

extended. Comments are due March 18, 2024.

**ADDRESSES:** You may submit comments, identified by RIN number 3038–AF39, by any of the following methods:

- *CFTC Comments Portal:* <https://comments.cftc.gov>. Select the “Submit Comments” link for this rulemaking and follow the instructions on the Public Comment Form.

- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://comments.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission’s regulations.<sup>1</sup>

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from <https://comments.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

**FOR FURTHER INFORMATION CONTACT:**

Eileen A. Donovan, Deputy Director, (202) 418–5096, [edonovan@cftc.gov](mailto:edonovan@cftc.gov); August A. Imholtz III, Special Counsel, (202) 418–5140, [aimholtz@cftc.gov](mailto:aimholtz@cftc.gov); or Gavin Young, Special Counsel, (202) 418–5976, [gyoung@cftc.gov](mailto:gyoung@cftc.gov); Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; or Theodore Z. Polley III, Associate Director, (312) 596–0551, [tpolley@cftc.gov](mailto:tpolley@cftc.gov); Division of Clearing and Risk, Commodity Futures

Trading Commission, 77 West Jackson Boulevard, Suite 800, Chicago, Illinois 60604.

**SUPPLEMENTARY INFORMATION:** On January 3, 2024, the Commission published in the **Federal Register** an NPRM proposing amendments to its regulations that would ensure clearing member funds and assets receive the proper treatment in the event the derivatives clearing organization (DCO) enters bankruptcy by requiring, among other things, that clearing member funds be segregated from the DCO’s own funds and held in a depository that acknowledges in writing that the funds belong to clearing members, not the DCO.<sup>2</sup> In addition, the Commission also proposed to permit DCOs to hold customer and clearing member funds at foreign central banks subject to certain requirements. Finally, the Commission proposed to require DCOs to conduct a daily calculation and reconciliation of the amount of funds owed to customers and clearing members and the amount actually held for customers and clearing members. The comment period for the NPRM was to close on February 16, 2024. In response to a request by commenters, the Commission is extending the comment period for this NPRM by an additional 31 days.<sup>3</sup> This extension of the comment period will allow interested persons additional time to analyze the proposal and prepare their comments.

Issued in Washington, DC, on January 31, 2024, by the Commission.

**Robert Sidman,**

*Deputy Secretary of the Commission.*

**Note:** The following appendix will not appear in the Code of Federal Regulations.

**Appendix to Protection of Clearing Member Funds Held by Derivatives Clearing Organizations—Commission Voting Summary**

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2024–02234 Filed 2–5–24; 8:45 am]

**BILLING CODE 6351–01–P**

<sup>2</sup> Protection of Clearing Member Funds Held by Derivatives Clearing Organizations, 89 FR 286 (January 3, 2024).

<sup>3</sup> Letter from Teo Floor, Chief Executive Officer, The Global Association of Central Counterparties, dated January 11, 2024. Available at <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=73229>. The requested extension was 30 days. The Commission is extending the comment period by 31 days to avoid having the extended closing date fall on a weekend.

**SELECTIVE SERVICE SYSTEM**

**32 CFR Part 1662**

**RIN 3240–AA03**

**Freedom of Information Act Regulations**

**AGENCY:** United States Selective Service System.

**ACTION:** Proposed rule.

**SUMMARY:** The Selective Service System (SSS) proposes the following revisions to its Freedom of Information Act (FOIA) regulations to meet the requirements set forth in the Electronic Freedom of Information Act Amendments of 1996 (E–FOIA); the Openness Promotes Effectiveness requirement in the National Government Act of 2007 (the OPEN Government Act); and the FOIA Improvement Act of 2016 (FOIA Improvement Act). This proposed rule comprehensively updates the Agency’s FOIA regulations.

**DATES:** Comments must be received 60 days from publication date.

**ADDRESSES:** You may submit comments identified by docket number and/or Regulatory Information Number (RIN) number and title by email to [federalregisterliaison@sss.gov](mailto:federalregisterliaison@sss.gov), or by mail to: Selective Service System, **Federal Register Liaison**, 1501 Wilson Boulevard, Suite 700, Arlington, VA 22209.

*Instructions:* All submissions received must include the Agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <https://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel A. Lauretano, Sr., General Counsel, 703–605–4012, [dlauretano@sss.gov](mailto:dlauretano@sss.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background & Legal Basis for This Rule**

*A. The Housekeeping Statute*

The Housekeeping Statute, 5 U.S.C. 301, authorizes agency heads to promulgate regulations governing “the custody, use, and preservation of its records, papers, and property.” The FOIA is a Federal statute that allows the public to request records from the Federal government. The FOIA provides

<sup>1</sup> 17 CFR 145.9.

that any person has a right, enforceable in court, to obtain access to Federal agency records subject to the FOIA, except to the extent that any portions of such records are protected from public disclosure by one of nine exemptions or other law. Additionally, under the FOIA, agencies must make records specified in 5 U.S.C. 552(a)(2) (e.g., instructional manuals issued to employees, general statements of policy, etc.) available for public inspection in an electronic format. The FOIA also statutorily requires Federal agencies to annually report on numerous and various metrics to the Department of Justice (DOJ).

Since the most recent update to 32 CFR part 1662, the E-FOIA, the OPEN Government Act, and the FOIA Improvement Act have been enacted. These laws provide guidance to agencies for the implementation of the FOIA requirements. This proposed rule updates and revises part 1662 consistent with these laws.

The revisions will better streamline the process for the Agency's FOIA policies and procedures. These updates are consistent with the Plain Writing Act of 2010 which requires Federal agencies to use clear communications that the public can understand and use. They underscore the FOIA guidelines issued by Attorney General Merrick Garland in his March 15, 2022, Memorandum for Heads of Executive Departments and Agencies. The Memorandum directs the heads of all executive branch departments and agencies to apply a presumption of openness in administering the FOIA, instructs agencies to remove barriers to access, and asks agencies to help requesters understand the FOIA process.

In the sections that follow, SSS explains the requirements of the E-FOIA, the OPEN Government Act, and the FOIA Improvement Act. To visualize the proposed reorganization of part 1662, the Agency provides a table that identifies the old (existing) regulatory sections, the sections to which the content moved, and the names of the new sections. Following the table is a section-by-section summary wherein SSS identifies proposed changes to ensure compliance with the E-FOIA, the OPEN Government Act, and the FOIA Improvement Act. It also updates the SSS process for ease of understanding the Agency's FOIA policies and procedures.

#### *B. The E-FOIA*

The E-FOIA requires agencies to make certain types of records, created by the Agency on or after November 1,

1996, available electronically. It requires agencies to make available for public inspection, via an electronic reading room, "copies of all records, regardless of form or format that have been released to any person [under the FOIA] and which, because of the nature of their subject matter, the Agency determines have become or are likely to become the subject of subsequent requests for substantially the same records."

#### *C. The OPEN Government Act*

The OPEN Government Act amended the FOIA by providing new procedural and reporting requirements agencies must implement in their administration of the FOIA. It requires that (1) all FOIA requests that will take longer than ten days to process must be assigned an individualized tracking number and (2) agencies must provide requesters with a telephone line or internet service from which requesters can receive the status of their request(s).

The statute established the Office of Government Information Services (OGIS) within the National Archives and Records Administration that, among other duties, offers mediation services between FOIA requesters and Federal agencies as an alternative to litigation. It further directs agencies to designate a Chief FOIA Officer, who: (1) has responsibility for FOIA compliance; (2) monitors FOIA implementation; (3) makes recommendations to the Agency head concerning improvements to FOIA implementation; (4) reports to the Attorney General (through the Agency Head), as requested, on the Agency's FOIA implementation; (5) facilitates public understanding of the purposes of FOIA's statutory exemptions; and (6) designates one or more FOIA Public Liaisons. The FOIA Public Liaison serves as an official to whom a FOIA requester can raise concerns about service and is responsible for assisting in reducing delays in FOIA request processing, helping resolve disputes, and helping requesters understand the status of their requests.

The OPEN Government Act also revised annual reporting obligations, mandating reports on agency compliance with the FOIA to include information on: (1) FOIA denials based upon particular statutes; (2) response times; and (3) compliance by the agency and by each principal component thereof.

Regarding FOIA request processing, the OPEN Government Act: (1) modifies and specifies the time limits for an agency to determine whether to comply with a FOIA request; (2) establishes limitations on the circumstances under

which the statutory time period may be "tolled"; and (3) prohibits an agency from assessing search or duplication fees under the FOIA if it fails to comply with time limits, provided that no unusual or exceptional circumstances apply.

Lastly, the OPEN Government Act provides for the definition of "representative of the news media" and amends the definition of "record" to include any information maintained by an agency contractor "for the purposes of record management."

The changes to part 1662 in this proposed rule conform with the requirements of the OPEN Government Act as follows:

- Sections 1662.1 and 1662.2 introduce and provide information on the services of the FOIA Public Liaison and OGIS;
- Section 1662.2 defines "representative of the news media" and adds new terms such as the FOIA Public Liaison, OGIS, and Chief FOIA Officer; and
- Section 1662.11 updates and clarifies the following business practices: (1) the Chief FOIA Officer's acknowledgment of FOIA requests; (2) when a request is considered perfected; (3) multi-tracking procedures; (4) unusual circumstances; and (5) tolling of the 20-business-day statutory time period.

