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Title 29 — Labor

Subtitle A — Office of the Secretary of Labor

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PART 70—PRODUCTION OR DISCLOSURE OF INFORMATION OR MATERIALS

Authority: 5 U.S.C. 301; 29 U.S.C. 551 *et seq.*; 5 U.S.C. 552, as amended; Reorganization Plan No. 6 of 1950, 5 U.S.C. Appendix, 29 U.S.C. 1026 (106), 5 U.S.C. app. 11., Executive Order. 12,600, 52 FR 23781, 3 CFR, 1988 Comp., p. 235. This part also implements the public information provisions of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. 435, see § 70.53 below; the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1026 (106), see § 70.54 below; and the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 11, see § 70.40(i) below.

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Subpart A—General

§ 70.1 General provisions.

- (a) This part is organized as follows: Subpart A contains general information about Department of Labor policies and procedures; subpart B sets forth the procedures for obtaining access to records of the Department; subpart C contains the Department's regulations on fees; and subpart D sets forth the procedures for obtaining access to certain public records. Appendix A contains a list of all Department of Labor FOIA components from which records may be obtained.
- (b) This part contains the rules that the Department of Labor follows in processing requests for records under the Freedom of Information Act (FOIA), as amended, 5 U.S.C. 552. The rules in this part should be read together with the text of the FOIA, which provides additional information about access to records maintained by the Department. Additionally, the Department's "Guide to Submitting Requests under the FOIA" and related documents contain helpful information about the specific procedures particular to the Department with respect to making FOIA requests, and descriptions of the types of records maintained by different components of the Department. These references are available at <http://www.dol.gov/dol/foia/guide6.html>.
- (c) Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under 29 CFR part 71 as well as under this part. Information routinely provided to the public as part of a regular Department activity (for example, press releases issued by the Office of Public Affairs (OPA)) may be provided to the public without following this subpart.
- (d) As set forth in § 70.3 of this part, the Department operates its FOIA program with a presumption of openness and withholds records or information under the FOIA only when the Department reasonably foresees that disclosure would harm an interest protected by a FOIA exemption or when disclosure is prohibited by law.

- (e) The Department has a decentralized system for processing requests, with each component handling requests for its own records. Each component has a FOIA Customer Service Center that can assist individuals in locating records and address questions regarding pending FOIA requests. A list of the Department's Customer Service Centers is available at <http://www.dol.gov/dol/foia/RequestorServiceCenters.htm>.
- (f) The Secretary has designated a Chief FOIA Officer for the Department. Contact information for the Chief FOIA Officer is available on the Department's FOIA Web site, <http://www.dol.gov/dol/foia/>. The Office of Information Services (OIS), which is located within the Office of the Solicitor, provides Department level guidance and oversight for the Department's FOIA program and supports the statutorily-based responsibilities of the DOL Chief FOIA Officer.
- (g) The Department has a designated FOIA Public Liaison who can assist individuals in locating records of a particular component and with resolving issues relating to the processing of a pending FOIA request. Information concerning the DOL FOIA Public Liaison is available at <http://www.dol.gov/sol/foia/liaison.htm>. The DOL FOIA Public Liaison is responsible for assisting in reducing delays in FOIA processing, increasing transparency and understanding, providing information concerning the status of requests, and assisting in the resolution of disputes.

§ 70.2 Definitions.

As used in this part:

- (a) The terms agency, person, party, rule, order, and adjudication have the meaning attributed to these terms by the definitions in [5 U.S.C. 551](#).
- (b) Confidential commercial information means commercial or financial information received or obtained by the Department from a submitter, directly or indirectly, that arguably may be protected from disclosure under Exemption 4 of the FOIA.
- (c) The Department means the Department of Labor.
- (d) FOIA Component means an official component of the Department that has authority to disclose or withhold records under the FOIA and to which requests to inspect or copy records in its custody should be addressed. Department of Labor components are listed in Appendix A to this part.
- (e) Record means any information that would be an agency record subject to the requirements of this part when maintained by an agency in any format, including an electronic format, and any information described under this part that is maintained for an agency by an entity under Government contract, for the purposes of records management.
- (f) Request means any written request for records made pursuant to [5 U.S.C. 552\(a\)\(3\)](#) and which meets the requirements of this part.
- (g) Requester means any person who makes a request.
- (h) Search means to look for, manually or by automated means, Department records for the purpose of locating them in response to a pending request.
- (i) The Secretary means the Secretary of Labor.

- (j) Submitter means any person or entity from whom the Department receives or obtains confidential commercial or financial information, directly or indirectly. The term submitter includes, but is not limited to, corporations, labor organizations, non-profit organizations, and local, state, and tribal and foreign governments.
- (k) Unusual circumstances means, to the extent reasonably necessary for the proper processing of a FOIA request:
 - (1) The need to search for and collect the requested records from physically separate facilities;
 - (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; or
 - (3) The need for consultation, which will be conducted with all practicable speed, with another agency or among two or more components of the Department having a substantial interest in the determination of the request.

§ 70.3 Presumption of openness.

