

Location	Date and time	BLM contact
Eastern States Hearing, Holiday Inn, Downtown/Riverfront Pavilion 1, 102 Lake Street (exit Spring Street at I-20), Shreveport, Louisiana.	May 12, 1999 1:00 p.m.	Dave Stewart (703) 440-1728.

The meeting sites are accessible to individuals with disabilities. If you have a disability and will need an auxiliary aid or service to participate in the hearing, such as interpreting service, assistive listening device, or materials in an alternate format, you must notify one of the persons listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled hearing date. Although BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Dated: March 22, 1999.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 99-7440 Filed 3-25-99; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 5

RIN 0991-AB00

Revision of the Department of Health and Human Services Freedom of Information Act Regulations and Implementation of the Electronic Freedom of Information Act Amendments of 1996

AGENCY: Department of Health and Human Services.

ACTION: Proposed rule.

SUMMARY: This document sets forth proposed revisions to the Department's Freedom of Information regulations. The regulations have been streamlined and condensed, in accord with principles of the National Performance Review, and incorporated more "user-friendly" language wherever possible. These proposed revisions also contain new provisions implementing the Electronic Freedom of Information Act Amendments of 1996.

DATES: Submit comments on this proposed regulation on or before May 26, 1999.

ADDRESSES: Address all comments concerning this proposed rule to Rosario Cirrincione, Freedom of Information and Privacy Acts Division, Office of the

Assistant Secretary for Public Affairs, U.S. Department Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201-0004.

FOR FURTHER INFORMATION CONTACT: Rosario Cirrincione (202) 690-7453.

SUPPLEMENTARY INFORMATION: These comprehensive revisions of 45 CFR part 5 incorporate changes to the language and structure of the regulations and add new provisions to implement the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104-231). The Department's current Freedom of Information Act regulations are no longer in compliance with the law in that they do not reflect the provisions of the 1996 Amendments. This revised regulation is intended to bring the Department into compliance and to inform the public as to how we will implement the law in the light of the Amendments.

New Provisions

A. The following new definitions are added to the regulation:

1. *Electronic mail or e-mail* means a communication of information electronically from one personal computer user to another.

2. *Expedited processing* means placing a request in a special queue for processing ahead of requests which had been received earlier. Within any special queue as well as within any regular queues we may also maintain, requests will continue to be processed on a "first in, first out" basis.

3. *Form* means the medium in which the record is physically incorporated (e.g., paper, floppy disk, CD-ROM, etc.).

4. *Format* means a particular manner of storing or presenting the information within a given medium, such as a particular computer software used to generate or reproduce the record.

5. *Reproduction* means duplicating an existing record for release, in whole or in part, to a requester under the Freedom of Information Act. As appropriate to the medium of release, records may be photocopied, microfilmed, or electronically copied onto tape or disc.

B. Response Times. The proposed regulation reflects the expanded time frame, from 10 working days to 20 working days, permitted for routine responses.

C. Expedited Processing. Expedited processing is provided in cases where the requester demonstrates that failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or, when the requester is a person primarily engaged in disseminating information, a showing is made that there exists an urgency to inform the public concerning an actual or alleged Federal Government activity. Other requests for expedited processing will be considered on a case by case basis. The decision to grant expedited processing rests with the FOI Officer, but may be appealed.

D. What Is Not A FOIA Request. The proposed regulation attempts to correct a common misunderstanding by clarifying that the Freedom of Information Act is not the proper mechanism to seek answers to specific questions of program policy, appeal adjudication of program or administrative decisions, or to provide input into HHS program decision making.

E. Electronic Records. The proposed regulation emphasizes that electronic records, including e-mail, are also subject to the Act, and that every reasonable effort will be made to provide records in the form and format requested.

F. Listing of FOIA Exemptions. Because they are a matter of law, not regulation, and are readily available elsewhere, the proposed regulation does not repeat the listing of FOIA exemptions contained in the previous regulation.

Similar revisions to the Freedom of Information Act Regulations of Executive Branch Agencies are occurring throughout the Government. Public hearings are not planned but public comment on the proposed rule is invited. Instructions as to where to mail public comments are included, above.

We have examined the impacts of this proposal under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601 to 612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages). Under the

Regulatory Flexibility Act, unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the agency must analyze regulatory options that would minimize the impact of the rule on small entities. Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1532) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any 1 year by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation).

HHS has reviewed this rule and has determined that it is consistent with the regulatory philosophy and principles identified in Executive Order 12866, and these two statutes. With respect to the Regulatory Flexibility Act, the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because the proposed rule does not impose any mandates on state, local, or tribal governments, or the private sector that will result in a 1-year expenditure of \$100 million or more, HHS is not required to perform a cost-benefit analysis under the Unfunded Mandates Reform Act.

List of subjects in 45 CFR Part 5

Administrative practices and procedure, Freedom of information.

Dated: December 10, 1998.

Donna E. Shalala,
Secretary.

For the reasons set out in the preamble, the Secretary proposes to revise 45 CFR part 5 to read as follows:

PART 5—FREEDOM OF INFORMATION REGULATIONS

Subpart A—Basic Policy

Sec.

- 5.1 Purpose.
- 5.2 Policy.
- 5.3 Scope.
- 5.4 Relationship between the FOIA and the Privacy Act of 1974.
- 5.5 Definitions.

Subpart B—Obtaining a Record

- 5.21 How to request records.
- 5.22 Expedited processing.
- 5.23 Requests not handled under the FOIA.
- 5.24 Referral of request outside the Department.
- 5.25 Responding to your request.

Subpart C—Release and Denial of Records

- 5.31 Designation of authorized officials.
- 5.32 Release of records.
- 5.33 Denial of requests.
- 5.34 Appeal of Denials.
- 5.35 Time limits.

