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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

U.S. Customs and Border Protection

19 CFR Part 103

Federal Emergency Management Agency

44 CFR Part 5

[Docket No. DHS-2009-0036]

RIN 1601-AA00

Freedom of Information Act Regulations

AGENCY: Office of the Secretary, Department of Homeland Security

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to amend the Department of Homeland Security's (DHS) regulations under the Freedom of Information Act (FOIA). The Department (DHS) is proposing to update and streamline the language of several procedural provisions, and to incorporate changes brought about by the amendments to the FOIA under the OPEN Government Act of 2007, among other changes. DHS invites comment on all aspects of this proposal.

DATES: Comments and related material must be submitted to the docket for this rulemaking, DHS-2009-0036, on or before **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by docket number DHS–2009–0036, by one of the following methods:

(1) Federal eRulemaking Portal: <http://www.regulations.gov>

(2) Fax: 202–343-4011

(3) Mail: By mail to the Department of Homeland Security, Office of the Chief Privacy Officer, ATTN: James Holzer, 245 Murray Lane SW., STOP-0655, Washington, D.C. 20528-0655.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change and may be read at <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: James Holzer, Senior Director, FOIA Operations, Office of the Chief Privacy Officer, Department of Homeland Security, at 1-866-431-0486.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Homeland Security has authority under 5 U.S.C. 301, 552, and 552a, and 6 U.S.C. 112(e), to issue FOIA and Privacy Act regulations. On January 27, 2003, the Department of Homeland Security (Department or DHS) published an interim rule in the Federal Register (68 FR 4056) that established DHS procedures for obtaining agency records under the

FOIA, 5 U.S.C. 552, or Privacy Act, 5 U.S.C. 552a. DHS solicited comments on this interim rule, but received none.¹

In 2005, Executive Order 13392 called for the designation of a Chief FOIA Officer and FOIA Public Liaisons, along with the establishment of FOIA Requester Service Centers as appropriate. Subsequently, the Openness Promotes Effectiveness in our National Government Act of 2007 (OPEN Government Act), Public Law 110–175, required agencies to designate a Chief FOIA Officer who is then to designate one or more FOIA Public Liaisons (5 U.S.C. 552(j) and 552(k)(6)). Sections 6, 7, 9, and 10 of the OPEN Government Act amended provisions of the FOIA by setting time limits for agencies to act on misdirected requests and limiting the tolling of response times (5 U.S.C. 552(a)(6)(A)); requiring tracking numbers for requests that will take more than 10 days to process (5 U.S.C. 552 (a)(7)(A)); providing requesters a telephone line or Internet service to obtain information about the status of their requests, including an estimated date of completion (5 U.S.C. 552(a)(7)(B)); expanding the definition of “record” to include records “maintained for an agency by an entity under Government contract, for the purposes of records management” (5 U.S.C. 552(f)(2)); and introducing alternative dispute resolution to the FOIA process through FOIA Public Liaisons (5 U.S.C. 552(a)(6)(B)(ii) & (l)) and the Office of Government Information Services (5 U.S.C. 552(h)(3)).

DHS now proposes to revise its FOIA regulations at 6 CFR part 5, which apply to all components of DHS. This proposed rule would implement changes required by the OPEN Government Act and make other revisions to DHS FOIA regulations to improve access to Departmental records.

¹ This rule proposes revisions to DHS’s FOIA regulations, but not its Privacy Act regulations. DHS intends to finalize its Privacy Act regulations by separate rulemaking.

DHS describes the primary proposed changes in the section-by-section analysis below. DHS invites public comment on each of the proposed changes described, as well as any other matters within the scope of the rulemaking.

II. Section-by-Section Analysis

The proposed rules continue to inform the public of the responsibilities of DHS in conjunction with requests received under the Freedom of Information Act as well as the requirements for filing a proper FOIA request.

DHS is proposing to amend Subpart A to eliminate the provision for “brick and mortar” public reading rooms, amend DHS rules for third-party requests for records, and add information about proactive DHS disclosures.

Section 5.1 General provisions.

DHS is proposing to amend this part to incorporate reference to additional DHS policies and procedures relevant to the FOIA process. These resources, which are available at <http://www.dhs.gov/freedom-information-act-foia>, also include descriptions of the types of records maintained by different DHS components. DHS is also proposing to amend this section to clarify the definition of a component for purposes of this proposed rule. Component means each separate organizational entity within DHS that reports directly to the Office of the Secretary. A full list of all DHS components would be provided in appendix I of this proposed rule (as well as in the web resources described above) for informational purposes.

DHS is proposing to add paragraph (d) to section 5.1, “Unofficial release of DHS information.” This proposed paragraph seeks to inform the public about how information that is not released through official DHS channels will be treated in the FOIA process. DHS does not

consider information that is either inadvertently or inappropriately released by means other than the official release process used by DHS, whether in FOIA or otherwise, to be a FOIA release and accordingly, DHS does not waive its ability to assert exemptions to withhold some or all of the same records in response to a FOIA request.

Finally, DHS is proposing to remove at least two additional portions of current section 5.1. First, current paragraph (a)(1) clarifies that “[i]nformation routinely provided to the public as part of a regular DHS activity . . . may be provided to the public without following this subpart.” Second, current paragraph (a)(2) provides that “Departmental components may issue their own guidance under this subpart pursuant to approval by DHS.” DHS considers each of these provisions to be self-evident, and therefore proposes to remove them from the regulation.

Section 5.2 Proactive disclosures of DHS records.

DHS proposes to replace prior section 5.2, “Public Reading Rooms,” which was outdated, with a new section describing the proactive disclosure of DHS records. The FOIA requires DHS to make certain records available for public inspection and copying. Such records are available via the internet through the electronic reading rooms of each component. For those individuals with no access to the internet, the DHS Privacy Office or the component Public Liaison can provide assistance with access to records available in the electronic reading rooms. Contact information is provided in Appendix I to this subpart.

Section 5.3 Requirements for making requests.

DHS proposes to amend paragraph 5.3(a) to eliminate the requirement that third-party requesters of records pertaining to an individual provide a written authorization from the individual that is the subject of the records (or proof of death of the individual) as a prerequisite

to making such a request for records. As proposed, paragraph (a)(4) would inform third-party requesters that they may receive greater access if they provide written authorization from, or proof of death of, the subject of the records. In certain circumstances, they may in fact receive no access absent such authorization or proof. This paragraph would further advise that DHS may exercise its administrative discretion in seeking additional information from the requester to ensure that the proper consent has been received from the subject of the records.

DHS also proposes to amend paragraph (b) to direct requesters to contact the FOIA Public Liaison for each component if the requester has questions about how to describe the records that the requester seeks. DHS also proposes to amend this part to eliminate paragraph (c), which would be addressed under section 5.11, “Fees.” DHS proposes to insert a new paragraph (c), which describes the process under which DHS may administratively close a request if a requester fails to comply with a request for additional information.

Section 5.4 Responsibility for responding to requests.

DHS proposes to insert a new paragraph (c), “Re-routing of misdirected requests,” to advise requesters that a component that is in receipt of a misdirected request within DHS will redirect such a request to the proper component without the need for further action from the requester. In the event that a component receives a request that should be directed outside DHS entirely, the component would inform the requester that DHS does not collect or retain the type of records requested. Proposed paragraph (c) would cover a different situation than current paragraph (c), which only applies “[w]hen a component receives a request for a record in its possession.”