All agency records, except those exempt from mandatory disclosure by one or more provisions of 5 U.S.C. 552(b) or the law enforcement exclusions in 5 U.S.C. 552(c), will be made promptly available to any person submitting a written request in accordance with the procedures of this part. The Department will withhold records under the FOIA only when the Department reasonably foresees that disclosure would harm an interest protected by a FOIA exemption or is prohibited by law. Whenever the Department determines that full disclosure of a requested record is not possible, the Department will consider whether partial disclosure is possible and will take reasonable steps to segregate and release nonexempt material. As set forth in Sec. 70.4, the Department proactively identifies and discloses records of interest to the public.

§ 70.4 Proactive disclosure of Departmental records.

Records that are required by the FOIA, 5 U.S.C. 552(a)(2), to be made available for public inspection in an electronic format may be accessed through the Department's Web site. Each component is responsible for determining which of its records are required to be made publicly available, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. Each component must review and update its Web site of posted records and indices on an ongoing basis.

§ 70.5 Compilation of new records.

Nothing in 5 U.S.C. 552 or this part requires that any agency or component create a new record in order to respond to a request for records. A component must, however, make reasonable efforts to search for records that already exist in electronic form or format, except when such efforts would significantly interfere with the operation of the component's automated information systems. The component will determine what constitutes a reasonable effort on a case-by-case basis.

§ 70.6 Disclosure of originals.

- (a) No original record or file in the custody of the Department of Labor, or of any component or official thereof, will on any occasion be given to any agent, attorney, or other person not officially connected with the Department without the written consent of the Secretary, the Solicitor of Labor or the Inspector General.

- (b) The individual authorizing the release of the original record or file must ensure that a copy of the document or file is retained in the component that had custody and/or control when an original document or file is released pursuant to this subpart.

§§ 70.7-70.18 [Reserved]

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

§ 70.19 Requirements for making a request.

- (a) **General information.** The Department of Labor has a decentralized system for responding to requests submitted under the FOIA, as explained in § 70.1 of this part. In addition to processing requests for its own records, each agency component has the ability to receive FOIA requests in writing by mail, delivery service/courier or facsimile at its designated mailing address. However, to enable proper handling, any FOIA request submitted electronically, by email, must be submitted to the Department's central FOIA mailbox at foiarequests@dol.gov. FOIA requests sent electronically to any other email address will not be accepted. A FOIA request submitted via email should designate the component or components to which the requester is submitting his/her request. The Department's central FOIA mailbox is regularly monitored, and requests will be assigned to the appropriate DOL FOIA component.
- (b) **Request for records.** To make a request for records of the Department, whenever possible, a requester should write directly to the FOIA office of the component that maintains the records sought or, if emailing a request to the DOL central FOIA mailbox, should identify the component(s) to which the request is directed. Submitting the request directly to the FOIA office of the component that maintains the records sought, or identifying that component when sending a FOIA request via email, will facilitate the quickest response. The requester must provide a mailing address to receive correspondence, and it may facilitate processing if telephone and email contact information are provided.
 - (1) The Department's components for the purposes of the FOIA are listed in Appendix A to this part. The function and mailing address of each Department of Labor component is available on the Department's FOIA Web site at <http://www.dol.gov/dol.foia>. This page also provides other information that is helpful in determining where to make a request.
 - (2) Requesters who cannot determine the proper FOIA office component or who are requesting records from multiple components may also send requests to the Office of the Solicitor, Office of Information Services, 200 Constitution Avenue NW., Room N-2420, Washington, DC 20210 or by email to foiarequests@dol.gov.
 - (3) Pursuant to § 70.25(a), if a requester submits a FOIA request to the incorrect DOL FOIA component, or sends a request to the Department's central FOIA office or mailbox without identifying the component(s) to which the request is submitted, the time to respond begins to run when the request is received by the proper component, but no later than 10 working days after receipt in any component identified in Appendix A or in the Office of Information Services.
- (c) **Description of records sought.** Requesters must describe the record or records sought in sufficient detail to enable Department personnel to locate them with a reasonable amount of effort. To the extent possible, the request should provide enough identifying information to help the component identify the requested records, such as the subject of the record, the date or approximate date when the record was created, the record's title or name, case or file number, reference number, the person or office or the office location that created it, and any other pertinent identifying details. Prior to submitting the request, a

requester may wish to consult the references provided in § 70.1 of this part, the relevant FOIA Requester Service Center or the FOIA Public Liaison to discuss the records they are seeking and to receive assistance on how to describe the records.

- (d) **Deficient descriptions and revised requests.** If the description is insufficient, so that a knowledgeable employee who is familiar with the subject area of the request cannot identify the record with a reasonable amount of effort, the component processing the request will notify the requester and describe what additional information is needed to process the request.
 - (1) Requesters who are attempting to modify or reformulate their requests may discuss their requests with the component's designated FOIA contact, the FOIA Public Liaison, or a representative of OIS, each of whom is available to assist the requester in reasonably describing the records sought. Every reasonable effort will be made to assist a requester in the identification and location of the records sought. If the requester fails to reasonably describe the records sought, the agency's response to the request may be delayed.
 - (2) Any amended request must be confirmed in writing and meet the requirements for a request under this part.
 - (3) While an agency component awaits a requester's modified FOIA request, the processing time limits described in § 70.25(a)(1) will be tolled (that is, the processing time clock will be stopped on one occasion only) until clarification is received from the requester.

§ 70.20 Responsibility for responding to requests.

