

“Request for Termination of Suspended Investigation” (whichever is applicable);

(ii) Conduct a verification under § 351.307;

(iii) Include in the preliminary results of review under § 351.221(b)(4) the Secretary’s decision whether there is a reasonable basis to believe that the requirements for revocation or termination are met;

(iv) If the Secretary decides that there is a reasonable basis to believe that the requirements for revocation or termination are met, publish with the notice of preliminary results of review under § 351.221(b)(4) notice of “Intent to Revoke Order” or “Intent to Terminate Suspended Investigation” (whichever is applicable);

(v) Include in the final results of review under § 351.221(b)(5) the Secretary’s final decision whether the requirements for revocation or termination are met; and

(vi) If the Secretary determines that the requirements for revocation or termination are met, publish with the notice of final results of review under § 351.221(b)(5) notice of “Revocation of Order” or “Termination of Suspended Investigation” (whichever is applicable).

(3) If the Secretary revokes an order, the Secretary will order the suspension of liquidation terminated by the revocation on the first day after the period under review, and will instruct the Customs Service to release any cash deposit or bond.

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## DEPARTMENT OF JUSTICE

### 28 CFR Part 16

[Docket No. OAG 140; AG Order No. 3259–2011]

RIN 1105–AB27

### Freedom of Information Act Regulations

**AGENCY:** Department of Justice.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes revisions to the Department’s regulations under the Freedom of Information Act (FOIA). The regulations are being revised to update and streamline the language of several procedural provisions, and to incorporate certain of the changes brought about by the amendments to the FOIA under the OPEN Government Act of 2007. Additionally, the regulations are being updated to reflect

developments in the case law and to include current cost figures to be used in calculating and charging fees.

**DATES:** Written comments must be postmarked and electronic comments must be submitted on or before April 20, 2011. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System will accept comments until Midnight Eastern Time at the end of that day.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.
- *FAX:* (202) 514–1009. Send your comments to the attention of Caroline A. Smith.

- *Mail:* Caroline A. Smith, Office of Information Policy, U.S. Department of Justice, 1425 New York Ave., Suite 11050, Washington, DC 20530–0001.

To ensure proper handling, please reference OAG Docket No. 140 on your correspondence.

See **SUPPLEMENTARY INFORMATION** for further instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Caroline A. Smith, 202–514–3642.

#### SUPPLEMENTARY INFORMATION:

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment on this rule. Nevertheless, if you still want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase “PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has

so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on <http://www.regulations.gov>.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency’s public docket file, but not posted online. If you wish to inspect the agency’s public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

The reason that the Department is requesting electronic comments before Midnight Eastern Time on the day the comment period closes is because the inter-agency Regulations.gov/Federal Docket Management System (FDMS) which receives electronic comments terminates the public’s ability to submit comments at Midnight on the day the comment period closes. Commenters in time zones other than Eastern may want to take this fact into account so that their electronic comments can be received. The constraints imposed by the Regulations.gov/FDMS system do not apply to U.S. postal comments which will be considered as timely filed if they are postmarked before Midnight on the day the comment period closes.

#### Discussion

This rule proposes revisions to the Department’s regulations under the FOIA to update and streamline the language of several procedural provisions and to incorporate certain of the changes brought about by the amendments to the FOIA under the OPEN Government Act of 2007, Public Law 110–175, 121 Stat. 2524. Additionally, the regulations are being updated to reflect developments in the case law and to include current cost figures to be used in calculating and charging fees.

The revisions of the FOIA regulations in subpart A of part 16 incorporate changes to the language and structure of the regulations. Revised provisions include § 16.1 (General Provisions), § 16.2 (Proactive disclosure of Department records), § 16.3 (Requirements for making requests), § 16.5 (Timing of responses to requests), § 16.6 (Responses to requests), § 16.7 (Confidential commercial information), and § 16.8 (Administrative appeals). In addition, current § 16.7 (Classified Information) is to be deleted and subsequent sections renumbered accordingly.