DHS proposes to combine paragraph 5.4(c), “Consultations and referrals,” with current paragraph (d), “Law Enforcement Information,” which covers consultation and referral of law enforcement records. Proposed paragraph (d) would describe the process of consultation, coordination, and referral of all records, to include law enforcement records, consistent with equities of components, agencies, or departments other than the responding component. Proposed paragraph (e) restates much of the current content of section 5.7, “Classified information.”

DHS proposes to revise current paragraph (f), “Notice of referral.” Paragraph (f) currently provides that when a component refers a request to another component or agency, it ordinarily shall notify the requester of such referral. Consistent with current law, DHS proposes to insert an exception to this requirement, such that the component should not refer the records if disclosure of the identity of the component or agency would harm an interest protected by an applicable exemption. Instead, the component should coordinate the response with the other component or agency, as appropriate.

DHS proposes a new paragraph, paragraph 5.4(i), “Electronic records and searches,” to advise requesters of DHS’s responsibilities under the FOIA with regard to conducting searches of electronic records and databases. DHS adheres to the requirement in 5 U.S.C. 552(a)(3)(C), which states that agencies will make reasonable efforts to search for records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency’s automated information systems. Proposed paragraph 5.4(i) seeks to clarify to requesters the types of situations that would amount to “significant interference” with the

operation of agency information systems such that DHS would not conduct a search for the requested records.

Section 5.5 Timing of responses to requests.

DHS proposes to amend paragraph 5.5(a) to advise requesters that the response time for misdirected requests that are re-routed under paragraph 5.4(c) will commence on the date the request is received by the proper component, but in any event, no later than ten working days after the request is first received by any component. DHS proposes to amend paragraph (b), “Multitrack Processing,” to include a specific provision for a track for requests granted expedited processing.

DHS proposes to split current paragraph (c), “Unusual Circumstances,” into two separately designated paragraphs. As revised, the rule would include in paragraph 5.5(d) information on how DHS will aggregate multiple related requests submitted by a single requester or a group of requesters acting in concert.

DHS also proposes to redesignate current paragraph 5.5(d), “Expedited Processing,” as paragraph 5.5(e). DHS proposes in proposed paragraph 5.5(e) to amend text that describes the procedures for making a request for expedited processing of an initial request or an appeal (current paragraph (d)), to include two new available justifications for requesting expedited processing.

5.6 Responses to requests. DHS proposes to revise paragraph 5.6(a) to encourage components to communicate with FOIA requesters having access to the internet through electronic means, to the extent practicable. This new paragraph is intended to address the increasing number of FOIA requesters who are corresponding with DHS via electronic mail and web portals. DHS

proposes to move paragraph (a) to paragraph (b), “Acknowledgment of Requests.” DHS proposes to amend this paragraph to specify that DHS and its components will acknowledge a request and assign the request an individualized tracking number if the request will take more than ten working days to process. DHS also proposes to require acknowledgment letters to contain a brief description of the request to allow requesters to more easily keep track of their requests. The provision in paragraph (a) referencing that the acknowledgment letter will confirm the requester’s agreement to pay fees would be addressed in proposed section 5.11(e).

DHS proposes to move paragraph (b), “Grants of requests,” to paragraph (c). DHS proposes to amend paragraph (b) by removing the description of the treatment of information, both released and redacted in documents provided to the requester. Substantially the same information is now included in a new proposed paragraph, paragraph 5.6(f), “Markings on Released Documents.” DHS proposes to move the remainder of current paragraph 5.6(c), “Adverse determinations of requests,” to two paragraphs, (d) and (e), “Adverse determinations of requests” and “Content of denial.” The language regarding adverse determination of requests remains substantially the same. DHS proposes to describe the content and process for denial letters in the newly proposed paragraph (e), but does not intend this paragraph to significantly change the current regulatory requirements concerning denial letters.

DHS also proposes new paragraph (g), “Use of record exclusions,” which describes the DHS’s use of exclusions under 5 U.S.C. 552(c). This paragraph proposes to incorporate the requirement set forth by the Department of Justice’s Office of Information Policy (OIP) that all federal agencies obtain the approval of OIP prior to invoking an exclusion. This proposed

paragraph also includes a requirement that DHS maintain an administrative record of the process of the invocation of the exclusion and approval by OIP.

5.7 Confidential commercial information. Proposed section 5.7, “Confidential commercial information,” would replace current section 5.8 of the current regulations, “Business information.” DHS proposes to reorder several paragraphs within this section. The changes are for clarity and to better advise requesters and providers of commercial information how DHS will treat requests for confidential commercial information, but the information contained in the proposed section remains substantively the same.

DHS proposes to amend the “Notice of intent to disclose” paragraph by splitting it into two paragraphs, proposed new paragraph (f), “Analysis of objections” and proposed new paragraph (g), “Notice of intent to disclose.” The proposed division of the information previously contained in a single paragraph is intended to improve clarity by highlighting in a separate paragraph that DHS will consider a submitter’s objections and specific grounds for nondisclosure in deciding whether to disclose the requested information. Otherwise, the information contained in the new proposed paragraphs remains substantively the same.

Finally, DHS proposes to include an exception to this section for commercial information provided to U.S. Customs and Border Protection (CBP) by a business submitter. Although CBP’s FOIA regulations (located at 19 CFR part 103, subpart A) are displaced by the DHS FOIA regulations, this rule proposes to allow CBP to continue treating commercial information in the same manner as it has since the promulgation of current 19 CFR 103.35.

5.8 Administrative appeals. This section corresponds to section 5.9 of the current regulations. In the time following the publication of the interim regulations in January 2003, DHS has

designated Appeals Officers for each component. As such, DHS proposes to amend paragraph (a) to direct requesters seeking to appeal adverse determinations to the DHS website or FOIA phone line for FOIA information to obtain the name and address of the appropriate appeals officer.

DHS proposes new paragraph (b) “Adjudication of appeal,” which replaces former paragraph (c) “When appeal is required.” The proposed new paragraph informs requesters that the DHS Office of the General Counsel or its designee component appeals officers are the authorized appeals authority for DHS. New proposed paragraph (b) also informs requesters about the treatment of appeals involving classified information. Finally, former paragraph (a)(3), which informs requesters that appeals will not normally be adjudicated if a FOIA lawsuit is filed, is incorporated into proposed paragraph (b).

DHS proposes to add a new paragraph (c), “Appeal decisions,” which is substantially similar to current paragraph 5.9(b). Proposed paragraph (c) would advise requesters that appeal decisions will be made in writing, and that decisions will inform requesters of their right to file a lawsuit and about mediation services offered by the Office of Government Information Services. Proposed paragraph (c) would also advise requesters of what to expect if the appeals officer reverses or modifies the original administrative decision on appeal. DHS also proposes to add a new paragraph (d), “Time limit for issuing appeal decision,” which advises requesters of the statutory 20-day time limit for responding to appeals, and also of the statutory 10-day extension of the 20-day limit available to the appeals officers in certain circumstances.

Finally, DHS proposes to add paragraph (e), “Appeal necessary before seeking court review,” which advises requesters that an administrative appeal is generally required before

seeking judicial review of a component's adverse determination. This language is substantially similar to current paragraph 5.9(c). This proposed paragraph also advises requesters that there is no administrative appeal requirement prior to seeking judicial review of a denial of request for expedited processing.

5.9 Preservation of records. DHS proposes to redesignate current section 5.10 "Preservation of records" as section 5.9. There is no change to the substantive information in the section.