- (a) **In general.** Except in the instances stated in paragraph (d) of this section, the component that first receives a request for a record and maintains that record is the component responsible for responding to the request. In determining which records are responsive to a request, a component ordinarily will include only records in its possession as of the date that the component begins the search; if any other date is used, the component 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. When it is determined that records responsive to a request may be located in multiple components of the Department, the Office of Information Services may coordinate the Department's response. If the Office of Information Services deems a consolidated response appropriate, it will issue such a response on behalf of the Department.
- (b) **Authority to grant or deny requests.** Pursuant to relevant exemptions under 5 U.S.C. 552(b) or an exclusion under 5 U.S.C. 552(c), the head of a component, or designee, is authorized to grant or to deny any requests for records that are maintained by that component.
- (c) **Re-routing of misdirected requests.** Where a component's FOIA office determines that a request was misdirected within the Department, the receiving component's FOIA office will work with OIS to facilitate the routing of the request to the FOIA office of the proper component(s).
- (d) **Consultations and referrals.** When a component is reviewing records in response to a request, it will determine if another component of the Department, or of the Federal Government, is better able to determine whether the record can be disclosed or is exempt from disclosure under the FOIA. If the receiving component determines that it is not best able to process the record, then the receiving component will either:

- (1) Respond to the request after consulting with the component or agency best able to determine whether to disclose the record and with any other component or agency that has a substantial interest in the record; or
 - (2) Refer the responsibility for responding to the request regarding that record to the component best able to determine whether to disclose it, or to another agency that originated the record (but only if that entity is subject to the FOIA). Ordinarily, the component or agency that originated the record will be presumed to be best able to determine whether to disclose it.
- (e) **Notice of referral.** Whenever a component refers all or any part of the responsibility for responding to a request to another component or agency, the component will notify the requester of the referral and inform the requester of the name of each component or agency to which the request has been referred and provide contact information for that component or agency.
- (f) **Classified records.** Any request for classified records which are in the custody of the Department of Labor will be referred to the classifying agency under paragraphs (d) and (e) of this section.

§ 70.21 Responses to requests.

- (a) **In general.** Components should, to the extent practicable, communicate with requesters using the method that is most likely to increase the speed and efficiency of the communication, including by electronic means, such as by email.
- (b) **Acknowledgements of requests.** A component will acknowledge each new request and assign it an individualized tracking number. Components will include in the acknowledgment a brief description of the records sought to allow the requesters to more easily keep track of their requests.
- (c) **Granting a request.** After a component makes a determination to grant a request in full or in part, the component will notify the requester in writing. The component will provide the record in the form or format requested if the record is readily reproducible in that form or format, provided the requester has agreed to pay and/or has paid any fees required by subpart C of this part. The component will determine on a case-by-case basis what constitutes a readily reproducible format. Each component should make reasonable efforts to maintain its records in commonly reproducible forms or formats. The component must notify the requester of the right to seek assistance from the Department's FOIA Public Liaison.
- (d) **Adverse determinations of requests.** A component making an adverse determination denying a request in any respect must notify the requester in writing. Adverse determinations, or denials of requests, include decisions that: The requested record is exempt, in whole or in part, from release pursuant to one or more exemptions under the FOIA, 5 U.S.C. 552; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily producible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials for requests for expedited processing.
- (e) **Content of the denial.** The denial notice must be signed by the component agency head or a designee and will include:
- (1) The name and title or position of the person responsible for the denial;
 - (2) A brief statement of the reason or reasons for the denial, including any FOIA exemption or exemptions applied or procedural reasons relied upon by the component in denying the request;

- (3) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by the exemption under which the deletion was made;
 - (4) A statement that the denial may be appealed as described under Sec. 70.22; and
 - (5) A statement notifying the requester of the right to seek dispute resolution services from the Department's FOIA Public Liaison or the Office of Government Information Services (within the National Archives and Records Administration). Engaging in dispute resolution services provided by OGIS is a voluntary process. If the Department agrees to participate in the mediation services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.
- (f) **Markings on released documents.** Markings on released documents must be clearly visible to the requester. Records disclosed in part shall be marked to show the amount of information deleted and the exemption(s) under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the records, if technically feasible.

§ 70.22 Appeals from denial of requests.

- (a) A requester may appeal to the Solicitor of Labor from any adverse determination, including but not limited to when one or more of the following has occurred: A request for access to records has been denied in whole or in part; a requester disputes a determination that records cannot be located or have been destroyed; a requester disputes a determination by a component concerning the assessment or waiver of fees; a requester disputes the denial of a request for expedited processing; or a component fails to respond to a request within the time limits set forth in the FOIA and referenced in 70.25(a). The appeal must be filed within 90 days of the date of the action being appealed.
- (b) The appeal must state in writing the grounds for appeal, and it may include any supporting statements or arguments, but such statements are not required. In order to facilitate processing of the appeal, the appeal should include the assigned request number (if applicable), appellant's mailing address and daytime telephone number, as well as copies of the initial request and the component's response. If mailed, the envelope and the letter of appeal should be clearly marked: "Freedom of Information Act Appeal." Any amendment to the appeal must be in writing and received prior to a decision on the appeal.
- (c) The appeal should be addressed to the Solicitor of Labor, Office of the Solicitor, FOIA Appeals Unit, Division of Management and Administrative Legal Services, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-2420, Washington, DC 20210. Appeals also may be submitted by fax to 202-693-5538 or by email to foiaappeal@dol.gov. Appeals submitted to any other email address will not be accepted.