#### *D. The FOIA Improvement Act*

The FOIA Improvement Act took effect on June 30, 2016, and applies to any FOIA request made after the date of enactment. Its intent is to improve Agency transparency and responsiveness in processing FOIA requests.

The statute codifies the "foreseeable harm" standard, establishing that agencies may only withhold information if the Agency reasonably foresees that disclosure would harm an interest protected by a statutory exemption, or if disclosure is prohibited by existing law. Unless the record is prohibited from disclosure by law, asserting a FOIA exemption alone is not sufficient; an agency must also determine that release of the record would cause foreseeable harm to others/interests protected under the exemption.

The FOIA Improvement Act also imposes numerous administrative and procedural requirements upon Federal agencies. It adds new elements to the annual reports that capture the number of record denials and the number of records of general interest or use to the public that are made available for public inspection. It also creates new duties for the Chief FOIA Officer, requiring the

Chief FOIA Officer to (1) serve as the primary liaison between OGIS and the Office of Information Policy at DOJ and (2) offer training to staff regarding their FOIA responsibilities. It also creates a council of Chief FOIA Officers whose purpose is to improve an agency's administration of the FOIA. Within the Agency's proposed revisions to part 1662, it is not addressing the additional reporting requirements provided in the FOIA Improvement Act, as they do not affect its day-to-day administration of the FOIA.

This law also requires agencies to offer the services of the FOIA Public Liaison and OGIS in all decision letters. It further increases the time for appeals, now allowing requesters at least 90 days to file an administrative appeal of an adverse determination. Additionally, it codifies the "rule of three," which requires agencies to make available for public inspection, in an electronic format, records that are of general interest or have been requested three or more times and released to any person.

Further, it prohibits an agency from charging search and/or duplication fees under the FOIA for providing records if the agency misses a deadline for complying with a FOIA request, unless unusual circumstances exist, and the agency takes certain action to notify the requester. Additionally, it amends one of the privileges recognized under the FOIA Exemption 5, the deliberative process privilege, by providing that this privilege cannot be applied to records that are 25 years or older at the time of the FOIA request.

Finally, the FOIA Improvement Act requires the head of each agency to (1) review agency regulations and issue regulations on procedures for disclosure of records in accordance with the amendments made by the bill and (2) include in such regulations procedures for engaging in dispute resolution through the FOIA Public Liaison and OGIS.

The changes to part 1662 in this Proposed Rule conform with the requirements of the FOIA Improvement Act as follows:

- Sections 1662.1 and 1662.15 address the FOIA Public Liaison and OGIS;
- Sections 1662.3(a) and 1662.11(k) add the foreseeable harm standard;
- Section 1662.13 clarifies the agency's fee charging rules, including when unusual circumstances apply;
- Section 1662.16 updates the appeal timeframe to 90 days (from 30 days);
- Section 1662.22(a) states that the deliberative process privilege does not apply to records that are 25 years or

older at the time of the FOIA request; and

- Section 1662.26 sets forth that records requested three or more times will be publicly posted.

## II. The FOIA Process at SSS

The revised regulations at 32 CFR part 1662 ensure the SSS FOIA program is easier for the public to navigate.

Under current procedures, the Chief FOIA Officer conducts a thorough review to ensure proper disclosure. The Agency's Chief FOIA Officer makes the final determination on the release of records in response to initial requests and the Director of Selective Service is designated the final authority on appeal determinations. SSS also makes available for public inspection, in an electronic format, records that have been requested and released three or more times and other specified records described in revised § 1662.26, available at [www.sss.gov/foia](http://www.sss.gov/foia).

## III. Section-by-Section Changes

### 32 CFR 1662.1

The Agency is revising this section in its entirety, including the heading. The heading has been changed from "§ 1662.1. Applicability of this part" to "§ 1662.1. Scope and purpose of this part." The current section states: "The provisions of this part prescribe the procedures for requests for information under 5 U.S.C. 552, as amended (Freedom of Information Act)." The proposed section provides readers a roadmap of the contents of part 1662; sets forth FOIA's mandate to provide records unless exemptions apply; and the requirement to make certain records available for public inspection. This section introduces the services of the FOIA Public Liaison and OGIS. Proposed paragraph (c) states that nothing in part 1662 supersedes the information located in parts 1660 and 1665 of the Agency's regulations.

### 32 CFR 1662.2

The Agency is revising this section in its entirety, including the heading, which will change from "§ 1662.2. Procedure for requesting information" to "§ 1662.2. Definitions." The definitions contained in this section derive from the FOIA, the E-FOIA, the Open Government Act, and the FOIA Improvement Act. The definitions explain two new positions and one new entity created by the OPEN Government Act: Chief FOIA Officer, FOIA Public Liaison, and OGIS. The OPEN Government Act also amends the definition of "records" and provides for the definition of "representative of the

news media"; therefore, both items are addressed within this revised section. To promote openness in government, SSS is including definitions of terms used regularly in the administration of the FOIA. In addition to the aforementioned definitions, the terms included in this section are commercial interest; component; expedited processing; exemption; fee category; fee waiver; FOIA request; non-commercial scientific institution; online FOIA portal; other requester; production; reading room; redact; special services; submitter; tolling; and trade secrets and commercial or financial information.

### 32 CFR 1662.3

The Agency is revising this section in its entirety, including the heading, which will change from "§ 1662.3. Identification of information requested" to "§ 1662.3. SSS's FOIA policy." Paragraph (a) of this section provides language acknowledging the Agency's presumption of openness, meaning that SSS will withhold information only if disclosure would cause foreseeable harm, as codified in the FOIA Improvement Act, or if the disclosure is prohibited by law.

Paragraphs (b) and (c) advise the public where they may find information about the Chief FOIA Officer's authority to release and withhold records and records that are available for public inspection. However, the FOIA does not require the Agency to give opinions, conduct research, answer questions, nor create records in the administration of the FOIA, which is set forth in paragraph (d).

### 32 CFR 1662.4

The Agency is revising this section in its entirety, including the heading, which will change from "§ 1662.4. Consideration of request for information" to "§ 1662.4. Relationship between the FOIA and the Privacy Act of 1974." This revises and moves language from current § 1662.6(b)(4), which states that requests for records contained within a system of records will be handled under the Privacy Act of 1974, and that under such search, only fees for reproduction costs may be charged. The proposed section adds a notification for the public that requests for their own records will be handled under the Privacy Act of 1974 and the FOIA.

### 32 CFR 1662.5

The Agency is revising this section in its entirety, including the heading, which is changing from "§ 1662.5. Inspection, copying, and obtaining copies" to "§ 1662.5. Who can file a

FOIA request?” This section clearly identifies who can file a FOIA request.

### 32 CFR 1662.6

The Agency is revising this section in its entirety, including the heading, which will change from “§ 1662.6. Fee schedule; waiver of fees” to “§ 1662.6. Requirements of a FOIA request.” Current § 1662.3 states that a FOIA requester “shall provide a reasonably specific description of the information sought.. [and i]f the description is not sufficient, the records manager will notify the requester and, to the extent possible, indicate the additional information required.” This new section provides a list of criteria that must be met for a request to be considered a FOIA request, and thus subject to the rules discussed in this part. This section will help requesters “perfect” their request on first attempt, which will help streamline the FOIA process.

### 32 CFR 1662.7

This is a new section with the heading “§ 1662.7. Where to submit a FOIA request.” Currently § 1662.2 does not provide information on how and where to submit a FOIA request via mail, email, or Agency website. This new section eliminates the title “Records Manager” and replaces it with “FOIA Officer.” It sets forth options to submit requests by mail, via email, or online.

### 32 CFR 1662.8

This is a new section with the heading “§ 1662.8. Requests not processed under the FOIA.” It states that the Agency will not process the following FOIA requests for records that are: (a) publicly available; (b) distributed through a public information campaign (e.g., leaflets); and (c) earnings records. Paragraph (d) states that the Agency will not process a FOIA request that fails to meet the requirements set forth in proposed § 1662.21. The Chief FOIA Officer will provide instructions and/or request additional information so that the request adheres to the requirements of proposed § 1662.21.

### 32 CFR 1662.9

This is a new section with the heading “§ 1662.9. Chief FOIA Officer’s authority.” It states that the Chief FOIA Officer is authorized to make determinations about: (a) the release or withholding of records; (b) expedited processing; (c) charging or waiver of fees; and (d) other matters related to the processing of FOIA requests. It clarifies that the Chief FOIA Officer’s determination is provided in writing and, if the requester disagrees with the

Chief FOIA Officer’s determination, the requester may appeal to the Director of Selective Service as described in proposed § 1662.16.

### 32 CFR 1662.10

This is a new section with the heading “§ 1662.10. Responsibility for Responding to Requests.” It describes situations where records subject to a FOIA request were created/provided by another agency. When making a referral to another Federal agency, the Chief FOIA Officer will ask the other agency to process the request or portion of the request for records that originated with that agency. Paragraphs (a)(2), (b), and (c) explain how SSS handles records that originated with another agency when that other agency is not subject to the FOIA (paragraph (a)(2)); when the Chief FOIA Officer will advise a requester to submit their request to another agency (paragraph (b)); and the Chief FOIA Officer’s consultations with another entity (paragraph (c)).