Proposed revisions of the Department’s fee schedule can be found at § 16.10(c) and (d). The duplication charge for photocopying will decrease to

five cents a page, while document search and review charges will increase to \$16.50 and \$13.00 per quarter hour for professional and administrative time, respectively. The amount at or below which the Department will not charge a fee will increase from \$14.00 to \$25.00.

#### Regulatory Flexibility Act

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

#### Executive Order 12866

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

#### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

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

This rule is not a major rule as defined by section 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 in 28 CFR Part 16

Administrative practice and procedure, Freedom of Information, Privacy.

For the reasons stated in the preamble, the Department of Justice proposes to amend 28 CFR Chapter 1, part 16, as follows:

#### PART 16—DISCLOSURE OR PRODUCTION OF MATERIAL OR INFORMATION

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

**Authority:** 5 U.S.C. 301, 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

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

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

Sec.

- 16.1 General provisions.
- 16.2 Proactive disclosures of Department records.
- 16.3 Requirements for making requests.
- 16.4 Responsibility for responding to requests.
- 16.5 Timing of responses to requests.
- 16.6 Responses to requests.
- 16.7 Confidential business information.
- 16.8 Administrative appeals.
- 16.9 Preservation of records.
- 16.10 Fees.
- 16.11 Other rights and services.

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

##### § 16.1 General provisions.

(a) This subpart contains the rules that the Department of Justice follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552 as amended. 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 (Mar. 27, 1987) (hereinafter "OMB Guidelines"). Additionally, the Department's "FOIA Reference Guide" and its attachments contain information about the specific procedures particular to the Department with respect to making FOIA requests and descriptions of the types of records maintained by different Department components. This resource is available at [http://www.justice.gov/oip/04\\_3.html](http://www.justice.gov/oip/04_3.html). Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under subpart D of part 16 as well as under this subpart.

(b) As referenced in this subpart, component means the FOIA office of

each separate bureau, office, division, commission, service, center, or administration that is designated by the Department as a primary organizational entity.

##### § 16.2 Proactive disclosure of Department records.

Records that are required by the FOIA to be made available for public inspection and copying are accessible on the Department's Web site, <http://www.justice.gov>. 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 such records. Each component has a FOIA Public Liaison who can assist individuals in locating records particular to a component. A list of the Department's FOIA Public Liaisons is available at <http://www.justice.gov/oip/servicecenters.htm>.

##### § 16.3 Requirements for making requests.

(a) *General information.*

(1) To make a request for records of the Department, a requester must write directly to the FOIA office of the Department component that maintains those records. Each component's FOIA office and any additional requirements for submitting a request to a given component are listed in Appendix I of this part. Further details are provided in Attachments B and C of the Department's FOIA Reference Guide. Those Attachments contain detailed descriptions of each component's functions, as well as their major information systems. Part 0 of this chapter summarizes the functions of each component. These references can be used by requesters to determine where to send their request within the Department.

(2) When a requester is unable to determine the proper Department component to which to direct a request, the requester may send the request to the FOIA/PA Mail Referral Unit, Justice Management Division, Department of Justice, Washington, DC 20530-0001. The Mail Referral Unit 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 himself or herself must comply with the verification of identity provision set forth in subpart D 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 or a declaration by that individual made in compliance with the requirements set forth in 28 U.S.C. 1746 authorizing disclosure of the records to the requester, or submits 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) *Addressing requests.* Requests should be addressed to the FOIA office of the component that maintains the requested records. Attachment B of the FOIA Reference Guide lists the addresses of each FOIA office and the methods for submitting requests to each component.

(c) *Description of records sought.* Requesters must describe the records sought in sufficient detail to enable Department personnel to locate them with a reasonable amount of effort. 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 part 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. If the requester fails to reasonably describe the records sought, the component shall inform the requester what additional information is needed or why the request is deficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the component's designated FOIA contact or its FOIA Public Liaison. When a requester fails to provide sufficient detail after having been asked to clarify a request, the component shall notify the requester that the request has not been properly made and that no further action will be taken.

