



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 2**

**[FRL-9995-48-OGC]**

**RIN 2015-AA02**

Freedom of Information Act Regulations Update

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) takes final action to revise the Agency's regulations under the Freedom of Information Act (FOIA or Act). This action supports the Agency's mission by updating the process by which the public may access information about EPA actions and activities. These revisions include changes required by amendments to the Act in 2007, 2009, and 2016, updates to correct obsolete information, and changes to reflect internal EPA realignment.

**DATES:** This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Christopher T. Creech, Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW (2310A), Washington, DC 20460; telephone, 202-564-4286; email, [creech.christopher@epa.gov](mailto:creech.christopher@epa.gov).

**SUPPLEMENTARY INFORMATION:** This supplementary information section is organized as follows:

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### **I. Scope of this Action**

This action makes changes to the Agency's FOIA regulations at 40 CFR part 2, to implement statutory updates, correct obsolete information, and reflect internal EPA realignment and processing changes to improve the Agency's FOIA response process. These changes affect the process by which any individuals and entities request records from EPA under the Act. The EPA makes changes to bring EPA's FOIA regulations into compliance with the FOIA, as amended by the OPEN Government Act of 2007, Public Law 110-175, 121 Stat. 2524 (2007 Amendments), the OPEN FOIA Act of 2009, Pub. L. 111-83, 123 Stat. 2142 (2009 Amendments), and the FOIA Improvement Act of 2016, Public Law 114-185, 130 Stat. 538 (2016 Amendments).

Although EPA also makes these revisions as a single action, EPA intends that the revisions detailed below would be severable from each other on judicial review. At this time, the EPA makes these changes to its regulations to comply with the 2007, 2009, and 2016 Amendments, and to remove and correct provisions that are superseded by the statutory amendments.

The EPA has reserved for a later, second rulemaking phase certain discretionary and modernizing changes that the EPA is considering and on which the EPA will consider taking public comment. The changes in today's rule bring EPA's regulations into compliance with nondiscretionary provisions of the amended statute and reflect changes in the Agency's organization, procedure, or practice.

## **II. Why is EPA Using the Good Cause and Procedural Exceptions?**

### *A. Procedural Exception.*

The Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A), provides that an agency may issue interpretive rules, general statements of policy, or rules of agency organization, procedure,

or practice without providing notice and an opportunity for public comment. Certain revisions in this action update the EPA's rules to accurately reflect the Agency's organizational structure and implement statutorily directed changes, which are self-executing. Importantly, these revisions do not change the substantive standards the Agency applies in implementing the FOIA to the extent they conform with the Act and the 2007, 2009, and 2016 Amendments. As such, these revisions will not significantly affect the substantive rights of regulated entities or the general public.

EPA has determined that the following changes announced in the preamble in this rule are exempt from notice and comment under the procedural exception: modifying the methods of submitting a FOIA request (Section IV.A.2); reflecting the statutory language for the tolling of the time-period for responding to requests (Section IV.A.3); reflecting the statutory requirements to make the Agency's FOIA Public Liaison available (Section IV.A.4); updating the Agency's standard requirements for response letters (Section IV.C.2); acknowledging the possibility of an agency- or government-wide electronic submission tool (Section IV.C.3); extending the minimum time to file an administrative appeal (Section IV.C.4); clarifying the positions that have authority to respond to FOIA requests (Section V.A); modifying methods for submitting an administrative appeal and clarifying positions that have authority to respond to administrative appeals (Section V.B); clarifying that requests, appeals, and other communications from requesters, must be submitted before 5:00 p.m. Eastern Time for the Agency to consider the communication as received on that business day (Section VI.A); and replacing references to "Agency FOI Office" with references to the National FOIA Office (Section V.B).

*B. Good Cause Exception.*

The Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that public notice and comment procedures are impracticable, unnecessary,

or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause to revise portions of its FOIA regulations without prior proposal and opportunity for comment. Notice and opportunity for comment on the revisions identified below is unnecessary because the agency lacks discretion to reach a different outcome in response to comment.

It is routine for agencies to update their FOIA regulations to reflect self-executing statutory provisions. The 2016 Amendments provide that “each agency . . . shall review the regulations of such agency and shall issue regulations in accordance with the [2016 Amendments].” Under section 3 of the FOIA Improvement Act (130 Stat. 544). The significance and consequence of the recent FOIA amendments derive from the amendments themselves. Whereas Congress required the Agency to follow the statutory provisions of the FOIA, these regulatory revisions are insignificant in impact and inconsequential to the public.

