

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration****21 CFR Part 1240**

[Docket No. 97N-0418]

**Revocation of Lather Brushes Regulation; Correction**

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of May 12, 1998. The document that revoked regulations pertaining to the treatment, sterilization, handling, storage, marketing, and inspection of lather brushes. The document published with an inadvertent error. This document corrects that error.

**DATES:** The final rule is effective June 11, 1998.

**FOR FURTHER INFORMATION CONTACT:** Philip L. Chao, Policy Development and Coordination Staff (HF-23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-3380.

In FR Doc. 98-12450 appearing on page 26077 in the **Federal Register** of Tuesday, May 12, 1998, the following correction is made:

On page 26077, in the second column, in the heading, the docket number "97P-0418" is corrected to read "97N-0418".

Dated: May 21, 1998.

**William K. Hubbard,**  
Associate Commissioner for Policy  
Coordination.

[FR Doc. 98-14292 Filed 5-29-98; 8:45 am]

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**DEPARTMENT OF JUSTICE****28 CFR Parts 16 and 50**

[Attorney General Order No. 2156-98]

RIN 1105-AA20

**Revision of Freedom of Information Act and Privacy Act Regulations and Implementation of Electronic Freedom of Information Act Amendments of 1996**

AGENCY: Department of Justice.

ACTION: Final rule.

**SUMMARY:** This document amends the Department's regulations under both the Freedom of Information Act (FOIA) and

the Privacy Act of 1974. The FOIA and Privacy Act regulations have been streamlined and condensed, in accordance with the principles of the National Performance Review, with more "user-friendly" language used wherever possible. These revisions also reflect the principles established by President Clinton and Attorney General Reno in their FOIA Memoranda of October 4, 1993. The Department's new statement of discretionary disclosure policy—which originated in the Attorney General's FOIA Memorandum of October 4, 1993, and is incorporated into § 16.1(a)—supersedes the existing regulation regarding discretionary access to records of historical interest. Additionally, the regulations have been updated to reflect developments in case law and to include updated cost figures used in calculating and charging fees. These revisions also contain new provisions implementing the Electronic Freedom of Information Act Amendments of 1996 (Electronic FOIA Amendments).

**EFFECTIVE DATE:** July 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Janice Galli McLeod ((202) 514-3642).

**SUPPLEMENTARY INFORMATION:****Background Information**

On August 26, 1997, the Department of Justice published a proposed rule that revised its existing regulations under the FOIA and Privacy Act and added new provisions implementing the Electronic FOIA Amendments. See 62 FR 45184, Aug. 26, 1997. Interested persons were afforded an opportunity to participate in the rulemaking through submission of written comments on the proposed rule. The Department received three responses to its proposed rule. The Department has adopted several of the modifications suggested by the commenters and has made other revisions to its proposed rule for clarity as well.

New provisions implementing the Electronic FOIA Amendments are found at § 16.2(c) (electronic reading rooms), § 16.5(b) (multitrack processing), § 16.5(c) (processing under unusual circumstances), § 16.5(d) (expedited processing), § 16.6(b) (deletion marking), § 16.6(c) (appeal of format determinations), § 16.6(c)(3) (volume estimation), § 16.11(b)(3) (format of disclosure), and § 16.11(b)(8) (electronic searches). Revisions to the Department's fee schedule are found at § 16.11(c) and (d).

**Comments**

The Department received three responses from commenters: the first,

from several organizations that represent newspapers, news editors, and reporters; the second, from two nonprofit groups that regularly use the FOIA, both as requesters and as counsel for requesters; and the third, from a Federal agency. Each of the three responses contained several comments. Due consideration has been given to each of the comments received.

In several instances, commenters questioned the absence in the proposed rule of verbatim restatements of the language of the Electronic FOIA Amendments, or other statutory provisions of the FOIA. Such restatements of statutory language, however, are not necessary to the regulation. The rule revises the Department's existing regulations only where the amending language of the Electronic FOIA Amendments specifically requires or permits new regulations, where the current regulations conflict with the statutory amendments or existing case law, or where condensing or clarifying the regulations is warranted. The Department has added to its final rule three new clarifying statements—in §§ 16.1 and 16.3, as well as in § 16.40—to remind requesters and users that the Department's regulations should be read in conjunction with the FOIA, the Privacy Act, or both statutes.

Requesters and other users of the regulations now are also referred in § 16.3 to the Department's "Freedom of Information Act Reference Guide"—a user-friendly guide created under the Electronic FOIA Amendments that provides helpful information designed to familiarize users with available resources and specific procedures for making FOIA requests to the Department. The Department has complied with new subsection (g) of the FOIA by making its "Freedom of Information Act Reference Guide" available both in paper form and electronically. See "FOIA Update," Summer 1997, at 2; see also "Freedom of Information Act Reference Guide," at 3 & Attachment C (Aug. 1997); H.R. Rep. No. 104-795, at 30 (1996). In accordance with one commenter's suggestion, § 16.3(a) has been revised to specifically refer requesters to the Department's "Freedom of Information Act Reference Guide" for assistance in locating the records of the Department's various components in connection with potential FOIA requests.

In some instances, commenters suggested particular amendments to the proposed rules. Several of the suggested amendments have been accepted and incorporated into the Department's final rule. For example, one commenter noted

that within § 16.6(b), the subsection that partly concerns a component's obligation to indicate both the amount of and the location of information deleted on a partially disclosed record, the term "wherever practicable" appeared to modify both the term "amount" and the term "location," in a manner that was not consistent with the statutory language. The Department agrees and has modified this subsection to make it clear that the term in question applies only to the location of the deletion and not to the amount of information deleted. The commenter also questioned use of the term "wherever practicable" in lieu of the statutory term "technically feasible" within § 16.6(b). The Department agrees with the commenter and has replaced the term "wherever practicable" with the term "if technically feasible."

The Department also agrees with a commenter's suggestion that an agency's determination not to honor a requester's choice of form or format should be regarded as an adverse agency action that can be the subject of an administrative appeal. Accordingly, the Department has modified § 16.6(c) to include such a determination within its listing of adverse determinations subject to administrative appeal.

The Department disagrees with the commenter who interpreted the second sentence of 5 U.S.C.A. 552(a)(3)(B) (West 1996 & Supp. 1997) as requiring agencies to maintain records "in as many forms as possible," and it declines to add the commenter's suggested amendatory language to that effect. There is nothing in the legislative history of this provision to indicate that this amendment was intended to extend beyond the confines of the FOIA in the way in which the commenter suggested. The Department further declines to adopt a commenter's suggestion that it modify the language of § 16.5(c) concerning extensions of time to process requests based on unusual circumstances so as to limit the use of the provision to "rare instances." Rather, the parameters of this regulatory provision are governed by the clear statutory language, which specifies the circumstances under which time limits may be extended. The Department has, however, inserted the phrase "as defined by the FOIA" into this provision to alert requesters to the statutory basis of the definition of the term "unusual circumstances."