5.10 FOIA requests for information contained in a Privacy Act system of records. DHS proposes to add the new above-referenced section, to explain to requesters how DHS treats FOIA requests for information protected by the Privacy Act. When applicable, DHS analyzes all requests under both the FOIA and the Privacy Act to ensure that the requester receives the greatest amount of information possible under federal law. This proposed section also explains the circumstances under which a third-party requester can obtain access to information protected by the Privacy Act.

5.11 Fees. DHS proposes to address all fee issues in section 5.11. Most of this section remains essentially unchanged. Proposed changes to paragraph (b) would clarify some of the definitions used by DHS in determining a requester's fee category. For instance, paragraph (b)(1) "Commercial use request," would clarify that components will make determinations on commercial use on a case-by-case basis. Paragraph (b)(4) "Educational institution," would add several examples to help requesters understand the analysis that DHS will apply to determine whether a requester meets the criteria to be considered an educational institution. Paragraph (b)(6), "News media," clarifies the criteria used by DHS to determine whether a requester qualifies to be considered a member of the news media for fee purposes. Paragraph (b)(8)

“Search,” would eliminate superfluous language that does not improve the comprehensibility of the paragraph. Because these and similar proposed changes are consistent with current regulations and describe current process, DHS does not expect that they will result in additional costs for the government or the public.

DHS also proposes to change paragraph (c)(1)(iii), which discusses direct costs associated with conducting any search that requires the creation of a new computer program, as discussed in new proposed paragraph 5.4(i), to locate the requested records. This change is intended to improve comprehension and to more accurately describe the circumstances under which a requester may be charged for a computerized search or a search of electronic records. It does not represent a change in practice, as DHS currently charges direct costs for specialized data searches. Again, because these proposed changes are consistent with current regulations and describe current process, DHS does not expect that they will result in additional costs for the government or the public.

DHS proposes to restructure paragraph (c)(3)(d), “Restrictions on charging fees.” Under this proposal, search fees, and in some cases, duplication fees may not be charged if a component fails to comply with the time limits in which to respond to a request provided no unusual or exceptional circumstances are present. This provision directly tracks a mandatory provision from section 6 of the OPEN Government Act of 2007, P.L. No. 110-175, 121 Stat. 2524, 5 U.S.C. 552(a)(4)(A)(viii).

In addition, DHS proposes to renumber former paragraph (d)(2) as paragraph (d)(3), and paragraph (d)(3) as (d)(4). DHS proposes minor changes in paragraph (d)(4) to improve clarity. Current paragraphs (d)(4) and (d)(5) would be combined into proposed paragraph (d)(5). DHS

proposes changes to paragraphs (e) and (f) to improve clarity; no significant changes are intended with respect to those paragraphs. DHS proposes no major changes to paragraphs (g), (h), (i), or (j), but proposes to modify a number of procedural provisions consistent with the practices of other agencies in this area. DHS also proposes minor changes to paragraph (k) to improve clarity. DHS proposes to eliminate current paragraph (l), “Payment of outstanding fees,” as the information in that paragraph is largely duplicative of the information contained within proposed paragraph (i)(3)—although proposed paragraph (i)(3) is discretionary, DHS anticipates that the result will be substantially the same as under current paragraph (l). Except in extraordinary circumstances, DHS will not process a FOIA request from persons with an unpaid fee from any previous FOIA request to any Federal agency until that outstanding fee has been paid in full to the agency. Finally, DHS proposes to insert a chart showing fee applicability, for ease of reference.

5.12 Confidential commercial information; CBP procedures.

As noted above, DHS proposes to include an exception to proposed § 5.7 for commercial information provided to U.S. Customs and Border Protection (CBP) by a business submitter. Although CBP’s FOIA regulations (located at 19 CFR part 103, subpart A) are displaced by the DHS FOIA regulations, because of the unique nature of CBP’s mission, this rule proposes to allow CBP to continue treating commercial information in the same manner as it has since the promulgation of current 19 CFR 103.35. CBP’s FOIA regulations, located at 19 CFR part 103, subpart A, will be removed no later than the effective date of the final rule for this rulemaking. CBP may, however, retain current 19 CFR 103.35 as an interim measure.

5.13 Other rights and services. DHS proposes no substantive changes to this section.

FEMA Regulations.

DHS also proposes to remove FEMA's outdated FOIA regulations at 44 CFR part 5, subparts A through E. FEMA is currently operating under DHS's title 6 FOIA regulations for all purposes.

III. Regulatory Analyses

Executive Orders 12866 and 13563 - Regulatory Review

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

DHS has considered the costs and benefits of this proposed rule. Previously in this preamble, DHS has provided a section-by-section analysis of the provisions in this proposed rule and concludes this rule does not impose additional costs on the public or the government. This rule does not collect any additional fee revenues compared to current practices or otherwise introduce new regulatory mandates. The rule's benefits include additional clarity for the public and DHS personnel with respect to DHS's implementation of the FOIA and subsequent statutory amendments.

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.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 note, agencies must consider the impact of their rulemakings on “small entities” (small businesses, small organizations and local governments). The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. DHS 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. Based on the previous discussion in this preamble, DHS does not believe this rule imposes any additional direct costs on small entities.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (as amended), 5 U.S.C. 804. 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

6 CFR Part 5

Classified information, Courts, Freedom of information, Government employees, Privacy.

19 CFR Part 103

Administrative practice and procedure, Confidential business information, Courts, Freedom of information, Law enforcement, Privacy, Reporting and recordkeeping requirements.

44 CFR Part 5

Courts, Freedom of information, Government employees.

For the reasons stated in the preamble, the Department of Homeland Security proposes to amend 6 CFR chapter I, part 5, 19 CFR chapter I, part 103, and 44 CFR chapter I, part 5, as follows:

TITLE 6 – Domestic Security

PART 5 -- DISCLOSURE OR PRODUCTION OF MATERIAL OR INFORMATION

1. The authority citation for part 5 is revised to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 301; 6 U.S.C. 101 et seq.; E.O. 13392.

2. In Chapter I, revise subpart A of part 5 to read as follows:

Subpart A -- Procedures for Disclosure of Records Under the Freedom of Information Act

Section

5.1 General provisions.

5.2 Proactive disclosures of DHS records.

- 5.3 Requirements for making requests.
 - 5.4 Responsibility for responding to requests.
 - 5.5 Timing of responses to requests.
 - 5.6 Responses to requests.
 - 5.7 Confidential commercial information.
 - 5.8 Administrative appeals.
 - 5.9 Preservation of records.
 - 5.10 FOIA requests for information contained in a Privacy Act system of records..
 - 5.11 Fees.
 - 5.12 Confidential commercial information; CBP procedures.
 - 5.13 Other rights and services.
- Appendix I to Subpart A—FOIA Contact Information

Subpart A -- Procedures for Disclosure of Records Under the Freedom of Information Act

§ 5.1 General provisions.

(a) (1) This subpart contains the rules that the Department of Homeland Security follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552 as amended. The Freedom of Information Act applies to third-party requests for documents concerning the general activities of the government and of DHS in particular. When an individual requests access to his or her own records, it is considered a Privacy Act request. Such records are maintained by DHS under the individual's name or personal identifier. Although requests are considered either FOIA requests or Privacy Act requests, agencies process requests in accordance with both laws, which provides the greatest degree of lawful access while safeguarding an individual's personal privacy.

