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Dated: December 7, 1999.

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy.*

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## OFFICE OF NATIONAL DRUG CONTROL POLICY

### 21 CFR Part 1401

RIN 3201-ZA02

### Freedom of Information Act

**AGENCY:** Office of National Drug Control Policy.

**ACTION:** Final rule.

**SUMMARY:** The Office of National Drug Control Policy revises this rule to comply with the Electronic Freedom of Information Act. The rule defines records as defined in the Act, establishes an electronic reading room, institutes an expedited process for handling requests and conforms to the statutory time limitations for a response.

**DATES:** Effective December 15, 1999.

**ADDRESSES:** Send comments to Executive Office of the President, Office of National Drug Control Policy, Office of Legal Counsel, Attention General Counsel, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Daniel R. Petersen, (202) 395-6745.

**SUPPLEMENTARY INFORMATION:** This rule is not a major rule for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, ONDCP certifies that this proposed rule would not have a significant impact on small business entities.

### List of Subjects in 21 CFR Part 1401

Freedom of information, Organization and functions (Government agencies).

For the reasons stated in the preamble, the Office of National Drug Control Policy revises 21 CFR part 1401 to read as follows:

### PART 1401—PUBLIC AVAILABILITY OF INFORMATION

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**Authority:** 5 U.S.C. 552.

#### § 1401.1 Purpose.

The purpose of this part is to prescribe rules, guidelines and procedures to implement the Freedom of Information Act (FOIA), as amended, 5 U.S.C. 552.

#### § 1401.2 The Office of National Drug Control Policy—organization and functions.

(a) The Office of National Drug Control Policy (ONDCP) was created by the Anti-Drug Abuse Act of 1988, 21 U.S.C. 1501 *et seq.*, and reestablished under 21 U.S.C. 1701 *et seq.* The mission of ONDCP is to coordinate the anti-drug efforts of the various agencies and departments of the Federal government, to consult with States and localities and assist their anti-drug efforts, to conduct a national media campaign, and to annually promulgate the National Drug Control Strategy.

(b) ONDCP is headed by the Director of National Drug Control Policy. The Director is assisted by a Deputy Director of National Drug Control Policy, a Deputy Director for Supply Reduction, a Deputy Director for Demand Reduction, and a Deputy Director for State and Local Affairs.

(c) Offices within ONDCP include Chief of Staff, and the Offices of Legal Counsel, Strategic Planning, Legislative Affairs, Programs Budget and Evaluation, Supply Reduction, Demand Reduction, Public Affairs, State and Local Affairs, and the Financial Management Office.

(d) The Office of Public Affairs is responsible for providing information to the press and to the general public. If members of the public have general questions about ONDCP that can be answered by telephone, they may call the Office of Public Affairs at (202) 395-6618. This number should not be used to make FOIA requests. All oral requests for information under FOIA will be rejected.

#### § 1401.3 Definitions.

For the purpose of this part:

(a) All the terms defined in the Freedom of Information Act apply.

(b) *Commercial-use request* means a request from or on behalf of one who seeks information for a cause or purpose that furthers the commercial, trade or profit interests of the requester or the person or institution on whose behalf the request is made. In determining whether a requester properly belongs in this category, ONDCP will consider the intended use of the information.

(c) *Direct costs* means the expense actually expended to search, review, or duplicate in response to a FOIA request. For example, direct costs include 116% of the salary of the employee performing work and the actual costs incurred while operating equipment.

(d) *Duplicate* means the process of making a copy of a document. Such copies may take the form of paper, microform, audio-visual materials, or machine-readable documentation. ONDCP will provide a copy of the material in a form that is usable by the requester.

(e) *Educational institution* means 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 or programs of scholarly research.

(f) *Noncommercial scientific institution* means an institution that is not operated on a commercial basis as that term is defined in this section, and that is operated solely for the purpose of conducting scientific research not intended to promote any particular product or industry.

(g) *Records* and any other terms used in this part in reference to information includes any information that would be an agency record subject to the requirements of this part when maintained in any format, including electronic format.

(h) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. News is information about current events or information that would be of interest to the public. Examples of the news media include television or radio stations that broadcast to the public at large and publishers of news periodicals that make their products available to the general public for purchase or subscription. Freelance journalists may be regarded as working for the news media where they demonstrate a reasonable basis for expecting publication through that organization, even though not actually employed by it.

(i) *Request* means a letter or other written communication seeking records or information under FOIA.

(j) *Review* means the process of examining documents that are located during a search to determine if any portion should lawfully be withheld. It is the processing of determining disclosability.

(k) *Search* means to review, manually or by automated means, agency records for the purpose of locating those records responsive to a request.