The Department also disagrees with the commenter who questioned the language of § 16.2(c)—specifically, the phrase "by the Department"—regarding electronic availability. This language is entirely consistent with

governmentwide guidance provided by the Department on this point in its "FOIA Update" publication. See "FOIA Update," Winter 1997, at 4-5. As the Department advised all Federal agencies in "FOIA Update," in enacting the Electronic FOIA Amendments Congress established a new "electronic reading room" obligation for all categories of reading room records, but it did so only "(f)or records created on or after November 1, 1996." 5 U.S.C.A. 552(a)(2) (West 1996 & Supp. 1997). This cut-off date serves as an important practical limitation on an agency's "electronic reading room" obligation: By limiting it to newly created reading room records—records that presumably would already be maintained by an agency in an electronic form, with few exceptions—Congress ensured that agencies would more readily be able to satisfy it. Thus, as agencies create the new policy statements, staff manuals, and final opinions in the adjudication of cases that are required to be placed in their reading rooms under subsections (a)(2)(A)-(C), they now automatically make those records available electronically as well. By contrast, many agencies and Department components must deal with records in the new fourth reading room category that were not generated by them, but rather were generated elsewhere and merely were obtained by them for one purpose or another (e.g., documents submitted by regulated entities). While such records may be determined by a component to fall within new subsection (a)(2)(D), they are not "created" by the Department and should not be regarded as subject to the electronic availability requirement. Accord *United States Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 144 (1989) (recognizing that agencies "either create or obtain" records that become subject to FOIA). A component may, of course, choose as a matter of administrative discretion to make such records available electronically in any case in which it determines that to do so would be most cost-effective in serving public access needs under subsection (a)(2)(D). The Department is confident that its implementation of this provision is fully in accord with congressional intent. Cf. H.R. Rep. No. 104-795, at 20-21 (1996) (indicating intent to treat subsection (a)(2) "in the same manner" as subsection (a)(1)); "FOIA Update," Winter 1997, at 3 (compelling agencies to follow two rules more favorable to FOIA requesters even though language of statutory amendments did not provide for them explicitly).

Several comments pertained to requests for expedited processing. One commenter raised a concern that requesters may not be sufficiently familiar with Departmental rules to know where to send such requests. By regulation, the Department has defined four categories of requests that will be taken out of turn and given expedited treatment. See 28 CFR 16.5(d)(1). One category of such requests—those that concern a matter of widespread and exceptional media interest that involves possible questions about government integrity—must be directed to the Department's Office of Public Affairs. All other categories of requests for expedited processing are to be sent to the applicable component's FOIA office. The participation of the Department's Office of Public Affairs in this aspect of FOIA processing was initiated by the Attorney General in 1994 in order to have the Department's media specialists deal directly with matters of exceptional concern to the media. The address of the Office of Public Affairs now has been placed within the text of § 16.5(d)(2) in order to better facilitate this process; all other component FOIA addresses are found in the appendix that follows the Department's FOIA and Privacy Act regulations. For requesters familiar with the regulation, submission of expedited-processing requests directly to the office that will process them will further the purpose of the underlying statutory provision. The Department already had in place procedures by which all Department components are required to forward misdirected expedited-processing requests that involve the Department's special media-related standard to the Office of Public Affairs by hand-delivery or fax. At one commenter's suggestion, the Department has now added a statement embodying this existing administrative requirement within § 16.5(d)(2).

Another commenter commended the Department for adopting expedited-processing categories beyond the two categories authorized by Congress; it then asked the Department to create a fifth category for any records subject to "five or more requests for substantially the same records." While Congress did give agencies latitude to expand expedited processing to other categories, it also admonished agencies that being "unduly generous" in creating other categories for expedited processing "would unfairly disadvantage other requesters." H.R. Rep. No. 104-795, at 26 (1996). The Department accordingly declines to create a fifth expedited-processing category for records subject to multiple requests.

Other suggested revisions to the proposed rule that have been incorporated into this final rule include the addition of a specific reference to the twenty-day period within which a component ordinarily will be required to make a determination on a request within the section concerning component responses to requests (§ 16.6(b)); a revision of the introductory paragraph pertaining to fee waivers, for clarity (§ 16.11(k)); and minor revisions of § 16.11(c)(3) and (k)(4), for clarity.

In some instances, commenters posed questions about the implementation of the Electronic FOIA Amendments or the proposed revisions. One commenter, for instance, given the broad language within § 16.5(d) concerning the submission of requests for expedited processing, asked: "Is there a point in time when expedited requests will not be accepted?" The answer to the question is simply "no." The language of the proposed rule clearly stated that a request for expedited processing may be made at the time of the initial request or "at any later time." The Department believes that questions such as the one raised by this commenter are more appropriately handled in a forum other than publication as part of a final rule.

#### *Regulatory Flexibility Act*

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605()), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Under the Freedom of Information Act, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, fees assessed by the Department are nominal. Further, the "small entities" that make FOIA requests, as compared with individual requesters and other requesters, are relatively few in number.

#### *Executive Order 12866*

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Office of Management and Budget has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by that agency.

#### *Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more

in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### *Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### **List of Subjects**

##### *28 CFR Part 16*

Administrative practice and procedure, Freedom of information, Privacy.

##### *28 CFR Part 50*

Administrative practice and procedure.

For the reasons stated in the preamble, the Department of Justice amends 28 CFR Chapter I, parts 16 and 50, as follows:

#### **PART 16—DISCLOSURE OR PRODUCTION OF RECORDS OR INFORMATION**

1. The authority citation for part 16 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

2. Subpart A of part 16 is revised to read as follows:

#### **Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act**

Sec.

- 16.1 General provisions.
- 16.2 Public reading rooms.
- 16.3 Requirements for making requests.
- 16.4 Responsibility for responding to requests.
- 16.5 Timing of responses to requests.
- 16.6 Responses to requests.
- 16.7 Classified information.
- 16.8 Business information.
- 16.9 Appeals.
- 16.10 Preservation of records.
- 16.11 Fees.
- 16.12 Other rights and services.

#### **Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act**

##### **§ 16.1 General provisions.**

(a) This subpart contains the rules that the Department of Justice follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. These rules should be read together with the FOIA, which provides additional information about access to records maintained by the Department. Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, which are processed under subpart D of this part, are processed under this subpart also. 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 subpart. As a matter of policy, the Department makes discretionary disclosures of records or information exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

(b) As used in this subpart, *component* means each separate bureau, office, board, division, commission, service, or administration of the Department of Justice.

##### **§ 16.2 Public reading rooms.**

(a) The Department maintains public reading rooms that contain the records that the FOIA requires to be made regularly available for public inspection and copying. Each Department component is responsible for determining which of the records it generates are required to be made available in this way and for making those records available either in its own reading room or in the Department's central reading room. Each component shall maintain and make available for public inspection and copying a current subject-matter index of its reading room records. Each index shall be updated regularly, at least quarterly, with respect to newly included records.

