withheld. For example, " Under 5 U.S.C. 552(b)(6), we withheld the social security numbers and home addresses of our employees, since release would constitute a clearly unwarranted invasion of personal privacy."

5. UNIT PRICES. Just a reminder that DON activities shall follow EO 12,600 (a copy is available under Resource Materials at foia.navy.mil) when processing FOIA requests for the release of unit prices. As a result of recent litigation, any decision to release/deny unit prices shall be based on the competitive harm tests established in National Parks and Conservation Assn v. Morton [498 F.2d 765 (D.C. Cir. 1974)], regardless of solicitation release date.

6. FOR OFFICIAL USE ONLY. Please ensure that any unclassified document that contains information that may be protected from disclosure under exemptions (b)(2) through (b)(9) are marked FOR OFFICIAL USE ONLY as prescribed by Chapter 4 of DoD 5400.7-R, DoD Freedom of Information Act. This includes messages, e-mails, letters, memoranda, etc. When the document also contains privacy protected information, recommend it be marked "FOR OFFICIAL USE ONLY - PRIVACY SENSITIVE - Any misuse or unauthorized disclosure may result in both civil and criminal penalties." Such a marking will ensure agency personnel are aware of their responsibilities to ensure the proper protection of information.



DORIS M. LAMA

By direction

(202) 685-6545/DSN 325-6545

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ENCLOSURE (1)

R 151629Z MAY 02 PSN 438875M35
FM SECDEF WASHINGTON DC
TO ALDODACT
BT

UNCLAS ALDODACT 06/02

"ADDRESSES PASS TO ALL SUBORDINATE COMMANDS"

SUBJECT: ACTION TO SAFEGUARD INFORMATION REGARDING WEAPONS
OF MASS

DESTRUCTION AND SENSITIVE HOMELAND SECURITY INFORMATION

1. THE WHITE HOUSE CHIEF OF STAFF RECENTLY REMINDED
DEPARTMENTS AND

AGENCIES OF THE AUTHORITY THEY HAVE UNDER EXISTING LAWS AND
REGULATIONS TO SAFEGUARD CLASSIFIED AND UNCLASSIFIED BUT
SENSITIVE

INFORMATION, PARTICULARLY THAT RELATED TO WEAPONS OF MASS
DESTRUCTION. ALL DOD ACTIVITIES ARE REMINDED THAT IN
ACCORDANCE WITH

DOD INSTRUCTION 5230.29, PUBLIC RELEASE OF DOCUMENTS CONTAINING
CHEMICAL, BIOLOGICAL, RADIOLOGICAL AND NUCLEAR (CBRN)
INFORMATION

REQUIRES REVIEW AND APPROVAL BY WASHINGTON HEADQUARTERS
SERVICES,

DIRECTORATE FOR FREEDOM OF INFORMATION AND SECURITY REVIEW
(WHS/DFOISR). FOLLOWING THIS PROCESS WILL ENSURE THAT THE
DOCUMENTS

DO NOT CONTAIN INFORMATION THAT WOULD AID IN THE DEVELOPMENT
OR USE

OF WEAPONS OF MASS DESTRUCTION. OTHER PROCESSES FOR THE
REVIEW AND

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RELEASE OF INFORMATION CONTAINING CBRN INFORMATION WILL BE
REVIEWED

AS WELL AS AGENCIES' SECURITY CLASSIFICATION GUIDANCE. AGENCIES
ARE

NOT TO VIOLATE ANY LEGAL OBLIGATION TO PROVIDE INFORMATION TO
CONGRESS OR TO AUTHORIZED RECIPIENTS UNDER THE CHEMICAL
WEAPONS

CONVENTION, THE BIOLOGICAL WEAPONS CONVENTION OR SIMILAR
AGREEMENTS.