§ 70.23 Action on appeals.

The Solicitor of Labor, or designee, will review the appellant's appeal and make a determination de novo whether the action of the component was proper and in accordance with the applicable law.

§ 70.24 Form and content of action on appeals.

The disposition of an appeal will be issued by the Solicitor of Labor or designee in writing. A decision affirming, in whole or in part, the decision below will include a brief statement of the reason or reasons for the affirmance, including the FOIA exemption or exemptions relied upon, and its relation to each record withheld. The appeal determination will advise the requester of the availability of the mediation services of the Office of Government Information Services (OGIS) as a non-exclusive alternative to litigation. The appeal will also notify the requester of the statutory right to judicial review of the denial by the United States District Court for the judicial district in which the requester resides or maintains his or her principal place of business, the judicial district in which the requested records are located, or the District of Columbia. If it is determined on appeal that a record should be disclosed, the record will be provided in accordance with the decision on appeal. If it is determined that records should be denied in whole or in part, the appeal determination will include an estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption.

§ 70.25 Time limits and order in which requests and appeals must be processed.

- (a) **Time limits.** The FOIA establishes a 20 business day deadline for regular requests and appeals, and a 10 calendar day time limit for making determinations regarding expedited processing. Components of the Department of Labor will comply with the time limits required by the FOIA for responding to and processing requests and appeals. In instances involving misdirected requests that are re-routed pursuant to § 70.20(c) of this subpart, the response time will commence on the date that the request is received by the proper component's office that is designated to receive requests, but in any event not later than 10 working days after the request is first received by any component's office that is designated by these regulations to receive requests. A component or the designated appeal authority will notify a requester whenever they are unable to respond to or process the request or appeal within the time limits established by the FOIA.
- (b) **Multitrack processing.** All components must designate a specific track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (d) of this section. A component may also designate additional processing tracks that distinguish between simple and complex requests based on the estimated amount of work and/or time needed to process the request, including based on the number of pages involved and the need for consultations or referrals. Components shall advise the requesters of the track into which their request falls and, when appropriate, shall offer the requester an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the component's faster track.
- (c) **Unusual circumstances.**
 - (1) Where the statutory time limits for processing a request cannot be met because of "unusual circumstances," as set forth in the FOIA at 5 U.S.C. 552(a)(6)(B)(i)-(iii), and the component determines to extend the time limits on that basis, the component shall, before the expiration of the 20 working day deadline to respond, notify the requester in writing of the unusual circumstances and of the date by which processing of the request can be expected to be completed. If the component intends to extend the deadline to respond by more than ten working days, the component must:
 - (i) Provide the requester with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an alternative time period with the component for processing the request or a modified request;

- (ii) Make available to the requester the contact information for the designated FOIA contact and the FOIA Public Liaison to assist the requester; and
- (iii) Notify the requester of the right to seek dispute resolution services from the Office of Government Information Services (OGIS).

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

(e) **Expedited processing.**

- (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve:
 - (i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
 - (ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information;
 - (iii) The loss of substantial due process rights; or
 - (iv) A matter of widespread and exceptional media interest in which there exists possible questions about the government's integrity which affect public confidence.
- (2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing must be received by the proper component. Requests based on paragraphs (e)(1)(i) through (iv) of this section must be submitted to the component that maintains the records requested.
- (3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category in paragraph (e)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that goes beyond the public's general right to know about government activity. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an "urgency to inform" the public on a topic. As a matter of administrative discretion, a component may waive the formality of certification.
- (4) Within ten calendar days of its receipt of a request for expedited processing, the proper component will decide whether to grant the request and will notify the requester of the decision. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

§ 70.26 Confidential commercial information.

- (a) ***In general.*** Confidential commercial information will be disclosed under the FOIA only in accordance with this section and Executive Order 12,600, "Predisclosure Notification Procedures for Confidential Commercial Information" (3 CFR 1988 Comp., p.235).
- (b) ***Designation of confidential commercial information.*** A submitter of confidential commercial information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.
- (c) ***Notice to submitters.*** A component will provide a submitter with prompt written notice of a FOIA request that seeks its confidential commercial information whenever required under paragraph (d) of this section, except as provided in paragraph (g) of this section, in order to give the submitter an opportunity to object in writing to disclosure of any specified portion of that information under paragraph (e) of this section. The notice will either describe the confidential commercial information requested or include copies of the requested records or record portions containing the information. When notification to a voluminous number of submitters is required, notification may be made by posting or publishing notice reasonably likely to accomplish such notification.
- (d) ***When notice is required.*** Notice will be given to a submitter whenever:
 - (1) The information requested under the FOIA has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or
 - (2) A component has reason to believe that the information requested under the FOIA may be protected from disclosure under Exemption 4, but has not yet determined whether the information is protected from disclosure under that exemption or any other applicable exemption.
- (e) ***Opportunity to object to disclosure.*** A component will allow a submitter a reasonable time to respond to the notice described in paragraph (c) of this section taking into account the amount of material the submitter has to review and the deadlines imposed by the FOIA or agreed to with the requester. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to disclosure of the information. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.
- (f) ***Notice of intent to disclose.*** A component will consider a submitter's timely objections and specific grounds for non-disclosure in deciding whether to disclose confidential commercial information. Whenever a component decides to disclose confidential commercial information over the objection of a submitter, the component will give the submitter written notice, which will include:
 - (1) A statement of the reason(s) why each of the submitter's disclosure objections were not sustained;
 - (2) A description of the confidential commercial information to be disclosed; and
 - (3) A specified disclosure date, which will be a reasonable time subsequent to the notice.
- (g) ***Exceptions to notice requirements.*** The notice requirements of paragraphs (c) and (f) of this section will not apply if:

- (1) The component determines that the information should not be disclosed;
- (2) The information lawfully has been published or has been officially made available to the public;
- (3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12,600; or
- (4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous or such a designation would be unsupportable—except that, in such a case, the component will, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

- (h) **Notice of a FOIA lawsuit.** Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the component will promptly notify the submitter.
- (i) **Corresponding notice to requesters.** Whenever a component provides a submitter with notice and an opportunity to object to disclosure under paragraphs (d) and (e) of this section, the component will also notify the requester(s). Whenever a component notifies a submitter of its intent to disclose requested information under paragraph (f) of this section, the component will also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of confidential commercial information, the component will notify the requester(s).
- (j) **Notice requirements.** The component will fulfill the notice requirements of this section by addressing the notice to the confidential commercial submitter or its legal successor at the address indicated on the records, or the last known address. If the notice is returned, the component will make a reasonable effort to locate the confidential commercial submitter or its legal successor. Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting and publishing the notice in a place reasonably calculated to accomplish notification.

§ 70.27 Preservation of records.

Each component will preserve all correspondence relating to the requests it receives under this part, and all records processed pursuant to such requests, until disposition or destruction of such correspondence and records is authorized by Title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 4.2. Records are not to be destroyed while they are the subject of a pending request, appeal, or lawsuit under the Act.

§§ 70.28-70.37 [Reserved]

Subpart C—Costs for Production of Records

§ 70.38 Definitions related to costs.

The following definitions apply to this subpart:

- (a) **Request**, in this subpart, includes any request, as defined by § 70.2(f) of this part.
- (b) **Direct costs** means those expenditures which a component actually incurs in searching for and duplicating (and in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the Federal employee performing work (the basic rate of

pay for the Federal employee plus 16 percent of that rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are kept.

- (c) **Duplication** means the process of making a copy of a record necessary to respond to a request. Such copy can take the form of paper, microform, audio-visual materials or electronic records (such as a CD or other media).
- (d) **Search** means the process of looking for and retrieving records or information that are responsive to a FOIA request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. FOIA components will ensure that searches are done in the most efficient and least expensive manner reasonably possible. A search does not include the review of material, as defined in paragraph (e) of this section, which is performed to determine whether material is exempt from disclosure.
- (e) **Review** means the process of examining records, including audio-visual, electronic mail, etc., located in response to a request to determine whether any portion of the located record is exempt from disclosure, and accordingly may be withheld. It also includes the act of preparing materials for disclosure, *i.e.*, doing all that is necessary to excise them and otherwise prepare them for release. Review time includes time spent contacting any submitter, and considering and responding to any objections to disclosure made by a submitter under Sec. 70.26, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.
- (f) **Commercial use request** means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade or profit interests, which can include furthering those interests through litigation. When considering fee issues, components will determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because a component has reasonable cause to doubt a requester's stated use, the component will provide the requester a reasonable opportunity to submit further clarification.
- (g) **Educational institution** means an institution which:
 - (1) Is a preschool, public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education; or
 - (2) Operates a program or programs of scholarly research. To qualify under this definition, the program of scholarly research in connection with which the information is sought must be carried out under the auspices of the academic institution itself as opposed to the individual scholarly pursuits of persons affiliated with an institution. For example, a request from a professor predicated upon research funding granted to the institution would meet its requirements. A request from a professor seeking information that will assist in the writing of a book, independent of his or her institutional responsibilities, would not qualify under this definition.
- (h) **Non-commercial scientific institution** means an institution that is not operated on a commercial basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.
- (i) **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 the raw materials into a distinct work, and distributes that work to an audience. Examples of news media entities include television or radio stations

that broadcast “news” to the public at large and publishers of periodicals that disseminate “news” and make their products available through a variety of means to the general public, as well as news organizations that operate solely on the internet. Alternative media may be considered to be news media entities. These examples are not all inclusive.

- (1) Factors indicating status as a news media representative include press accreditation, guild membership, a history of continuing publication, business registration, and/or Federal Communication Commission licensing, among others.
- (2) For purposes of this definition, news contemplates information that is about current events or that would be of current interest to the public.
- (3) A freelance journalist will be treated as a representative of the news media if the person can demonstrate a solid basis for expecting publication of matters related to the requested information through a news media entity. A publication contract with a news media entity satisfies this requirement. An individual's past publication record with such organizations is also relevant in making this determination.

§ 70.39 Statutes specifically providing for setting of fees.

This subpart will not apply to fees charged under any statute, other than the FOIA, that specifically requires an agency to set and collect fees for particular types of records.

§ 70.40 Charges assessed for the production of records.