(b) The Department maintains public reading rooms or areas at the locations listed below:

(1) Bureau of Prisons—on the Seventh Floor, 500 First Street, NW., Washington, DC;

(2) Civil Rights Division—in Room 930, 320 First Street, NW., Washington, DC;

(3) Community Relations Service—in Suite 2000, 600 E Street, NW., Washington, DC;

(4) Drug Enforcement Administration—in Room W-7216, 700 Army Navy Drive, Arlington, Virginia;

(5) Executive Office for Immigration Review (Board of Immigration Appeals)—in Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia;

(6) Federal Bureau of Investigation—at the J. Edgar Hoover Building, 935 Pennsylvania Avenue, NW., Washington, DC;

(7) Foreign Claims Settlement Commission—in Room 6002, 600 E Street, NW., Washington, DC;

(8) Immigration and Naturalization Service—425 I Street, NW., Washington, DC;

(9) Office of Justice Programs—in Room 5430, 810 Seventh Street, NW., Washington, DC;

(10) Pardon Attorney—on the Fourth Floor, 500 First Street, NW., Washington, DC;

(11) United States Attorneys and United States Marshals—at the principal offices of the United States Attorneys and the United States Marshals, which are listed in most telephone books; and

(12) All other components of the Department of Justice—in Room 6505 at the Main Justice Building, 950 Pennsylvania Avenue, NW., Washington, DC.

(c) Components shall also make reading room records created by the Department on or after November 1, 1996, available electronically at the Department's World Wide Web site (which can be found at <http://www.usdoj.gov>), through use of the Department's "Freedom of Information Act Home Page." This includes each component's index of its reading room records, which will indicate which records are available electronically.

### § 16.3 Requirements for making requests.

(a) *How made and addressed.* You may make a request for records of the Department of Justice by writing directly to the Department component that maintains those records. You may find the Department's "Freedom of Information Act Reference Guide"—which is available electronically at the Department's World Wide Web site, and is available in paper form as well—helpful in making your request. For additional information about the FOIA, you may refer directly to the statute. If you are making a request for records about yourself, see § 16.41(d) for additional requirements. If you are making a request for records about another individual, either a written authorization signed by that individual

permitting disclosure of those records to you or proof that that individual is deceased (for example, a copy of a death certificate or an obituary) will help the processing of your request. Your request should be sent to the component's FOIA office at the address listed in appendix I to part 16. In most cases, your FOIA request should be sent to a component's central FOIA office. For records held by a field office of the Federal Bureau of Investigation (FBI) or the Immigration and Naturalization Service (INS), however, you must write directly to that FBI or INS field office address, which can be found in most telephone books or by calling the component's central FOIA office (The functions of each component are summarized in part 0 of this title and in the description of the Department and its components in the "United States Government Manual," which is issued annually and is available in most libraries, as well as for sale from the Government Printing Office's Superintendent of Documents. This manual also can be accessed electronically at the Government Printing Office's World Wide Web site (which can be found at [http://www.access.gpo.gov/su\\_docs](http://www.access.gpo.gov/su_docs).) If you cannot determine where within the Department to send your request, you may send it to the FOIA/PA Mail Referral Unit, Justice Management Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530-0001. That office will forward your request to the component(s) it believes most likely to have the records that you want. Your request will be considered received as of the date it is received by the proper component's FOIA office. For the quickest possible handling, you should mark both your request letter and the envelope "Freedom of Information Act Request."

(b) *Description of records sought.* You must describe the records that you seek in enough detail to enable Department personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. In addition, if you want records about a court case, you should provide the title of the case, the court in which the case was filed, and the nature of the case. If known, you should include any file designations or descriptions for the records that you want. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Department will be able to

locate those records in response to your request. If a component determines that your request does not reasonably describe records, it shall tell you either what additional information is needed or why your request is otherwise insufficient. The component also shall give you an opportunity to discuss your request so that you may modify it to meet the requirements of this section. If your request does not reasonably describe the records you seek, the agency's response to your request may be delayed.

(c) *Agreement to pay fees.* If you make a FOIA request, it shall be considered an agreement by you to pay all applicable fees charged under § 16.11, up to \$25.00, unless you seek a waiver of fees. The component responsible for responding to your request ordinarily will confirm this agreement in an acknowledgement letter. When making a request, you may specify a willingness to pay a greater or lesser amount.

### § 16.4 Responsibility for responding to requests.

(a) *In general.* Except as stated in paragraphs (c), (d), and (e) of this section, the component that first receives a request for a record and has possession of that record is the component responsible for responding to the request. In determining which records are responsive to a request, a component ordinarily will include only records in its possession as of the date the component begins its search for them. If any other date is used, the component shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The head of a component, or the component head's designee, is authorized to grant or deny any request for a record of that component.

(c) *Consultations and referrals.* When a component receives a request for a record in its possession, it shall determine whether another component, or another agency of the Federal Government, is better able to determine whether the record is exempt from disclosure under the FOIA and, if so, whether it should be disclosed as a matter of administrative discretion. If the receiving component determines that it is best able to process the record in response to the request, then it shall do so. If the receiving component determines that it is not best able to process the record, then it shall either:

(1) Respond to the request regarding that record, after consulting with the component or agency best able to determine whether to disclose it and with any other component or agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to the component best able to determine whether to disclose it, or to another agency that originated the record (but only if that agency is subject to the FOIA). Ordinarily, the component or agency that originated a record will be presumed to be best able to determine whether to disclose it.

(d) *Law enforcement information.* Whenever a request is made for a record containing information that relates to an investigation of a possible violation of law and was originated by another component or agency, the receiving component shall either refer the responsibility for responding to the request regarding that information to that other component or agency or consult with that other component or agency.

(e) *Classified information.* Whenever a request is made for a record containing information that has been classified, or may be appropriate for classification, by another component or agency under Executive Order 12958 or any other executive order concerning the classification of records, the receiving component shall refer the responsibility for responding to the request regarding that information to the component or agency that classified the information, should consider the information for classification, or has the primary interest in it, as appropriate. Whenever 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 regarding that information to the component or agency that classified the underlying information.

(f) *Notice of referral.* Whenever a component refers all or any part of the responsibility for responding to a request to another component or agency, it ordinarily shall notify the requester of the referral and inform the requester of the name of each component or agency to which the request has been referred and of the part of the request that has been referred.

(g) *Timing of responses to consultations and referrals.* All consultations and referrals will be handled according to the date the FOIA request initially was received by the first component or agency, not any later date.

(h) *Agreements regarding consultations and referrals.* Components may make agreements with other components or agencies to eliminate the

need for consultations or referrals for particular types of records.

#### § 16.5 Timing of responses to requests.

(a) *In general.* Components ordinarily shall respond to requests according to their order of receipt.