FREEDOM OF INFORMATION ACT (FOIA) REQUESTS FOR RECORDS
CONTAINING

CBRN INFORMATION MUST CONTINUE TO BE PROCESSED IN ACCORDANCE
WITH THE

ACT'S PROVISIONS AND APPLICABLE DEPARTMENTAL REGULATIONS.
HOWEVER,

PRIOR TO RELEASING SUCH RECORDS, ALL DOD DEPARTMENTS AND COMPONENTS WILL FORWARD THE RECORD WITH A RELEASE DETERMINATION TO DFOISR FOR FINAL REVIEW. THE SAME PROCEDURE WILL BE FOLLOWED WHEN PROCESSING MANDATORY DECLASSIFICATION REVIEWS SUBMITTED UNDER EXECUTIVE ORDER 12958. THIS CENTRALIZATION IS UNTIL NEW SECURITY CLASSIFICATION GUIDANCE IS PROMULGATED. ADDITIONAL GUIDANCE ON PROCESSING FOIA AND MANDATORY DECLASSIFICATION REVIEW REQUESTS SHALL BE ISSUED SEPARATELY BY DFOISR.

2. ASD/C3I WILL ENSURE A COORDINATED REVIEW OF SECURITY CLASSIFICATION AND DECLASSIFICATION GUIDES AND DECLASSIFICATION PROCEDURES AND WILL ISSUE SEPARATE GUIDANCE. REVIEWS WILL CONFIRM THAT PROCEDURES ARE IN PLACE TO ENSURE THAT ALL INFORMATION PLACED IN PAGE 03 RUEKJCS8002 UNCLAS PUBLIC VENUES IS PROPERLY REVIEWED FOR DECLASSIFICATION PRIOR TO RELEASE. THE REVIEW OF SECURITY CLASSIFICATION GUIDES SHALL INCLUDE AN EVALUATION OF WHETHER ANY STATE OR NON-STATE/NON-TRADITIONAL ADVERSARY COULD USE THE INFORMATION IN DEVELOPING OR USING A CBRN WEAPON OR IN HARMFULLY IMPACTING THE SECURITY OF DOD OPERATIONS OR ASSETS OR THE PUBLIC HEALTH AND SAFETY OF CITIZENS OF THE UNITED STATES. THESE REVIEWS WILL BE COMPLETED, AND CHANGES RECOMMEND, AS NECESSARY, BY JUNE 21, 2002. ANY CHANGES TO SECURITY CLASSIFICATION GUIDES SHALL BE PROMULGATED BY JULY 12, 2002. DEPARTMENTS AND AGENCIES MUST CONSIDER THE NEED FOR SAFEGUARDING INFORMATION TOGETHER WITH THE BENEFITS THAT RESULT FROM THE OPEN AND EFFICIENT EXCHANGE OF SCIENTIFIC, TECHNICAL AND OTHER INFORMATION.

3. THIS MESSAGE ALSO COVERS DOD DOCUMENTS AVAILABLE TO THE PUBLIC ON THE INTERNET AND THROUGH PUBLICLY ACCESSIBLE DOD WEBSITES AND

WEBSITES WITH ACCESS RESTRICTED ONLY BY DOMAIN OR IP ADDRESS. DOCUMENTS FOR RELEASE TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION WILL BE PROCESSED IAW PROCEDURES TO BE AGREED BETWEEN

NARA AND DOD. DOCUMENTS REMOVED FROM THE DEFENSE TECHNICAL INFORMATION CENTER WEBSITE WILL BE REVIEWED, EVALUATED AND APPROPRIATE ACTION TAKEN AS EXPEDITIOUSLY AS POSSIBLE.

DOCUMENTS

PAGE 04 RUEKJCS8002 UNCLAS

THAT POSE NO THREAT WILL BE MADE AVAILABLE TO THE PUBLIC AS QUICKLY

AS POSSIBLE.

4. BY TAKING THESE ACTIONS, THE DEPARTMENT WILL PREVENT INAPPROPRIATE

DISCLOSURE AND REDUCE THE RISK OF ACCESS TO INFORMATION THAT MIGHT

ASSIST TERRORISTS.