Subpart D—Fees

- 5.41 Fees to be charged—categories of requests.
- 5.42 Fees to be charged—general provisions.
- 5.43 Fee schedule.
- 5.44 Procedures for assessing and collecting fees.
- 5.45 Waiver or reduction of fees.

Subpart E—Records Available for Public Inspection

- 5.51 Records available.
- 5.52 Indices of records.

Subpart F—Predisclosure Notification for Certain Kinds of Commercial/Financial Records

- 5.61 General.

Authority: 5 U.S.C. 552, 18 U.S.C. 1905, 31 U.S.C. 9701, 42 U.S.C. 1306(c), E.O. 12600.

Subpart A—Basic Policy

§ 5.1 Purpose.

This part contains the rules that the Department of Health and Human Services (HHS) follows in handling requests for records under the Freedom of Information Act (FOIA). It describes how to make FOIA requests; who can release records and who can decide not to release them; how much time it should take to make a determination regarding release; what fees may be charged; what records are available for public inspection; why some records are not released; and your right to appeal and to then go to court if we still refuse to release records.

§ 5.2 Policy.

As a general policy, HHS follows a balanced approach in administering the FOIA. We recognize the right of the public to access records in the possession of the Department but also realize that some materials are nonetheless protected by the statute. In addition, we recognize the legitimate interests of persons or organizations who have submitted material to the Department or who would otherwise be affected by the release of records. For example, we have no discretion to release certain records, such as trade secrets and confidential commercial information, which we are prohibited by law from releasing. This policy calls for the fullest responsible disclosure consistent with those requirements of administrative necessity and confidentiality recognized in the Freedom of Information Act. In particular, the Department encourages a “pro-active” approach to making information available through press releases, public information programs, and to the greatest degree possible, electronically, through the large number

of web sites sponsored and maintained by HHS components.

§ 5.3 Scope.

These rules apply to all components of the Department. Some units may establish additional rules because of unique program requirements, but such rules must be consistent with these rules and must have the concurrence of the Assistant Secretary for Public Affairs. Existing implementing rules remain in effect to the extent they are consistent with the new Departmental regulation. If additional rules are issued, they will be published in the **Federal Register**, and you will be able to get copies from our Freedom of Information Officers.

§ 5.4 Relationship between the FOIA and the Privacy Act of 1974.

(a) *Coverage.* The FOIA and this rule apply to all HHS records, including those covered by the Privacy Act. The Privacy Act, 5 U.S.C. 552a, applies only to records that are about individuals but only if those records are in a system of records. “Individuals” and “system of records” are defined in the Privacy Act and in our Privacy Act regulation, part 5b of this title.

(b) *Requesting your own records.* If you are an individual and request records, then to the degree that you are requesting your own records in a Privacy Act system of records, we will handle your request under the Privacy Act and part 5b of this title. If there is any record that we need not release to you under those provisions, we will also consider your request under the FOIA and this rule, and we will release the record to you if the FOIA requires it.

(c) *Requesting another individual's record.* Whether or not you are an individual, if you request records that are about an individual (other than yourself) and that are in a system of records, we will handle your request under the FOIA and this rule. (However, if our disclosure in response to your request would be permitted by the Privacy Act's disclosure provisions, 5 U.S.C. 552a(b), for reasons other than the requirements of the FOIA, and if we decide to make the disclosure, then we will not handle your request under the FOIA and this rule. For example, when we make routine use disclosures pursuant to requests, we do not handle them under the FOIA and this rule. *Routine use* is defined in the Privacy Act and in part 5b of this title.) If we handle your request under the FOIA and this rule and the FOIA does not require releasing the records to you, then the Privacy Act may prohibit the release and remove our discretion to release.

§ 5.5 Definitions.

As used in this part,

Agency means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency. Thus HHS is an agency. A private organization is not an agency even if it is performing work under contract with the Government or is receiving Federal financial assistance. Grantee and contractor records are not subject to the FOIA unless they are in the possession of HHS or its agents, such as Medicare health insurance carriers and intermediaries.

Commercial use means, when referring to a request, that the request is from or on the behalf of someone who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or of a person on whose behalf the request is made. Whether a request is for a commercial use depends on the purpose of the request and the use to which the records will be put. The identity of the requester (e.g., individual, non-profit corporation, for profit corporation) or the nature of the records, while in some cases indicative of that purpose or use, is not necessarily determinative. When a request is from a representative of the news media, a purpose or use supporting the requester's new dissemination function is not considered a commercial use.

Department or HHS means the U.S. Department of Health and Human Services. It includes Medicare health insurance carriers and intermediaries to the extent they are performing functions under agreements entered into under sections 1816 and 1842 of the Social Security Act, 42 U.S.C. 1395h, 1395u.

Duplication means the process of making a copy of a record and sending it to the requester, to the extent necessary to respond to the request. Such copies include paper copy, microfilm, audio visual materials, and magnetic tape, cards, and discs.

Educational institution means a preschool, elementary, or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocation education, which operates a program of scholarly research.

Electronic mail or e-mail means a communication of information electronically from one personal computer user to another.

Expedited Processing means placing a request in a special queue for processing ahead of other requests which had been

received earlier. Within any special queue as well as within any regular queues we may also maintain, requests will continue to be processed on a "first in/first out basis," except for requests expedited on the basis of an imminent threat to the life or safety of a specific person, which will always be placed at the head of the queue.

Form means the medium in which the record is physically maintained (e.g., paper, floppy diskette, CD-ROM, etc.)

Format means a particular manner of storing or presenting the information within a given medium, such as a particular computer software used to generate or reproduce the record.

Freedom of Information or FOIA means section 552 of Title 5, United States Code.

