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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2021–0020]

RIN 1601–AB21

Electronic Payments for FOIA Requests

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS or Department) is updating its regulations related to the payment of fees arising from Freedom of Information Act (FOIA) and Privacy Act of 1974 requests to add the option for requesters to submit electronic payments via the Department's FOIA processing system, which can be made using *pay.gov,* or as otherwise directed by DHS and its components.

DATES: This final rule is effective November 30, 2026.

FOR FURTHER INFORMATION CONTACT: Roman Jankowski, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528, (202) 343–1717, *Privacy@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Homeland Security has authority under 5 U.S.C. 301 and 552, and 6 U.S.C. 112(e) to issue Freedom of Information Act and Privacy Act regulations. That authority has been delegated to the Chief Privacy Officer of the Department pursuant to 6 U.S.C. 142 and DHS Del. No. 13001, Rev. 01 (. (June 2, 2020). Most recently, DHS updated its procedures for submitting requests under the Freedom of Information Act and Privacy Act, 5 U.S.C. 552a, and under the Judicial Redress Act of 2015 (JRA) (5 U.S.C. 552a note), at 6 CFR part 5, subparts A and B, on December 23, 2025 (90 FR 59945).

II. Discussion of Changes

This rule updates Title 6, part 5, paragraphs 5.11(a) and 5.21(d), which describe how FOIA and Privacy Act/JRA fees are assessed and how to submit payment. The current rule generally requires requesters to pay for their FOIA and Privacy Act/JRA requests using a check or money order made payable to the Treasury of the United States. In addition to check and money orders (when permitted), DHS and its components are now adding electronic payment as a permissible payment type for FOIA and Privacy Act/JRA requests. Electronic payments can be made via *pay.gov,* or any other electronic payment platform selected by DHS and its components. By adding electronic payments, DHS and its components will increase options for requesters, who may have limited access to checks or money orders. Further, the inclusion of electronic payments will remove steps for requesters, like the need to obtain money orders or write checks and mail physical payments, and increase processing efficiency for the Department and its components.

III. Regulatory History

DHS did not publish a notice of proposed rulemaking for this rule. Under 5 U.S.C. 553(b)(A), this final rule is exempt from notice and public comment rulemaking requirements because the change involves rules of agency organization, procedure, or practice. In addition, under 5 U.S.C. 553(b)(B), an agency may bypass notice and comment requirements if it finds, for good cause, that notice and comment is impracticable, unnecessary, or contrary to the public interest. DHS finds that notice and comment is unnecessary here because adding a payment type to the existing list of payment types to pay for a FOIA or Privacy Act/JRA request is an agency procedural update that will not alter the rights or interests of parties, but will improve the efficient operations of the agency by reducing the need to receive and process physical checks and money orders. DHS also believes that adding this option, which is widely used by the public in other contexts, will increase convenience for the public without removing any currently available option. Specifically, electronic payments may be preferable to checks and money orders to many potential requesters because they eliminate the need to mail the payment and allow for better tracking of payments. DHS is retaining the option for requesters to pay by check or money order.

III. Regulatory Analyses

A. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14192 (Unleashing Prosperity Through Deregulation)

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 14192 establishes a policy that the executive branch be ''prudent and financially responsible in the expenditure of funds, from both public and private sources, and [ ] alleviate unnecessary regulatory burdens placed on the American people.''

The Office of Management and Budget (OMB) has not designated this rule a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this rule. This rule is also not subject to Executive Order 14192 because the rule is not significant under Executive Order 12866 and because it is related to agency organization, management, or personnel. *See* OMB Memorandum M–25–20, ''Guidance Implementing Section 3 of Executive Order 14192, titled 'Unleashing Prosperity Through Deregulation'' (Mar. 26, 2025).