(b) *Multitrack processing.* (1) A component may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, including through limits based on the number of pages involved. If a component does so, it shall advise requesters in its slower track(s) of the limits of its faster track(s).

(2) A 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 within the specified limits of the component's faster track(s). A component doing so will contact the requester either by telephone or by letter, whichever is more efficient in each case.

(c) *Unusual circumstances.* (1) Where the statutory time limits for processing a request cannot be met because of "unusual circumstances," as defined in the FOIA, and the component determines to extend the time limits on that basis, the component shall as soon as practicable notify the requester in writing of the unusual circumstances and of the date by which processing of the request can be expected to be completed. Where the extension is for more than ten working days, the component shall provide the requester with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an alternative time period with the component for processing the request or a modified request.

(2) Where a component reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated. Multiple requests involving unrelated matters will not be aggregated.

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

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

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

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

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

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing must be received by the proper component. Requests based on the categories in paragraphs (d)(1)(i), (ii), and (iii) of this section must be submitted to the component that maintains the records requested. Requests based on the category in paragraph (d)(1)(iv) of this section must be submitted to the Director of Public Affairs, whose address is: Office of Public Affairs, U.S. Department of Justice, Room 1128, 950 Pennsylvania Avenue, NW., Washington DC 20530-0001. A component that receives a request that must be handled by the Office of Public Affairs shall forward it immediately to that office by hand-delivery or fax.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category in paragraph (d)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category in paragraph (d)(1)(ii) 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.

(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. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

**§ 16.6 Responses to requests.**

(a) *Acknowledgements of requests.* On receipt of a request, a component ordinarily shall send an acknowledgement letter to the requester which shall confirm the requester's agreement to pay fees under § 16.3(c) and provide an assigned request number for further reference.

(b) *Grants of requests.* Ordinarily, a component shall have twenty business days from when a request is received to determine whether to grant or deny the request. Once 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 charged under § 16.11 and shall disclose records to the requester promptly on payment of any applicable fee. Records disclosed in part shall be marked or annotated to show the amount of information deleted unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted also shall be indicated on the record, if technically feasible.

(c) *Adverse determinations of requests.* A component making an adverse determination denying a request in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, consist of: 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; a determination on any disputed fee matter, including a denial of a request for a fee waiver; and a denial of a request for expedited treatment. The denial letter shall be signed by the head of the component, or the component head's designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including any FOIA exemption applied by the component in denying the request;

(3) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to 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 exemption; and

(4) A statement that the denial may be appealed under § 16.9(a) and a description of the requirements of § 16.9(a).

**§ 16.7 Classified information.**

In processing a request for information that is classified under Executive Order 12958 (3 CFR, 1996 Comp., p. 333) or any other executive order, the originating component shall review the information to determine whether it should remain classified. Information determined to no longer require classification shall not be withheld on the basis of Exemption 1 of the FOIA. On receipt of any appeal involving classified information, the Office of Information and Privacy shall take appropriate action to ensure compliance with part 17 of this title.

**§ 16.8 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 purposes of this section:

(1) *Business information* means commercial or financial information obtained by the Department from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) *Submitter* means any person or entity from whom 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 will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(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 wherever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (f) of this section. The notice shall either describe the business information requested or include copies of the requested records or record portions

containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish it.

(e) *Where notice is required.* Notice shall be given to a submitter wherever:

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

(2) The component has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* A component will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period within the notice. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received by the component until after its disclosure decision has been made shall not be considered by the component. Information provided by a submitter 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 for nondisclosure in deciding whether to disclose business information. Whenever a component decides to disclose business information over the objection of a submitter, the component shall give the submitter written notice, which shall include:

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

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

(3) A specified disclosure date, which shall be a reasonable time subsequent to 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 lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1988 Comp., p. 235); or

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

(i) *Notice 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 requesters.* 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(s). Whenever a component notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, the component shall also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the component shall notify the requester(s).

#### § 16.9 Appeals.

(a) *Appeals of adverse determinations.* If you are dissatisfied with a component's response to your request, you may appeal an adverse determination denying your request, in any respect, to the Office of Information and Privacy, U.S. Department of Justice, Flag Building, Suite 570, Washington, DC 20530-0001. You must make your appeal in writing and it must be received by the Office of Information and Privacy within 60 days of the date of the letter denying your request. Your appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the component determination (including the assigned request number, if known) that you are appealing. For the quickest possible handling, you should mark your appeal letter and the envelope "Freedom of Information Act Appeal." Unless the Attorney General directs otherwise, a Director of the Office of Information and Privacy will act on behalf of the Attorney General on all appeals under this section, except that:

(1) In the case of an adverse determination by the Deputy Attorney

General or the Associate Attorney General, the Attorney General or the Attorney General's designee will act on the appeal;

(2) An adverse determination by the Attorney General will be the final action of the Department; and

(3) An appeal ordinarily will not be acted on if the request becomes a matter of FOIA litigation.

(b) *Responses to appeals.* The decision on your appeal will be made in writing. A decision affirming an adverse determination in whole or in part shall contain a statement of the reason(s) for the affirmance, including any FOIA exemption(s) applied, and will inform you of the FOIA provisions for court review of the decision. If the adverse determination is reversed or modified on appeal, in whole or in part, you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.

(c) *When appeal is required.* If you wish to seek review by a court of any adverse determination, you must first appeal it under this section.

#### § 16.10 Preservation of records.

Each component shall preserve all correspondence pertaining to the requests that it receives 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. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

#### § 16.11 Fees.

(a) *In general.* Components shall charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (k) of this section. A component ordinarily 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. When it

appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because a component has reasonable cause to doubt a requester's stated use, the component shall provide the requester a reasonable opportunity to submit further clarification.

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

(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 can take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others. Components shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format by the office responding to the request.

(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 not sought for a commercial use but are sought to further scholarly research.

(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 not sought for a commercial use but are sought to further scientific research.

(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 in those instances where they can qualify as disseminators of "news") who 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, doing all that is necessary to redact it and prepare it for disclosure. Review costs are recoverable even if a record ultimately is not disclosed. Review time 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. For example, components shall not search line-by-line where duplicating an entire document would be quicker and less expensive.

(c) *Fees*. In responding to FOIA requests, components shall charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section:

(1) *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 may charge for time spent searching even if they do not locate any responsive record or if they withhold the record(s) located as entirely exempt from disclosure.

(ii) For each quarter hour spent by clerical personnel in searching for and retrieving a requested record, the fee will be \$4.00. Where a search and retrieval cannot be performed entirely by clerical personnel—for example, where the identification of records within the scope of a request requires the use of professional personnel—the fee will be \$7.00 for each quarter hour of search time spent by professional personnel. Where the time of managerial personnel is required, the fee will be \$10.25 for each quarter hour of time spent by those personnel.

(iii) 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) will be entitled to the cost equivalent of two hours of manual search time without charge. These direct costs will include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for responsive records, as well as the costs of operator/programmer salary apportionable to the search.