Freedom of Information Officer means any HHS official who has been delegated the authority to release or withhold records, and assess, waive, or reduce fees in response to FOIA requests.

Multitrack Processing means a system of separate processing queues into which requests are placed based on their complexity and scope. HHS components may establish such processing systems if, in their judgement, such an arrangement will enable them to provide better service to requesters.

Non-commercial scientific institution means an institution that is not operated substantially for purposes of furthering its own or someone else's business, trade, or profit interests, and that is operated for the purposes of conducting scientific research whose results are not intended to promote any particular product or industry.

Records means any handwritten, typed, printed or electronic documents (such as memoranda, letters, studies, tables, charts, drafts, transcripts, and minutes) and documentary material in other forms (such as magnetic tapes, cards or discs; paper tapes; audio or video recordings; maps; photographs; slides; microfilm; and motion pictures). It does not include objects or articles such as exhibits, models, office equipment, duplicating machines, computers or audiovisual processing materials. In particular, it does not include such objects or articles even to the extent that there is information inscribed or imprinted on them, or electronic instructions embedded in them. Nor does it include books, magazines, brochures, pamphlets, or other reference material in formally organized and officially designated HHS libraries, where such materials are available under the rules of the particular library.

Representative of the news media means a person actively gathering information for an entity organized and operated to publish or broadcast news to the public. News media entities include television and radio broadcasters, publishers of newspapers or periodicals who distribute or make their products available for purchase or subscription by the general public, and those who may disseminate information to the general public, by subscription, through electronic means. We will treat freelance journalists as representatives of a news media entity if they can show a likelihood of publication through such an entity. A publication contract is such a basis, and a requester's past publication record may provide such a basis.

Reproduction means duplicating an existing record for release, in whole or in part, to a requester under the Freedom of Information Act. As appropriate to the medium of release, records may be photocopied, microfilmed, or electronically copied onto tape or disc.

Request means asking for records, whether or not you specifically refer to the Freedom of Information Act. Requests from other Executive Branch agencies and Federal court orders for documents are not included within this definition. Judicial subpoenas from other than Federal courts are requests to the extent provided by part 2 of this title.

Review means, when used in connection with processing records for a commercial use request, examining records to determine what portions, if any, may be withheld, and any other processing that is necessary to prepare the records for release. It includes only the examining and processing that are done the first time we analyze whether a specific exemption applies to a particular record or portion of a record. It does not include examination done in the appeal stage with respect to an exemption that was applied at the initial response stage, nor does it include the process of researching or resolving general legal or policy issues regarding exemptions.

Search means looking for records or portions of records responsive to a request. It includes reading and interpreting a request, manually searching hard copy paper files, electronically searching automated files and data bases, and page-by-page and line-by-line examination to identify responsive portions of a document. It does not include, however, line-by-line examination where merely duplicating an entire page would be a less expensive

and quicker way to comply with a request.

Subpart B—Obtaining a Record

§ 5.21 How to request records.

(a) *General.* Our policy is to answer all requests as accurately and completely as possible from existing records. In order to accomplish this most efficiently and with a minimum of misunderstanding, we require all requests to be submitted in writing, by postal service, facsimile or messenger. All requests, no matter how submitted, must be signed by the person making the request and contain the postal address of the requester and the name of the person responsible for the payment of any fees that may be charged. A phone number where we can reach the requester to get clarification of the request or resolve other issues concerning the request, is strongly recommended. Providing the request in writing assures that all the rights provided by the FOIA and these regulations are protected (for example, the right to administratively appeal any denials we may make and the right to have our decisions reviewed in Federal court).

(b) *Addressing requests.* It will help us to handle your request sooner if you address it to the Freedom of Information Officer of the HHS component that is most likely to have the records you want. (See § 5.31 of this part for a list of HHS Freedom of Information Officers.) If you cannot determine who is most likely to have the records you seek, send the request to: HHS Freedom of Information Officer, Room 645-F, Hubert H. Humphrey Building, Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201. Write the words "Freedom of Information Act Request" on the envelope and on the letter.

(c) *Details in the letter.* You should provide all the details you can that will help us identify and locate the records you want. A request submitted without details, such as one for "all records you have on (a particular subject)," is likely to require a great deal of search time and be very expensive, even if we find few or no records. If you are not sure how to write your request or what details to include, communicate with a Freedom of Information Officer.

§ 5.22 Expedited processing.

You may ask that your request be handled in an expedited fashion.

(a) *Reasons for expedited processing.* We will expedite the processing of your request if you demonstrate:

(1) That failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of a specific individual; or

(2) With respect to a request made by a person primarily engaged in disseminating information, that there exists an urgency to inform the public concerning actual or alleged Federal Government activity. (A routine publication deadline, of itself, shall not constitute urgency.)

(3) We will consider other reasons for expedited processing on a case-by-case basis. (One situation that may warrant expedited processing in some cases occurs where lack of such processing will deprive you of information for which you have a substantial need for purposes of litigation with a governmental agency. If you ask for expedited processing on this basis, you must show that you submitted the request as soon as possible after learning of the need for the records.)

(b) *Process for asking for expedited processing.* You must make your request for expedited processing in writing. You must include a complete explanation of the reasons that you believe justify expediting the processing of your request. You must certify in writing that the explanation is true and correct to the best of your knowledge and belief. Such a certification is required, but it does not, by itself, entitle you to expedited processing. You must address the request for expedited processing to the FOI Officer whose component has the records you want. (See § 5.31 of this part for a list of FOI Officers in HHS.) If the records are in more than one component of HHS, you must address your request for expedited processing to the HHS FOI Officer.