### 32 CFR 1662.11

This is a new section with the heading “§ 1662.11. How does SSS process FOIA requests?” It is comprised of paragraphs (a) through (j) that capture the following: the Agency’s acknowledgment of FOIA requests; when a request is considered “perfected”; where to find information in the regulations concerning expedited processing; the Agency’s multi-tracking procedures; what constitutes unusual circumstances; the Agency’s ability to aggregate requests; fee information that is discussed in proposed § 1662.13; the Chief FOIA Officer’s ability to stop or “toll” the 20 business day statutory period; records retrieval information; unproductive searches; furnishing records; handling and release of records under the FOIA exemptions; and burdensome requests, wherein the Agency explains that SSS will not process a request when doing so would be unduly burdensome on the Agency.

### 32 CFR 1662.12

This is a new section with the heading “§ 1662.12. Expedited processing,” which sets forth the “compelling need” criteria. The Chief FOIA Officer decides to grant or deny expedited processing by applying the criteria. Denials may be appealed to the Director of Selective Service under the process set forth in proposed § 1662.16.

### 32 CFR 1662.13

This is a new section with the heading “§ 1662.13. Fees associated with processing FOIA requests.” This section revises existing (old) § 1662.6 to

make the processes and procedures easier for the public to understand. This section includes search, duplication, and review fees; restrictions on charging fees; requirement to provide notice when fees are anticipated to be in excess of \$25.00; charges for other services; charging interest on unpaid bills; aggregating requests; advance payments; and requirements for a waiver or reduction of fees.

### 32 CFR 1662.14

This is a new section with the heading “§ 1662.14. Release of records.” This section clarifies the Agency’s rules concerning records previously released; advises the public of the Agency’s FOIA electronic reading room; and sets forth the procedures when only poor-quality copies of a record are available.

### 32 CFR 1662.15

This is a new section with the heading “§ 1662.15. FOIA Public Liaison and Office of Government Information Services,” which provides requesters with information on how to seek the services of the FOIA Public Liaison and OGIS.

### 32 CFR 1662.16

This is a new section with the heading “§ 1662.16. Appeals of the Chief FOIA Officer’s determination.” The SSS revisions update the information located in the existing regulation at § 1662.4(b) in newly created paragraphs (a) through (e). Paragraph (a) sets the appeal period at 90 days and clarifies that the Director of Selective Service makes final appeal determinations. Under paragraph (b), the Agency is adding language concerning the SSS’s acknowledgement of appeals and paragraph (c) provides clarifying information concerning how long the Agency generally takes to process appeals. Under paragraph (d), SSS includes additional information explaining that the Director of Selective Service makes final appeal determinations. Finally, paragraph (e) advises requesters of their right to seek review in a U.S. District Court if they disagree with the appeal determination.

### 32 CFR 1662.17

This is a new section with the heading “§ 1662.17. U.S. District Court Action.” It states that if requesters disagree with the Director of Selective Service’s decision, they may ask a U.S. District Court to review the decision.

### 32 CFR 1662.18

This is a new section with the heading “§ 1662.18. The FOIA Exemption 1: National defense and

foreign policy,” which codifies the FOIA Exemption 1 in the Agency’s regulations.

#### 32 CFR 1662.19

This is a new section with the heading “§ 1662.19. The FOIA Exemption 2: Internal personnel rules and practices,” which codifies the FOIA Exemption 2 in the Agency’s regulations.

#### 32 CFR 1662.20

This is a new section with the heading “§ 1662.20. The FOIA Exemption 3: Records exempted by other statutes,” which codifies the FOIA Exemption 3 in the Agency’s regulations.

#### 32 CFR 1662.21

This is a new section with the heading “§ 1662.21. The FOIA Exemption 4: Trade secrets and confidential commercial or financial information,” which codifies the FOIA Exemption 4 in the Agency’s regulations. It sets forth the procedures under which a submitter may challenge release of information they believe to be exempt from disclosure under this exemption. This section includes information regarding the submitter’s notice; submitter’s opportunity to object to disclosure; notice of intent to disclose; notice of FOIA lawsuit; and requester notification.

#### 32 CFR 1662.22

This is a new section with the heading “§ 1662.22. The FOIA Exemption 5: Internal documents,” which codifies the FOIA Exemption 5 in the Agency’s regulations. It includes the deliberative process privilege; attorney work product privilege; attorney-client privilege; and the 25-year sunset on records otherwise exempt under the deliberative process privilege.

#### 32 CFR 1662.23

This is a new section with the heading “§ 1662.23. The FOIA Exemption 6: Clearly unwarranted invasion of personal privacy,” which codifies the FOIA Exemption 6 in the Agency’s regulations. Paragraph (a) sets forth the balancing test for when the Chief FOIA Officer must decide whether to release records that contain personal or private information. The Chief FOIA Officer must weigh the foreseeable harm of invading a person’s privacy against the public interest in disclosure. Paragraph (b) notifies requesters that the Chief FOIA Officer will not disclose information regarding employee(s) contact information and/or duty station

if the disclosure places employee(s) at risk of injury or other harm.

#### 32 CFR 1662.24

This is a new section with the heading “§ 1662.24. The FOIA Exemption 7: Law enforcement,” which codifies the FOIA Exemption 7 in the Agency’s regulations.

#### 32 CFR 1662.25

This is a new section with the heading “§ 1662.25. The FOIA Exemptions 8 and 9: Records on financial institutions; records on wells,” which codifies the FOIA Exemptions 8 and 9 in the Agency’s regulations.

#### 32 CFR 1662.26

This is a new section with the heading “§ 1662.26. Records available for public inspection,” which lists the records SSS is required to make available for public inspection in electronic format.

#### 32 CFR 1662.27

This is a new section with the heading “§ 1662.27. Where records are published,” which sets forth the acceptable methods of publication of records pursuant to the provisions of 5 U.S.C. 552(a)(1) and (a)(2).

#### 32 CFR 1662.28

This is a new section with the heading “§ 1662.28. Publications for sale through the Government Publishing Office.” These publications include, but are not limited to, the Military Selective Service Act, SSS regulations, Legal Aspects of the Selective Service System, and **Federal Register** issues.

### IV. Regulatory Procedures

#### A. Expected Impact of the Proposed Rule

The Agency does not anticipate any additional costs associated with promulgations of the regulations contained herein.

The Agency anticipates qualitative benefits from the proposed revisions to the FOIA regulations from streamlined and codified FOIA policies and procedures. SSS expects the codified regulations will benefit both the Agency and the public because the administration of the FOIA will be better organized and user friendly for requesters. The purpose of the FOIA is to provide the public with access to government records, and administrative transparency is paramount to a successful FOIA program. Clear policies generate efficient and effective processing of FOIA requests.

*B. Executive Order (E.O.) 12866, “Regulatory Planning and Review,” E.O. 13563, Improving Regulation and Regulatory Review,” and Congressional Review Act (5 U.S.C. 801–08)*

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Following the requirements of these E.O.s, the Office of Management and Budget (OMB) has determined that this proposed rule is not a significant regulatory action under section 3(f) of E.O. 12866 nor a “major rule” as defined by 5 U.S.C. 804(2).

*C. Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C. 601)*

SSS certifies that this proposed rule is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601, because it would not have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require SSS to prepare a regulatory flexibility analysis.

*D. Section 202 of Public Law 104–4, “Unfunded Mandates Reform Act” (2 U.S.C. 1532)*

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require the expenditure of \$100 million or more (in 1995 dollars, adjusted annually for inflation) in any one year. This proposed rule will not mandate any requirements for state, local, or tribal governments, nor will it affect private sector costs.

*E. Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)*

It has been determined that 32 CFR part 1660 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act.

*F. E.O. 13132, “Federalism”*

E.O. 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. This proposed rule will

not have a substantial effect on state and local governments.

*G. E.O. 11623, Delegation of Authority & Coordination Requirements*

In E.O. 11623, the President delegated to the Director of Selective Service the authority to prescribe the necessary rules and regulations to carry out the provisions of the Military Selective Service Act. In carrying out the provisions of E.O. 11623, as amended by E.O. 13286, the Director shall request the views of the Secretary of Defense; the Attorney General; the Secretary of Labor; the Secretary of Health, Education, and Welfare; the Secretary of Homeland Security (when the Coast Guard is serving under the Department of Homeland Security); the Director of the Office of Emergency Preparedness; and the Chairman of the National Selective Service Appeal Board with regard to such proposed rule or regulation, and shall allow not less than 10 days for the submission of such views before publication of the proposed rule or regulation. On January 24, 2024, SSS completed its coordination requirements, and the Director certifies that he has requested the views of the officials required to be consulted pursuant to subsection (a) of E.O. 11623, considered those views and as appropriate incorporated those views in these regulations, and that none of these officials has requested that the matter be referred to the President for decision.

*These proposed regulations were reviewed and approved by Joel C. Spangenberg, Acting Director of Selective Service.*

**List of Subjects in 32 CFR Part 1662**

Freedom of information.

■ For the reasons stated in the preamble, the Selective Service System proposes to revise 32 CFR part 1662 to read as follows:

**PART 1662—FREEDOM OF INFORMATION ACT (FOIA) PROCEDURES**

Sec.