#### **§ 1401.4 Access to information.**

The Office of National Drug Control Policy makes available information pertaining to matters issued, adopted, or promulgated by ONDCP, that are within the scope of 5 U.S.C. 552(a)(2). A public reading area and the ONDCP FOIA Handbook are located at <http://www.whitehousedrugpolicy.gov/about/about.html>.

#### **§ 1401.5 How to request records.**

(a) Each request must reasonably describe the record(s) sought including the type of document, specific event or action, originator of the record, date or time period, subject matter, location, and all other pertinent data.

(b) Requests must be received by ONDCP through the mail or by electronic facsimile transmission. Mailed requests must be addressed to Executive Office of the President, Office of National Drug Control Policy, Office of Legal Counsel, Washington, DC 20503. The applicable fax number is (202) 395-5543.

(c) The words "FOIA REQUEST" or "REQUEST FOR RECORDS" must be clearly marked on the cover-letter, letter and envelope. The time limitations imposed by § 1401.7 will not begin until the Office of the General Counsel identifies a letter or fax as a FOIA request.

#### **§ 1401.6 Expedited process.**

(a) Requests and appeals will be given expedited treatment whenever ONDCP determines either:

(1) The lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) An urgency to inform the public about an actual or alleged federal government activity occurs and the request is made by a person primarily engaged in disseminating information.

(b) A request for expedited processing may be made at the time of the initial request for records or at a later time.

(c) 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. A requester within the category in paragraph (a)(2) of this section also must 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. The formality of certification may be waived as a matter of administrative discretion.

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

#### **§ 1401.7 Prompt response.**

The General Counsel, or designee, will determine within 20 days (excepting Saturdays, Sundays and legal public holidays) after the receipt of a FOIA request whether it is appropriate to grant the request and will provide written notification to the person making the request. If the request is denied, the written notification will include the names of the individuals who participated in the determination, the reasons for the denial, and that an appeal may be lodged within the Office of National Drug Control Policy.

#### **§ 1401.8 Extension of time.**

(a) In unusual circumstances, the Office of General Counsel may extend the time limit prescribed in § 1401.7 or § 1401.9 by written notice to the FOIA requester. The notice will state the reasons for the extension and the date a determination is expected. The extension period may be divided among the initial request and an appeal but will not exceed a total of 10 working days (excepting Saturdays, Sundays, or legal public holidays).

(b) The phrase "unusual circumstances" means:

(1) The requested records are located in establishments that are separated from the office processing the request;

(2) A voluminous amount of separate and distinct records are demanded in a single request; or

(3) Another agency or two or more components in the same agency have substantial interest in the determination of the request.

(c) Where unusual circumstance exist, ONDCP may provide an opportunity for amendment of the initial request so that the request may be timely processed. Refusal by the person to reasonably modify the request or arrange an alternative time frame shall be considered as a factor for purposes of 5 U.S.C. 552 (a)(6)(C).

(d) ONDCP may aggregate requests by a requester or a group of requestors where multiple requests reasonably appear to be a single request.

#### **§ 1401.9 Appeals.**

An appeal to the ONDCP must explain in writing the legal and factual basis for the appeal. It must be received by mail at the address specified in § 1401.5 within 30 days of receipt of a denial. The Director or designee will decide the appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays). If the Director or designee deny an appeal in whole or in part, the written determination will contain the reason for the denial, the names of the individuals who participated in the determination, and the provisions for judicial review.

#### **§ 1401.10 Fees to be charged—general.**

ONDCP will recoup the full allowable costs it incurs in response to a FOIA request.

(a) *Manual search for records.* ONDCP will charge 116% of the salary of the individual(s) making a search.

(b) *Computerized search for records.* ONDCP will charge 116% of the salary of the programmer/operator and the apportionable time of the central processing unit directly attributed to the search.

(c) *Review of records.* ONDCP will charge 116% of the salary of the individual(s) conducting a review. Records or portions of records withheld under an exemption subsequently determined not to apply may be reviewed to determine the applicability of exemptions not considered. The cost for a subsequent review is assessable.

(d) *Duplication of records.* Request for copies prepared by computer will cost 116% of the apportionable operator time and the cost of the tape or disk. Other methods of duplication will cost 116% of the salary of the individual copying the data plus 15 cents per copy of 8½ x 11 inch original.

(e) *Other charges.* ONDCP will recover the costs of providing other services such as certifying records or sending records by special methods.

#### **§ 1401.11 Fees to be charged—miscellaneous provisions.**

(a) Remittance shall be mailed to the Office of Legal Counsel, ONDCP, Washington DC 20503, and made payable to the order of the Treasury of the United States on a postal money order or personal check or bank draft drawn on a bank in the United States.