- (a) **General.** Components shall charge for processing requests under the FOIA in accordance with the provisions of this section and with the OMB Guidelines. In order to resolve any fee issues that arise under this section, a component may contact a requester for additional information. Components will ensure that searches, review, and duplication are conducted in the most efficient and least expensive manner. A component ordinarily will collect all applicable fees before sending copies of records to the requester.
- (b) **Types of charges.** There are three types of charges assessed in connection with the production of records in response to a request, specifically, charges for costs associated with:
 - (1) Searching for or locating responsive records (search costs),
 - (2) Duplicating such records (duplication costs), and
 - (3) Reviewing records to determine whether any materials are exempt (review costs).
- (c) **Types of requesters.**
 - (1) There are four types of requesters:
 - (i) Commercial use requesters,
 - (ii) Educational and non-commercial scientific institutions,
 - (iii) Representatives of the news media, and
 - (iv) All other requesters.
 - (2) Depending upon the type of requester, as set forth in paragraph (c)(1) of this section, the charges outlined in paragraph (d) of this section may be assessed.
- (d) **Types of charges that will be assessed for each type of request —**

- (1) **Commercial use request.** When a requester makes a commercial use request, search costs, duplication costs and review costs will be assessed in their entirety.
- (2) **Educational or non-commercial scientific institution request.** When an educational or non-commercial scientific institution makes a request, only duplication costs will be assessed, excluding charges for the first 100 pages.
- (3) **Request by representative of news media.** When a representative of the news media makes a request, only duplication costs will be assessed, excluding charges for the first 100 pages.
- (4) **All other requesters.** Requesters making a request which does not fall within paragraph (d)(1), (2), or (3) of this section will be charged search costs and duplication costs, except that the first 100 pages of duplication and the first two hours of search time will be furnished without charge. Where computer searches are involved, the monetary equivalent of two hours of search time by a professional employee will be deducted from the total cost of computer processing time.

(e) **Charges for each type of activity –**

- (1) **Search costs.**
 - (i) When a search for records is performed by a clerical employee, a rate of \$5.00 per quarter hour will be applicable. When a search is performed by professional or supervisory personnel, a rate of \$10.00 per quarter hour will be applicable. Components will charge for time spent searching even if they do not locate any responsive records or they withhold the records located as exempt from disclosure.
 - (ii) For computer searches of records, requesters will be charged the direct costs of conducting the search, except as provided in paragraph (e)(4) of this section.
- (2) **Duplication costs.** The standard copying charge for records in black and white paper copy is \$0.15 per page. This charge includes the operator's time to duplicate the record. When responsive information is provided in a format other than 8¹/₂ x 11 or 11 x 14 inch black and white paper copy, such as computer tapes, disks and color copies, the requester may be charged the direct costs of the tape, disk, audio-visual or whatever medium is used to produce the information, as well as the direct cost of duplication, including operator time.
- (3) **Review costs.** Costs associated with the review of records, as defined in § 70.38(e), will be charged for work performed by a clerical employee at a rate of \$5.00 per quarter hour when applicable. When professional or supervisory personnel perform work, a rate of \$10.00 per quarter hour will be charged, when applicable. Except as noted in this paragraph, charges may only be assessed for review the first time the records are analyzed to determine the applicability of specific exemptions to the particular record or portion of the record. Thus a requester would not be charged for review at the administrative appeal level with regard to the applicability of an exemption already applied at the initial level. When, however, a record has been withheld pursuant to an exemption which is subsequently determined not to apply and is reviewed again at the appellate level to determine the potential applicability of other exemptions, the costs attendant to such additional review will be assessed.
- (4) **Limitations on charging fees.** If a component fails to comply with the time limits in which to respond to a request, it shall not assess certain fees except:

- (i) If there are unusual circumstances (as that term is defined in § 70.25(c)) and the component has provided timely written notice, the component is permitted ten additional days to respond to the request. After the expiration of the ten additional days, the component is no longer permitted to assess search fees or, in the instances of requests from requesters described in § 70.38(h) and (i), duplication fees except as described in paragraph (e)(4)(ii) of this section.
- (ii) If there are unusual circumstances (as that term is defined in § 70.25(c)), and more than 5,000 pages of documents are necessary to respond to the request, the component may continue to charge assessable fees for as long as it takes to process the request, provided that the component has provided timely written notice and discussed with the requester via telephone, email, or written mail (or made at least three good-faith attempts to do so) how the requester could effectively limit the scope of the pending request.
- (iii) If a court has determined that exceptional circumstances exist, as defined in the FOIA, 5 U.S.C. 552(a)(6)(C) the agency's failure to comply with any time limits of the FOIA are excused for the length of time provided by the court order.

(5) **Mailing cost.** Where responses are sent by mail, no postage charge will be made for transmitting by regular mail a single copy of the requested record to the requester, or for mailing additional copies where the total postage cost does not exceed \$5.00. However, where the volume of paper or other produced material or the requested method of transmittal requested is in excess of \$5.00, the transmittal costs will be added.

(f) **Aggregating requests for purposes of assessing costs.**

- (1) Where a component reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the disclosure officer may aggregate those requests and charge accordingly.
- (2) Components may presume that multiple requests of this type made within a 30-day period have been submitted in order to avoid fees. Where requests are separated by a longer period, disclosure officers will aggregate them only where a solid basis exists for determining that aggregation is warranted under all of the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

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

(h) **Authentication of copies –**

- (1) **Fees.** The FOIA does not require certification or attestation under seal of copies of records provided in accordance with its provisions. Pursuant to provisions of the general user-charger statute, 31 U.S.C. 9701 and Subchapter II of title 29 U.S.C., the following charges will be made when, upon request, such services are rendered by the agency in its discretion:
 - (i) For certification of true copies, \$10.00 each certification.
 - (ii) For attestation under the seal of the Department, \$10.00 each attestation under seal.