(c) *The decision.* The FOI Officer will decide whether to expedite the processing of your request for records. The decision will be made, and notice of the decision will be sent to you, within ten calendar days after the date of your request for expedited processing. The date of your request will be the date it is received in the FOI office of the component maintaining the records requested.

(d) *Granting the request.* Granting a request for expedited processing does not constitute a promise to meet any particular deadline that you may try to impose on us for responding to your request for records.

(e) *Denying the request.* If we deny your request for expedited processing, we will process your request for records with other non-expedited requests for records, on a first-in/first-out basis. You may appeal a decision to deny

expedited processing. The denial letter will explain the appeal process and will identify the official authorized to decide an appeal of the decision. You must address the appeal to the official identified in the denial letter. We will make a decision on your appeal expeditiously and we will notify you promptly of that decision. If we deny your appeal, you may seek judicial review of that decision in the United States District Court in the district where you reside or have your principal place of business, in the district where the records are situated, or in the District of Columbia.

§ 5.23 Requests not handled under the FOIA.

(a) We will not handle your request under the FOIA and this regulation to the extent that it asks for records that are currently available, either from HHS or another part of the Federal Government, under a statute other than the FOIA that provides for charging fees for those records. For example, we will not handle your request under the FOIA and these regulations to the extent that it asks for records currently available from the Government Printing Office or the National Technical Information Service.

(b) We will not handle your request under the FOIA and this regulation to the extent that it asks for records that are distributed by an HHS program office as part of its regular program activity, for example, health education brochures distributed by the National Institutes of Health.

(c) We will not handle your request under the FOIA and this regulation to the extent that it asks for specific answers to questions regarding program policies of any component of HHS, seeks adjudication of decisions made in the administration of any our programs, or attempts to circumvent established procedures providing for input into our decision making processes. There are other mechanisms available to address each of these kinds of concerns.

§ 5.24 Referral of requests outside the Department.

If you request records that were created by, or provided to us by, another Federal agency, we may refer the records and your request (or the portion of your request which would be answered by those records) to that agency for response. We may likewise refer your request for classified records to the agency that classified them. In these cases, the other agency will process and respond to your request (or that portion of your request) under that agency's regulations. You will not need

to make a separate request to that agency. We will notify you when we refer your request to another agency.

§ 5.25 Responding to your request.

(a) *Retrieving records.* The Department is required to furnish copies of records only when they are in our possession or we can retrieve them from storage. If we have stored the records you want in the National Archives or another storage center, we will retrieve and review them for possible disclosure. However, the Federal Government destroys many old records, so sometimes, it is impossible to fill requests. Various laws, regulations, and manuals give the time periods for keeping records before they may be destroyed. You will find further information about the retention of records in the Records Disposal Act of 1944, 44 U.S.C. 3301 through 3314; the Federal Property Management Regulations, 41 CFR 101-11.4; the General Records Schedules of the National Archives and Records Administration; and in the HHS Handbook; Files Maintenance and Records Disposition.

(b) *Furnishing records.* As stated above, the Department is required to furnish copies only of those records we have or can retrieve. We need not ask or compel state governments or other entities to produce records not in our possession in order to respond to a FOIA request. Neither are we required to create records, perform research, or aggregate data from a variety of unrelated sources. We will, however, conduct electronic searches of electronic files and/or data bases when they are likely to contain the requested records, unless such a search would significantly interfere with the operation of the electronic information system. We will provide the records in the form or format you request, if the existing record is readily reproducible in that form or format. Requesters will be required to pay the actual costs of reproducing a record in a form or format in which it is not already maintained by the responding Departmental component, including the cost of programming to produce an electronic record. We will not, however, purchase special equipment or software for the sole purpose of satisfying a requester's desire for a specific form or format, nor will we ship records from one organizational or geographic component to another for the sole purpose of reproducing them in the form or format asked for by the requester. Regardless of the form or format in which the responsive records are provided, we will usually provide

only one copy of the record to the requester.

Subpart C—Release and Denial of Records

§ 5.31 Designation of authorized officials.

(a) *Freedom of Information Officers.*

To provide coordination and consistency throughout HHS in responding to FOIA requests, only Freedom of Information Officers have the authority to release or deny records, or waive or reduce FOIA fees.

(1) HHS Freedom of Information Officer. Only the HHS Freedom of Information Officer may determine whether to release or deny records, or waive or reduce FOIA fees, in any of the following situations:

(i) The records you seek include records addressed to, sent from, or created by an official or office of the Office of the Secretary, including its staff offices, or of any Regional Director's Office;

(ii) The records you seek include any records of the Administration for Children and Families, including its regional offices, or any organizational unit of HHS not specifically identified below;

(iii) The records you seek include records of more than one of the HHS components listed below and are not limited to the components listed in paragraph (a)(3)(iii), (v)-(vi), (viii)-(xi) of this section.

(2) PHS Freedom of Information Officer. If the records you seek are exclusively records of the Office of Public Health and Science, or of the Parklawn components of the Program Support Center, or if the records involve more than one of the components listed in paragraph (a)(3)(iii), (v)-(vi), (viii)-(xi) of this section, including records in the regional offices, only the PHS Freedom of Information Officer may determine whether to release or deny those records, or waive or reduce associated FOIA fees.

(3) Except as indicated above, each of the Operating Divisions of the Department has its own Freedom of Information Officer to process requests for records which are exclusively records of that Operating Division. Because organizational titles vary from component to component and may change as the result of organizational realignments, we will not use the specific organizational titles of officials who serve as the Operating Divisions' Freedom of Information Officers. Regardless of titles, Freedom of Information Officers are so designated by the Heads of their respective Operating Divisions and are frequently,

but not necessarily, the primary Public Affairs officials or Chief Information Officers of those Operating Divisions. These officials may, with the concurrence of the Assistant Secretary for Public Affairs, delegate their authority to release or deny records, or reduce or deny FOIA fees. The persons to whom these authorities are delegated are also known as Freedom of Information Officers. The addresses and telephone numbers of Departmental Freedom of Information Officers are listed below.