(2) These rules should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget at 52 FR 10012 (March 27, 1987) (hereinafter "OMB Guidelines"). Additionally, DHS has additional policies and procedures relevant to the FOIA process. These resources are available at <http://www.dhs.gov/freedom-information-act-foia>. Requests made by individuals

for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under subpart B of part 5 as well as under this subpart. As a matter of policy, DHS 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 referenced in this subpart, component means the FOIA office of each separate organizational entity within DHS that reports directly to the Office of the Secretary.

(c) DHS has a decentralized system for processing requests, with each component handling requests for its records.

(d) Unofficial release of DHS information. The disclosure of exempt records, without authorization by the appropriate DHS official, is not an official release of information; accordingly, it is not a FOIA release. Such a release does not waive the authority of the Department of Homeland Security to assert FOIA exemptions to withhold the same records in response to a FOIA request. In addition, while the authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

§ 5.2 Proactive disclosure of DHS records.

Records that are required by the FOIA to be made available for public inspection and copying are accessible on DHS's website, <http://www.dhs.gov/freedom-information-act-foia-and-privacy-act>. Each component is responsible for determining which of its records are required to be made publicly available, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records.

Each component shall ensure that posted records and indices are updated on an ongoing basis. Each component has a FOIA Public Liaison who can assist individuals in locating records particular to a component. A list of DHS's FOIA Public Liaisons is available at <http://www.dhs.gov/foia-contact-information> and in appendix I to this subpart. If you have no access to the internet, please contact the Public Liaison for the component from which you are seeking records for assistance with publicly available records.

§ 5.3 Requirements for making requests.

(a) General information. (1) DHS has a decentralized system for responding to FOIA requests, with each component designating a FOIA office to process records from that component. All components have the capability to receive requests electronically, either through email or a web portal. To make a request for DHS records, a requester should write directly to the FOIA office of the component that maintains the records being sought. A request will receive the quickest possible response if it is addressed to the FOIA office of the component that maintains the records sought. DHS's FOIA Reference Guide contains or refers the reader to descriptions of the functions of each component and provides other information that is helpful in determining where to make a request. Each component's FOIA office and any additional requirements for submitting a request to a given component are listed in Appendix I of this subpart. These references can all be used by requesters to determine where to send their requests within DHS.

(2) A requester may also send his or her request to the Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW STOP-0655, or via the internet at <http://www.dhs.gov/dhs-foia-request-submission-form>, or via fax to (202) 343-4011. The Privacy

Office will forward the request to the component(s) that it determines to be most likely to maintain the records that are sought.

(3) A requester who is making a request for records about him or herself must comply with the verification of identity provision set forth in subpart B of this part.

(4) Where a request for records pertains to a third party, a requester may receive greater access by submitting either a notarized authorization signed by that individual, in compliance with the verification of identity provision set forth in subpart B of this part, or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual, authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (e.g., a copy of a death certificate or an obituary). As an exercise of its administrative discretion, each component can require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

(b) Description of records sought. Requesters must describe the records sought in sufficient detail to enable DHS personnel to locate them with a reasonable amount of effort. A reasonable description contains sufficient information to permit an organized, non-random search for the record based on the component's filing arrangements and existing retrieval systems. To the extent possible, requesters should include specific information that may assist a component in identifying the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number. Requesters should refer to Appendix I of this subpart for additional component-specific requirements. In general, requesters should include as much detail as possible about the specific records or the

types of records that they are seeking. Before submitting their requests, requesters may contact the component's FOIA Officer or FOIA public liaison to discuss the records they are seeking and to receive assistance in describing the records. If after receiving a request, a component determines that it does not reasonably describe the records sought, the component should inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the component's designated FOIA Officer, its FOIA Public Liaison, or a representative of the DHS Privacy Office, each of whom is available to assist the requester in reasonably describing the records sought. If a request does not reasonably describe the records sought, the agency's response to the request may be delayed.

(c) If a request does not adequately describe the records sought, DHS may seek additional information from the requester. If the requester does not respond to the request for additional information within thirty (30) days, the request may be administratively closed at DHS's discretion. This administrative closure does not prejudice the requester's ability to submit a new request for further consideration with additional information.

§ 5.4 Responsibility for responding to requests.

(a) In general. Except in the instances described in paragraphs (c) and (d) of this section, the component that first receives a request for a record and maintains 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 that it begins its search. If any other date is used, the component shall inform the

requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), shall not be considered responsive to a request.

(b) Authority to grant or deny requests. The head of a component, or designee, is authorized to grant or to deny any requests for records that are maintained by that component.

(c) Re-routing of misdirected requests. Where a component's FOIA office determines that a request was misdirected within DHS, the receiving component's FOIA office shall route the request to the FOIA office of the proper component(s).

(d) Consultations, coordination and referrals. When a component determines that it maintains responsive records that either originated with another component or agency, or which contains information provided by, or of substantial interest to, another component or agency, then it shall proceed in accordance with either paragraph (d)(1), (2), or (3) of this section, as appropriate:

(1) The component may respond to the request, after consulting with the component or the agency that originated or has a substantial interest in the records involved.

(2) The component may provide a combined or joint response to the request after coordinating with the other components or agencies that originated the record. This may include situations where the standard referral procedure is not appropriate where disclosure of the identity of the component or agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement component responding to a request for records on a living third party locates records within its files originating with a law enforcement agency, and if the existence of that law enforcement interest

in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if a component locates material within its files originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the component that received the request should coordinate with the originating component or agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination should then be conveyed to the requester by the component that originally received the request.

(3) The component may refer the responsibility for responding to the request or portion of the request to the component or agency best able to determine whether to disclose the relevant records, or to the agency that created or initially acquired the record as long as that agency is subject to the FOIA. Ordinarily, the component or agency that created or initially acquired the record will be presumed to be best able to make the disclosure determination. The referring component shall document the referral and maintain a copy of the records that it refers.

(e) Classified information. On receipt of any request involving classified information, the component shall determine whether information is currently and properly classified and take appropriate action to ensure compliance with 6 CFR part 7. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another component or agency under any applicable 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, or should consider the information for classification. Whenever a component's record contains information classified by another component or agency, the component shall coordinate with or refer the responsibility for responding to that portion of the request to the component or agency that classified the underlying information.

(f) Notice of referral. Whenever a component refers any part of the responsibility for responding to a request to another component or agency, it will notify the requester of the referral and inform the requester of the name of each component or agency to which the records were referred, unless disclosure of the identity of the component or agency would harm an interest protected by an applicable exemption, in which case the component should coordinate with the other component or agency, rather than refer the records.

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

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

(i) Electronic records and searches—(1) Significant interference. The FOIA allows components to not conduct a search for responsive documents if the search would cause significant interference with the operation of the component's automated information system.

(2) Business as usual approach. A "business as usual" approach exists when the component has the capability to process a FOIA request for electronic records without a

significant expenditure of monetary or personnel resources. Components are not required to conduct a search that does not meet this business as usual criterion.

(i) Creating computer programs or purchasing additional hardware to extract email that has been archived for emergency retrieval usually are not considered business as usual if extensive monetary or personnel resources are needed to complete the project.