(2) **Authority and form for attestation under seal.** Authority is hereby given to any officer or officers of the Department of Labor designated as authentication officer or officers of the Department to sign and issue attestations under the seal of the Department of Labor.

(i) **Transcripts.** Fees for transcripts of an agency proceeding, as defined in the Administrative Procedure Act, 5 U.S.C. 5521(12) will be assessed in accordance with the provisions of this subpart.

(j) **Privacy Act requesters.** A request from an individual or on behalf of an individual for a record maintained by that individual's name or other unique identifier which is contained within a component's system of records, will be treated under the fee provisions at 29 CFR 71.6.

§ 70.41 Waiver or reduction of fees.

(a) **Requirements for waiver or reduction of fees.**

(1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under § 70.40(e) of this subpart, where a component determines, based on all available information, that the requester has demonstrated that:

- (i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and
- (ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) To determine whether the requirement of paragraph (a)(1)(i) of this section is met, components will consider the following factors:

- (i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government." The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.
- (ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding.
- (iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public will be considered. It will be presumed that a representative of the news media will satisfy this consideration.
- (iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to the public understanding of government operations or activities. The public's understanding of the subject in question must be enhanced by the disclosure to a significant extent.

- (3) To determine whether the requirement of paragraph (a)(1)(ii) of this section is met, components will consider the following factors:
 - (i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. The component will consider any commercial interest of the requester (with reference to the definition of “commercial use request” in § 70.38(f) of this subpart), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters will be given an opportunity in the administrative process to provide explanatory information regarding this consideration.
 - (ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.” A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The component ordinarily will presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.
- (4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver will be granted only for those records.
- (5) Requests for the waiver or reduction of fees should address the factors listed in paragraph (a) of this section, insofar as they apply to each request.
- (b) **Submission.** Requests for a waiver or reduction of fees should be made when the request is first submitted to the component and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester will be required to pay any costs incurred up to the date the fee waiver request was received.
- (c) **Appeal rights.** Requesters dissatisfied with treatment of fee waiver or reduction requests may follow the procedures for appeal under Sections 70.22 and 70.23.

§ 70.42 Consent to pay fees.

- (a) The Department will not assess or collect fees where the fee to be assessed, after deducting any free pages and/or search time, is less than \$25.00. When making a request, a requester may specify a willingness to pay up to a certain amount, e.g., \$50.00 or \$200.
- (b) No request will be processed if a component reasonably believes that the fees are likely to exceed the amount to which the requester has originally consented, absent supplemental written consent by the requester to proceed after being notified of this determination.
- (c) When a component determines or estimates that the fees to be assessed in accordance with this section will exceed \$25.00, the component shall notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review or duplication, unless the requester has

indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component must advise the requester accordingly. Such notice may invite the requester to reformulate the request to satisfy his or her needs at a lower cost.

- (d) Components must make available their FOIA contact to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

§ 70.43 Payment of fees.

- (a) *De minimis costs.* As noted in § 70.42(a) of this subpart, the Department has determined it will not assess or collect fees below \$25.00. In these cases, the cost of collecting and processing a fee equals or exceeds the amount of the fee which would otherwise be assessed. The Department will assess fees where the costs to be assessed, after deduction of any free pages and/or search time, is \$25.00 or higher.
- (b) *How payment will be made.* Requesters will pay fees assessed by check or money order made payable to the Treasury of the United States, and sent to the component that is processing the request.
- (c) *Advance payments and billing.*
 - (1) Prior to beginning to process a request, the component will make a preliminary assessment of the amount that can properly be charged to the requester for search and review time and copying costs. Where a component determines or estimates that a total fee to be charged under this section will be more than \$250.00, the component will require the requester to make an advance payment of an amount up to the entire anticipated fee before beginning to process the request. The component may waive the advance payment where the component receives a satisfactory assurance of full payment from a requester who has a history of prompt payment of an amount similar to the one anticipated by the request.
 - (2) Where a requester has previously failed to pay a properly charged FOIA fee to any component of the Department of Labor within 30 days of the date of billing, a component will require the requester to pay the full amount due, plus any applicable interest as provided in Sec. 70.40(f) and to make an advance payment of the full amount of any anticipated fee, before the component begins to process a new request or appeal or continues to process a pending request or appeal from that requester.
 - (3) For a request other than those described in paragraphs (c)(1) and (2) of this section, a component will not require the requester to make an advance payment before beginning to process a request. Payment owed for work already completed on a request pursuant to consent of the requester is not an advance payment and a component may require the requester to make a payment for such work prior to releasing any records to the requester.
- (d) *Time limits to respond extended when advance payments are requested.* When a component has requested an advance payment of fees in accordance with paragraph (c) of this section, the time limits prescribed in Sec. 70.25 will only begin to run after the component has received the advance payment.

§ 70.44 Other rights and services.