#### **§ 16.4 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) *Consultations and referrals.* A component in receipt of a request shall determine whether another component or another agency of the Federal government is in a better position to decide whether any records responsive to the request are exempt from disclosure under the FOIA and, if so, whether they should be released on a discretionary basis. If the receiving component determines that it is best able to process the record in response to the request, then it shall do so. If the receiving component determines to the contrary, then it shall either:

(1) Respond to the request, after consulting with the component or the agency that has a substantial interest in the records involved; or

(2) Refer the responsibility for responding to the request or portion of the request to the component 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 assessment. The referring component shall document the referral and maintain a copy of the records that it refers.

(d) *Classified information.* On receipt of any request involving classified information, the component shall take appropriate action to ensure compliance with part 17 of this title. 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 that has been derivatively classified, i.e., it contains information classified by another component or agency, the component shall refer the responsibility for responding to that portion of the request to the component

or agency that classified the underlying information.

(e) *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 identifying the recipient will itself disclose a sensitive, exempt fact.

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

(g) *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.

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

(a) *In general.* Components ordinarily will respond to requests according to their order of receipt. Appendix I to this part contains the list of the Department components that are designated to accept requests. In instances involving misdirected requests, i.e., where a request is sent to one of the Department components designated in Appendix I but is actually seeking records maintained by another Department component, the response time will commence on the date that the request is received by the appropriate component, but in any event not later than ten working days after the request is first received.

(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. A component can consider factors such as 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 the requesters an opportunity to narrow their request so that it 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 contact 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 it is determined 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 Office of Information Policy. Requests for expedited processing that are based on paragraph (e)(1)(iv) of this section must be submitted to the Director of Public Affairs at the Office of Public Affairs, Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530-0001. 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 Office of Public Affairs for its 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 Office of Public Affairs receives the request, provided that it is routed within ten working days.

(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 (d)(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. 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. A requester cannot satisfy the "urgency to inform" requirement solely by demonstrating that numerous articles have been published on a given subject. 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 component denies expedited processing, any appeal of that decision which complies with the procedures set forth in § 16.8 of this subpart shall be acted on expeditiously.

#### § 16.6 Responses to requests.

(a) *Acknowledgments of requests.* Upon receipt of a request that will take longer than ten days to process, a component shall send the requester an acknowledgment letter that assigns the request an individualized tracking number.

(b) *Grants of requests.* 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 § 16.10 of this subpart and shall disclose the requested records to the requester

promptly upon payment of any applicable fees.

(c) *Adverse determinations of requests.* A component making an adverse determination denying a request in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, 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 or fee waiver matters or denials of requests for expedited processing.

(d) *Content of denial letter.* The denial letter 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; and

(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.

(4) A statement that the denial may be appealed under § 16.8(a) of this subpart, and a description of the requirements set forth therein.

(e) *Markings on released documents.* Markings on released documents must be clearly visible to the requester.

(f) *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 the Office of Information Policy (OIP) to obtain approval to apply the exclusion.

(2) When a component applies an exclusion to exclude records from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the component utilizing the exclusion will respond to the request as if the excluded records did not exist. This response should not differ in wording from any other response given by the component.

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

#### **§ 16.7 Confidential commercial information.**

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

(2) *Submitter* means any person or entity from whom the Department obtains 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:

(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 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.

#### **§ 16.8 Administrative appeals.**

(a) *Requirements for making an appeal.* A requester may appeal any adverse determinations denying his or her request to the Office of Information Policy. The contact information for the Office of Information Policy is contained in the FOIA Reference Guide. Examples of adverse determinations are provided in § 16.6(c) of this subpart. The requester must make the appeal in writing and to be considered timely it must be postmarked, or in the case of electronic submissions, transmitted, within 45 calendar days after the date of the letter denying the request. Appeals that have not been postmarked or transmitted within the specified timeframe will be considered untimely and will be administratively closed with notice to the requester. The appeal letter should clearly identify the component's determination that is being appealed and the assigned request number. The requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, "Freedom of Information Act Appeal."