(i) HHS Freedom of Information Officer, Room 645-F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Tel: (202) 690-7453.

(ii) PHS Freedom of Information Officer, Room 13-C-24, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Tel: (301) 443-5252.

(iii) Freedom of Information Officer, Agency for Health Care Policy and Research, Executive Office Center, Suite 501, 2101 East Jefferson Street, Rockville, Maryland 20852. Tel: (301) 594-1364, ext. 1342.

(iv) Freedom of Information Officer, Administration on Aging, Room 4655, 330 Independence Avenue, SW., Washington, DC 20201. Tel: (202) 205-2814.

(v) Freedom of Information Officer, Centers for Disease Control and Prevention, and/or the Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Tel: (770) 639-7270.

(vi) Freedom of Information Officer, Food and Drug Administration, Room 12-A-16, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Tel: (301) 827-6500.

(vii) Freedom of Information Officer, Health Care Financing Administration, Room N2-20-16, North Building, 7500 Security Boulevard, Baltimore, Maryland 21244. Tel: (410) 786-5353.

(viii) Freedom of Information Officer, Health Resources and Services Administration, Room 1134, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Tel: (301) 443-2865.

(ix) Freedom of Information Officer, Indian Health Service, Suite 450, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, Rockville, Maryland 20857. Tel: (301) 443-1116.

(x) Freedom of Information Officer, National Institutes of Health, Room 2B39, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20892. Tel: (301) 496-5633.

(xi) Freedom of Information Officer, Substance Abuse and Mental Health Services Administration, Room 12-C-15, Parklawn Building, 5600 Fishers

Lane, Rockville, Maryland 20857. Tel: (301) 443-8956.

(b) [Reserved]

§ 5.32 Release of Records.

(a) *Records previously released.* If we have released a record, or part of a record, to others in the past, we will ordinarily release it to you also. We will not release it to you, however, if a statute forbids this disclosure to you, and we will not necessarily release it to you if an exemption applies in your situation and did not apply, or applied differently, in the previous situations. For example, a record about himself/herself, released to a requester, may contain personal information which would be removed if that record had to be released to another party.

(b) *Unauthorized disclosure.* The principle stated in paragraph (a) of this section, does not apply to any release of material which was unauthorized.

(c) *Poor copy.* If we cannot make a legible copy of a record to be released, we do not attempt to reconstruct it. Instead, we furnish the best copy possible and note the poor quality in our reply.

§ 5.33 Denial of Requests.

(a) *Information found but records denied in whole or in part.* All official denials are in writing and are signed by the person who made the decision to deny all or part of your request. The denial will include the following details, to the extent that we can do so without revealing information that is protected by the FOIA: an estimate of the volume of material that is being denied, a description of the withheld material in general terms, the reasons for the denial (including references to the specific exemption(s) of the FOIA authorizing the withholding or deletion), and an explanation of your right to appeal the decision (including the identity of the official to whom you should address any appeal). If we deny information by deleting it from a record and releasing the remaining portion of the record, we will indicate on the released portion the amount of the deleted material to the extent that we can do so without revealing information that is protected by the FOIA. We will indicate this at the place of the deletion if that is technically feasible.

(b) *Unproductive searches.* We will make a diligent search for records to satisfy your request. Nevertheless, we may not be able to find the records you want using the information you provided, or the records may not exist. If we advise you that we have been unable to find the records you seek despite a diligent search, although we

do not consider this to be a denial of your request, we will also advise you of your right to appeal the adequacy of our search.

§ 5.34 Appeal of denials.

(a) *Right of appeal.* You have the right to appeal a partial or full denial of your FOIA request, our failure to find records responsive to your request or a denial of your request for expedited processing or a waiver of fees. To do so, you must put your appeal in writing and send it to the appeal official identified in the letter denying the records, or expedited processing, or a waiver of fees, or informing you that we could not find responsive records. You must send your appeal within 30 days from the date you receive that letter or from the date you received any records released as a partial grant of your request.

(b) *Letter of appeal.* The appeal letter should state the reason why you believe that the FOIA exemption(s) we cited does not apply to the records you requested, or give reasons why they should be released regardless of whether the exemption(s) applies. If you are appealing the adequacy of our search, you should explain why you believe the records actually do exist and where you believe they may be found.

(c) *Review process.* Before making a decision on any FOIA appeal, the designated reviewing official will consult with the Office of the General Counsel to ensure that the rights and interests of all parties affected by the appeal decision are protected. The concurrence of the Assistant Secretary for Public Affairs is also required on all appeal decisions. The response to an appeal made by the reviewing official constitutes the Department's final action on the request. If the reviewing official grants your appeal of a denial of records, in whole or in part, we will send the releasable documents to you promptly or else explain the reasons for any delay and inform you of the approximate date you can expect to receive copies of newly released materials. If the decision is to deny your appeal, the official will state the reasons for the decision in writing and inform you of the FOIA provision for judicial review.

§ 5.35 Time limits.

(a) *General.* The FOIA sets certain time limits for us to decide whether to disclose the records you requested, and to decide appeals. If we fail to meet these deadlines, you may proceed as if we had denied your request or appeal. We will try diligently to comply with the time limits, but if it appears that processing your request may take longer

than we would wish, we may contact you to determine if a more focused request might satisfy your needs. If a narrower scope will not suffice, or still will not permit us to process your request within the basic time limits, we will inform you of the actual time we estimate that it will take to answer your request. Time limits begin when your request is initially received in the office of the FOIA Officer responsible for releasing or denying those records, or of the official responsible for deciding the appeal. FOIA and appeals offices acknowledge receipt of requests and appeals when they are received, so if you have not heard from us within a reasonable time (usually about two weeks), you should call or write to be sure that your request or appeal was not misaddressed or misrouted.