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

§§ 70.45-70.52 [Reserved]

Subpart D—Public Records and Filings

§ 70.53 Office of Labor-Management Standards.

- (a) The following documents in the custody of the Office of Labor-Management Standards are public information available for inspection and/or purchase of copies in accordance with paragraphs (b) and (c) of this section.
 - (1) Data and information contained in any report or other document filed pursuant to sections 201, 202, 203, 211, 301 of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 524-28, 530, 79 Stat. 888, 73 Stat. 530, 29 U.S.C. 431-433, 441, 461).
 - (2) Data and information contained in any report or other document filed pursuant to the reporting requirements of 29 CFR part 458, which are the regulations implementing the standards of conduct provisions of the Civil Service Reform Act of 1978, 5 U.S.C. 7120, and the Foreign Service Act of 1980, 22 U.S.C. 4117. The reporting requirements are found in 29 CFR 458.3.
 - (3) Data and information contained in any report or other document filed pursuant to the Congressional Accountability Act of 1995, 2 U.S.C. 1351, 109 Stat. 19.
- (b) The documents listed in paragraph (a) of this section are available from: U.S. Department of Labor, Office of Labor-Management Standards, Public Disclosure Room, N-1519, 200 Constitution Avenue NW., Washington, DC 20210. Reports filed pursuant to section 201 of the Labor-Management Reporting and Disclosure Act of 1959 and pursuant to 29 CFR 458.3 implementing the Civil Service Reform Act of 1978 and the Foreign Service Act of 1980 for the year 2000 and thereafter are also available at <http://www.union-reports.dol.gov>.
- (c) Pursuant to 29 U.S.C. 435(c) which provides that the Secretary will by regulation provide for the furnishing of copies of the documents listed in paragraph (a) of this section, upon payment of a charge based upon the cost of the service, these documents are available at a cost of \$.15 per page for record copies furnished. Authentication of copies is available in accordance with the fee schedule established in Sec. 70.40. In accordance with 5 U.S.C. 552(a)(4)(A)(vi), the provisions for fees, fee waivers and fee reductions in subpart C of this part do not supersede these charges for these documents.
- (d) Upon request of the Governor of a State for copies of any reports or documents filed pursuant to sections 201, 202, 203, or 211 of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 524-528, 79 Stat. 888; 29 U.S.C. 431-433, 441), or for information contained therein, which have been filed by any person whose principal place of business or headquarters is in such State, the Office of Labor-Management Standards will:
 - (1) Make available without payment of a charge to the State agency designated by law or by such Governor, such requested copies of information and data, or
 - (2) Require the person who filed such reports and documents to furnish such copies or information and data directly to the State agency thus designated.

§ 70.54 Employee Benefits Security Administration.

- (a) The annual financial reports (Form 5500) and attachments/schedules as filed by employee benefit plans under the Employee Retirement Income Security Act (ERISA) are in the custody of the Employee Benefits Security Administration (EBSA) at the address indicated in paragraph (b) of this section, and the right to inspect and copy such reports, as authorized under ERISA, at the fees set forth in this part, may be exercised at such office.

- (b) The mailing address for the documents described in this section is: U.S. Department of Labor, Employee Benefits Security Administration, Public Documents Room, 200 Constitution Avenue NW., Washington, DC 20210.

Appendix A to Part 70—FOIA Components

The following list identifies the individual agency components of the Department of Labor for the purposes of the FOIA. Each component is responsible for making records in its custody available for inspection and copying, in accordance with the provisions of the FOIA and this part. Unless otherwise specified, the mailing addresses for the following national office components are listed below. Updated contact information for national and regional offices can be found on the DOL Web site at <http://www.dol.gov/dol/foia>.

U.S. Department of Labor

200 Constitution Avenue NW.

Washington, DC 20210.

1. Office of the Secretary (OSEC).
2. Office of the Solicitor (SOL).
3. Office of Administrative Law Judges (ALJ), 800 K Street NW., Suite N-400, Washington, DC 20001-8002.
4. Office of the Assistant Secretary for Administration and Management (OASAM).
5. Office of the Assistant Secretary for Policy (OASP).
6. Office of the Chief Financial Officer (OCFO).
7. Office of Congressional and Intergovernmental Affairs (OCIA).
8. Office of Disability Employment Policy (ODEP).
9. Office of Federal Contract Compliance Programs (OFCCP).
10. Office of the Inspector General (OIG).
11. Office of Labor Management Standards (OLMS).
12. Office of Public Affairs (OPA).
13. Office of Workers' Compensation Programs (OWCP).
14. Bureau of International Labor Affairs (ILAB).
15. Bureau of Labor Statistics (BLS), Postal Square Building, Room 4040, 2 Massachusetts Avenue NE., Washington, DC 20212-0001.
16. Employment and Training Administration (ETA). Job Corps (part of ETA).
17. Mine Safety and Health Administration (MSHA), 201 12th Street, South, Arlington, Virginia 22202.
18. Occupational Safety and Health Administration (OSHA).
19. Employee Benefits Security Administration (EBSA).

20. Veterans' Employment and Training Service (VETS).
21. Employees' Compensation Appeals Board (ECAB).
22. Administrative Review Board (ARB).
23. Benefits Review Board (BRB).
24. Wage and Hour Division (WHD).
25. Women's Bureau (WB).

Appendix B to Part 70 [Reserved]