(b) *Adjudication of appeals.* (1) The Director of the Office of Information Policy or designee will act on behalf of the Attorney General on all appeals under this section.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(3) On receipt of any appeal involving classified information, the Office of Information Policy shall take appropriate action to ensure compliance with part 17 of this title.

(c) *Decisions on appeals.* A decision on an appeal must 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, and will provide the requester with notification of the statutory right to file a lawsuit. If a component's decision is remanded or modified on appeal the requester will be notified of that determination in writing. The component will thereafter further process the request in accordance with that appeal determination and respond directly to the requester.

(d) *When appeal is required.* Before seeking review by a court of a component's adverse determination, a requester generally must first submit a timely administrative appeal.

**§ 16.9 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 14 of the National Archives and Records Administration. Records that are identified as responsive to a request will not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

**§ 16.10 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. 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. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* For purposes of this section:

(1) *Commercial-use request* 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.

(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. Components shall ensure that searches, review, and duplication are conducted in the most efficient and the least expensive manner. 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 category must show that the request is

authorized by, and is made under the auspices of, a qualifying institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research. Records requested for the intention of fulfilling credit requirements are not considered to be sought for a scholarly purpose.

(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. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use. "Freelance" journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as working for that entity. A publishing 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. A component's decision to grant a requester media status will be made on a case-by-case basis based upon the requester's intended use.

(7) *Review* is the 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 § 16.7 of this subpart, 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.

(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, 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: Professional—\$16.50; and administrative—\$13.00.

(iii) Requesters will be charged the direct costs associated with conducting any search that requires the creation of a new program to locate the requested records.

(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 five cents per page. For copies of records produced on tapes, disks, or other

electronic 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, noncommercial scientific institutions, or representatives of the news media. When the 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 defined in paragraphs (b)(4), (b)(5) and (b)(6) of this section, may not charge duplication fees.

(2) 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.

(3) Except for requesters seeking records for a commercial use, components will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(4) 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 \$25.00 or less for any request, no fee will be charged.

(e) *Notice of anticipated fees in excess of \$25.00.* 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, 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. 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 received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee. Such a commitment must be made by the requester in writing, must indicate a given dollar amount, and must be received by the component within 30 calendar days from the date of notification of the fee estimate. If a commitment is not received within this period, the request shall be closed. Components will make available their FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request in an effort to reduce fees. Components are not required to accept payments in installments.

(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 (i)(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 letter, 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, 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) The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either 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 ordinarily be presumed that a representative of the news media satisfies 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.

(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.

#### **§ 16.11 Other rights and services.**

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

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

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

Please consult Attachment B of the Department of Justice Freedom of Information Act Reference Guide for the contact information and a detailed description of the types of records maintained by each Department component. The FOIA Reference Guide is available at <http://www.justice.gov/oip/referenceguide.htm> or upon request to the Office of Information Policy.

The FOIA Offices of Department components and any component-specific requirements for making a FOIA request are listed below. The Certification of Identity form available at [http://www.justice.gov/oip/forms/cert\\_ind.pdf](http://www.justice.gov/oip/forms/cert_ind.pdf) may be used by individuals who are making requests for records pertaining to themselves. For each of the components marked with an asterisk, FOIA and Privacy Act ("PA") access requests must be sent to the Office of Information Policy, which handles initial requests for those seven components.

#### **A**

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

#### **B**

Antitrust Division, FOIA/PA Unit

Bureau of Alcohol, Tobacco, Firearms, and Explosives, Disclosure Division  
Civil Division, FOIA/PA Officer

Requests for records from case files must include a case caption or name, civil action number, and judicial district.

Civil Rights Division, FOIA/PA Branch  
Community Relations Service, FOIA/PA Coordinator

Criminal Division, FOIA/PA Unit

Requests for records from criminal case files must include the case caption or name, civil action number, judicial district, dates of arrest or conviction, and Federal offenses involved.