(b) *Time allowed.*

(1) We will decide whether to release the records within twenty (20) working days after your request reaches the appropriate FOIA office, as identified in § 5.31. When we decide to release records, we will provide the records or let you know when you can expect them, or will make arrangements with you to inspect them, as soon as possible after that decision.

(2) We will decide an appeal within twenty (20) working days after the appeal reaches the appropriate appeal official.

(c) *Extension of time limits.* FOIA Officers or review officials may extend the time limits in unusual circumstances. Extensions at the request stage and at the appeal stage may not exceed a total of 10 working days, except as provided by paragraph (d) of this section. We will notify you in writing of any extension. "Unusual circumstances" include situations when we must:

(1) Search for and collect records from field facilities, storage centers, or locations other than the office processing the request;

(2) Search for, collect, or examine a great many records in response to a single request;

(3) Consult with another office or agency that has a substantial interest in the determination of the request;

(4) Conduct negotiations with submitters and requesters of information to determine the nature and extent of non-disclosable proprietary materials.

(d) *Extensions longer than 10 days.* If unusual circumstances, as defined in paragraph (c) of this section, exist, and if we do not believe that we can process your request even within the extra ten-day period described in paragraph (c) of this section, we will notify you of that conclusion. We will also give you the

opportunity to narrow the scope of your request so that it can be processed in a shorter time, and/or to agree on a time frame longer than the extra ten working days for our processing of your request.

(e) *Aggregating requests.* If a group of requests by the same requester, or by a group of requesters acting together, involve related matters and appear to actually constitute a single request, we may aggregate them in order to determine whether unusual circumstances, as defined above, exist.

Subpart D—Fees

§ 5.41 Fees to be charged—categories of requests.

The paragraphs below state, for each category of request, the type of fees that we will generally charge. For each of these categories, however, the fees may be limited, waived, or reduced for the reasons given in §§ 5.42 through 5.45, or for other reasons.

(a) *Commercial use request.* If your request is for a commercial use, HHS will charge you the costs of search, review, and duplication.

(b) *Educational and scientific institutions and news media.* If you are an educational institution or non-commercial scientific institution, operated primarily for scholarly or scientific research, or a representative of the news media, and your request is not for a commercial use, HHS will charge you only for the duplication of records. Also, HHS will not charge you the copying costs for the first 100 pages of duplication or its equivalent, depending on the medium involved.

(c) *Other requesters.* If your request is not the kind described by paragraph (a) or (b) of this section, HHS will charge you only for the search and the duplication. Also, we will not charge you for the first two hours of search time, or for the copying costs of the first 100 pages of duplication or its equivalent.

§ 5.42 Fees to be charged—general provisions.

(a) We may charge you search fees even if the records we find are exempt from disclosure, or even if we do not find any records at all.

(b) If we are not charging you for the first two hours of search time, under § 5.41(c), and the search is done electronically (including doing computer programming), we will charge you search costs only to the extent that they exceed the equivalent of two hours salary for a search of paper records calculated as prescribed in § 5.43.

(c) If we are not charging you for the first 100 pages of duplication, under

§ 5.41 (b) or (c), then those 100 pages are the first 100 pages of photocopies of standard size pages, or if the record is provided in another form, the cost of duplication will be reduced by an amount equivalent to the cost of photocopying 100 standard size pages.

(d) We will not charge you any fee at all if the costs of billing and processing the fee are likely to equal or exceed the amount of the fee. These amounts vary significantly from component to component. For requests processed by the HHS Freedom of Information Office, this amount was \$25 as of May 1998.

(e) If we determine that you (acting alone or in concert with others) are breaking down a single request into a series of requests in order to avoid (or reduce) the fees charged, we may aggregate all these requests for purpose of calculating the fees to be charged.

(f) We will charge interest on unpaid bills beginning on the 31st day following the day the bill was sent. We will use the provisions of part 30 of this title in assessing interest, administrative costs and penalties, and in taking actions to encourage payment.

§ 5.43 Fee schedule.

HHS charges the following fees:

(a) *Manual searching for or reviewing of records*—When the search or review is performed by employees at grade GS-1 through GS-8, an hourly rate based on the salary of a GS-5, step 7, employee; when done by a GS-9 through GS-14, an hourly rate based on the salary of a GS-12, step 4, employee; and when done by a GS-15 or above, an hourly rate based on the salary of a GS-15, step 7, employee. In each case, the hourly rate will be computed by taking the hourly rate for the specified grade and step, adding 16% of that rate to cover benefits, and rounding to the nearest whole dollar. As of November, 1998, these rates were \$14, \$29, and \$52, respectively. When a search involves employees at more than one of these levels, we will charge the rate appropriate for each, multiplied by the amount of time that person was involved in the search.

(b) *Computer searching and printing*—If we need to use a computer for any purpose involving searching for or copying records, or providing them in a different form or format, we will charge the actual cost of operating the computer, and charge for the time spent by the operator and/or programmers at the rate given in paragraph (a) of this section.

(c) *Photocopying standard size pages*—\$0.10 per page. FOIA Officers may charge less than \$0.10 per page for particular documents where—

(1) The document has already been printed in large numbers;

(2) The program office determines that using existing stock to answer this request, and other anticipated FOIA requests, will not interfere with program requirements; and

(3) The FOIA Officer determines that the lower fee to be charged is adequate to recover the prorated share of the original printing costs.