(b) ONDCP may require advance payment where the estimated fee exceeds \$250, or a requester previously failed to pay within 30 days of the billing date.

(c) ONDCP may assess interest charges beginning the 31st day of billing. Interest will be at the rate

prescribed in section 3717 of title 31 of the United States Code and will accrue from the date of the billing.

(d) ONDCP may assess search charges where records are not located or where records are exempt from disclosure.

(e) ONDCP may aggregate individual requests and charge accordingly for requests seeking portions of a document or documents.

#### **§ 1401.12 Fees to be charged—categories of requesters.**

(a) There are four categories of FOIA requesters: commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters.

(b) The specific levels of fees for each of these categories are:

(1) *Commercial use requesters.* ONDCP will recover the full direct cost of providing search, review and duplication services. Commercial use requesters will not receive free search-time or free reproduction of documents.

(2) *Educational and non-commercial scientific institution requesters.* ONDCP will charge the cost of reproduction, excluding charges for the first 100 pages. Requesters must demonstrate the request is authorized by and under the auspices of a qualifying institution and that the records are sought for scholarly or scientific research not a commercial use.

(3) *Requesters who are representatives of the news media.* ONDCP will charge the cost of reproduction, excluding charges for the first 100 pages. Requesters must meet the criteria in § 1401.3(h), and the request must not be made for a commercial use. A request that supports the news dissemination function of the requester shall not be considered a commercial use.

(4) *All other requesters.* ONDCP will recover the full direct cost of the search and the reproduction of records, excluding the first 100 pages of reproduction and the first two hours of search time. Requests for records concerning the requester will be treated under the fee provisions of the Privacy Act of 1974, 5 U.S.C. 552a, which permits fees only for reproduction.

#### **§ 1401.13 Waiver or reduction of fees.**

Fees chargeable in connection with a request may be waived or reduced where ONDCP determines that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the

Government and is not primarily in the commercial interest of the requester.

**Barry McCaffrey,**

*Director.*

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## **DEPARTMENT OF THE TREASURY**

### **Internal Revenue Service**

#### **26 CFR Parts 1 and 602**

[TD 8847]

RIN 1545-AS39

#### **Adjustments Following Sales of Partnership Interests**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document finalizes regulations relating to the optional adjustments to the basis of partnership property following certain transfers of partnership interests under section 743, the calculation of gain or loss under section 751(a) following the sale or exchange of a partnership interest, the allocation of basis adjustments among partnership assets under section 755, the allocation of a partner's basis in its partnership interest to properties distributed to the partner by the partnership under section 732(c), and the computation of a partner's proportionate share of the adjusted basis of depreciable property (or depreciable real property) under section 1017. The changes will affect partnerships and partners where there are transfers of partnership interests, distributions of property, or elections under sections 108(b)(5) or (c). In addition, the final regulations under section 732(c) reflect changes to the law made by the Taxpayer Relief Act of 1997.

**DATES:** *Effective Dates:* These regulations are effective December 15, 1999.

*Applicability Date:* These regulations apply to transfers of partnership interests and distributions occurring on or after December 15, 1999.

**FOR FURTHER INFORMATION CONTACT:** Matthew Lay, (202) 622-3050.

#### **SUPPLEMENTARY INFORMATION:**

##### **Paperwork Reduction Act**

The collections of information in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number

1545-1588. Responses to these collections of information are mandatory for partnerships that have made an election under section 754 and for which a section 743 transfer has been made, and for partnerships which distribute property in a transaction subject to section 732(d).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent varies from 1 hour to 300 hours, depending on the individual circumstances, with an estimated average of 4 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to these collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### **Background**

This document (a) revises §§ 1.743-1 and 1.755-1 of the Income Tax Regulations (26 CFR part 1), and (b) amends §§ 1.732-1, 1.732-2, 1.734-1, 1.751-1, 1.754-1, and § 1.1017-1 of the Income Tax Regulations.

On January 29, 1998, proposed regulations (REG 209682-94) were published in the **Federal Register** (63 FR 4408). Written comments were received in response to the notice of proposed rulemaking. One speaker provided testimony at a public hearing held on September 10, 1998.

After consideration of all the comments, the proposed regulations under sections 732, 734, 743, 751, 755, and 1017 are adopted, as revised by this Treasury Decision.

#### **Explanation of Revisions and Summary of Contents**

##### *1. Basis in Distributed Property*

(a) Mandatory application of section 732(d). Section 1.732-1(d)(4) of the current regulations requires transferees to apply the special basis rule in certain