This rule revises or strikes provisions in the EPA’s prior regulations that are repetitive of the FOIA: replacing the outdated definition of “news media” with a cross-reference to the FOIA (Section IV.A.1 in this preamble); and striking the obsolete list of FOIA exemptions as incorrect and duplicative of the FOIA (Section IV.B in this preamble). This rule also corrects certain provisions in the EPA’s prior regulations to conform to the amended statutory text: reflecting the statutory requirements to make the Agency’s FOIA Public Liaison available (Section IV.A.4 in this preamble); incorporating the text of the 2016 Amendments, which changed when an agency may charge search fees (Section IV.C.1 in this preamble); and incorporating the statutorily required information that the agency must include in FOIA determinations (Section IV.C.2 in this preamble). These provisions now accurately reflect the statutory language of the FOIA, and

the EPA is exercising no discretion in revising these sections. Further, any portions of this rule that have slightly different phrasing than the FOIA have no independent effect.

Additionally, EPA has made minor and purely ministerial changes: replacing references to “Agency FOI Office” with references to the National FOIA Office (Section V.B in this preamble); and making certain non-substantive style and grammatical corrections to the regulations (Section VI.C in this preamble).

### **III. Background**

#### *A. Background on EPA’s FOIA Regulations and FOIA Processes.*

EPA’s FOIA regulations at 40 CFR part 2 set forth the process and administrative rules by which EPA handles FOIA requests. These regulations address such topics as: where and how to make a FOIA request to the Agency; who within the Agency is responsible for responding to FOIA requests; how and when the Agency will respond to requests; how to appeal final FOIA determinations and how the Agency handles appeals; and how FOIA fees are charged and processed. The Agency has not substantively updated these regulations since 2002. *See* 67 FR 67303 (November 5, 2002).

#### *B. Why EPA is Proposing Changes to its FOIA Regulations.*

EPA revises its FOIA regulations to ensure compliance with amendments to the FOIA. Since the last time the EPA substantially revised these regulations in 2002, Congress has enacted three laws amending the FOIA. Congress passed the 2007 Amendments, which addressed several procedural issues that concern FOIA administration. Congress passed the 2009 Amendments, which revised the requirements of FOIA Exemption 3 regarding records exempt from disclosure by other statutes. Congress passed the 2016 amendments, which addressed a range of procedural

and substantive issues and directed all agencies to amend their FOIA regulations to incorporate these required changes.

EPA is also updating its FOIA regulations to correct obsolete information and reflect internal EPA realignment and processing changes to improve the Agency's FOIA response process.

#### **IV. Revisions Related to the Amendments to the FOIA**

This action revises the Agency's FOIA regulations to incorporate certain required changes brought about by the 2007 Amendments, the 2009 Amendments, and the 2016 Amendments.

##### *A. Revisions Related to the 2007 Amendments.*

###### *1. Incorporating the Definition of "Representative of the News Media".*

EPA incorporates by reference the statutory definition provide by the 2007 Amendments of "representative of the news media." Section 3 of the 2007 Amendments amends 5 U.S.C. 552(a)(4)(A)(ii) by providing a definition of "a representative of the news media" directly in the statute. The amended statutory provision defines the term "news," gives examples of news-media entities such as "television or radio stations broadcasting to the public at large," and includes provision for a "freelance journalist." Further, the amended statutory provision recognizes the evolution of "methods of news delivery" through, for example, "electronic dissemination," and notes that news-media entities might make their products available by "free distribution to the general public."

###### *2. Methods of Submitting FOIA Requests.*

EPA also revises the location to which requesters may submit a FOIA request. By this action, EPA makes the National FOIA Office (NFO) in the Office of General Counsel (OGC) the

point of entry for all requests. EPA clarifies that requesters may submit FOIA requests to the NFO only by the following four methods: 1) EPA's FOIA submission website at <https://www.foiaonline.gov>; 2) an electronic government submission website established pursuant to 5 U.S.C. 552(m); (3) U.S. Mail sent to the following address: National FOIA Office, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW (2310A), Washington, DC 20460; or (4) overnight delivery service to National FOIA Office, U.S. Environmental Protection Agency, 1200 Pennsylvania NW, Room 5315, Washington, DC 20460. EPA removes certain existing provisions in 40 CFR 2.102(a) and (b) regarding the routing of requests to conform with the approach for the submission of requests. A request triggers the statutory time-periods for response and the tolling provisions of the Act only when the NFO receives a FOIA request through one of the methods outlined above. The 2007 Amendments also decreased the amount of time an agency may take to route a request to the appropriate component of the agency to ten working-days or less. 5 U.S.C. 552(a)(6)(A)(ii). The Agency makes these revisions above to address this change and to minimize the number of misdirected requests sent to the Agency.

Under EPA's former regulations, requesters may have submitted FOIA requests to EPA Headquarters as well as to each of EPA's ten Regional Offices through various means. EPA will no longer accept FOIA requests sent (1) to any office by facsimile; (2) to any office by email; or (3) to Regional FOIA Offices by U.S. Mail or other non-electronic means. If a requester erroneously submits a FOIA request to an EPA program or regional office, the EPA will not consider the request received by the Agency. Consistent with the 2007 Amendments, the EPA will no longer consider these methods and offices "components of the agency" that are "designated in the agency's regulations . . . to receive requests." 5 U.S.C. 552(a)(6)(A)(ii).