- 1662.1 Scope and purpose of this part.
- 1662.2 Definitions.
- 1662.3 SSS's FOIA policy.
- 1662.4 Relationship between the FOIA and the Privacy Act of 1974.
- 1662.5 Who can file a FOIA request?
- 1662.6 Requirements of a FOIA request.
- 1662.7 Where to submit a FOIA request.
- 1662.8 Requests not processed under the FOIA.
- 1662.9 Chief FOIA Officer's authority.
- 1662.10 Responsibility for responding to requests.
- 1662.11 How does SSS process FOIA requests?

- 1662.12 Expedited processing.
- 1662.13 Fees associated with processing FOIA requests.
- 1662.14 Release of records.
- 1662.15 FOIA Public Liaison and the Office of Government Information Services.
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- 1662.18 The FOIA Exemption 1: National defense and foreign policy.
- 1662.19 The FOIA Exemption 2: Internal personnel rules and practices.
- 1662.20 The FOIA Exemption 3: Records exempted by other statutes.
- 1662.21 The FOIA Exemption 4: Trade secrets and confidential commercial or financial information.
- 1662.22 The FOIA Exemption 5: Internal documents.
- 1662.23 The FOIA Exemption 6: Clearly unwarranted invasion of personal privacy.
- 1662.24 The FOIA Exemption 7: Law enforcement.
- 1662.25 The FOIA Exemptions 8 and 9: Records on financial institutions; records on wells.
- 1662.26 Records available for public inspection.
- 1662.27 Where records are published.
- 1662.28 Publications for sale through the Government Publishing Office.

**Authority:** 5 U.S.C. 301; 50 U.S.C. 3809; 5 U.S.C. 552 and 552a; 18 U.S.C. 1905; 31 U.S.C. 9701; & E.O. 11623, as amended by E.O. 13286, Feb 28, 2003.

**§ 1662.1 Scope and purpose of this part.**

(a) The purpose of this part is to describe the Selective Service System's (SSS) policies and procedures for implementing the requirements of the Freedom of Information Act (FOIA) as set forth at 5 U.S.C. 552. The FOIA mandates disclosure to the public of Federal agency records unless specific exemptions apply. The FOIA also requires an agency to proactively disclose records and make certain records available for public inspection.

(b) The rules in this part describe how SSS makes records available to the public, including:

- (1) What constitutes a proper request for records;
- (2) How to make a FOIA request;
- (3) Who has the authority to release and withhold records;
- (4) What fees may be charged to process a request for records;
- (5) The timing of determinations regarding release;
- (6) The exemptions that permit the withholding of records;
- (7) A requester's right to seek assistance from the FOIA Public Liaison;
- (8) A requester's right to appeal the Agency's FOIA determination;
- (9) A requester's right to seek assistance from the Office of

Government Information Services (OGIS) and then go to court if they still disagree with the Agency's release determination; and

(10) The records available for public inspection.

(c) The rules in this part do not revoke, modify, or supersede the SSS regulations relating to disclosure of information in parts 1660 or 1665 of this chapter.

**§ 1662.2. Definitions.**

As used in this part:

*Agency* means the Selective Service System. Agency may also refer to 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. A private organization is not an agency even if it is performing work under contract with the Government or is receiving Federal financial assistance.

*Chief FOIA Officer* means a senior official of SSS who has an Agency-wide responsibility for ensuring efficient and appropriate compliance with the FOIA, monitoring implementation of the FOIA throughout SSS, and making recommendations to the Director of Selective Service to improve SSS's implementation of the FOIA. The Director of Selective Service designates a Chief FOIA Officer for the Agency. The Director of Selective Service makes final decisions in response to appeals of the Chief FOIA Officer's determinations.

*Commercial interest* includes interests relating to business, trade, and profit, as well as non-profit 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.

*Component* consists of the Office of the Director, National Headquarters Directorates and Offices, Data Management Center, Region Offices, and all other organizational entities within SSS that may maintain Agency records subject to a request under the FOIA.

*Duplication* means the process of reproducing a copy of a record, or of the information contained in it, to the extent necessary to respond to a request. Copies include paper, electronic records, audiovisual materials, and other formats of Agency records.

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

research. To qualify for this category, a requester must show that the FOIA request is authorized by, and is made under the auspices of, a qualifying institution and that the records are sought to further a scholarly research goal of the institution, and not for a commercial use or purpose, or for individual use or benefit.

*Exemption* means one of the nine exemptions to the mandatory disclosure of records permitted under section 552(b) of the FOIA.

*Expedited processing* means the process set forth in the FOIA that allows requesters to request faster processing of their FOIA request if they meet specific criteria noted in § 1662.12.

*Fee category* means one of the three categories established by the FOIA to determine whether a requester will be charged fees under FOIA for search, review, and duplication. The categories are: commercial use requests; non-commercial scientific or educational institutions and news media requests; and all other requests.

*Fee waiver* means the waiver or reduction of fees if a requester meets the requirements set forth in § 1662.13.

*FOIA Officer* means an SSS official whom the Director of Selective Service has delegated the authority to assist the Chief FOIA Officer in releasing or withholding records; assessing, waiving, or reducing fees in response to FOIA requests; and all other determinations regarding the processing of a FOIA request. In this capacity, the FOIA Officer is authorized to request and receive responsive records that may be maintained by other Agency components. Except for records subject to proactive disclosure pursuant to subsection (a)(2) of the FOIA, only the Chief FOIA Officer has the authority to release or withhold records or to waive fees in response to a FOIA request.

*FOIA Public Liaison* means an Agency official who reports to the Agency Chief FOIA Officer and serves as a supervisory official to whom a requester can raise concerns about the service the requester received concerning the processing of the FOIA request. This individual is responsible for increasing transparency in the Agency's FOIA business process, helping requesters understand the status of requests, and assisting in the resolution of disputes. The FOIA Public Liaison may be contacted via email at [FOIA.Public.Liaison@sss.gov](mailto:FOIA.Public.Liaison@sss.gov).

*FOIA request* means a written request that meets the criteria in § 1662.6.

*Freedom of Information Act* or *FOIA* means the law codified at 5 U.S.C. 552 that provides the public with the right

to request Agency records from Federal executive branch agencies.

*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, including print and online publications that disseminate news and make their products available through a variety of means to the public. SSS does not consider FOIA requests for records that support the news dissemination function of the requester to be commercial use. SSS considers "freelance" journalists who demonstrate a solid basis for expecting publication through a news media entity as working for that entity. A publishing contract provides the clearest evidence that a journalist expects publication; however, SSS also considers a requester's past publication record.

*Non-commercial scientific institution* means an institution that does not further the commercial, trade, or profit interests of any person or entity and is operated for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

*Online FOIA portal* means the electronic application that SSS uses to process FOIA requests. The public may also submit requests directly to SSS via the online [FOIA.gov](https://www.sss.gov)—Freedom of Information Act.

*Other requester* means any individual or organization whose FOIA request does not qualify as a commercial-use request, representative of the news media request (including a request made by a freelance journalist), or an educational or non-commercial scientific institution request.

*Production* means the process of preparing the records for duplication, including the time spent in preparing the records for duplication (i.e., materials used, records/database retrieval, employee, and contractor time, as well as systems processing time).

*Reading room* means an electronic location(s) that SSS uses to post records that are made available to the public without a specific request. SSS makes reading room records electronically available to the public through the SSS website, <https://www.sss.gov/>, including at <https://www.sss.gov/foia/>.

*Record(s)* means any information maintained by an Agency, regardless of format, that is made or received in connection with official Agency business that is under the Agency's control at the time of the FOIA request. Record(s) includes any information

maintained for an Agency by a third party. Record(s) does not include personal records of an employee, or other information in formally organized and officially designated SSS libraries and reading rooms, where such materials are available under the rules of the particular library.

*Redact* means delete or mark over.

*Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.

*Request* means asking for records, whether or not the requester refers specifically to the FOIA. Requests from federal agencies, subpoenas, and court orders for documents are not included within this definition.

*Review*, unless otherwise specifically defined in this part, means examining records responsive to a request to determine whether any portions are exempt from disclosure. Review time includes processing a record for disclosure (i.e., doing all that is necessary to prepare the record for disclosure), including redacting the record and marking the appropriate FOIA exemptions. It does not include the process of resolving general legal or policy issues regarding exemptions.

*Search* means the process of identifying, locating, and retrieving records responsive to a request, whether in hard copy or in electronic form or format, or by manual or automated/electronic means.

*Special services* mean performing additional services outside of those required under the FOIA to respond to a request. Examples include using an overnight mail service to send the Agency's response to a FOIA request.

*SSS* means the Selective Service System.

*Submitter* means any person or entity that provides trade secrets or commercial or financial information to the Agency, and includes individuals, corporations, other organizational entities, and state and foreign governments.

*Tolling* means temporarily stopping the running of a time limit. SSS may toll a FOIA request to seek clarification from the requester or to address fee issues, as further described in § 1662.11.

*Trade secrets and commercial or financial information* means trade secrets and commercial or financial information that are confidential, and are obtained by the Agency from a submitter, such that it may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).



**§ 1662.3. SSS's FOIA policy.**

(a) *Presumption of openness.* The Agency will withhold information only if the Chief FOIA Officer reasonably foresees that disclosure would harm an interest protected by a FOIA exemption or if disclosure is prohibited by law.

(b) *Authority to release and withhold records.* As described in § 1662.9, the Agency's Chief FOIA Officer has the authority to:

(1) Release or withhold records in response to initial requests;

(2) Grant or deny expedited processing; and

(3) Reduce or waive fees.