(2) *Duplication*. Duplication fees will 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 will be ten cents per page. For copies produced by computer, such as tapes or printouts, components will charge the direct costs, including operator time, of producing the copy. For other forms of duplication, components will charge the direct costs of that duplication.

(3) *Review*. Review fees will be charged to requesters who make a commercial use request. Review fees will be charged only for the initial record review—in other words, the review done when a component determines whether an exemption applies to a particular record or record portion at the initial request level. No charge will be made for review at the administrative appeal level for an exemption already applied. However, records or record portions 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; the costs of that review are chargeable where it is made necessary by such a change of circumstances. Review fees will be charged at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) *Limitations on charging fees*. (1) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) No search fee or review fee will 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 will 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) Whenever a total fee calculated under paragraph (c) of this section is \$14.00 or less for any request, no fee will 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 will 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 \$14.00.

(e) *Notice of anticipated fees in excess of \$25.00*. When a component determines or estimates that the fees to be charged under this section will amount to more than \$25.00, the component shall notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as those 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. In cases in which a requester has been notified that actual or estimated fees amount to more than \$25.00, the request shall not be considered received and further work shall not be done on it until the requester agrees to pay the anticipated total fee. Any such agreement should be memorialized in writing. A notice under this paragraph will offer the requester an opportunity to discuss the matter with Departmental personnel in order to reformulate 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, when a component chooses as a matter of administrative discretion to provide a special service—such as certifying that

records are true copies or sending them by other than ordinary mail—the direct costs of providing the service ordinarily will be charged.

(g) *Charging interest.* Components may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the component. Components will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* Where 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. Components may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, components will aggregate them only where there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will 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—in other words, a payment made before work is begun or continued on a request. Payment owned for work already completed (i.e., a prepayment before copies are sent to a requester) is not an advance payment.

(2) Where a component determines or estimates that a total fee to be charged under this section will be more than \$250.00, it may require the requester to make an advance payment of an amount up to the amount of the entire anticipated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester that has a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to any component or agency within 30 days of the date of billing, a component may require the requester to pay to the full amount 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.

(4) In cases in which a component requires advance payment or payment due under paragraph (i)(2) or (3) of this section, the request shall not be considered received and further work will not be done on it until the required payment is received.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. Where records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, components will inform requesters of the steps for obtaining records from those sources so that they may do so most economically.

(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 where a component determines, based on all available information, 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 will 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 as likely to contribute to such understanding where nothing new would be added to the public’s 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 “public understanding.”* The disclosure must 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 will 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, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. Components shall not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is “important” enough to be made public.

(3) To determine whether the second fee waiver requirement is met, components will 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 any commercial interest of the requester (with reference to the definition of “commercial use” 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 in the administrative process to provide explanatory information regarding this consideration.

(ii) *The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, 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 where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. Components ordinarily shall presume that where a news media requester has satisfied the

public interest standard, the public interest will be the interest primarily 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) Where only some of the records to be released satisfy the requirements for a waiver of fees, 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. Components will exercise their discretion to consider the cost-effectiveness of their investment of administrative resources in this decisionmaking process, however, in deciding to grant waivers or reductions of fees.

#### § 16.12 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

3. Subpart D of part 16 is revised to read as follows:

#### Subpart D—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

Sec.

- 16.40 General provisions.
- 16.41 Requests for access to records.
- 16.42 Responsibility for responding to requests for access to records.
- 16.43 Responses to requests for access to records.
- 16.44 Classified information.
- 16.45 Appeals from denials of requests for access to records.
- 16.46 Requests for amendment or correction of records.
- 16.47 Requests for an accounting or record disclosures.
- 16.48 Preservation of records.
- 16.49 Fees.
- 16.50 Notice of court-ordered and emergency disclosures.
- 16.51 Security of systems or records.
- 16.52 Contracts for the operation of record systems.
- 16.53 Use and collection of social security numbers.
- 16.54 Employee standards of conduct.
- 16.55 Other rights and services.

#### Subpart D—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

##### § 16.40 General provisions.

(a) *Purpose and scope.* This subpart contains the rules that the Department of Justice follows under the Privacy Act of 1974, 5 U.S.C. 552a. These rules should be read together with the Privacy

Act, which provides additional information about records maintained on individuals. The rules in this subpart apply to all records in systems of records maintained by the Department that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records themselves, request amendment or correction of those records, and request an accounting of disclosures of those by the Department. In addition, the Department processes all Privacy Act requests for access to records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, following the rules contained in subpart A of this part, which gives requests the benefit of both statutes.

(b) *Definitions.* As used in this subpart:

(1) *Component.* means each separate bureau, office, board, division, commission, service, or administration of the Department of Justice.

(2) *Request for access.* to a record means a request made under Privacy Act subsection (d)(1).

(3) *Request for amendment or correction* of a record means a request made under Privacy Act subsection (d)(2).

(4) *Request for an accounting* means a request made under Privacy Act subsection (c)(3).

(5) *Requester* means an individual who makes a request for access, a request for amendment or correction, or a request for an accounting under the Privacy Act.

(c) *Authority to request records for a law enforcement purpose.* The head of a component or a United States Attorney, or either's designee, is authorized to make written requests under subsection (b)(7) of the Privacy Act for records maintained by other agencies that are necessary to carry out an authorized law enforcement activity.

##### § 16.41 Requests for access to records.

(a) *How made and addressed.* You may make a request for access to a Department of Justice record about yourself by appearing in person or by writing directly to the Department component that maintains the record. Your request should be sent or delivered to the component's Privacy Act office at the address listed in appendix I to this part. In most cases, a component's central Privacy Act office is the place to send a Privacy Act request. For records held by a field office of the Federal Bureau of Investigation (FBI) or the Immigration and Naturalization Service (INS), however, you must write directly to that FBI or INS field office address,

which can be found in most telephone books or by calling the component's central Privacy Act office. (The functions of each component are summarized in Part 0 of this title and in the description of the Department and its components in the "United States Government Manual," which is issued annually and is available in most libraries, as well as for sale from the Government Printing Office's Superintendent of Documents. This manual also can be accessed electronically at the Government Printing Office's World Wide Web site (which can be found at [http://www.access.gpo.gov/su\\_docs](http://www.access.gpo.gov/su_docs)). If you cannot determine where within the Department to send your request, you may send it to the FOIA/PA Mail Referral Unit, Justice Management Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530-0001, and that office will forward it to the component(s) it believes most likely to have the records that you seek. For the quickest possible handling, you should make both your request letter and the envelope "Privacy Act Request."