Requests submitted by one of these three methods will not trigger the statutory time-periods for response or the tolling provisions of the Act. The requester therefore needs to submit a new request to the NFO by one of the four acceptable methods identified in the previous paragraph. Only when a requester properly submits a request by one of the four acceptable methods will EPA's timelines to respond begin to run.

### *3. Tolling of the Time-Period to Respond to Requests.*

EPA revises the regulations regarding when the Agency may toll its time-period for responding to requests. The FOIA provides that agencies have 20 working days to respond to requests (unless "unusual circumstances" exist). Consistent with the 2007 Amendments to 5 U.S.C. 552(a)(6)(A)(ii), the Agency may toll the response time once during the first 20 working days to obtain necessary clarification from a requester and as many times as necessary to address issues related to fees.

### *4. FOIA Public Liaison.*

The 2007 Amendments to FOIA require agencies to make the FOIA Public Liaison available to requesters to resolve disputes. Therefore, this action includes information about the existence and role of EPA's FOIA Public Liaison, who is available to work with requesters and Agency staff concerning issues related to the Agency's response to FOIA requests.

### *B. Revision Related to the 2009 Amendments to FOIA—Elimination of List of FOIA Exemptions.*

EPA repeals the list of the FOIA exemptions in its regulations at 40 CFR 2.105. Providing this list of exemptions by regulation is unnecessary and redundant of the statute. EPA will continue to apply the exemptions found in accordance with 5 U.S.C. 552(b) as appropriate. In 2009, Congress amended the FOIA to revise the requirements of FOIA Exemption 3, 5 U.S.C.

552(b)(3), regarding records exempted from disclosure by other statutes. If the EPA were to retain the list of statutory exemptions in its regulations, the EPA would be required to update the list to reflect the changes to Exemption 3. Further, EPA's removal of the list of exemptions from its regulations reduces the need for conforming amendments to EPA's regulations if Congress enacts future changes to the FOIA exemptions and reduces confusion regarding EPA's FOIA process, as it will eliminate any potential for inconsistency between EPA's regulations and the statute. By undertaking this change, no further changes to EPA's regulations would be required by the 2009 Amendments.

*C. Revisions Related to the 2016 Amendments to FOIA.*

*1. When the Agency May Charge Search Fees.*

EPA does not charge search fees (or duplication fees for educational or noncommercial scientific institutions, or representatives of the news media) if the Agency fails to meet FOIA's period to respond to a FOIA request except where the following criteria are met: (1) "unusual circumstances" (as defined in FOIA) exist; (2) timely written notice is provided to the requester; (3) more than 5,000 pages are necessary to respond to the request; and (4) Agency staff have made at least three good faith attempts to discuss limiting the scope of the request with the requester as provided for in section 552(a)(6)(B)(ii), which includes notice of the availability of the FOIA Public Liaison and the right to seek dispute resolution services from the Office of Government Information Services (OGIS) at the National Archives and Records Administration (NARA).

The 2016 Amendments limited agencies' ability to charge for search or duplication fees for certain requests. Specifically, the 2016 Amendments limited agencies from assessing search fees (or duplication fees for educational or noncommercial scientific institutions, or

representatives of the news media) if an agency's response time is delayed beyond statutory time-periods. 5 U.S.C. 552(a)(4)(viii). In general, the time-period for determining whether to comply with a FOIA request is 20 working days. When agencies determine that "unusual" circumstances apply to the processing of a request, and they have provided timely written notice to the requester, a delay may be excused for an additional 10 working days. However, if the agency fails to comply with the extended time limit, it may not charge search fees (or duplication fees for educational or noncommercial scientific institutions, or representatives of the news media). The law contains an exception: if unusual circumstances apply (as defined by 5 U.S.C. 552(a)(6)(B)(iii)) and more than 5,000 pages are necessary to respond to the request, agencies may charge search fees (or duplication fees for educational or noncommercial scientific institutions, or representatives of the news media) if timely written notice has been made to the requester and "the agency has discussed with the requester by written mail, electronic mail, or telephone (or made not less than 3 good-faith attempts to do so) how the requester could effectively limit the scope of the request [under 5 U.S.C. 552(a)(6)(B)(ii)] ." *Id.* § 552(a)(A)(4)(viii)(II)(bb).