5. MILITARY DEPARTMENTS AND DEFENSE COMPONENTS HEADQUARTERS SECURITY

POLICY OFFICES ARE TO PROVIDE OASD C3I WITH THE STATUS OF THEIR REVIEWS AND THEIR IMPLEMENTATION OF THIS MESSAGE BY MAY 31, 2002. THE

OASD C3I POINT OF CONTACT IS MS. CHRIS BROMWELL, 703-697-1988; DSN PREFIX 227; E-MAIL CHRISTINA.BROMWELL@OSD.MIL.

BT

#8002

NNNN

ENCLOSURE (2)

The agency estimates the range of reformulation costs is from \$100,000 to \$500,000 per product. As most affected firms have only one or two products containing these ingredients, the midpoint of the cost estimate for reformulation implies total costs of \$300,000 to \$600,000 per firm. If all manufacturers decide to reformulate, about 56 products would be affected. Using the midpoint of the estimated cost to reformulate (\$300,000) implies total costs of \$16.8 million. However, the agency believes the total costs will be lower because not all firms will choose to reformulate. Some firms may choose to discontinue a product line if sales are too low to justify the added cost of reformulation and/or they may place their market emphasis on other OTC laxative drug products. The lost sales from the products containing nonmonograph ingredients may be offset by sales of the substitute products containing monograph ingredients. In addition, firms have been aware of the proposed nonmonograph status of these products since 1998 and have not submitted data to the agency. While this final rule may cause firms to discontinue marketing or to reformulate some products prior to issuance of the final monograph, these firms have known for some time that if adequate data were not submitted to support safety, cessation of marketing of the current products would be required, in any event, when the final monograph is published.

The agency estimates that the average cost to relabel OTC drug products is about \$3,600. The agency is unsure of how many products will require new labeling. If all of the 170 products are reformulated and are still marketed, then the one-time costs to relabel would be \$612,000. The estimated total one-time reformulation and relabeling cost would be \$17.8 million.

The agency considered but rejected not acting on these ingredients in advance of the finalization of other monograph conditions. As firms have not submitted the requested safety data, these ingredients will not be included in the final monograph when completed. The agency has determined that there is no reason to allow continued marketing of OTC laxative drug products containing any of these ingredients. Consumers will benefit from the early removal from the marketplace of products containing ingredients for which safety has not been established. Consumers can then purchase products containing only ingredients proposed for monograph status. Manufacturers who choose to reformulate or replace affected products will be able to use

alternate ingredients, as discussed previously in this document, that are proposed as monograph conditions without incurring any additional expense of clinical testing for those ingredients.

Because these products must be manufactured in compliance with the pharmaceutical current good manufacturing practices (parts 210 and 211), all firms have the necessary skills and personnel to perform the tasks of reformulation, validation, and relabeling either in-house or by contractual arrangement. No additional professional skills are needed. No other Federal rules duplicate, overlap, or conflict with this rule.

The agency has considered the burden to small entities and identified reformulation options available to them. Nevertheless, some entities may incur significant impacts, especially private label manufacturers that provide labeling for a number of the affected products. This economic analysis, together with other relevant sections of this document, serves as the agency's final regulatory flexibility analysis, as required under the Regulatory Flexibility Act.

IV. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

2. Section 310.545 is amended by adding paragraphs (a)(12)(iv)(C) and (d)(30) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(12) * * *

(iv)(C) *Stimulant laxatives—Approved as of November 5, 2002.*

Aloe ingredients (aloe, aloe extract, aloe flower extract)

Cascara sagrada ingredients (casanthranol, cascara fluidextract aromatic, cascara sagrada bark, cascara sagrada extract, cascara sagrada fluidextract).

* * * * *

(d) * * *

(30) November 5, 2002, for products subject to paragraph (a)(12)(iv)(C) of this section.

* * * * *

Dated: April 29, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11510 Filed 5–8–02; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286

DoD Freedom of Information Act (FOIA) Program

AGENCY: Department of Defense.

