

forwarded a reasonable number of days prior to the specified date upon which disclosure is intended. The requester shall be provided with a copy of the notice of intent to disclose.

(g) *Exceptions to notice requirements.* The notice requirements of this section shall not apply if:

(1) The component determines that the information should not be disclosed;

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

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

(4) The disclosure is required by a rule that

(i) Was adopted pursuant to notice and public comment;

(ii) Specifies narrow classes of records submitted to the agency that are to be released under the Freedom of Information Act; and

(iii) Provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(5) The information requested has not been designated by the submitter as in accordance with paragraph (b) of this Section, and the submitter had an opportunity to do so at the time of submission of the information or a reasonable time thereafter, unless the component has reason to believe that disclosure of the information would result in substantial competitive harm; or

(6) The designation made by the submitter in accordance with these regulations appears obviously frivolous; except that in such case, the component must provide the submitter with written notice of any final administrative disclosure determination within a reasonable number of days prior to the specified disclosure date.

(h) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of confidential commercial information covered by paragraph (b) of this section, the component shall promptly notify the business submitter.

(i) *Notice requirements.* The component shall fulfill the notice requirements of this section by addressing the notice to the business submitter or its legal successor at the address indicated on the records, or the last known address. If the notice is returned, the component shall make a reasonable effort to locate the business 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 shall preserve all correspondence relating to the requests it receives under this part, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to title 44 of the United States Code. Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under the Act.

### Subpart C—Costs for Production of Documents

#### § 70.38 Definitions.

The following definitions apply to the terms of this subpart.

(a) The term a *statute specifically providing for setting the level of fees for particular types of records* (See 5 U.S.C. 552(a)(4)(A)(vi)), means any statute other than FOIA that specifically requires a Government agency to establish a fee schedule for particular types of records. An example of such a statute is section 205(c) of the Labor-Management Reporting and Disclosure Act, as amended, 29 U.S.C. 435(c). Statutes such as the User Fee Statute which only provide a general discussion of fees without explicitly requiring that an agency set and collect fees for particular documents are not within the meaning of this term.

(b) The term *direct costs* means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of a commercial requester, reviewing) documents to respond to an FOIA request. Direct costs