## 2. *Content of Response Letters.*

EPA now requires that final determinations include information about the right to seek assistance from the FOIA Public Liaison, and in the case of an adverse determination, of the existence and role of OGIS in providing dispute resolution services in FOIA-related matters. EPA also requires that the office which is processing the FOIA requests to include information about the existence and role of the OGIS when any request for an extension exceeds the 10-day period, as required by the 2016 Amendments. The 2016 Amendments established new requirements for providing notification of assistance from public liaisons. When agencies make

determinations on requests they now must offer the services of their FOIA Public Liaison and must notify requesters of the dispute resolution services provided by OGIS. Agencies must also allow requesters a period of at least 90 days within which to file an administrative appeal. Specifically, agencies must notify requesters of “the right of such person to seek assistance from the FOIA Public Liaison of the agency,” and, in the case of an adverse determination, the right to appeal within a period of time “that is not less than 90 days after the date of such adverse determination” and “the right of such person to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services.”

### *3. Agency- or Government-Wide Submission Tool.*

EPA amends the regulations to permit electronic submission of FOIA requests to the Agency through an agency- or government-wide electronic submission tool that may be approved in the future pursuant to 5 U.S.C. 552(m), such as FOIA.gov, in addition to permitting electronic submission through the Agency’s current electronic submission tool, FOIAonline.

### *4. Extension of Minimum Time to File Administrative Appeal.*

EPA extends the time in which a requester is required to file an administrative appeal from 30 calendar days to 90 calendar days, which reflects changes made by the 2016 Amendments.

## **V. Clarifications to EPA’s FOIA Process**

The Agency is taking this opportunity to make additional changes to its regulations to improve the FOIA process.

### *A. Authority to Respond to Requests.*

EPA clarifies that the Administrator and Deputy Administrator and all assistant administrator-level positions and regional administrator positions in the Agency, or their

deputies, and certain other office heads have the authority to respond to FOIA requests. This change eliminates a potential conflict in the existing regulations and ensures consistency of responses across the Agency. The previous regulations contained a potential inconsistency. EPA simplifies and consolidates section 2.103(b), which empowered the “head of an office, or that individual’s designee” to grant or deny requests, and section 2.104(h), which empowered division directors or equivalents authority to issue “denials.”

In addition, the Agency clarifies the authorities, and delegation of the authority, because the term “division director” is not easily interpreted across the Agency. The Agency does not intend to affect the Agency’s use of delegation directives to set forth specific rules and limitations regarding who may be delegated FOIA decision making authority; it is not necessary to set forth such delegations, and limitations, in Agency regulations.

#### *B. Administrative Appeals.*

EPA revises the provisions of its regulations relating to administrative appeals to further streamline the appeals process. Like the changes regarding the receipt of FOIA requests, EPA accepts administrative appeals through centralized means to ensure timely receipt by the Agency of the appeal. EPA accepts appeals only by 1) electronic means through the Agency’s FOIA management system, or 2) by U.S. Mail to the NFO.

Final determinations made by the General Counsel or the General Counsel’s delegates will be heard by an authorized decisionmaker within OGC who did not make the final determination. This change ensures the most efficient receipt and processing of FOIA appeals by the Agency.

## **VI. Other Changes**

In addition to revisions related to the amendments to the FOIA, EPA is making both changes to procedural provisions to improve the way the Agency responds to FOIA requests and non-substantive edits for clarity.

*A. Timing of Received Date.*

The Agency must receive all requests, appeals, and other communications from requesters, submitted electronically (through EPA's electronic FOIA management system or otherwise) before 5:00 p.m. Eastern Time for the Agency to consider the communication as received on that business day. EPA considers any such communications received after 5:00 p.m. Eastern Time as received on the next working day (i.e., excluding weekends and federal holidays). This timing rule will govern how the Agency calculates its time-periods for action under FOIA, as well as time-periods requesters may face (such as the requirement to file administrative appeals within 90 days).

*B. References to the National FOIA Office.*

EPA revises references to the Headquarters FOI Office, Headquarters FOIA Office, National FOI Office, etc., to refer to the National FOIA Office. The Chief FOIA Officer designates the office that performs the duties of the National FOIA Office.

*C. Clear Writing Changes.*

The EPA makes certain non-substantive changes to clarify references to Agency offices, correct grammatical errors, remove gendered language, remove second person pronouns, and correct passive voice.

**VII. Statutory and Executive Order Reviews**

- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

*B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs*

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

*C. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

*D. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. Submission of a FOIA request is a voluntary action that any member of the public, including small entities, can elect to do and the rule relates to the procedures for submitting and processing a FOIA request for EPA records.

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandates as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on Indian Tribal governments or on the relationship between the national government and the Indian Tribal governments. Thus, Executive Order 13175 does not apply to this action.

*H. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

*I. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*J. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

*K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes that this action is not subject to Executive Order 12898 (59 Fed. Reg. 7629 (February 16, 1994)) because it does not establish an environmental health or safety

standard. This regulatory action is a procedural change and does not have any impact on human health or the environment.

*L. Congressional Review Act*

This rule is exempt from the Congressional Review Act because it is a rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties.

**List of Subjects in 40 CFR Part 2**

Environmental Protection, Administrative practice and procedure, Confidential Business Information, Freedom of Information, government employees.