ACTION: Final rule; amendment.

SUMMARY: The search and review rates for processing Freedom of Information Act (FOIA) requests within the Department of Defense are being increased at the recommendation of the General Accounting Office (GAO). FOIA

requesters will incur more direct costs for search and review, if applicable.

DATES: This rule is effective July 1, 2002.

FOR FURTHER INFORMATION CONTACT: D. Maier, (703) 697-1160.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 286

Freedom of Information.

Accordingly, 32 CFR part 286 is amended as follows:

PART 286—DOD FREEDOM OF INFORMATION ACT PROGRAM REGULATION

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 552.

2. In § 286.29, the tables in paragraphs (b)(1) and (d) are revised to read as follows:

§ 286.29 Collection of fees and fee rates.

* * * * *

(b) * * *

(1) * * *

Type	Grade	Hourly Rate
Clerical	E1-E9/GS1-GS8.	\$20.00
Professional ...	O1-O6/GS9-GS15.	44.00
Executive	ES1-ES6/O7-O10.	75.00
Contractor	44.00

* * * * *

(d) * * *

Type	Grade	Hourly Rate
Clerical	E1-E9/GS1-GS8.	\$20.00
Professional ...	O1-O6/GS9-GS15.	44.00
Executive	ES1-ES6/O7-O10.	75.00
Contractor	44.00

* * * * *

Dated: May 1, 2002.

Patricia Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 02-11381 Filed 5-8-02; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07-01-048]

RIN 2115-AA97

Security Zone; St. Croix, U.S. Virgin Islands

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the security zones around commercial tank and freight vessels moored at the HOVENSA facility in St. Croix, U.S. Virgin Islands. The zones were created for national security reasons and to protect the public and port of Limetree Bay (HOVENSA) from subversive acts. The zone is no longer needed because the HOVENSA facility has upgraded security measures, installed controlled access points and implemented internal security procedures for permitting crewmembers to leave vessels moored at their facility.

DATES: Temporary § 165.T07-002 is removed effective May 9, 2002.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket [CGD07-01-048] and are available for inspection or copying at Marine Safety Office San Juan, San Martin Street #90, RODVAL Building, Suite 400, Guaynabo, PR 00968 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert Lefevers, U.S. Coast Guard Marine Safety Office, San Juan, Puerto Rico, (787) 706-2444.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that publishing an NPRM is unnecessary because this rule removes temporary security zones that are no longer needed because the HOVENSA facility has implemented internal security procedures for deciding which crewmembers are permitted to leave their vessels and enter the facility's property. For the same burden-lifting reason, under 5 U.S.C. 553(d)(3), we find good cause exists to make this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

On September 28, 2001, the first in a series of temporary rules creating security zones around commercial tank and freight vessels moored at the HOVENSA facility in St. Croix, U.S. Virgin Islands was published in the **Federal Register** (66 FR 49534). The zones created by that first rule were scheduled to terminate October 15, 2001, but they were revived twice—by a temporary rule issued in October 2001 (that was sent to Washington, D.C. for publication in the **Federal Register** but that was delayed in the mail [CGD07-01-125; 67 FR 9194, 9197, February 28, 2002]), and another issued in January 2002 (67 FR 4911, February 1, 2002).

When it was issued, the current temporary rule that created temporary section 165.T07-002 of Title 33 of the Code of Federal Regulations, was scheduled to expire on June 15, 2002. Temporary section 165.T07-002 requires all persons aboard commercial tank and freight vessels to remain onboard when moored at the HOVENSA facility in St. Croix, U.S. Virgin Islands unless they have permission from the Captain of the Port to transit the security zone around the vessel.

These security zones were needed to prevent subversive acts and to protect the public and the port of HOVENSA. The security zones are no longer needed because HOVENSA has implemented internal security procedures for deciding which persons can depart the vessels moored at their facility. Therefore, the Coast Guard is removing this security zone regulation effective May 9, 2002.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.