(ii) Creating a computer program that produces specific requested fields or records contained within a well-defined database structure usually is considered business as usual. The time to create this program is considered as programmer or operator search time for fee assessment purposes and the FOIA requester may be assessed fees in accordance with 6 CFR 5.11(c)(1)(iii). However, creating a computer program to merge files with disparate data formats and extract specific elements from the resultant file is not considered business as usual, but a special service, for which additional fees may be imposed as specified in 6 CFR 5.11. Components are not required to perform special services and creation of a computer program for a fee is up to the discretion of the component and is dependent on component resources and expertise.

(3) Data links. Components are not required to expend DHS funds to establish data links that provide real time or near-real-time data to a FOIA requester.

§ 5.5 Timing of responses to requests.

(a) In general. Components ordinarily will respond to requests according to their order of receipt. Appendix I to this subpart contains the list of components that are designated to accept requests. In instances involving misdirected requests that are re-routed pursuant to 6 CFR 5.4(c), the response time will commence on the date that the request is received by the

proper component, but in any event not later than ten working days after the request is first received by any DHS component designated in appendix I of this subpart.

(b) Multitrack processing. All components must designate a specific track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (e) of this section. A component may also designate additional processing tracks that distinguish between simple and more complex requests based on the estimated amount of work or time needed to process the request. Among the factors a component may consider are the number of pages involved in processing the request or the need for consultations or referrals. Components shall advise requesters of the track into which their request falls, and when appropriate, shall offer requesters an opportunity to narrow their request so that the request can be placed in a different processing track.

(c) Unusual circumstances. Whenever the statutory time limits for processing a request cannot be met because of “unusual circumstances,” as defined in the FOIA, and the component extends the time limits on that basis, the component shall, before expiration of the twenty-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed. Where the extension exceeds ten working days, the component shall, as described by the FOIA, provide the requester with an opportunity to modify the request or agree to an alternative time period for processing. The component shall make available its designated FOIA Officer and its FOIA Public Liaison for this purpose.

(d) Aggregating requests. For the purposes of satisfying unusual circumstances under the FOIA, components may aggregate requests in cases where it reasonably appears that

multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. Components will not aggregate multiple requests that involve unrelated matters.

(e) Expedited processing. (1) Requests and appeals will be processed on an expedited basis whenever the component determines that they involve:

(i) Circumstances in which the lack of expedited processing 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 who is 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 any time. Requests based on paragraphs (e)(1)(i), (ii), and (iii) of this section must be submitted to the component that maintains the records requested. When making a request for expedited processing of an administrative appeal, the request should be submitted to the DHS Office of General Counsel or the component Appeals Officer. Address information is available at the DHS website, <http://www.dhs.gov/freedom-information-act-foia>, or by contacting the component FOIA officers via the information listed in Appendix I. Requests for expedited processing that are based on paragraph (e)(1)(iv) of this section must be submitted to the Senior Director of FOIA Operations, the Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW STOP-0655, Washington, DC 20598-0655. A component that receives a misdirected request for expedited

processing under the standard set forth in paragraph (e)(1)(iv) of this section shall forward it immediately to the DHS Senior Director of FOIA Operations, the Privacy Office, for determination. The time period for making the determination on the request for expedited processing under paragraph (e)(1)(iv) of this section shall commence on the date that the Privacy Office receives the request, provided that it is routed within ten working days, but in no event shall the time period for making a determination on the request commence any later than the eleventh working day after the request is received by any component designated in appendix I of this subpart.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (e)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that he or she is a person whose primary professional activity or occupation is information dissemination, though it need not be his or her sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public’s right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful to establishing the requirement that there be an “urgency to inform” the public on the topic. As a matter of administrative discretion, a component may waive the formal certification requirement.

(4) A component shall notify the requester within ten calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request shall be given priority, placed in the processing

track for expedited requests, 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.

§ 5.6 Responses to requests.

(a) In general. Components should, to the extent practicable, communicate with requesters having access to the internet using electronic means, such as email or web portal.

(b) Acknowledgments of requests. A component shall acknowledge the request and assign it an individualized tracking number if it will take longer than ten working days to process. Components shall include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests.

(c) Grants of requests. Ordinarily, a component shall have twenty (20) working days from when a request is received to determine whether to grant or deny the request unless there are unusual or exceptional circumstances. Once a component makes a determination to grant a request in full or in part, it shall notify the requester in writing. The component also shall inform the requester of any fees charged under 6 CFR 5.11 and shall disclose the requested records to the requester promptly upon payment of any applicable fees.

(d) 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, include decisions that the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials

involving fees, including requester categories or fee waiver matters, or denials of requests for expedited processing.

(e) Content of denial. The denial shall be signed by the head of the component, or designee, and shall include:

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

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

(3) An estimate of the volume of any records or information withheld, for example, by providing the number of pages or some other reasonable form of estimation. This estimation is not required if the volume is otherwise indicated by deletions marked on records that are 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 6 CFR 5.8(a), and a description of the requirements set forth therein.

(f) Markings on released documents. Markings on released documents must be clearly visible to the requester. Records disclosed in part shall be marked to show the amount of information deleted and the exemption under which the deletion was made 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.

(g) Use of record exclusions. (1) In the event that a component identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the

head of the FOIA office of that component must confer with Department of Justice's Office of Information Policy (OIP) to obtain approval to apply the exclusion.

(2) Any component invoking an exclusion shall maintain an administrative record of the process of invocation and approval of the exclusion by OIP.

§ 5.7 Confidential commercial information.

(a) Definitions.

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

(2) Submitter means any person or entity from whom DHS obtains confidential commercial information, directly or indirectly.

(b) Designation of confidential commercial information. A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, either at the time of submission or within 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.

(c) When notice to submitters is required. (1) A component shall promptly provide written notice to a submitter whenever records containing such information are requested under the FOIA if, after reviewing the request, the responsive records, and any appeal by the requester, the component determines that it may be required to disclose the records, provided:

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

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

(2) The notice shall either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, notice may be made by posting or publishing the notice in a place or manner reasonably likely to accomplish it.

(d) Exceptions to submitter notice requirements. The notice requirements of paragraphs (c) and (g) of this section shall not apply if:

(1) The component determines that the information is exempt under the FOIA;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987; or

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

(e) Opportunity to object to disclosure. (1) A component will specify a reasonable time period within which the submitter must respond to the notice referenced above. If a submitter

has any objections to disclosure, it should provide the component a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information constitutes a trade secret, or commercial or financial information that is privileged or confidential.

(2) A submitter who fails to respond within the time period specified in the notice shall be considered to have no objection to disclosure of the information. Information received by the component after the date of any disclosure decision will not be considered by the component. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(f) Analysis of objections. A component shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(g) Notice of intent to disclose. Whenever a component decides to disclose information over the objection of a submitter, the component shall provide the submitter written notice, which shall include:

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

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

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) Notice of FOIA lawsuit. Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the component shall promptly notify the submitter.

(i) Requester notification. The component shall notify a requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

(j) Scope. This section shall not apply to any confidential commercial information provided to CBP by a business submitter. 6 CFR 5.12 applies to such information. 6 CFR 5.12 also defines “confidential commercial information” as used in this paragraph.

§ 5.8 Administrative appeals

(a) Requirements for filing an appeal.