Dated: June 14, 2019.

Andrew R. Wheeler,  
Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR Part 2, as follows:

**PART 2—PUBLIC INFORMATION**

1. The authority citation for Part 2 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

2. Subpart A of Part 2 is revised to read as follows:

**Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act**  
*Sec.*

- 2.100 General provisions.
- 2.101 Where to file requests for records.
- 2.102 Procedures for making requests.
- 2.103 Responsibility for responding to requests.
- 2.104 Responses to requests and appeals.
- 2.105 [Reserved]
- 2.106 Preservation of records.
- 2.107 Fees.
- 2.108 Other rights and services.

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

**§ 2.100 General provisions.**

(a) This Subpart contains the rules that the Environmental Protection Agency (EPA or Agency) follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. The Agency also has rules that it follows in processing FOIA requests for records submitted to it as Confidential Business Information (CBI). Such records are covered in Subpart B of this Part. Requests made by individuals for records about themselves under the Privacy Act of 1974, which are processed under 40 CFR part 16, will also be treated as FOIA requests under this Subpart. This ensures that the requestor has access to all responsive records. Information routinely provided to the public as part of a regular EPA activity may be provided to the public without following this Subpart.

(b) EPA will inform the requester of the steps necessary to obtain records from agencies operating statutory-based fee schedule programs, such as, but not limited to, the Government Printing Office or the National Technical Information Service.

(c) The Chief FOIA Officer designates the office that performs the duties of the National FOIA Office. The National FOIA Office reports to the Chief FOIA Officer.

(d) The Chief FOIA Officer designates the FOIA Public Liaisons. The FOIA Public Liaisons report to the Chief FOIA Officer. A FOIA Public Liaison is an official to whom a requester can raise concerns about the service the requester received from the FOIA Requester Service Center. A FOIA Public Liaison is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes. The public can find more information about the FOIA Public Liaisons at EPA's website.

#### **§ 2.101 Where to file requests for records.**

(a) Requesters must submit all requests for records from EPA under the FOIA in writing and by one of the following methods:

(1) EPA's FOIA submission website at <https://www.foiaonline.gov>;

(2) An electronic government submission website established pursuant to 5 U.S.C. 552(m), such as FOIA.gov;

(3) U.S. Mail sent to the following address: National FOIA Office, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW (2310A), Washington, DC 20460; or

(4) Overnight delivery service to National FOIA Office, U.S. Environmental Protection Agency, 1200 Pennsylvania NW, Room 5315, Washington, DC 20460. EPA will not treat a request submitted by any other method as a FOIA request, and the Agency will not re-route the request. The requester or requester organization must include the full name of their point of contact and their mailing address for EPA to process the request. For all requests, requesters should provide an email address and daytime telephone number whenever possible. For requests

submitted through EPA's FOIA submission website or as provided by an electronic government submission website established pursuant to 5 U.S.C. 552(m), requesters must include an email address. For requests submitted through U.S. Mail, the requester must mark both the request letter and envelope "Freedom of Information Act Request." The requester should not provide social security numbers when making a request for information under the FOIA. Requesters submitting requests electronically must do so before 5:00 pm Eastern Time for the Agency to consider the request as received on that date.

(b) EPA provides access to all records that the FOIA requires an agency to make regularly available for public inspection and copying. Each office is responsible for determining which of the records it generates are required to be made publicly available and for providing access by the public to them. The Agency will also maintain and make available for public inspection and copying a current subject matter index of such records and provide a copy or a link to the respective website for Headquarters or the Regions. Each index will be updated regularly, at least quarterly, with respect to newly-included records.

(c) All records created by EPA on or after November 1, 1996, which the FOIA requires an agency to make regularly available for public inspection and copying, will be made available electronically through EPA's website, located at <http://www.epa.gov>, or, upon request, through other electronic means. EPA will also include on its website the current subject matter index of all such records.

## **§ 2.102 Procedures for making requests.**

(a) *General information.* EPA will consider a request received when the Agency receives a request by one of the methods identified in § 2.101(a).

(b) EPA employees may attempt in good faith to comply with oral requests for inspection or disclosure of EPA records publicly available under § 2.201(a) and (b), but such requests are not subject to the FOIA or this Part.

(c) *Description of records sought.* A request should reasonably describe the records the requester seeks in a way that will permit EPA employees to identify and locate them. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter. If known, the requester should include any file designations or descriptions for the records that the requester wants. The more specific the requester is about the records or type of records that the requester wants, the more likely EPA will be able to identify and locate records responsive to the request. If EPA determines that the request does not reasonably describe the records, EPA will tell the requester either what additional information the requester needs to provide or why the request is otherwise insufficient. EPA will also give the requester an opportunity to discuss and modify the request to meet the requirements of this Section.