(c) *Records publicly available.* The Agency makes available for public inspection, in an electronic format, records that have been requested and released three or more times and other specified records described in § 1662.26.

(d) *Required record production.* The FOIA does not require an Agency to give opinions, conduct research, answer questions, or create records.

**§ 1662.4. Relationship between the FOIA and the Privacy Act of 1974.**

(a) *Coverage.* The FOIA and the rules in this part apply to all SSS records. The Privacy Act, 5 U.S.C. 552a, applies to records that are about individuals, but only if the records are in a system of records.

(b) *Requesting your own records.* If you have filed a FOIA request and are an individual requesting your own records that are maintained in a system of records, or if you are a parent or legal guardian authorized to act on behalf of a minor or custodian who is seeking the records about a minor or individual who has been declared incompetent, the Agency will handle your request under the Privacy Act.

**§ 1662.5. Who can file a FOIA request?**

Any member of the public may submit a FOIA request to SSS. Under the FOIA, "member of the public" includes requests from individuals, corporations, state, and local agencies, as well as foreign entities. Requests from Federal agencies and Federal or state courts are not covered by the FOIA.

**§ 1662.6. Requirements of a FOIA request.**

(a) To be considered a FOIA request under this part, the following must occur:

(1) The request must be written (either by hand or electronically);

(2) The request must be submitted in accordance with § 1662.7;

(3) The requester must provide the following required contact information: requester's name, U.S. or foreign postal address, description of records sought,

and fee willing to pay. While not required, the Agency encourages requesters to provide us with their email address and phone number; and

(4) The request must clearly state and reasonably describe what SSS records are requested. Broad, sweeping requests and vague requests are not reasonably described. The requester must describe the records sought in sufficient detail to enable the Agency to locate the records with a reasonable amount of effort. When known, requests should identify the records sought by providing the name/title of the record, applicable date range, subject matter, offices, or employees involved, and record type. If the request is for electronic communications, such as email records, it would assist SSS if the requestor could provide as much information as possible, such as the names, position titles, or other identifying information about the Agency employees involved, as well as the applicable timeframe. Absent sufficient details, the Agency may be unable to search for or locate the records sought. The greater the date range, the longer it may take to process the request and the greater amount of fees that may be charged.

(b) Requests that do not meet the required criteria above are not considered proper FOIA requests.

(c) The FOIA requires an Agency to provide the record in any form or format requested by the person if the record is readily reproducible by the Agency in that form or format. SSS will not search or produce records in response to a FOIA request that the FOIA Officer determines would be unduly burdensome to process. FOIA requests are determined to be unreasonably burdensome when processing the FOIA request would significantly interfere with the ongoing operation of the Agency's programs.

**§ 1662.7. Where to submit a FOIA request.**

*Submission of requests.* Requesters must submit FOIA requests in writing to the Agency through one of the following options:

(a) *Online FOIA portal:* link available from the Agency's [www.sss.gov/foia](http://www.sss.gov/foia) website.

(b) *Email:* [FOIA@sss.gov](mailto:FOIA@sss.gov).

(c) *Mail:* SSS, ATTN: Freedom of Information Act Officer, 1501 Wilson Boulevard, Suite 700, Arlington, VA 22209.

**§ 1662.8. Requests not processed under the FOIA.**

(a) The Chief FOIA Officer will not process a request under the FOIA and the regulations in this part to the extent it asks for records that are currently

publicly available, either from SSS or from another part of the Federal Government, unless the requester does not have access to the internet and cannot retrieve records online. See § 1662.26.

(b) The Chief FOIA Officer will not process a request under the FOIA and the regulations in this part if the records sought are distributed by the Agency as part of its regular program activity, for example, public information leaflets distributed by SSS. See §§ 1662.26 through 1662.28.

(c) The Chief FOIA Officer will not process a request under the FOIA that does not meet the requirements of a FOIA request as defined in § 1662.21. When a request under FOIA does not meet the requirements of § 1662.21, the Chief FOIA Officer will send written correspondence to the requester:

(1) Providing instructions for how to submit a proper FOIA request; or

(2) Asking for additional information to make the request a proper FOIA request.

**§ 1662.9. Chief FOIA Officer's authority.**

(a) *Release determination.* The Chief FOIA Officer is authorized to make determinations about:

(1) Release or withholding of records;

(2) Expedited processing;

(3) Charging or waiver of fees; and

(4) Other matters relating to processing a request for records under this part.

(b) *Determination provided in writing.* The Chief FOIA Officer's determination is provided in writing to the requester via emailed communication or, in the absence of the requester's email address, via U.S. postal mail. If the requester disagrees with the FOIA Officer's determination in response to items identified in paragraph (a) of this section, the requester may appeal the determination to the Director of Selective Service, as described in § 1662.16.

**§ 1662.10. Responsibility for responding to requests**

(a) *In general.* When the Chief FOIA Officer first receives a request for a record and SSS maintains that record, it is the responsibility of SSS to respond to the request. In determining which records are responsive to a request, SSS ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, SSS will 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), is not considered responsive to a request.

(b) *Authority to grant or deny requests.* The Chief FOIA Officer is



authorized to grant or to deny any requests for records that are maintained by SSS. Denials may be appealed to the Director of the Selective Service.

(c) *Consultation, referral, and coordination.* When reviewing records located by SSS in response to a request, the Chief FOIA Officer will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, the Agency must proceed in one of the following ways:

(1) *Consultation.* When records originated with SSS but contain within them information of interest to another agency or other Federal Government office, SSS will consult with that other entity prior to making a release determination.

(2) *Referral.* (i) When the Chief FOIA Officer believes that a different agency or component is best able to determine whether to disclose the record, the Chief FOIA Officer will refer the responsibility for responding to the request regarding that record to that agency. Ordinarily, the agency that originated the record is presumed to be the best agency to make the disclosure determination. However, if the Chief FOIA Officer and the originating agency jointly agree that SSS is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever the Chief FOIA Officer refers any part of the responsibility for responding to a request to another agency, it will document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name(s) of the agency to which the record was referred, including that Agency's FOIA contact information.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement agency responding to a request for records on a living third party locates within its file's records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if the Chief FOIA Officer locates within its files material originating from an Intelligence Community agency, and the

involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the Chief FOIA Officer will coordinate with the originating agency to seek its views on whether the record may be disclosed. The release determination for the record that is the subject of the coordination will then be conveyed to the requester by the Chief FOIA Officer.

(d) *Classified information.* On receipt of any request involving classified information, the Chief FOIA Officer must determine whether the information is currently and properly classified in accordance with applicable classification rules. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another agency under any applicable executive order concerning the classification of records, the Chief FOIA Officer will refer the responsibility for responding to the request regarding that information to the agency that classified the information, or that should consider the information for classification. Whenever the record of SSS contains information that has been derivatively classified (for example, when it contains information classified by another agency), the Chief FOIA Officer will refer the responsibility for responding to that portion of the request to the agency that classified the underlying information.

(e) *Timing of responses to consultations and referrals.* All consultations and referrals received by the Chief FOIA Officer will be handled according to the date that SSS received the perfected FOIA request.

(f) *Agreements regarding consultations and referrals.* The Chief FOIA Officer may establish agreements with other agencies to eliminate the need for consultations or referrals with respect to particular types of records.

#### **§ 1662.11. How does SSS process FOIA requests?**

(a) *Acknowledgement.* (1) The Chief FOIA Officer acknowledges all FOIA requests in writing within ten business days after the Agency's receipt of the request. The acknowledgement email or letter restates the FOIA request and provides the requester with the request's tracking number.

(2) If the Chief FOIA Officer requires clarification to process the FOIA request, the Chief FOIA Officer will

contact the requester either via email, U.S. postal mail, or phone call. The Chief FOIA Officer will attempt to contact requesters twice. If the Chief FOIA Officer does not receive a response to their clarification attempts within 30 calendar days from the date of the first contact to the requester, the Chief FOIA Officer will close the FOIA request due to insufficient information.

(b) *Perfected requests.* FOIA requests are considered "perfected," *i.e.*, the 20-business day statutory time begins, when the request meets the requirements of the proper FOIA request listed in § 1662.6. There may be times that the Chief FOIA Officer requires more information from the requester after perfecting a request. The 20-business day period may be extended in unusual circumstances by written notice to the requester. See paragraph (e) of this section.

(c) *Expedited processing.* Unless granted expedited processing, the Chief FOIA Officer processes FOIA requests according to a first-in, first-out basis. See § 1662.12 for information on expedited processing.

(d) *Multi-tracking procedures.* FOIA requests are categorized as either simple or complex, depending on the nature of the request and the estimated processing time:

(1) *Simple.* For most non-expedited requests, the Chief FOIA Officer makes a determination about release of the record(s) requested within 20 business days.

(2) *Complex.* The Chief FOIA Officer will place into a complex processing queue any request that cannot be completed within 20 business days due to unusual circumstances. The Chief FOIA Officer notifies requesters in writing if it is necessary for SSS to take additional time to process a request and of the requester's right to seek dispute resolution services with the OGIS. See § 1662.15.