(1) A requester may appeal adverse determinations denying his or her request or any part of the request to the appropriate Appeals Officer. A requester may also appeal if he or she questions the adequacy of the component’s search for responsive records, or believes the component either misinterpreted the request or did not address all aspects of the request (i.e., it issued an incomplete response), or if the requester believes there is a procedural deficiency (e.g., fees were improperly calculated). For the address of the appropriate component Appeals Officer, contact the applicable component FOIA liaison using the information in appendix I to this subpart, visit www.dhs.gov/foia, or call 1–866–431–0486. An appeal must be in writing, and to be considered timely it must be postmarked or, in the case of electronic submissions, transmitted to the Appeals Officer within 60 business days after the date of the component’s response. The

appeal should clearly identify the component determination (including the assigned request number if the requester knows it) that is being appealed and should contain the reasons the requester believes the determination was erroneous. To facilitate handling, the requester should mark both the letter and the envelope, or the transmittal line in the case of electronic transmissions “Freedom of Information Act Appeal.”

(2) An adverse determination by the component appeals officer will be the final action of DHS.

(b) Adjudication of appeals. (1) The DHS Office of the General Counsel or its designee (e.g., component Appeals Officers) is the authorized appeals authority for DHS;

(2) On receipt of any appeal involving classified information, the Appeals Officer shall consult with the Chief Security Officer, and take appropriate action to ensure compliance with 6 CFR part 7;

(3) If the appeal becomes the subject of a lawsuit, the Appeals Officer is not required to act further on the appeal.

(c) Appeal decisions. The decision on the appeal will be made in writing. A decision that upholds a component’s determination will contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision will provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation services offered by the Office of Government Information Services, of the National Archives and Records Administration, as a non-exclusive alternative to litigation. If the adverse decision is reversed or modified on appeal, in whole or in part, the requester will be notified in a

written decision and the request will be thereafter be further processed in accordance with that appeal decision.

(d) Time limit for issuing appeal decision. The statutory time limit for responding to appeals is generally 20 workdays after receipt. However, the Appeals Officer may extend the time limit for responding to an appeal provided the circumstances set forth in 5 U.S.C. 552(a)(6)(B)(i) are met.

(e) Appeal necessary before seeking court review. If a requester wishes to seek court review of a component's adverse determination on a matter appealable under subsection (a)(1) of this section, the requester must generally first appeal it under this subpart. However, a requester is not required to first file an appeal of an adverse determination of a request for expedited processing prior to seeking court review.

§ 5.9 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 pursuant to title 44 of the United States Code or the General Records Schedule 4.2 and/or 14 of the National Archives and Records Administration. Records will not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 5.10 FOIA requests for information contained in a Privacy Act system of records.

(a) Information subject to Privacy Act. (1) If a requester submits a FOIA request for information about him or herself that is contained in a Privacy Act system of records applicable to the requester (i.e., the information contained in the system of records is retrieved by the

component using the requester's name or other personal identifier, and the information pertains to an individual covered by the Privacy Act) the request will be processed under both the FOIA and the Privacy Act.

(2) If the information the requester is seeking is not subject to the Privacy Act (e.g., the information is filed under another subject, such as an organization, activity, event, or an investigation not retrievable by the requester's name or personal identifier), the request, if otherwise properly made, will be treated only as a FOIA request. In addition, if the information is covered by the Privacy Act and the requester does not provide proper verification of the requester's identity, the request, if otherwise properly made, will be processed only under the FOIA.

(b) When both Privacy Act and FOIA exemptions apply. Only if both a Privacy Act exemption and a FOIA exemption apply can DHS withhold information from a requester if the information sought by the requester is about him or herself and is contained in a Privacy Act system of records applicable to the requester.

(c) Conditions for release of Privacy Act information to third parties in response to a FOIA request. If a requester submits a FOIA request for Privacy Act information about another individual, the information will not be disclosed without that person's prior written consent that provides the same verification information that the person would have been required to submit for information about him or herself, unless—

(1) The information is required to be released under the FOIA, as provided by 5 U.S.C. 552a (b)(2); or

(2) In most circumstances, if the individual is deceased.

(d) Privacy Act requirements. See DHS's Privacy Act regulations in 5 CFR part 5, subpart B for additional information regarding the requirements of the Privacy Act.

§ 5.11 Fees.

(a) In general. Components shall charge for processing requests under the FOIA in accordance with the provisions of this section and with the OMB Guidelines. Components will ordinarily use the most efficient and least expensive method for processing requested records. In order to resolve any fee issues that arise under this section, a component may contact a requester for additional information. A component ordinarily will collect all applicable fees before sending copies of records to a requester. If you make a FOIA request, it shall be considered a firm commitment by you to pay all applicable fees charged under § 5.11, up to \$25.00, unless you seek a waiver of fees. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) Definitions. Generally, "requester category" means one of the three categories in which agencies place requesters for the purpose of determining whether a requester will be charged fees for search, review and duplication; categories include commercial requesters, noncommercial scientific or educational institutions or news media requesters, and all other requesters. The term "fee waiver" means that processing fees will be waived, or reduced, if a requester can demonstrate that certain statutory standards are satisfied including that the information is in the public interest and is not requested for a commercial interest. For purposes of this section:

(1) Commercial use request is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. A component's decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information.

(2) Direct costs are those expenses that an agency expends in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (i.e., the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

(3) Duplication is reproducing 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, audiovisual materials, or electronic records, among others.

(4) Educational institution is any school that operates a program of scholarly research. A requester in this fee category must show that the request is authorized by, and is made under the auspices of, an educational institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research. To fall within this fee category the request must serve the scholarly research goal of the institution rather than an individual research goal.

Example 1. A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from

an educational institution if the request adequately describes how the requested information would further a specific research goal of the educational institution.

Example 2. A request from the same professor of geology seeking immigration information from the U.S. Immigration and Customs Enforcement in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

Example 3. A student who makes a request in furtherance of the completion of a course of instruction would be presumed to be carrying out an individual research goal, rather than a scholarly research goal of the institution, and would not qualify as part of this fee category.

Note: These examples are provided for guidance purposes only. Each individual request will be evaluated under the particular facts, circumstances, and information provided by the requester.

(5) Noncommercial scientific institution is an institution that is not operated on a “commercial” basis, as 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. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and not for a commercial use.

(6) Representative of the news media is any person or entity organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. 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 that broadcast “news” to the public at large and publishers of periodicals that disseminate “news” and make their products available through a variety of means to the general public, including but not limited to, news organizations that disseminate solely on the Internet. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use. In contrast, data brokers or others who merely compile and market government information for direct economic return shall not be presumed to be news media entities. “Freelance” journalists must demonstrate a solid basis for expecting publication through a news media entity in order to be considered as working for a news media entity. A publication contract would provide the clearest evidence that publication is expected; however, components shall also consider a requester’s past publication record in making this determination.

(7) Review is the page-by-page, line-by-line examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under 6 CFR 5.7 or 6 CFR 5.12, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) Search is the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records; and the reasonable efforts expended to locate and retrieve information from electronic records. Components shall ensure that searches are done in the most efficient and least expensive manner reasonably possible by readily available means.

(c) Charging 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. Because the fee amounts provided below already account for the direct costs associated with a given fee type, unless otherwise stated in § 5.11, components should not add any additional costs to those charges.

(1) Search. (i) Search fees shall be charged for all requests subject to the restrictions of paragraph (d) of this section. Components may properly charge for time spent searching even if they do not locate any responsive records or if they determine that the records are entirely exempt from disclosure.

(ii) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be as follows: managerial -- \$10.25; professional -- \$7.00; and clerical/administrative -- \$4.00.

(iii) Requesters will be charged the direct costs associated with conducting any search that requires the creation of a new computer program, as referenced in section 5.4, to locate the requested records. Requesters shall be notified of the costs associated with creating such a program and must agree to pay the associated costs before the costs may be incurred.