(d) *Agreement to pay fees.* If the requester makes a FOIA request, EPA will consider the request to be an agreement that the requester will pay all applicable fees charged under § 2.107, up to \$25.00, unless the requester seeks a waiver of fees. The EPA office responsible for responding to the request ordinarily will confirm this agreement in writing. When making a request, the requester may specify a willingness to pay a greater or lesser amount.

### **§ 2.103 Responsibility for responding to requests.**

(a) *In general.* Upon receipt of a FOIA request under § 2.101(a) of this Subpart, the National FOIA Office will assign the request to an appropriate office within the Agency for processing. To determine which records are within the scope of a request, an office will

ordinarily include only those records in the Agency's possession as of the date the request was received by one of the methods described in § 2.101(a). The Agency will inform the requester if any other date is used.

(b) *Authority to issue final determinations.* The Administrator, Deputy Administrators, Assistant Administrators, Deputy Assistant Administrators, Regional Administrators, Deputy Regional Administrators, General Counsel, Deputy General Counsels, Regional Counsels, Deputy Regional Counsels, and Inspector General or those individuals' delegates, are authorized to make determinations required by 5 U.S.C. 552(a)(6)(A), including to issue final determinations whether to release or withhold a record or a portion of a record on the basis of responsiveness or under one or more exemptions under the FOIA, and to issue "no records" responses.

(c) *Authority to grant or deny fee waivers or requests for expedited processing.* EPA's Chief FOIA Officer or EPA's Chief FOIA Officer's delegates are authorized to grant or deny requests for fee waivers or requests for expedited processing.

(d) *Consultations and referrals.* When a request to EPA seeks records in its possession that originated with another Federal agency, the EPA office assigned to process the request shall either:

(1) In coordination with the National FOIA Office, consult with the Federal agency where the record or portion thereof originated and then respond to the request, or

(2) With the concurrence of the National FOIA Office, refer the request to the Federal agency where the record or portion thereof originated. The National FOIA Office will notify the requester whenever all or any part of the responsibility for responding to a request has been referred to another agency.

(e) *Law enforcement information.* Whenever a requester makes a request for a record containing information that relates to an investigation of a possible violation of law and the investigation originated with another agency, the assigned office, with the concurrence of the National FOIA Office, will refer the request to that other agency or consult with that other agency prior to making any release determination.

#### **§ 2.104 Responses to requests and appeals.**

(a) *Timing of response.* The EPA office assigned to process the FOIA request will initiate the search, collection, and review process, and respond to a request within 20 working days from the date the request was received by one of the methods identified in § 2.101(a), unless unusual or exceptional circumstances exist as provided in paragraph (e) of this section. If EPA fails to respond to the request within the statutory time-period, or any authorized extension of time, the requester may seek judicial review to obtain the records without first making an administrative appeal.

(b) On receipt of a request, the National FOIA Office ordinarily will send a written acknowledgment advising the requester of the date the Agency received the request and of the processing number assigned to the request for future reference.

(c) *Multitrack processing.* The Agency uses three or more processing tracks by distinguishing between simple and complex requests based on the amount of work, time needed to process the request, or both, including limits based on the number of pages involved. The Agency will advise the requester of the processing track in which the Agency placed the request and the limits of the different processing tracks. The Agency may place the request in a slower track while providing the requester with the opportunity to limit the scope of the request to

qualify for faster processing within the specified limits of a faster track. If the Agency places the request in a slower track, the Agency will contact the requester.

(d) *Tolling the request.* Once the request is received, the Agency shall not toll the processing time-period except:

(1) The Agency may toll the processing time-period one time while seeking clarification from the requester; or

(2) The Agency may toll the processing time-period as many times as necessary to resolve fee issues.

(e) *Unusual circumstances.* When the Agency cannot meet statutory time limits for processing a request because of “unusual circumstances,” as defined in the FOIA, and the time limits are extended on that basis, the Agency will notify the requester in writing, as soon as practicable, of the unusual circumstances and of the date by which processing of the request should be completed. If the 20 working-day period is extended, EPA will give the requester an opportunity to limit the scope of the request, modify the request, or agree to an alternative time-period for processing, as described by the FOIA. EPA will also provide contact information for its FOIA Public Liaison to assist in the resolution of any disputes between the requester and the Agency, and the Agency will notify the requester of their right to seek dispute resolution services from the Office of Government Information Services within the National Archives and Records Administration.

(f) *Expedited processing.* (1) EPA will take requests or appeals out of order and give expedited treatment whenever EPA determines that such requests or appeals involve a compelling need, as follows:

(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; or

(ii) An urgency to inform the public about an actual or alleged Federal government activity, if the information is requested by a person primarily engaged in disseminating information to the public.

(2) Requesters must make a request for expedited processing at the time of the initial request for records or at the time of appeal.