(e) *Unusual circumstances.* (1) Unusual circumstances exist when there is a need to:

(i) Search for and collect records from SSS components or locations that are separate from National Headquarters;

(ii) Search for, collect, and review a voluminous number of records that are part of a single request; and/or

(iii) Consult with two or more SSS components or another agency having substantial interest in the request before releasing the records.

(2) Within the unusual circumstances letter to the requester, the Chief FOIA Officer will provide an estimated date that they will contact the requester with the applicable fee notice and/or further correspondence. The Chief FOIA Officer

will also advise the requester that they may modify or narrow the scope of their request.

(f) *Fee notice.* FOIA requesters are issued a fee notice from the Chief FOIA Officer that informs them of the estimated search and review time associated with processing their FOIA request. For more information on fees, see § 1662.13.

(g) *Tolling.* (1) The Chief FOIA Officer may stop or toll the 20 business days in two circumstances:

(i) The Chief FOIA Officer may stop the clock one time if they require additional information regarding the specifics of the request; and

(ii) The Chief FOIA Officer may stop the clock as many times as needed regarding fee assessments.

(2) The processing time will resume upon the Chief FOIA Officer's receipt of the requester's response. There may be instances when the Chief FOIA Officer requires multiple clarifications on a FOIA request. After the first request for clarification, any additional clarifications are performed without tolling the clock. Should the requester not respond to any correspondence wherein the Chief FOIA Officer requests clarification, or should the correspondence be returned as undeliverable, the Agency reserves the right to administratively close the FOIA request if the Chief FOIA Officer does not receive a response within 30 business days of the date of their correspondence requesting clarification.

(h) *Retrieving records.* The Agency is required to furnish copies of records only when they are in the Agency's possession or SSS can retrieve them from storage. The Federal government follows National Archives and Records Administration (NARA) rules on record retention. Records are retained or destroyed under the guidelines of the Federal Records Act.

(i) *Unproductive searches.* SSS will search for records to satisfy a request using methods that can be reasonably expected to produce the requested records. Nevertheless, the Agency may not be able to find the records requested using the information provided by the requester, or they may not exist. If the Chief FOIA Officer advises that SSS is unable to find the records despite a diligent search, the requester may appeal the no records determination to the Director of Selective Service, as described in § 1662.16.

(j) *Furnishing records.* The Chief FOIA Officer will provide the requester with the record(s) requested unless disclosure would harm an interest protected by a FOIA exemption or disclosure is prohibited by law. When

information within a responsive record(s) is exempt from disclosure, the information is redacted and the applicable FOIA exemption(s) are noted within the redacted cell. The Chief FOIA Officer will make reasonable efforts to provide the records in the form or format requested if the record is readily reproducible in that form or format. The Chief FOIA Officer may provide individual records as the Agency processes them on a rolling basis, or the Chief FOIA Officer may release all responsive records once the request is completed. See § 1662.14 for more information on the release of records by SSS.

#### **§ 1662.12. Expedited processing.**

(a) Expedited processing must be requested at the same time as the FOIA request. The Chief FOIA Officer provides expedited processing when the requester can demonstrate a "compelling need" for the requested information, such as:

(1) When there is an imminent threat to the life or safety of a person;

(2) When the request is from the media, or others primarily engaged in disseminating information, and shows an immediate urgency to inform the public about actual or alleged government activities; or

(3) When the requester can show, in detail and to the Chief FOIA Officer's satisfaction, that a prompt response is needed because the requester may be denied a legal right, benefit, or remedy without the requested information, and that it cannot be obtained elsewhere in a reasonable amount of time.

(b) Only the Chief FOIA Officer may make the decision to grant or deny expedited processing. Requests that do not meet the "compelling need" criteria will be processed normally. If the Chief FOIA Officer does not grant the request for expedited processing, the requester may appeal the denial to the Director of Selective Service. In the appeal letter, the requester should explain why they believe their request demonstrates a "compelling need," such as describing how the request meets the criteria in paragraphs (a)(1) through (3) of this section. The process described in § 1662.16 will apply to these appeals.

#### **§ 1662.13. Fees associated with processing FOIA requests.**

(a) *Charging fees.* In responding to FOIA requests, the Chief FOIA Officer shall charge the following fees unless a waiver or reduction of fees has been granted under paragraph (i) of this section. Because the fee amounts provided below already account for the direct costs associated with a given fee

type, the Chief FOIA Officer should not add any additional costs to charges calculated under this section.

(1) *Search.* (i) Requests made by educational institutions, non-commercial scientific institutions, or representatives of the news media are not subject to search fees. Search fees shall be charged for all other requesters, subject to the restrictions of paragraph (b) of this section. The Chief FOIA Officer may properly charge for time spent searching even if the Agency does not locate any responsive records or if the Chief FOIA Officer determines 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 shall be as follows: professional—\$10.00; and clerical/administrative—\$4.75.

(iii) Requesters shall be charged the direct costs associated with conducting any search that requires the creation of a new computer program to locate the requested records. Requesters shall be notified by the Chief FOIA Officer of the costs associated with creating such a program and must agree to pay the associated costs before the costs may be incurred.

(iv) For requests that require the retrieval of records stored by the Agency at a Federal records center operated by NARA, additional costs shall be charged in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) *Duplication.* Duplication fees shall be charged to all requesters, subject to the restrictions of paragraph (b) of this section. The Chief FOIA Officer shall honor a requester's preference for receiving a record in a particular form or format where it is readily reproducible in the form or format requested. Where photocopies are supplied, the Chief FOIA Officer shall provide one copy per request at a cost of five cents per page. For copies of records produced on tapes, disks, or other media, components shall charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned 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, the Chief FOIA Officer shall charge the direct costs.

(3) *Review.* Review fees shall be charged to requesters who make commercial use requests. Review fees shall be assessed in connection with the

initial review of the record, *i.e.*, the review conducted by the Chief FOIA Officer 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, if a particular exemption is deemed to no longer apply, any costs associated with the Agency's re-review of the records in order to consider the use of other exemptions may be assessed as review fees. Review fees shall be charged at the same rates as those charged for a search under paragraph (a)(1)(ii) of this section.

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

(2) If the Agency fails to comply with the FOIA's time limits in which to respond to a request, the Chief FOIA Officer may not charge search fees, or, in the instances of requests from requesters described in paragraph (b)(1) of this section, may not charge duplication fees, except as described in paragraphs (b)(2)(i) through (iii) of this section.

(i) If the Chief FOIA Officer has determined that unusual circumstances as defined by the FOIA apply and they provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional 10 days.

(ii) If the Chief FOIA Officer has determined that unusual circumstances as defined by the FOIA apply, and more than 5,000 pages are necessary to respond to the request, the Chief FOIA Officer may charge search fees, or, in the case of requesters described in paragraph (b)(1) of this section, may charge duplication fees if the following steps are taken. The Chief FOIA Officer must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and the Chief FOIA Officer must have discussed with the requester via written mail, email, or telephone (or made not less than three good faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, the Chief FOIA Officer may charge all applicable fees incurred in the processing of the request.

(iii) If a court has determined that exceptional circumstances exist as defined by the FOIA, a failure to comply with the time limits shall be excused for

the length of time provided by the court order.

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

(4) Except for requesters seeking records for a commercial use, the Chief FOIA Officer shall provide without charge:

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

(ii) The first two hours of search.

(5) When, after first deducting the 100 free pages (or its cost equivalent) and the first two hours of search, a total fee calculated under paragraph (a) of this section is \$25.00 or less for any request, no fee will be charged.

(c) *Notice of anticipated fees in excess of \$25.00.* (1) When the Chief FOIA Officer determines or estimates that the fees to be assessed in accordance with this section will exceed \$25.00, the Chief FOIA Officer shall notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review, or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the Chief FOIA Officer shall advise the requester accordingly. If the requester is a non-commercial use requester, the notice shall specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge, and shall advise the requester whether those entitlements have been provided.

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

(3) If the requester has indicated a willingness to pay some designated

amount of fees, but the Chief FOIA Officer estimates that the total fee will exceed that amount, they shall toll the processing of the request when they notify the requester of the estimated fees more than the amount the requester has indicated a willingness to pay. The Chief FOIA Officer shall inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

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

(d) *Charges for other services.* Although not required to provide special services, if the Chief FOIA Officer chooses to do so as a matter of administrative discretion, the direct costs of providing the service shall 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.

(e) *Charging interest.* The Chief FOIA Officer may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges shall 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 Chief FOIA Officer. The Chief FOIA Officer shall follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(f) *Aggregating requests.* When the Chief FOIA Officer 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 Chief FOIA Officer may aggregate those requests and charge accordingly. The Chief FOIA Officer may presume that multiple requests of this type made within a 30-day period have been made to avoid fees. For requests separated by a longer period, the Chief FOIA Officer 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 shall not be aggregated.

(g) *Advance payments.* (1) For requests other than those described in paragraph (g)(2) or (g)(3) of this section, the Chief FOIA Officer shall not require the requester to make an advance

payment before work on a request is commenced or continued. Payment owed for work already completed (*i.e.*, payment before copies are sent to a requester) is not an advance payment.