(b) *Description of records sought.* You must describe the records that you want in enough detail to enable Department personnel to locate the system of records containing them with a reasonable amount of effort. Whenever possible, your request should describe the records sought, the time periods in which you believe they were compiled, and the name or identifying number of each system of records in which you believe they are kept. The Department publishes notices in the **Federal Register** that describe its components' systems of records. A description of the Department's systems of records also may be found as part of the "Privacy Act Compilation" published by the National Archives and Records Administration's Office of the Federal Register. This compilation is available in most large reference and university libraries. This compilation also can be accessed electronically at the Government Printing Office's World Wide Web site (which can be found at [http://www.access.gpo.gov/su\\_docs](http://www.access.gpo.gov/su_docs)).

(c) *Agreement to pay fees.* If you make a Privacy Act request for access to records, it shall be considered an agreement by you to pay all applicable fees charged under § 16.49, up to \$25.00. The component responsible for responding to your request ordinarily shall confirm this agreement in an acknowledgement letter. When making a request, you may specify a willingness to pay a greater or lesser amount.

(d) *Verification of identity.* When you make a request for access to records about yourself, you must verify your identity. You must state your full name, current address, and date and place of birth. You must sign your request and your signature must either be notarized or submitted by you under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the FOIA/PA Mail Referral Unit, Justice Management Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530-0001. In order to help the identification and location of requested records, you may also, at your option, include your social security number.

(e) *Verification of guardianship.* When making a request as the parent or guardian of a minor or as the guardian of someone determined by a court to be incompetent, for access to records about that individual, you must establish:

(1) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and, at your option, the social security number of the individual;

(2) Your own identity, as required in paragraph (d) of this section;

(3) That you are the parent or guardian of that individual, which you may prove by providing a copy of the individual's birth certificate showing your parentage or by providing a court order establishing your guardianship; and

(4) That you are acting on behalf of that individual in making the request.

**§ 16.42 Responsibility for responding to requests for access to records.**

(a) *In general.* Except as stated in paragraphs (c), (d), and (e) of this section, the component that first receives a request for access to a record, and has possession of that record, is the component responsible for responding to the request. In determining which records are responsive to a request, a component ordinarily shall include only those records in its possession as of the date the component begins its search for them. If any other date is used, the component shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The head of a component, or the component head's designee, is authorized to grant or deny and request for access to a record of that component.

(c) *Consultation and referrals.* When a component receives a request for access to a record in its possession, it shall

determine whether another component, or another agency of the Federal Government, is better able to determine whether the record is exempt from access under the Privacy Act. If the receiving component determines that it is best able to process the record in response to the request, then it shall do so. If the receiving component determines that it is not best able to process the record, then it shall either:

(1) Respond to the request regarding that record, after consulting with the component or agency best able to determine whether the record is exempt from access and with any other component or agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to the component best able to determine whether it is exempt from access, or to another agency that originated the record (but only if that agency is subject to the Privacy Act). Ordinarily, the component or agency that originated a record will be presumed to be best able to determine whether it is exempt from access.

(d) *Law enforcement information.* Whenever a request is made for access to a record containing information that relates to an investigation of a possible violation of law and that was originated by another component or agency, the receiving component shall either refer the responsibility for responding to the request regarding that information to that other component or agency or shall consult with that other component or agency.

(e) *Classified information.* Whenever a request is made for access to a record containing information that has been classified by or may be appropriate for classification by another component or agency under Executive Order 12958 or any other executive order concerning the classification of records, the receiving component shall refer the responsibility for responding to the request regarding that information to the component or agency that classified the information, should consider the information for classification, or has the primary interest in it, as appropriate. Whenever 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 regarding that information to the component or agency that classified the underlying information.

(f) *Notice of referral.* Whenever a component refers all or any part of the responsibility for responding to a

request to another component or agency, it ordinarily shall notify the requester of the referral and inform the requester of the name of each component or agency to which the request has been referred and of the part of the request that has been referred.

(g) *Timing of responses to consultations and referrals.* All consultations and referrals shall be handled according to the date the Privacy Act access request was initially received by the first component or agency, not any later date.

(h) *Agreements regarding consultations and referrals.* Components may make agreements with other components or agencies to eliminate the need for consultations or referrals for particular types of records.

**§ 16.43 Responses to requests for access to records.**

(a) *Acknowledgements of requests.* On receipt of a request, a component ordinarily shall send an acknowledgement letter to the requester which shall confirm the requester's agreement to pay fees under § 16.41(c) and provide an assigned request number for further reference.

(b) *Grants of requests for access.* Once a component makes a determination to grant a request for access in whole or in part, it shall notify the requester in writing. The component shall inform the requester in the notice of any fee charged under § 16.49 and shall disclose records to the requester promptly on payment of any applicable fee. If a request is made in person, the component may disclose records to the requester directly, in a manner not unreasonably disruptive of its operations, on payment of any applicable fee and with a written record made of the grant of the request. If a requester is accompanied by another person, the requester shall be required to authorize in writing any discussion of the records in the presence of the other person.

(c) *Adverse determinations of requests for access.* A component making an adverse determination denying a request for access in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, consist of: 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 what has been requested is not a record subject to the Privacy Act; a determination on any disputed fee matter; and a denial of a request for expedited treatment. The notification letter shall be signed by the

head of the component, or the component head's designee, and shall include:

- (1) The name and title or position of the person responsible for the denial;
- (2) A brief statement of the reason(s) for the denial, including any Privacy Act exemption(s) applied by the component in denying the request; and
- (3) A statement that the denial may be appealed under § 16.45(a) and a description of the requirements of § 16.45(a).

#### § 16.44 Classified information.

In processing a request for access to a record containing information that is classified under Executive Order 12958 or any other executive order, the originating component shall review the information to determine whether it should remain classified. Information determined to no longer require classification shall not be withheld from a requester on the basis of Exemption (k)(1) of the Privacy Act. On receipt of any appeal involving classified information, the Office of Information and Privacy shall take appropriate action to ensure compliance with part 17 of this title.

#### § 16.45 Appeals from denials of requests for access to records.

(a) *Appeals.* If you are dissatisfied with a component's response to your request for access to records, you may appeal an adverse determination denying your request in any respect to the Office of Information and Privacy, U.S. Department of Justice, Flag Building, Suite 570, Washington, DC 20530-0001. You must make your appeal in writing and it must be received by the Office of Information and Privacy within 60 days of the date of the letter denying your request. Your appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the component determination (including the assigned request number, if known) that you are appealing. For the quickest possible handling, you should mark both your appeal letter and the envelope "Privacy Act Appeal." Unless the Attorney General directs otherwise, a Director of the Office of Information and Privacy will act on behalf of the Attorney General on all appeals under this section, except that:

(1) In the case of an adverse determination by the Deputy Attorney General or the Associate Attorney General, the Attorney General or the Attorney General's designee will act on the appeal;

(2) An adverse determination by the Attorney General will be the final action of the Department; and

(3) An appeal ordinarily will not be acted on if the request becomes a matter of litigation.

(b) *Responses to appeals.* The decision on your appeal will be made in writing. A decision affirming an adverse determination in whole or in part will include a brief statement of the reason(s) for the affirmance, including any Privacy Act exemption applied, and will inform you of the Privacy Act provisions for court review of the decision. If the adverse determination is reversed or modified on appeal in whole or in part, you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.