Drug Enforcement Administration, Freedom of Information Operations Unit, FOI/Records Management Section

Environment and Natural Resources Division, FOIA Coordinator, Law and Policy Section

Requests for records from case files must include the case caption or name, civil action number, and judicial district.

Executive Office for Immigration Review, Office of the General Counsel

When applicable, requesters must include an alien registration number. If the "A" number is not known or the case occurred before 1988, the date of the Order to Show Cause, country of origin, and location of the immigration hearing must be provided.

Executive Office for United States Attorneys, FOIA/Privacy Unit

Requests for records from case files must include the judicial district in which the investigation/prosecution or other litigation occurred.

Executive Office for United States Trustees, FOIA/PA Counsel, Office of the General Counsel

Requests for records from bankruptcy case files must include the case caption or name, case number, and judicial district.

Federal Bureau of Investigation, Record/Information Dissemination Section, Records Management Division

Federal Bureau of Prisons, FOIA/PA Section  
Foreign Claims Settlement Commission

INTERPOL—U.S. National Central Bureau, FOIA/PA Specialist, Office of General Counsel

Justice Management Division, FOIA Contact  
National Drug Intelligence Center, FOIA Coordinator

National Security Division, FOIA Initiatives Coordinator

Office of Community Oriented Policing Services, FOIA Officer, Legal Division

Office of Dispute Resolution, FOIA Officer  
Office of the Federal Detention Trustee,

Office of General Counsel

Office of Information Policy

Office of the Inspector General, Office of the General Counsel

Office of Intergovernmental and Public Liaison\*

Office of Justice Programs, Office of the General Counsel

Office of Legal Counsel

Office of Legal Policy\*

Office of Legislative Affairs\*

Office of the Pardon Attorney, FOIA Officer  
Office of Professional Responsibility, Special

Counsel for Freedom of Information and Privacy Acts



Office of Public Affairs\*

Office of the Solicitor General

Requests for records from case files must include the case name, docket number or citation to case.

Office on Violence Against Women

Professional Responsibility Advisory Office,  
Information Management Specialist  
Tax Division, Division Counsel for FOIA and  
PA Matters

Requests for records from case files must include the case caption or name, civil action number, and judicial district.

United States Marshals Service, Office of the  
General Counsel

Requests for records pertaining to individuals must include the judicial district. Requests for records related to prisoner transportation must include the date and trip number. Requests for records concerning seized property must specify the judicial district, civil action number, asset identification number, or an accurate description of the property.

United States Parole Commission, FOIA/PA  
Specialist

Dated: March 14, 2011.

**Eric H. Holder, Jr.,**  
*Attorney General.*

[FR Doc. 2011-6473 Filed 3-18-11; 8:45 am]

**BILLING CODE 4410-BE-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[Docket No. USCG-2011-0126]

RIN 1625-AA08

#### Special Local Regulations for Marine Events; Chester River, Chestertown, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish special local regulations during the reenactment portion of the “Chestertown Tea Party Festival”, a marine event to be held on the waters of the Chester River, Chestertown, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Chester River during the event.

**DATES:** Comments and related material must be received by the Coast Guard on or before April 20, 2011.

**ADDRESSES:** You may submit comments identified by docket number USCG-2011-0126 using any one of the following methods:

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

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410-576-2674, e-mail [Ronald.L.Houck@uscg.mil](mailto:Ronald.L.Houck@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

##### **Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG-2011-0126), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail

address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the “submit a comment” box, which will then become highlighted in blue. In the “Document Type” drop down menu select “Proposed Rule” and insert “USCG-2010-0126” in the “Keyword” box. Click “Search” then click on the balloon shape in the “Actions” column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

##### **Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the “read comments” box, which will then become highlighted in blue. In the “Keyword” box insert “USCG-2011-0126” and click “Search.” Click the “Open Docket Folder” in the “Actions” column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

##### **Privacy Act**

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

##### **Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time