(3) If the requester seeks expedited processing, the requester must submit a statement, certified to be true and correct to the best of the requester's knowledge and belief, explaining in detail the basis for the request. For example, if the requester fits within the category described in paragraph (f)(1)(ii) of this section and is not a full-time member of the news media, the requester must establish that they are a person whose primary professional activity or occupation is information dissemination, although it need not be the requester's sole occupation. If the requester fits within the category described in paragraph (f)(1)(ii) of this section, the requester must also establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally.

(4) Within 10 calendar days from the date of the request for expedited processing, the Chief FOIA Officer, or the Chief FOIA Officer's delegates, will decide whether to grant the request and will notify the requester of the decision. If the Agency grants the request for expedited processing, the Agency will give the request priority and will process the request as soon as practicable. If the Agency denies the request for expedited processing, the Agency will act on any appeal of that decision expeditiously.

(g) *Grants of requests.* Once the Agency determines to grant a request in whole or in part, it will release the records or parts of records to the requester and notify the requester of any applicable fee charged under § 2.107. The office will annotate records released in part, whenever technically feasible, with the applicable FOIA exemption or exemptions at that part of the record from which the exempt information was deleted.

(h) *Adverse determinations of requests.* When the Agency makes an adverse determination, the Agency will notify the requester of that determination in writing. Adverse determinations include:

- (1) A decision that the requested record is exempt from disclosure, in whole or in part;
- (2) A decision that the information requested is not a record subject to the FOIA;
- (3) A decision that the requested record does not exist or cannot be located;
- (4) A decision that the requested record is not readily reproducible in the form or format sought by the requester;
- (5) A determination on any disputed fee matter, including a denial of a request for a fee waiver; or
- (6) A denial of a request for expedited processing.

(i) *Content of final determination letter.* The appropriate official will issue the final determination letter in accordance with § 2.103(b) of this subpart and will include:

- (1) The name and title or position of the person responsible for the determination;
- (2) A brief statement of the reason or reasons for the denial, including an identification of records being withheld (either individually or, if a large number of similar records are being denied, described by category) and any FOIA exemption applied by the office 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 annotated deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption;

(4) A statement that an adverse determination may be appealed under (j) of this section and description of the requirements for submitting an administrative appeal; and

(5) A statement that the requester has the right to seek dispute resolution services from an EPA FOIA Public Liaison or the Office of Government Information Service.

(j) *Appeals of adverse determinations.* If the requester is dissatisfied with any adverse determination of their request, the requester may appeal that determination by letter to the National FOIA Office, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW (2310A), Washington, DC 20460 or [hq.foia@epa.gov](mailto:hq.foia@epa.gov). The requester must make their appeal in writing, and the Agency must receive the requester's appeal no later than 90 calendar days from the date of the letter that denied the request. The Agency will not consider appeals received after the 90-calendar day limit. Requesters submitting appeals electronically must do so before 5:00 p.m. Eastern Time for the Agency to consider the appeal as received on that date. The appeal letter may include as much or as little related information as the requester wishes, as long as it clearly identifies the determination being appealed (including the assigned FOIA request number, if known). For quickest handling, the requester must mark their appeal letter and its envelope with "Freedom of Information Act Appeal." Unless the Administrator directs otherwise, the General Counsel or the General Counsel's delegate will act on behalf of the Administrator on all appeals under this Section, except that:

(1) The Counsel to the Inspector General will act on any appeal where the Inspector General or the Inspector General's delegate has made the final adverse determination; however, if the Counsel to the Inspector General has signed the final adverse determination, the General Counsel or the General Counsel's delegate will act on the appeal;

(2) An adverse determination by the Administrator on an initial request will serve as the final action of the Agency; and

(3) If a requester seeks judicial review because the Agency has not responded in a timely manner, any further action on an appeal will take place through the lawsuit.

(k) EPA will make the decision on the appeal in writing, normally within 20 working days of its receipt by the National FOIA Office. A decision affirming an adverse determination in whole or in part will contain a statement of the reason or reasons for the decision, including any FOIA exemption or exemptions applied, and inform the requester of the FOIA provisions for judicial review of the decision. If the Agency reverses or modifies the adverse determination on appeal, the Agency will notify the requester in a written decision. In the written decision, the Agency will attach the requested information that the Agency determined on appeal to be releasable, or the Agency will return the request to the appropriate office so that the office may reprocess the request in accordance with the appeal decision.

(l) If the requester wishes to seek judicial review of any adverse determination, the requester must first appeal that adverse determination under this Section, except when EPA has not responded to the request within the applicable time-period. In such cases, the requester may seek judicial review without making an administrative appeal.

## **§ 2.105 [Reserved]**

## **§ 2.106 Preservation of records.**

The Agency shall preserve all correspondence pertaining to the FOIA requests that it receives until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Copies of all responsive records should be maintained by the appropriate program office. Records shall not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

**§ 2.107 Fees.**

(a) *In general.* The Agency will charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (l) of this section. Requesters will pay fees by check or money order made payable to the U.S.