(c) *When appeal is required.* If you wish to seek review by a court of any adverse determination or denial of a request, you must first appeal it under this section.

#### § 16.46 Requests for amendment or correction of records.

(a) *How made and addressed.* Unless the record is not subject to amendment or correction as stated in paragraph (f) of this section, you may make a request for amendment or correction of a Department of Justice record about yourself by writing directly to the Department component that maintains the record, following the procedures in § 16.41. Your request should identify each particular record in question, state the amendment or correction that you want, and state why you believe that the record is not accurate, relevant, timely, or complete. You may submit any documentation that you think would be helpful. If you believe that the same record is in more than one system of records, you should state that and address your request to each component that maintains a system of records containing the record.

(b) *Component responses.* Within ten working days of receiving your request for amendment or correction of records, a component shall send you a written acknowledgment of its receipt of your request, and it shall promptly notify you whether your request is granted or denied. If the component grants your request in whole or in part, it shall describe the amendment or correction made and shall advise you of your right to obtain a copy of the corrected or amended record, in disclosable form. If the component denies your request in whole or in part, it shall send you a letter signed by the head of the component, or the component head's designee, that shall state:

(1) The reason(s) for the denial; and

(2) The procedure for appeal of the denial under paragraph (c) of this section, including the name and business address of the official who will act on your appeal.

(c) *Appeals.* You may appeal a denial of a request for amendment or correction to the Office of Information and Privacy in the same manner as a denial of a request for access to records (see § 16.45) and the same procedures shall be followed. If your appeal is denied, you shall be advised of your right to file a Statement of Disagreement as described in paragraph (d) of this section and of your right under the Privacy Act for court review of the decision.

(d) *Statements of Disagreement.* If your appeal under this section is denied in whole or in part, you have the right to file a Statement of Disagreement that states your reason(s) for disagreeing with the Department's denial of your request for amendment or correction. Statements of Disagreement must be concise, must clearly identify each part of any record that is disputed, and should be no longer than one typed page for each fact disputed. Your Statement of Disagreement must be sent to the component involved, which shall place it in the system of records in which the disputed record is maintained and shall mark the disputed record to indicate that a Statement of Disagreement has been filed and where in the system of records it may be found.

(e) *Notification of amendment/correction or disagreement.* Within 30 working days of the amendment or correction of a record, the component that maintains the record shall notify all persons, organizations, or agencies to which it previously disclosed the record, if an accounting of that disclosure was made, that the record has been amended or corrected. If an individual has filed a Statement of Disagreement, the component shall append a copy of it to the disputed record whenever the record is disclosed and may also append a concise statement of its reason(s) for denying the request to amend or correct the record.

(f) *Records not subject to amendment or correction.* The following records are not subject to amendment or correction:

- (1) Transcripts of testimony given under oath or written statements made under oath;
- (2) Transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings, which are the official record of those proceedings;
- (3) Presentence records that originated with the courts; and

(4) Records in systems of records that have been exempted from amendment and correction under Privacy Act, 5 U.S.C. 552a(j) or (k) by notice published in the **Federal Register**.

**§ 16.47 Requests for an accounting of record disclosures.**

(a) *How made and addressed.* Except where accountings of disclosures are not required to be kept (as stated in paragraph (b) of this section), you may make a request for an accounting of any disclosure that has been made by the Department to another person, organization, or agency of any record about you. This accounting contains the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. Your request for an accounting should identify each particular record in question and should be made by writing directly to the Department component that maintains the record, following the procedures in § 16.41.

(b) *Where accountings are not required.* Components are not required to provide accountings to you where they relate to:

(1) Disclosures for which accountings are not required to be kept—in other words, disclosures that are made to employees within the agency and disclosures that are made under the FOIA;

(2) Disclosures made to law enforcement agencies for authorized law enforcement activities in response to written requests from those law enforcement agencies specifying the law enforcement activities for which the disclosures are sought; or

(3) Disclosures made from law enforcement systems of records that have been exempted from accounting requirements.

(c) *Appeals.* You may appeal a denial of a request for an accounting to the Office of Information and Privacy in the same manner as a denial of a request for access to records (see § 16.45) and the same procedures will be followed.

**§ 16.48 Preservation of records.**

Each component will preserve all correspondence pertaining to the requests that it receives 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. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the Act.

**§ 16.49 Fees.**

Components shall charge fees for duplication of records under the Privacy Act in the same way in which they charge duplication fees under § 16.11. No search or review fee may be charged for any record unless the record has been exempted from access under Exemptions (j)(2) or (k)(2) of the Privacy Act.

**§ 16.50 Notice of court-ordered and emergency disclosures.**

(a) *Court-ordered disclosures.* When a record pertaining to an individual is required to be disclosed by a court order, the component shall make reasonable efforts to provide notice of this to the individual. Notice shall be given within a reasonable time after the component's receipt of the order—except that in a case in which the order is not a matter of public record, the notice shall be given only after the order becomes public. This notice shall be mailed to the individual's last known address and shall contain a copy of the order and description of the information disclosed. Notice shall not be given if disclosure is made from a criminal law enforcement system of records that has been exempted from the notice requirement.

(b) *Emergency disclosures.* Upon disclosing a record pertaining to an individual made under compelling circumstances affecting health or safety, the component shall notify that individual of the disclosure. This notice shall be mailed to the individual's last known address and shall state the nature of the information disclosed; the person, organization, or agency to which it was disclosed; the date of disclosure; and the compelling circumstances justifying the disclosure.

**§ 16.51 Security of systems of records.**

(a) Each component shall establish administrative and physical controls to prevent unauthorized access to its systems of records, to prevent unauthorized disclosure of records, and to prevent physical damage to or destruction of records. The stringency of these controls shall correspond to the sensitivity of the records that the controls protect. At a minimum, each component's administrative and physical controls shall ensure that:

(1) Records are protected from public view;

(2) The area in which records are kept is supervised during business hours to prevent unauthorized persons from having access to them;

(3) Records are inaccessible to unauthorized persons outside of business hours; and

(4) Records are not disclosed to unauthorized persons or under unauthorized circumstances in either oral or written form.

(b) Each component shall have procedures that restrict access to records to only those individuals within the Department who must have access to those records in order to perform their duties and that prevent inadvertent disclosure of records.

**§ 16.52 Contracts for the operation of record systems.**

Any approved contract for the operation of a record system will contain the standard contract requirements issued by the General Services Administration to ensure compliance with the requirements of the Privacy Act for that record system. The contracting component will be responsible for ensuring that the contractor complies with these contract requirements.