(2) When the Chief FOIA Officer determines or estimates that a total fee to be charged under this section will exceed \$250.00, they may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. The Chief FOIA Officer may elect to process the request prior to collecting fees when they receive 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 the Agency within 30 calendar days of the billing date, the Chief FOIA Officer may require that the requester pay the full amount due, plus any applicable interest on that prior request, and the Chief FOIA Officer may require that the requester make an advance payment of the full amount of any anticipated fee before the FOIA Officer begins to process a new request or continues to process a pending request or any pending appeal. Where the Chief FOIA Officer has a reasonable basis to believe that a requester has misrepresented the requester's identity to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which the Chief FOIA Officer 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 Chief FOIA Officer's fee determination, the request will be closed.

(h) *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 Chief FOIA Officer shall inform the requester of the contact information for that program.

(i) *Requirements for waiver or reduction of fees.* (1) Requesters may seek a waiver of fees by submitting a written application demonstrating how 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 is

not primarily in the commercial interest of the requester.

(2) The Chief FOIA Officer must furnish records responsive to a request without charge or at a reduced rate when they determine, based on all available information, that 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 is not primarily in the commercial interest of the requester. In deciding whether this standard is satisfied the component must consider the factors described in paragraphs (i)(2)(i) through (iii) of this section:

(i) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request must concern identifiable operations or activities of the Federal government with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(A) Disclosure of the requested records must be meaningfully informative about government 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 be meaningfully informative if nothing new would be added to the public's understanding.

(B) 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 the requester's ability and intention to effectively convey information to the public must be considered. The Chief FOIA Officer will presume that a representative of the news media will satisfy this consideration.

(iii) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, the Chief FOIA Officer will consider the following criteria:

(A) Whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters must be given an opportunity to provide explanatory

information regarding this consideration.

(B) If there is an identified commercial interest, the Chief FOIA Officer must determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraphs (i)(2)(i) and (ii) of this section are satisfied and any commercial interest is not the primary interest furthered by the request. The Chief FOIA Officer ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (i)(2)(i) and (ii) of this section, the request is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(3) 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.

(4) Requests for a waiver or reduction of fees should be made when the request is first submitted to the Chief FOIA Officer and should address the criteria referenced above. A requester may submit a fee waiver request later 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 shall be required to pay any costs incurred up to the date the fee waiver request was received.

#### § 1662.14. Release of records.

(a) *Records previously released.* If the Agency has released a record, or a part of a record, to others in the past, the Chief FOIA Officer will ordinarily release it to the requester, as well. However, the Chief FOIA Officer will not release it to a requester if a statute forbids this disclosure; an exemption applies that was not previously applicable; or if the previous release was unauthorized.

(b) *Withholding records.* Section 552(b) of the FOIA explains the nine exemptions under which the Chief FOIA Officer may withhold records requested under the FOIA. Within §§ 1662.18 through 1662.25, the Agency describes the FOIA exemptions and explain how the Chief FOIA Officer applies them to disclosure determinations. In some cases, more than one exemption may apply to the same document. Section 552(b) of the FOIA, while providing nine exemptions from mandatory disclosure, does not

itself provide any assurance of confidentiality by the Agency.

(c) *Reading room.* If the record(s) requested are already publicly available, either in the SSS electronic reading room or elsewhere online, such as at [www.sss.gov](http://www.sss.gov), SSS will direct the requester to the publicly available record(s), unless the requester does not have access to the internet.

(d) *Poor copy.* If the Chief FOIA Officer cannot make a legible copy of a record to be released, they do not attempt to reconstruct it. Instead, the Chief FOIA Officer will furnish the best copy possible and note its poor quality in their reply.

**§ 1662.15. FOIA Public Liaison and the Office of Government Information Services.**

The Chief FOIA Officer notifies requesters of their right to seek dispute resolution from the FOIA Public Liaison or OGIS within the SSS fee notices, responses to determinations identified in § 1662.9(a), and responses to appeals.

(a) *FOIA Public Liaison.* If requesters have questions about the response to their request or wish to seek dispute resolutions services within SSS, the requester may contact the FOIA Public Liaison via email to [FOIA.Public.Liaison@sss.gov](mailto:FOIA.Public.Liaison@sss.gov).

(b) *OGIS.* OGIS is an entity outside of SSS that offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. OGIS' contact information will be provided in any decision letter issued by the Chief FOIA Officer and Director of Selective Service.

**§ 1662.16. Appeals of the Chief FOIA Officer's determination.**

(a) *Appeal requirements.* If a requester disagrees with the Chief FOIA Officer's determination in response to items specified in § 1662.9, the requester may appeal the decision to the Director of Selective Service. The appeal must meet the following requirements:

(1) Be submitted in writing via the avenues identified in § 1662.7;

(2) Be received within 90 days from the date of the determination the requester is appealing; and

(3) Explain what the requester is appealing and include additional information to support the appeal.

(b) *Acknowledgement.* The Director of Selective Service acknowledges all appeals in writing within 10 business days after their receipt of the appeal. The acknowledgement is provided via email or, when the requester does not provide an email address, via U.S. postal mail. The acknowledgement email or letter restates the FOIA appeal

and provides the requester with the appeal's tracking number.

(c) *Processing timeframe.* FOIA appeals are categorized as either simple or complex, based on the designation of the initial request.

(1) *Simple.* Generally, the Director of Selective Service makes a determination about release of the requested record(s) within 20 business days.

(2) *Complex.* Appeals of complex requests cannot be completed within 20 business days due to unusual circumstances. During the Director of Selective Service's processing of the appeal, they will need to consult with appropriate SSS component(s), including legal counsel; therefore, the Director of Selective Service generally requires more than 20 business days to issue a final decision on the appeal.

(d) *Final decision.* The Director of Selective Service makes decisions on appeals of the Chief FOIA Officer's determinations.

(1) The Director of Selective Service's final decision is provided in writing to the requester via email or, in the absence of the requester's email address, via U.S. postal mail.

(2) The final decision letter will explain the basis of the decision (for example, the reasons why an exemption applies).

(e) *Disagreement with final decision.* If a requester disagrees with the final decision issued by the Director of Selective Service, they may seek assistance from OGIS, as described in § 1662.15. Requesters may also ask a U.S. District Court to review the Director of Selective Service's final decision. See 5 U.S.C. 552(a)(4)(B).

**§ 1662.17. U.S. District Court action.**

If the Director of Selective Service, upon review, affirms the denial of the Chief FOIA Officer's determination of items specified in § 1662.9(a), requesters may ask a U.S. District Court to review that denial. See 5 U.S.C. 552(a)(4)(B).

**§ 1662.18. The FOIA Exemption 1: National defense and foreign policy.**

The FOIA exempts from disclosure records that are specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such executive order.

**§ 1662.19. The FOIA Exemption 2: Internal personnel rules and practices.**

The FOIA exempts from disclosure records that are related solely to the internal personnel rules and practices of an agency.

**§ 1662.20. The FOIA Exemption 3: Records exempted by other statutes.**

The FOIA exempts from disclosure records if another statute specifically allows or requires the agency to withhold them. The Chief FOIA Officer may use another statute to justify withholding only if it prohibits disclosure; it sets forth criteria to guide the Chief FOIA Officer's decision on releasing; or identifies types of material to be withheld.

**§ 1662.21. The FOIA Exemption 4: Trade secrets and confidential commercial or financial information.**

The FOIA exempts from disclosure trade secrets as well as commercial or financial information that is obtained from a person that is either privileged or confidential. SSS will allow submitters to designate information as trade secrets and confidential commercial or financial information at the time of submission or within a reasonable time thereafter. Submitters must use good faith efforts to designate, by appropriate markings, any portion of its submission that it considers to be protected from disclosure under the FOIA exemptions. These designations expire ten years after the due date of the submission unless the submitter requests a longer designation period.

(a) *Steps of submitters notice—(1) The submitter's notice.* When trade secrets or confidential commercial or financial information is requested under the FOIA, the Chief FOIA Officer will provide written submitter's notice if they have substantial reason to believe that information in the records could reasonably be considered exempt under the FOIA Exemption 4. The submitter's notice will describe and include a copy of the trade secret, or commercial or financial information requested. In cases involving many submitters, SSS may publish a submitter's notice to inform the submitters of the proposed disclosure instead of sending individual notifications. The submitter's notice requirements of this section do not apply if:

(i) The Chief FOIA Officer determines the information is fully exempt under the FOIA, and therefore will not be disclosed;

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

(iii) Disclosure of the information is required by statute other than the FOIA.

(2) *Submitter's opportunity to object to disclosure.* (i) The submitter must respond to the notice within five business days of the Chief FOIA Officer issuing the submitter's notice or the information may be released in

accordance with these regulations and the FOIA. A submitter who fails to respond within five business days will be considered to have no objection to the disclosure of the information. The Chief FOIA Officer is not required to consider any information received after the date of any disclosure decision. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(ii) If a submitter objects to disclosure, the submitter should provide the Chief FOIA Officer with a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. 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 confidential.

(iii) The Chief FOIA Officer will consider a submitter's timely made objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(3) *Notice of intent to disclose.* Whenever the Chief FOIA Officer decides to disclose information over the objection of a submitter, they must provide the following to the submitter:

(i) A Release Over Objection letter explaining the reasons why each of the submitter's disclosure objections did not meet the requirements for withholding under the FOIA;

(ii) A copy of the information as SSS intends to release it; and

(iii) A statement of the Chief FOIA Officer's intent to disclose the information five business days from the date on the Release Over Objection letter unless the submitter files an action in a U.S. District Court to prevent the release.

