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13 CFR Ch. I (1–1–07 Edition)

noncommercial scientific institution requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research. SBA will charge noncommercial scientific institution requesters for the cost of reproduction alone after the first 100 pages.

(8) *A representative of the news media* is a requester actively gathering information for one or more news media who:

(i) Is employed by a news medium or
(ii) Has a reasonable expectation of selling the information obtained to one or more news media. A news medium is an entity organized and operated to distribute information to the general public. A news medium may provide information by subscription and may target its dissemination to a narrow section of the general public so long as any member of the general public may purchase information from it. A request for records supporting the news dissemination function of the requester shall not be considered to be for commercial use. A news media requester must show that the request is authorized by and is made under the auspices of a qualifying news medium and that the records are not sought for a commercial use but are sought to further the dissemination of information to the general public. SBA will provide documents to representatives of the news media for the cost of reproduction alone, excluding charges for the first 100 pages.

(9) *A member of the general public* is a requester who does not fit into any of the categories in paragraphs (b)(1) through (8) of this section. SBA will charge requesters in this category search time after the first two hours and duplication after the first 100 pages.

(c) *Other charges.* SBA will recover the full costs of providing special services, such as certifying that records are true copies or sending copies by other than ordinary mail, to the extent that SBA elects to provide them.

(d) *Charging interest.* SBA will charge interest on any unpaid bill starting on the 31st day following the date of billing. Interest charges will accrue at the

maximum rate allowed under 31 U.S.C. 3717. If still unpaid by the 91st day after the billing date, SBA may notify consumer credit reporting agencies of the delinquency and/or take other appropriate action in accordance with law.

(e) *Fee waivers or reductions.* SBA will furnish responsive records without charge or at a reduced charge when a requester can show that disclosure of the 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.

(1) You must submit a request for a fee waiver or reduction to the initial processing office.

(2) On the basis of the information that you provide, the initial processing office will determine whether you meet the fee waiver requirements outlined in this section.

§ 102.7 Business information.

(a) *In general.* Business information provided to SBA from a submitter will only be disclosed in accordance with this section.

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

(1) *Business information* is commercial or financial information obtained by SBA from a submitter that may arguably be protected from disclosure under Exemption 4 of the FOIA.

(2) *Submitter* is any person or entity who provides business information, directly or indirectly to SBA.

(c) *Designation of business information.* Submitters of business information will use reasonable, good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of their submissions that they consider to be protected from disclosure under Exemption 4 of the FOIA. Designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* SBA will provide a submitter with written notice of

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a FOIA request or administrative appeal that seeks its business information whenever SBA intends to release that information. The notice will either describe the business information or include copies of the records in the form SBA proposes to release them. SBA will also advise the requester that the submitter is being given the opportunity to object to any proposed disclosure. When notification of a voluminous number of submitters is required, SBA may post or publish such a notice in a place reasonably likely to accomplish notice.

(e) *Opportunity to object to disclosure.* SBA will give the submitter ten working days from the date of the written notice to submit a detailed written statement specifying all grounds upon which disclosure is opposed. A reasonable extension of time may be granted by the correct office upon good cause shown by the submitter. The submitter's statement must demonstrate why it believes information is a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to timely respond to the notice, such failure will be deemed a waiver by the submitter of any objection to the 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.* SBA will consider a submitter's objections and specific grounds for nondisclosure in accordance with paragraph (e) of this section in deciding whether to disclose business information. If SBA decides to disclose business information despite the objection of a submitter, SBA will give the submitter written notice, advising the submitter what will be disclosed, and that such disclosure will occur within 10 working days from the date of the notice.

§ 102.8 Appeals.

(a) If you are dissatisfied with SBA's response to your request, you may appeal an adverse determination denying your request, in any respect, to the Chief, FOI/PA Office, 409 Third St., SW., Washington, DC 20416.

(b) The Chief must receive your signed, written appeal within 60 cal-

endar days of the date of the SBA determination from which you are appealing.

(c) You should include as much information as possible, *i.e.*, identifying the records not disclosed, the reason(s) a fee should be waived, or the reason(s) a request should be expedited. You must identify the deciding official and his/her office location.

(d) The Chief will decide your appeal unless the Chief originally made the determination you are appealing. In that case, the Assistant Administrator for Hearings and Appeals will decide your appeal.

(e) If SBA upholds the initial adverse determination, SBA will tell you why the decision has been upheld and tell you how to obtain judicial review of the decision.

§ 102.9 Public Index.

(a) The Public Index is a document that provides identifying information about official documents that SBA has issued.

(b) SBA has administratively determined, as permitted by FOIA, that periodic publication and distribution of the Public Index is unnecessary and impracticable.

(c) The Public Index is an appendix to SBA Standard Operating Procedure 40 03. You can obtain the latest edition of SOP 40 03 from SBA's Online Reading Room at <http://www.sba.gov/library> or by requesting it from any SBA office.

§ 102.10 What happens if I subpoena records or testimony of employees in connection with a civil lawsuit, criminal proceeding or administrative proceeding to which SBA is not a party?

(a) The person to whom the subpoena is directed must consult with SBA counsel in the relevant SBA office, who will seek approval for compliance from the Associate General Counsel for Litigation. Except where the subpoena requires the testimony of an employee of the Inspector General's office, or records within the possession of the Inspector General, the Associate General Counsel may delegate the authorization for appropriate production of documents or testimony to local SBA counsel.