(iv) For requests that require the retrieval of records stored by an agency at a federal records center operated by the National Archives and Records Administration (NARA), additional costs shall be charged in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) Duplication. Duplication fees will be charged to all requesters, subject to the restrictions of paragraph (d) of this section. A component shall honor a requester's preference for receiving a record in a particular form or format where it is readily reproducible by the component in the form or format requested. Where photocopies are supplied, the component will provide one copy per request at a cost of ten cents per page. For copies of records produced on tapes, disks, or other media, components will charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials. For other forms of duplication, components will charge the direct costs.

(3) Review. Review fees will be charged to requesters who make commercial use requests. Review fees will be assessed in connection with the initial review of the record, i.e., the review conducted by a component to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, when the appellate authority determines that a particular exemption no longer applies, any costs associated with a component's re-review of the records in order to consider the use of other exemptions may be

assessed as review fees. Review fees will be charged at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) Restrictions on charging fees. (1) No search fees will be charged for requests by educational institutions (unless the records are sought for a commercial use), noncommercial scientific institutions, or representatives of the news media.

(2) If a component fails to comply with the time limits in which to respond to a request, and if no unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (d)(1) of this section, may not charge duplication fees.

(3) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(4) 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 for other media); and
- (ii) The first two hours of search.

(5) When, after first deducting the 100 free pages (or its cost equivalent) and the first two hours of search, a total fee calculated under paragraph (c) of this section is \$14.00 or less for any request, no fee will be charged.

(e) Notice of anticipated fees in excess of \$25.00. (1) When a component determines or estimates that the fees to be assessed in accordance with this section will exceed \$25.00, the component shall notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review and/or duplication, 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 accordingly. If the requester is a noncommercial use requester, the notice will specify that the requester is entitled to his or her statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge, and will advise the requester whether those entitlements have been provided.

(2) In cases in which a requester has been notified that the actual or estimated fees are in excess of \$25.00, the request shall not be considered perfected and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees he or she is willing to pay, or in the case of a noncommercial use requester who has not yet been provided with his or her statutory entitlements, designates that he or she seeks only that which can be provided by the statutory entitlements. The requester must provide the commitment or designation in writing, and must, when applicable, designate an exact dollar amount the requester is willing to pay. Components are not required to accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the component estimates that the total fee will exceed that amount, the component will toll the processing of the request while it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The component shall inquire whether the requester wishes to revise the amount of fees he or she is willing to pay and/or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) Components will make available their FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(f) Charges for other services. Although not required to provide special services, if a component chooses to do so as a matter of administrative discretion, the direct costs of providing the service will be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(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 billing date until payment is received by the component. Components will follow the provisions of the Debt Collection Act of 1982 (Public Law 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. When a component reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single 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. For requests separated by a longer period, components will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of 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 before work is commenced or continued on a request. Payment owed for work already completed (i.e., payment before copies are sent to a requester) is not an advance payment.

(2) When a component determines or estimates that a total fee to be charged under this section will exceed \$250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. A component may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with 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 calendar days of the billing date, a component may require that the requester pay the full amount due, plus any applicable interest on that prior request and the component may require that the requester 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 or any pending appeal. Where a component has a reasonable basis to believe that a requester has misrepresented his or her identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which a component requires advance payment, the request shall not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of the component's fee determination, the request will be closed.

(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. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the component will inform the requester of the contact information for that source.

(k) Requirements for waiver or reduction of fees. (1) Records responsive to a request shall be furnished without charge or at a reduced rate below that established under paragraph (c) of this section, where a component determines, on a case-by-case basis, 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) In deciding whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government, components will consider the following factors:

(i) The subject of the request must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure 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 the same or a substantially identical form, would not contribute to such understanding where nothing new would be added to the public's understanding.

(iii) 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 as well as his or her 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 public's understanding of the subject in question must be enhanced by the disclosure to a significant extent. However, components shall not make value judgments about whether the information at issue is "important" enough to be made public.

(3) To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, components will consider the following factors:

(i) Components shall identify any commercial interest of the requester, as defined in paragraph (b)(1) of this section, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) A waiver or reduction of fees is justified where the public interest is greater than 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 a waiver or reduction of fees should be made when the request is first submitted to the component and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester will be required to pay any costs incurred up to the date the fee waiver request was received.

(6) Summary of fees. The following table summarizes the chargeable fees (excluding direct fees identified in § 5.11) for each requester category.

Category	Search Fees	Review Fees	Duplication Fees
Commercial-use.....	Yes.....	Yes.....	Yes
Educational or Non-Commercial Scientific Institution.....	No.....	No.....	Yes (100 pages free).
News Media.....	No.....	No.....	Yes (100 pages free)
Other requesters.....	Yes (2 hours free)...	No.....	Yes (100 pages free).

§ 5.12 Confidential commercial information; CBP procedures.

(a) In general. For purposes of this section, “commercial information” is defined as trade secret, commercial, or financial information obtained from a person. Commercial information provided to CBP by a business submitter and that CBP determines is privileged or confidential commercial or financial information will be treated as privileged or confidential and will not be disclosed pursuant to a Freedom of Information Act request or otherwise made known in any manner except as provided in this section.

(b) Notice to business submitters of FOIA requests for disclosure. Except as provided in paragraph (b)(2) of this section, CBP will provide business submitters with prompt written notice of receipt of FOIA requests or appeals that encompass their commercial information. The written notice will describe either the exact nature of the commercial information requested, or enclose copies of the records or those portions of the records that contain the commercial information. The written notice also will advise the business submitter of its right to file a disclosure objection statement as provided under paragraph (c)(1) of this section. CBP will provide notice to business submitters of FOIA requests for the business submitter's commercial information for a period of not more than 10 years after the date the business submitter provides CBP with the information, unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(1) When notice is required. CBP will provide business submitters with notice of receipt of a FOIA request or appeal whenever:

(i) The business submitter has in good faith designated the information as commercially- or financially-sensitive information. The business submitter's claim of confidentiality should be supported by a statement by an authorized representative of the business entity providing

specific justification that the information in question is considered confidential commercial or financial information and that the information has not been disclosed to the public; or

(ii) CBP has reason to believe that disclosure of the commercial information could reasonably be expected to cause substantial competitive harm.

(2) When notice is not required. The notice requirements of this section will not apply if:

(i) CBP determines that the commercial information will not be disclosed;

(ii) The commercial information has been lawfully published or otherwise made available to the public; or

(iii) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(c) Procedure when notice given. (1) Opportunity for business submitter to object to disclosure. A business submitter receiving written notice from CBP of receipt of a FOIA request or appeal encompassing its commercial information may object to any disclosure of the commercial information by providing CBP with a detailed statement of reasons within 10 days of the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays). The statement should specify all the grounds for withholding any of the commercial information under any exemption of the FOIA and, in the case of Exemption 4, should demonstrate why the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. The disclosure objection information provided by a person pursuant to this paragraph may be subject to disclosure under the FOIA.

(2) Notice to FOIA requester. When notice is given to a business submitter under paragraph (b)(1) of this section, notice will also be given to the FOIA requester that the business

submitter has been given an opportunity to object to any disclosure of the requested commercial information.