(d) *Photocopying odd-size documents (such as blueprints), or reproducing other records, (such as duplicating tapes or disks)*—the actual cost of operating the machine, plus the actual cost of materials involved, plus charges for the time spent by the operator, at the rates given in paragraph (a) of this section.

(e) *Certifying that records are true copies.* This service is not required by the FOIA. If we agree to provide it, we will charge \$10 per certification.

(f) *Sending records by express mail or other special methods.* This service is not required by the FOIA. If we agree to provide it, we will only send the records by a method which allows the requester to directly pay or be directly charged by the special method carrier.

(g) *Performing any other special service that you request and we agree to*—Actual costs of operating any machinery, plus actual cost of any materials involved, plus charges for the time of our employees, at the rates given in paragraph (a) of this section.

§ 5.44 Procedures for assessing and collecting fees.

(a) *Agreement to pay.* We generally assume that when you request records you are willing to pay the fees we charge for services associated with your request. You may specify a limit on the amount you are willing to spend. We will notify you if it appears that the fees will exceed that limit, and we will ask you whether you nevertheless want us to proceed with the processing of your request.

(b) *Advance payment.* If you have failed to pay previous bills in a timely fashion, or if our initial review indicates that we will be charging you fees exceeding \$250, we will require you to pay your past due fees, including penalties, and/or the estimated fees, or a deposit, before we start searching for the records you want. If so, we will let you know promptly upon receiving your request. In such cases, the administrative time limits prescribed in § 5.35 of this part (i.e., 20 working days from receipt of initial requests and from receipt of appeals of initial denials, plus permissible extensions of these time limits) will begin only after we come to an agreement with you over payment of

fees, or decide that a fee waiver or reduction is appropriate.

(c) *Billing and payment.* Except as indicated in paragraph (b) of this section, we will begin processing your request upon receipt. However, we will normally require you to pay all fees before we furnish the records to you. We may, at our discretion, send you a bill along with or following the furnishing of the records. For example, we may do this if you have a history of prompt payment. We may also, at our discretion, aggregate the charges for certain time periods to avoid sending numerous small bills to frequent requesters, or to businesses or agents representing requesters. For example, we might send a bill to such a requester once a month. Fees should be paid in accordance with the instructions provided by the person who responds to your request.

§ 5.45 Waiver or reduction of fees.

(a) *Standard.* (1) We will waive or reduce the fees we would otherwise charge if disclosure of the information meets both the following tests:

(i) It 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) It is not primarily in the commercial interest of the requester.

(2) These two tests are explained in paragraphs (b) and (c) of this section. The burden of proof of meeting these tests rests with the requester.

(b) *Public interest.* The disclosure passes the first test only if it furthers the specific public interest of being likely to contribute significantly to the public understanding of government operations or activities, regardless of any other public interest it may further. In analyzing this question, we will consider the following factors:

(1) How, if at all, do the records to be disclosed pertain to the operations or activities of the Federal Government?

(2) Would disclosure of the records reveal any meaningful information about government operations or activities? Can one learn from these records anything that is not already public knowledge? Are these or essentially equivalent records already available to the public through some other source or mechanism?

(3) Will disclosure advance the understanding of the general public as distinguished from a narrow segment of interested persons? This is a critical factor under which we may consider whether the requester is in a position to contribute to public understanding. For example, what is the requester's expertise in the subject area of the

request? Is the requester's intended use of the information likely to disseminate the information among the public at large? Does the requester have the ability to affect such dissemination? An unsupported claim to be doing research for a book or article does not demonstrate that likelihood, while such a claim by a representative of the news media is better evidence.

(4) Will the contribution to public understanding be a significant one? Will the public's understanding of the government's operations be substantially greater as a result of the disclosure?

(c) *Not primarily in the requester's commercial interest.* If the disclosure passes the test of furthering the specific public interest described in paragraph (b) of this section, we will determine whether it also furthers the requester's commercial interest and, if so, whether the commercial interest outweighs the advancement of that specific public interest. In applying this second test, we will consider the following factors:

(1) Would the disclosure further a commercial interest of the requester or of someone on whose behalf the requester is acting? "Commercial interests" include interests relating to business, trade, or profit. Not only profit-making corporations have commercial interests—so do nonprofit corporations, individuals, unions, and other associations. The interest of a representative of the news media in using the information for news dissemination purposes will not be considered a commercial interest.

(2) If disclosure would further the commercial interest of the requester, would that effect outweigh the advancement of the public defined in paragraph (b) of this section? Which effect is primary?

(d) *Deciding between waiver and reduction.* If the disclosure passes both tests, we will normally waive fees. In some cases, however, we may decide only to reduce the fees. For example, we may do this when some, but not all of the requested records pass the tests.

(e) *Procedure for requesting a waiver or reduction.* You must make your request for a waiver or reduction at the same time you make your request for records. You should explain why you believe a waiver or reduction is proper under the analysis in paragraphs (a) through (d) of this section. Only FOIA Officers may make the decision whether to waive or reduce fees. If we do not completely grant your request for a waiver or reduction, the denial letter will designate a review official. You may appeal the denial to that official. In your appeal letter, you should discuss

whatever reasons are given in our letter for denying your request. The process prescribed in § 5.34 of this part will apply to these appeals.

Subpart E—Records Available for Public Inspection

§ 5.51 Records available.

Records of general interest. We will make available the following records of general interest for your inspection and copying. Before releasing them, however, we may delete the names of individuals or any information that would identify these individuals if release would invade their personal privacy to a clearly unwarranted degree (see § 5.67 of this part). Records of these sorts created on or after November 1, 1996, will be made available through electronic means.

(a) Orders and final opinions, including concurring and dissenting opinions in adjudications, such as Letters of Finding issued by the Office of Civil Rights in civil rights complaints.