DHS has considered the costs and benefits of this rule. This rule will not impose any new costs on the government or the public. The rule's benefits include potentially increased efficiency in processing payments for FOIA and Privacy Act/JRA requests. Specifically, DHS expects that many requesters will choose the electronic payment option over check or money order, thus reducing the number of physical payments the Department will need to receive and process, and freeing personnel to work on other matters.

Requesters will have more flexibility in paying FOIA and Privacy Act/JRA request fees, and those who pay electronically may also experience a shorter lag time between making a payment and DHS sending a response.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no written statement was deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 note, agencies must consider the impact of their rulemakings on ''small entities'' (small businesses, small organizations, and local governments). The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. DHS has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. DHS does not believe this rule imposes any additional direct costs on small entities.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (as amended), 5 U.S.C. 804(2). The Office of Management and Budget's Office of Information and Regulatory Affairs has not found that this rule is likely to result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

National Environmental Policy Act

DHS reviews regulatory actions to determine whether the National Environmental Policy Act (NEPA) applies to them and, if so, what degree of analysis is required. DHS Directive 023–01 Rev. 01 (Directive) and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual) establish the procedures that DHS and its Components use to comply with NEPA.

NEPA allows Federal agencies to establish, in their NEPA implementing procedures, categories of actions (''categorical exclusions'') that experience has shown do not, individually or cumulatively, have a significant effect on the human environment and, therefore, do not require an environmental assessment or environmental impact statement. The Instruction Manual, Appendix A, lists the DHS categorical exclusions.

Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.

This rule is strictly procedural and is limited to updating the method by which requesters pay the fee associated with FOIA requests. DHS has reviewed this rule and finds that it clearly fits within categorical exclusion A3(a) as an administrative or procedural rule that will have no significant effect on the environment, is not part of a larger Federal action, and does not present extraordinary circumstances that create the potential for significant environmental impacts. Therefore, the rule is categorically excluded from further NEPA review.

List of Subjects in 6 CFR Part 5

Classified Information, Courts, Freedom of information, Government employees, Privacy.

For the reasons stated in the preamble, DHS amends Chapter I part 5 of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301; 6 U.S.C. 142; DHS Del. No. 13001, Rev. 01 (June 2, 2020).

Subpart A also issued under 5 U.S.C. 552.

Subpart B also issued under 5 U.S.C. 552a and 552 note.

■ 2. Amend § 5.11 by revising paragraph (a) to read as follows:

§ 5.11 Fees.

(a) *In general.* Components shall charge for processing requests under the FOIA in accordance with the provisions of this section and with the OMB Guidelines. Components will ordinarily use the most efficient and least expensive method for processing requested records. In order to resolve any fee issues that arise under this section, a component may contact a requester for additional information. A component ordinarily will collect all applicable fees before sending copies of records to a requester. If you make a FOIA request, it shall be considered a firm commitment to pay all applicable fees charged under § 5.11, up to $25.00, unless you seek a waiver of fees. Requesters must pay fees by check or money order made payable to the Treasury of the United States, or by electronic payment through *pay.gov,* or as otherwise directed by DHS and its components.

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■ 2. Amend § 5.21 by revising paragraph (d) to read as follows:

§ 5.21 Requests for Access to Records.

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(d) *Agreement to pay fees.* DHS and components shall charge for processing requests under the Privacy Act or JRA. DHS and components will ordinarily use the most efficient and least expensive method for processing requested records. DHS may contact a requester for additional information in order to resolve any fee issues that arise under this section. DHS ordinarily will collect all applicable fees before sending copies of records to a requester. If one makes a Privacy Act or JRA request for access to records, it will be considered a firm commitment to pay all applicable fees charged under § 5.29, up to $25.00. The component responsible for responding to a request ordinarily will confirm this agreement in an acknowledgement letter. When making a request, an individual may specify a willingness to pay a greater or lesser amount. Requesters must pay fees by check or money order made payable to the Treasury of the United States, or by electronic payment through *pay.gov,* or as otherwise directed by DHS and its components.

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Roman Jankowski,

Chief Privacy Officer, Department of Homeland Security.

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