(b) *Notice of FOIA lawsuit.* When a submitter's notice is issued for a request that is the subject of a lawsuit, the Chief FOIA Officer shall notify the submitter of the lawsuit within the notice.

(c) *Requester notification.* To the extent the Chief FOIA Officer expects substantial delays in the processing of FOIA requests due to the Agency's communications with the submitter, they will notify the requester in writing via email, or when the requester's email is not provided, via U.S. postal mail.

#### **§ 1662.22. The FOIA Exemption 5: Internal documents.**

This exemption covers inter-agency or intra-agency government documents that fall within an evidentiary privilege recognized in civil discovery. Such internal government communications include an agency's communications with an outside consultant or other

outside person, with a court, or with Congress, when those communications are for a purpose similar to the purpose of privileged intra-agency communications. Some of the most commonly applicable privileges are described in the following paragraphs:

(a) *Deliberative process privilege.* This privilege protects the decision-making processes of government agencies. Information is protected under this privilege if it is pre-decisional and deliberative. The purpose of the privilege is to prevent injury to the quality of the agency decision-making process by encouraging open and frank internal discussions, by avoiding premature disclosure of decisions not yet adopted, and by avoiding the public confusion that might result from disclosing reasons that were not in fact the ultimate grounds for an agency's decision. Purely factual material in a deliberative document is within this privilege only if it is inextricably intertwined with the deliberative portions so that it cannot reasonably be segregated, if it would reveal the nature of the deliberative portions, or if its disclosure would in some other way make possible an intrusion into the decision-making process. The privilege continues to protect pre-decisional documents even after a decision is made; however, the Chief FOIA Officer will release pre-decisional deliberative communications that were created 25 years or more before the date on which the records are requested, unless disclosure is otherwise prohibited by law.

(b) *Attorney work product privilege.* This privilege protects records prepared by or for an attorney in anticipation of or for litigation. It includes documents prepared for purposes of administrative and court proceedings. This privilege extends to information directly prepared by an attorney, as well as materials prepared by non-attorneys working for an attorney.

(c) *Attorney-client communication privilege.* This privilege protects confidential communications between an attorney and the attorney's client where legal advice is sought or provided.

#### **§ 1662.23. The FOIA Exemption 6: Clearly unwarranted invasion of personal privacy.**

The FOIA exempts from disclosure records about individuals if disclosure would constitute a clearly unwarranted invasion of their personal privacy.

(a) *Balancing test.* When the Chief FOIA Officer decides whether to release records that contain personal or private information about someone else, they weigh the foreseeable harm of invading

a person's privacy against the public interest in disclosure. When the Chief FOIA Officer determines whether disclosure would be in the public interest, they will consider whether disclosure of the requested information would shed light on how a government agency performs its statutory duties.

(b) *Agency employees.* To protect the safety of Agency employees, the Chief FOIA Officer will not disclose information when the information sought is contact information and/or duty stations of one or more Federal employees if the disclosure would place employee(s) at risk of injury or other harm.

#### **§ 1662.24. The FOIA Exemption 7: Law enforcement.**

The FOIA exempts from disclosure information or records that the government has compiled for law enforcement purposes. The records may apply to actual or potential violations of either criminal or civil laws or regulations. The Agency can withhold these records only to the extent that releasing them would cause harm in at least one of the following situations:

(a) *Enforcement proceedings.* Pursuant to the FOIA Exemption 7(A) (5 U.S.C. 552(b)(7)(a)), the Chief FOIA Officer may withhold information whose release could reasonably be expected to interfere with prospective or ongoing law enforcement proceedings. Investigations of fraud and mismanagement, employee misconduct, and civil rights violations may fall into this category.

(b) *Fair trial or impartial adjudication.* Under the FOIA Exemption 7(B) (5 U.S.C. 552(b)(7)(b)), the FOIA exempts from disclosure records whose release would deprive a person of a fair trial or an impartial adjudication because of prejudicial publicity.

(c) *Personal privacy.* Under the FOIA Exemption 7(C) (5 U.S.C. 552(b)(7)(c)), the FOIA exempts from disclosure personally identifiable information of individuals when the disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.

(d) *Confidential sources and information.* Pursuant to the FOIA Exemption 7(D) (5 U.S.C. 552(b)(7)(d)), the FOIA exempts from disclosure the identity of confidential sources, as well as the records obtained from the confidential sources in criminal investigations or by an agency conducting a lawful national security investigation. A confidential source may be an individual; a state, local, or foreign government agency; or any

private organization. The exemption applies whether the source provides information under an express promise of confidentiality or under circumstances from which such an assurance could be reasonably inferred; however, inferred confidentiality is determined in a case-by-case analysis. Also protected from mandatory disclosure is any information which, if disclosed, could reasonably be expected to jeopardize the system of confidentiality that assures a flow of information from sources to investigatory agencies.

(e) *Techniques and procedures.* Under the FOIA Exemption 7(E) (5 U.S.C. 552(b)(7)(e)), the FOIA exempts from disclosure records reflecting special techniques or procedures of investigation or prosecution, not otherwise generally known to the public. In some cases, it is not possible to describe even in general terms those techniques without disclosing the very material to be withheld. The Chief FOIA Officer may also withhold records whose release would disclose guidelines for law enforcement investigations or prosecutions if this disclosure could reasonably be expected to create a risk that someone could circumvent requirements of law or of regulation.

(f) *Life and physical safety.* Under the FOIA Exemption 7(F) (5 U.S.C. 552(b)(7)(f)), the Chief FOIA Officer may withhold records whose disclosure could reasonably be expected to endanger the life or physical safety of any individual. This protection extends to threats and harassment, as well as to physical violence.

**§ 1662.25. The FOIA Exemptions 8 and 9: Records on financial institutions; records on wells.**

Exemption 8 exempts from disclosure records about regulation or supervision of financial institutions. Exemption 9 exempts from disclosure geological and geophysical information and data, including maps, concerning wells.

**§ 1662.26. Records available for public inspection.**

Under the FOIA, SSS is required to make available for public inspection in an electronic format:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) The Agency's statements and interpretations of policy that have been adopted but are not published in the **Federal Register**;

(c) Administrative staff manuals and instructions that affect the public; and

(d) Copies of records, regardless of form or format, that an agency

determines will likely become the subject of subsequent requests, as well as records that have been requested and released three or more times, unless said materials are published and copies are offered to sale.

**§ 1662.27. Where records are published.**

Materials SSS is required to publish pursuant to the provisions of 5 U.S.C. 552(a)(1) and (a)(2) are published in one of the following ways:

(a) By publication in the **Federal Register** of Selective Service System regulations, and by their subsequent inclusion in the Code of Federal Regulations;

(b) By publication in the **Federal Register** of appropriate general notices; and/or

(c) By other forms of publication, when incorporated by reference in the **Federal Register** with the approval of the Director of the Federal Register.

**§ 1662.28. Publications for sale through the Government Publishing Office.**

The public may purchase publications containing information pertaining to the program, organization, functions, and procedures of SSS from the electronic U.S. Government Bookstore maintained by the Government Publishing Office. The publications for sale include but are not limited to:

(a) Title 50, Chapter 49, of the United States Code (the Military Selective Service Act);

(b) Title 32, Subtitle B, Chapter XVI, of the Code of Federal Regulations (Selective Service System Regulations);

(c) **Federal Register** issues; and

(d) Legal Aspects of the Selective Service System.

Daniel A. Lauretano, Sr.,

General Counsel.

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**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Parts 38 and 39**

**RIN 2900-AR82**

**Outer Burial Receptacles**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to revise its regulation that governs the outer burial receptacle (OBR) monetary allowance for burials in a VA national cemetery when a privately purchased OBR is used in lieu of a Government-furnished

graveliner. First, VA proposes to expand applicability of the monetary allowance to burials in VA grant-funded State and Tribal cemeteries when a privately purchased OBR was used, or where an OBR is placed at the time of interment, at the cost of the State or Tribal Organization. Second, VA proposes to reimburse States and Tribal Organizations for OBRs that are pre-placed as part of a new construction or expansion grant project. In addition, VA proposes minor conforming revisions to its regulations governing aid for the establishment, expansion and improvement of veterans cemeteries to clarify that VA will reimburse the cost of preplaced OBRs separately from the grant award. These changes would implement new authorities provided in the Johnny Isakson and David P. Roe, M.D Veterans Health Care and Benefits Improvement Act of 2020. VA also proposes to amend the regulation governing OBRs by removing retroactive provisions no longer needed because the relevant time period has passed.

**DATES:** Comments must be received on or before April 8, 2024.

**ADDRESSES:** Comments must be submitted through [www.regulations.gov](http://www.regulations.gov). Except as provided below, comments received before the close of the comment period will be available at [www.regulations.gov](http://www.regulations.gov) for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: <http://www.regulations.gov>. VA will not post on [Regulations.gov](http://www.regulations.gov) public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments; however, we will post comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking. In accordance with the Providing Accountability Through Transparency Act of 2023, a 100 word Plain-Language Summary of this proposed rule is available at [www.regulations.gov](http://www.regulations.gov), under RIN 2900-AR82.

**FOR FURTHER INFORMATION CONTACT:** Michelle Myers, Management and Program Analyst, Policy and Regulatory Service, National Cemetery Administration, Department of Veterans