(b) Statements of policy and interpretations that we have adopted but have not published in the **Federal Register**.

(c) Administrative staff manuals and instructions to staff that affect the public (we will not make available, however, manuals or instructions that reveal unique investigative or audit procedures).

(d) Records that we have already released in response to a FOIA request, and that we believe are being or will be requested frequently by other requesters.

§ 5.52 Indices of records.

(a) *Inspection and copying.* We will maintain and provide for your inspection and copying current indices of the records described in § 5.51 (a) through (c). We will also publish and distribute copies of the indices unless we announce in the **Federal Register** that it is unnecessary or impractical to do so. For assistance in locating indices maintained by the Department, you may contact the HHS FOIA Officer at the address and phone number shown in § 5.31.

(b) *Major information and records locator systems.* HHS participates in the Government Information Locator Service (GILS) program which makes this information available through a variety of media.

(c) *Electronic listing.* On or, in some cases, before December 31, 1999, a full listing of records made available under § 5.51 of this section will be available electronically.

(d) *Record citation as precedent.* We will not cite any record described in

§ 5.51 (a) through (c) as a precedent for action against a person unless we have published the record or have made it available electronically or by other means, or unless the person has timely notice of the record.

Subpart F—Predisclosure Notification for Certain Kinds of Commercial/ Financial Records

§ 5.61 General.

(a) *Designation of commercial information as confidential.* A person who submits records to the government may designate part or all of the information in such records as information that the person claims is exempt from disclosure under exemption 4 of the FOIA. The person may make this designation either at the time the records are submitted to the government or within a reasonable time thereafter. The designation must be in writing. Where a legend is required by a request for proposals or request for quotations, pursuant to 48 CFR 352.215-12, then that legend is necessary for this purpose. Any such designation will expire ten years after the records were submitted to the government.

(b) *Predisclosure notification.* The procedures in this paragraph apply to records on which the submitter has designated information as provided in paragraph (a) of this section. They also apply to records that were submitted to the government where we have substantial reason to believe that the information in the records could reasonably be considered exempt under exemption 4 of the FOIA. Certain exceptions to these procedures are stated in paragraph (c) of this section.

(1) When we receive a request for such records, and we determine that we may be required to release them, we will make reasonable efforts to notify the submitter about these facts. The notice will include a copy of the request, and it will inform the submitter about the procedures and time limits for submission and consideration of objections to disclosure. If we must notify a large number of submitters, we may do this by posting or publishing a notice in a place where the submitters are reasonably likely to become aware of it, or by sending the notice to a person or persons who we reasonably expect will give appropriate notification to the submitters or who will act on their behalf.

(2) The submitter will have five working days from receipt of the notice to object to disclosure of any part of the records and to state all bases for the objections. At the discretion of the FOIA

Officer, extensions of the time within which to respond may be granted, when requested by the submitter. These extensions shall not exceed an additional five working days.

(3) We will give consideration to all bases that have been timely stated by the submitter. If we decide to disclose the records, we will notify the submitter in writing. This notice will briefly explain why we did not sustain his/her objections. We will include with the notice a copy of the records about which the submitter objected, as we propose to disclose them. The notice will state that we intend to disclose the records five working days after the submitter receives the notice unless we are ordered by a United States District Court not to release them.

(4) When a requester files suit under the FOIA to obtain records covered by this subsection, we will promptly notify the submitter.

(5) Whenever we send a notice to a submitter under paragraph (b)(1) of this section, we will notify the requester that we are giving the submitter a notice and an opportunity to object. Whenever we send a notice to a submitter under paragraph (b)(3) of this section, we will notify the requester of this fact.

(c) *Exceptions to predisclosure notification.* The notice requirements in paragraph (b) of this section do not apply in the following situations:

(1) We decide not to disclose the records;

(2) The information has previously been published or made generally available;

(3) Disclosure is required by a regulation, issued after notice and opportunity for public comment, that specifies certain narrow categories of records that are to be disclosed upon request. However, a submitter may still designate such records as described in paragraph (a) of this section, and in exceptional cases, we may, at our discretion, follow the notice procedures in paragraph (b) of this section.

(4) The designation appears to be obviously frivolous. We will still, however, give the submitter the written notice as described in paragraph (b)(3) of this section (although this notice need not explain our decision or include a copy of the records), and we will notify the requester as described in paragraph (b)(5) of this section.

[FR Doc. 99-7222 Filed 3-25-99; 8:45 am]

BILLING CODE 4110-60-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 381

[Docket No. MARAD-99-5038]

RIN 2133-AB37

Regulations To Be Followed by All Departments and Agencies Having Responsibility To Provide a Preference for U.S.-Flag Vessels in the Shipment of Cargoes on Ocean Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Advance notice of proposed rulemaking; Extension of deadline for comments.

SUMMARY: On January 28, 1999, the Maritime Administration (MARAD) Advance Notice of Proposed Rulemaking (ANPRM) soliciting public comment concerning whether MARAD should amend its cargo preference regulations governing the carriage of agricultural exports was published in the *Federal Register* [64 FR 4382].

DATES: The deadline for submitting comments concerning this ANPRM is extended to April 28, 1999.

FOR FURTHER INFORMATION CONTACT: Thoms W. Harrelson, Director, Office of Cargo Preference 202-366-5515.

By order of the Maritime Administrator.

Dated: March 19, 1999.

Joel C. Richard,

Secretary.

[FR Doc. 99-7265 Filed 3-25-99; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AF56

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Alabama Sturgeon as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to list the Alabama sturgeon (*Scaphirhynchus suttkusi*) as endangered under the authority of the Endangered Species Act of 1973, as amended (Act). The Alabama sturgeon's historic range once included about 1,600 kilometers (km) (1,000 miles (mi)) of the Mobile River system