**§ 16.53 Use and collection of social security numbers.**

Each component shall ensure that employees authorized to collect information are aware:

(a) That individuals may not be denied any right, benefit, or privilege as a result of refusing to provide their social security numbers, unless the collection is authorized either by a statute or by a regulation issued prior to 1975; and

(b) That individuals requested to provide their social security numbers must be informed of:

(1) Whether providing social security numbers is mandatory or voluntary;

(2) Any statutory or regulatory authority that authorizes the collection of social security numbers; and

(3) The uses that will be made of the numbers.

**§ 16.54 Employee standards of conduct.**

Each component will inform its employees of the provisions of the Privacy Act, including the Act's civil liability and criminal penalty provisions. Unless otherwise permitted by law, an employee of the Department of Justice shall:

(a) Collect from individuals only the information that is relevant and necessary to discharge the responsibilities of the Department;

(b) Collect information about an individual directly from that individual whenever practicable;

(c) Inform each individuals from whom information is collected of:

(1) The legal authority to collect the information and whether providing it is mandatory or voluntary;

(2) The principal purpose for which the Department intends to use the information;

(3) The routine uses the Department may make of the information; and

(4) The effects on the individuals, if any, of not providing the information;

(d) Ensure that the component maintains no system of records without public notice and that it notifies appropriate Department officials of the existence or development of any system of records that is not the subject of a current or planned public notice;

(e) Maintain all records that are used by the Department in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in the determination;

(f) Except as to disclosures made to an agency or made under the FOIA, make reasonable efforts, prior to disseminating any record about an individual, to ensure that the record is accurate, relevant, timely, and complete;

(g) Maintain no record describing how an individual exercises his or her First Amendment rights, unless it is expressly authorized by statute or by the individual about whom the record is maintained, or is pertinent to and within the scope of an authorized law enforcement activity;

(h) When required by the Act, maintain an accounting in the specified form of all disclosures of records by the Department to persons, organizations, or agencies;

(i) Maintain and use records with care to prevent the unauthorized or inadvertent disclosure of a record to anyone; and

(j) Notify the appropriate Department official of any record that contains information that the Privacy Act does not permit the Department to maintain.

#### § 16.55 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act.

4. Appendix I of part 16 is revised to read as follows:

#### Appendix I to Part 16—Components of the Department of Justice

Unless a separate address is listed below, the address for each component is: (component name), U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530-0001. For all components marked by an asterisk, FOIA and Privacy Act requests should be sent to the Office of Information and Privacy, U.S. Department of Justice, Flag Bldg., Suite 570, Washington, DC 2053-0001. The components are:

#### A

Office of the Attorney General \*  
Office of the Deputy Attorney General \*  
Office of the Associate Attorney General \*  
Office of the Solicitor General

#### B

Office of Information and Privacy \*  
Office of the Inspector General  
Office of the Intelligence Policy and Review  
Office of Intergovernmental Affairs \*  
Office of Investigative Agency Policies  
Office of Legal Counsel  
Office of Legislative Affairs \*  
Office of Policy Development \*  
Office of Professional Responsibility  
Office of Public Affairs \*

#### C

Antitrust Division, U.S. Department of Justice, LPB Bldg., Suite 200, Washington, DC 20530-0001  
Civil Division, U.S. Department of Justice, 901E Bldg., Room 808, Washington, DC 20530-0001  
Civil Rights Division, U.S. Department of Justice, NYAV Bldg., Room 8000B, Washington, DC 20530-0001  
Criminal Division, U.S. Department of Justice, WCTR Bldg., Suite 1075, Washington, DC 20503-0001  
Environment and Natural Resources Division, U.S. Department of Justice, Post Office Box 4390, Washington, DC 20044-4390  
Justice Management Division  
Tax Division, U.S. Department of Justice, JCB Bldg., Room 6823, Washington, DC 20503-0001  
Bureau of Prisons, U.S. Department of Justice, HOLC Bldg., Room 738, 320 First Street, NW., Washington, DC 20534-0001  
Community Relations Service, U.S. Department of Justice, BICN Bldg., Suite 2000, Washington, DC 20530-0001  
Drug Enforcement Administration, U.S. Department of Justice, Washington, DC 20537-0001  
Executive Office for Immigration Review, U.S. Department of Justice, Suite 2400, 5107 Leesburg Pike, Falls Church, VA 22041-0001  
Executive Office for United States Attorneys, U.S. Department of Justice, BICN Bldg., Room 7100, Washington, DC 20530-0001  
Executive Office for United States Trustees, U.S. Department of Justice, 901E Bldg., Room 780, Washington, DC 20530-0001  
Federal Bureau of Investigation, U.S. Department of Justice, 935 Pennsylvania Avenue, NW., Washington, DC 20535-0001 (for field offices, consult your telephone book)  
Foreign Claims Settlement Commission, U.S. Department of Justice, BICN Bldg., Room 6002, 600 E Street, NW., Washington, DC 20579-0001  
Immigration and Naturalization Service, U.S. Department of Justice, CAB Bldg., 425 Eye Street, NW., Washington, DC 20536-0001 (for field offices, consult your telephone book)  
INTERPOL-U.S. National Central Bureau, U.S. Department of Justice, Washington, DC 20530-0001  
National Drug Intelligence Center, U.S. Department of Justice, Fifth Floor, 319

Washington Street, Johnstown, PA 15901-1622

Office of Community Oriented Policing Services, U.S. Department of Justice, VT1 Bldg., Twelfth Floor, Washington, DC 20530-0001

Office of Justice Programs, U.S. Department of Justice, Room 5337, 810 Seventh Street, NW., Washington, DC 20531-0001

Pardon Attorney, U.S. Department of Justice, FRST Bldg., Fourth Floor, Washington, DC 20530-0001

United States Marshals Service, U.S. Department of Justice, Lincoln Place, Room 1250, CSQ3, 600 Army Navy Drive, Arlington, VA 22202-4210

#### PART 50—STATEMENTS OF POLICY

5. The authority citation for part 50 continues to read as follows:

**Authority:** 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1921 et seq., 1973c.

#### § 50.8 [Removed and Reserved]

6. Section 50.8 of part 50 is removed and reserved.

Dated: May 22, 1998.

**Janet Reno,**

*Attorney General.*

[FR Doc. 98-14341 Filed 5-29-98; 8:45 am]

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#### DEPARTMENT OF THE INTERIOR

##### Minerals Management Service

#### 30 CFR Part 250

##### RIN 1010-AC37

#### Blowout Preventer (BOP) Testing Requirements for Drilling and Completion Operations

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the regulations governing the testing requirements for BOP systems used in drilling and completion operations on the Outer Continental Shelf (OCS). The rule allows a lessee up to 14 days between BOP pressure tests. MMS based this rule on a study of BOP performance which concluded that no statistical difference exists in failure rates for BOP's tested between 0- and 7-day intervals and between 8- and 14-day intervals. MMS estimates that the 14-day testing requirement could save industry \$35 to \$46 million a year without compromising safety.

**EFFECTIVE DATE:** The rule is effective on June 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Bill Hauser, Engineering and Research Branch, at (703) 787-1613.