(d) Notice of intent to disclose. CBP will consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose commercial information. Whenever CBP decides to disclose the requested commercial information over the objection of the business submitter, CBP will provide written notice to the business submitter of CBP's intent to disclose, which will include:

(1) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

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

(3) A specified disclosure date which will not be less than 10 days (exclusive of Saturdays, Sundays, and legal public holidays) after the notice of intent to disclose the requested information has been issued to the business submitter. Except as otherwise prohibited by law, CBP will also provide a copy of the notice of intent to disclose to the FOIA requester at the same time.

(e) Notice of FOIA lawsuit. Whenever a FOIA requester brings suit seeking to compel the disclosure of commercial information covered by paragraph (b)(1) of this section, CBP will promptly notify the business submitter in writing.

§ 5.13 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.

Appendix I to Subpart A -- FOIA Contact Information

Department of Homeland Security Chief FOIA Officer

Chief Privacy Officer/Chief FOIA Officer
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655

Department of Homeland Security Deputy Chief FOIA Officer

Deputy Chief FOIA Officer
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655

Senior Director, FOIA Operations

Sr. Director, FOIA Operations
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655
Phone: 202-343-1743 or 866-431-0486
Fax: 202-343-4011
E-mail: foia@hq.dhs.gov

Director, FOIA Production and Quality Assurance

Public Liaison
FOIA Production and Quality Assurance
The Privacy Office
U.S. Department of Homeland Security

245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655
Phone: 202-343-1743 or 866-431-0486
Fax: 202-343-4011
E-mail: foia@hq.dhs.gov

U. S. Customs & Border Protection (CBP)

FOIA Officer/Public Liaison
90 K Street NE, 9th Floor
Washington, D.C. 20229-1181
Phone: 202-325-0150
Fax: 202-325-0230

Office of Civil Rights and Civil Liberties (CRCL)

FOIA Officer/Public Liaison
U.S. Department of Homeland Security
Washington, D.C. 20528
Phone: 202-357-1218
E-mail: CRCL@dhs.gov

Federal Emergency Management Agency (FEMA)

FOIA Officer/Public Liaison
500 C Street, S.W., Room 7NE
Washington, D.C. 20472
Phone: 202-646-3323
E-mail: fema-foia@dhs.gov

Federal Law Enforcement Training Center (FLETC)

FOIA Officer/Public Liaison
Building #681, Suite 187B
Glynco, GA 31524
Phone: 912-267-3103
Fax: 912-267-3113
E-mail: fletc-foia@dhs.gov

National Protection and Programs Directorate (NPPD)

FOIA Officer/Public Liaison
U.S. Department of Homeland Security

Washington, D.C. 20528
Phone: 703-235-2211
Fax: 703-235-2052
E-mail: NPPD.FOIA@dhs.gov

Office of Biometric Identity Management (OBIM) FOIA Officer
Department of Homeland Security
Washington, D.C. 20598-0628
Phone: 202-298-5454
Fax: 202-298-5445
E-Mail: OBIM-FOIA@ice.dhs.gov

Office of Intelligence & Analysis (I&A)

FOIA Officer/Public Liaison
U.S. Department of Homeland Security
Washington, D.C. 20528
Phone: 202-447-4883
Fax: 202-612-1936
E-mail: I&AFOIA@hq.dhs.gov

Office of Inspector General (OIG)

FOIA Public Liaison
DHS-OIG Counsel
STOP 0305
245 Murray Lane, SW
Washington, D.C. 20528-0305
Phone: 202-254-4001
Fax: 202-254-4398
E-mail: FOIA.OIG@oig.dhs.gov

Office of Operations Coordination and Planning (OPS)

FOIA Officer/Public Liaison
U.S. Department of Homeland Security
Washington, D.C. 20528
Phone: 202-447-4156
Fax: 202-282-9811
E-mail: FOIAOPS@DHS.GOV

Science & Technology Directorate (S&T)

FOIA Officer/Public Liaison
U.S. Department of Homeland Security
Washington, D.C. 20528

Phone: 202-254-6342
Fax: 202-254-6739
E-mail: stfoia@hq.dhs.gov

Transportation Security Administration (TSA)
FOIA Officer/Public Liaison
Freedom of Information Act Branch
601 S. 12th Street
11th Floor, East Tower, TSA-20
Arlington, VA 20598-6020
Phone: 1-866-FOIA-TSA or 571-227-2300
Fax: 571-227-1406
E-mail: foia.tsa@dhs.gov

U.S. Citizenship & Immigration Services (USCIS)
FOIA Officer/Public Liaison
National Records Center, FOIA/PA Office
P. O. Box 648010
Lee's Summit, Mo. 64064-8010
Phone: 1-800-375-5283 (USCIS National Customer Service Unit)
Fax: 816-350-5785
E-mail: uscis.foia@uscis.dhs.gov

United States Coast Guard (USCG)

Commandant (CG-611)
2100 2nd St., S.W.
Attn: FOIA Officer/Public Liaison
Washington, D.C. 20593-0001
FOIA Requester Service Center Contact: Amanda Ackerson
Phone: 202-475-3522
Fax: 202-475-3927
E-mail: efoia@uscg.mil

United States Immigration & Customs Enforcement (ICE)

Freedom of Information Act Office
FOIA Officer/Public Liaison
500 12th Street, SW, Stop 5009
Washington, D.C. 20536-5009

FOIA Requester Service Center Contact
Phone: 866-633-1182
Fax: 202-732-4265
E-mail: ice-foia@dhs.gov

United States Secret Service (USSS)

Freedom of Information and Privacy Acts Branch
FOIA Officer/Public Liaison
245 Murray Drive, Building 410
Washington, D.C. 20223
Phone: 202-406-6370
Fax: 202-406-5586
E-mail: FOIA@usss.dhs.gov

Please direct all requests for information from the Office of the Secretary, Citizenship and Immigration Services Ombudsman, Domestic Nuclear Detection Office, Office of the Executive Secretary, Office of Intergovernmental Affairs, Management Directorate, Office of Policy, Office of the General Counsel, Office of Health Affairs, Office of Legislative Affairs, Office of Public Affairs and the Privacy Office, to the DHS Privacy Office at:

The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655
Phone: 202-343-1743 or 866-431-0486
Fax: 202-343-4011
E-mail: foia@hq.dhs.gov

Appendix B to Part 5 –[Removed]

3. Remove appendix B to part 5.

TITLE 19 – Customs Duties

PART 103 – AVAILABILITY OF INFORMATION

4. The authority citation for part 103 is revised to read as follows:

AUTHORITY: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

Section 103.31 also issued under 19 U.S.C. 1431;

Section 103.31a also issued under 19 U.S.C. 2071 note and 6 U.S.C. 943;

Section 103.33 also issued under 19 U.S.C. 1628;

Section 103.34 also issued under 18 U.S.C. 1905.

§ 103.35—[Removed]

5. Remove § 103.35.

TITLE 44 – Emergency Management and Assistance

PART 5 – PRODUCTION OR DISCLOSURE OF INFORMATION

6. The authority citation for part 5 is revised to read as follows:

Authority: Pub. L. 107-296, 116 Stat. 2135; 5 U.S.C. 301.

Subparts A through E—[Removed and Reserved]

7. Remove and reserve subparts A through E of part 5.

8. In §5.86, revise the section to read as follows:

§ 5.86 Records involved in litigation or other judicial process.

Subpoenas duces tecum issued pursuant to litigation or any other adjudicatory proceeding in which the United States is a party shall be referred to the Chief Counsel.

Jeh Charles Johnson,
Secretary.

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