Environmental Protection Agency.

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

(1) Commercial use request means a request from or on behalf of a person who seeks information for a use or purpose that furthers the requester's commercial, trade, or profit interests, which can include furthering those interests through litigation. The Agency 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 the Agency has reasonable cause to doubt a requester's stated use, the Agency will provide the requester a reasonable opportunity to submit further clarification.

(2) Direct costs means those expenses that the Agency 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 employee performing the work

and the cost of operating duplication equipment. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) Duplication means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape, disk, or compact disk), among others. The Agency will honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.

(4) Educational institution means a preschool, a 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, that operates a program of scholarly research. To be in this category, a 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 scholarly research.

(5) Noncommercial scientific institution means an institution not operated on a "commercial" basis, as defined in paragraph (b)(1) of this section, and that is operated solely for conducting scientific research that is not intended to promote any particular product or industry. To be in this category, a requester must show that a qualifying institution authorizes the request, that the requester makes the request under the auspices of the qualifying institution, and that the requester does not seek the records for a commercial use but to further scientific research.

(6) Representative of the news media has the meaning provided at 5 U.S.C. 552(a)(4)(A)(ii).

(7) Review means the examination of a record located in response to a request to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure (for example, doing all that is necessary to redact it and prepare it for disclosure). Review costs are recoverable even if a record ultimately is not disclosed. Review time includes time spent considering any formal objection to disclosure made by a business submitter requesting confidential treatment but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) Search means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Offices will ensure that searches are done in the most efficient and least expensive manner reasonably possible. For example, offices will not search line-by-line where duplicating an entire document would be quicker and less expensive.

(c) *Fees to be charged.* (1) There are four categories of requests. The Agency charges fees for each of these categories as follows:

(i) *Commercial use requests.* The Agency will charge a requester seeking access to records for a commercial use for the time spent searching for the records, reviewing the records for possible disclosure, and for the cost of each page of duplication. The Agency may charge for searching for and/or reviewing the records even if no responsive records are found or if the records are located but are determined to be exempt from disclosure.

(ii) *Educational or non-commercial scientific requests.* The Agency will charge requesters from educational or noncommercial scientific institution, whose purpose is scholarly or scientific research, only for the cost of record duplication, except that the Agency will furnish the first 100 pages of duplication at no charge.

(iii) *News media requests.* The Agency will charge requesters who are representatives of the news media, and whose purpose in seeking records is noncommercial, for the cost of duplication, except that the first 100 pages of duplication will be furnished at no charge.

(iv) *All other requests.* The Agency will charge requesters not covered by one of the three categories above for the full cost of search and duplication, except that the Agency will furnish without charge the first two hours of search time and the first 100 pages of duplication. The Agency will charge for searching for the records even if no responsive records are found or if the records are located but are determined to be exempt from disclosure.

(2) In responding to FOIA requests, the Agency will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (l) of this section:

(i) *Search.* (A) The Agency will charge search fees for all requests except for those made by educational institutions or noncommercial scientific institutions, or representatives of the news media subject to the limitations of paragraph (d) of this section. The Agency will charge for time spent searching even if no responsive records are found or if the records are located but are determined to be exempt from disclosure.

(B) For searches and retrievals of requested records, either manually or electronically, conducted by clerical personnel, the fee will be \$4.00 for each quarter hour of time. For searches and retrievals of requested records, either manually or electronically, requiring the use of professional personnel, the fee will be \$7.00 for each quarter hour of time. For searches and

retrievals of requested records, either manually or electronically, requiring the use of managerial personnel, the fee will be \$10.25 for each quarter hour of time.

(C) When contractors conduct searches and retrievals, the Agency will charge requesters for the actual charges up to but not exceeding the rate that the Agency would have charged the requester had EPA employees conducted the search. The Agency will charge the costs of actual computer resource usage in connection with such searches, to the extent they can be determined.

(ii) *Duplication.* The Agency will charge duplication fees to all requesters, subject to the limitations of paragraph (d) of this section. For either a photocopy or a computer-generated printout of a record (no more than one copy of which need be supplied), the fee will be fifteen (15) cents per page. For electronic forms of duplication, other than a computer-generated printout, offices will charge the direct costs of that duplication. Such direct costs will include the costs of the requested electronic medium on which the copy is to be made and the actual operator time and computer resource usage required to produce the copy, to the extent they can be determined.

(iii) *Review.* The Agency will charge review fees to requesters who make a commercial use request. The Agency will charge review fees only for the initial record review (that is, the review done when an office is deciding whether an exemption applies to a particular record or portion of a record at the initial request level). The Agency will not charge for review at the administrative appeal level for an exemption already applied. However, the Agency may again review records or portions of records withheld under an exemption that the Agency subsequently determines not to apply to determine whether any other exemption not previously considered applies; the Agency will charge costs of that review when a change of circumstances makes it

necessary. The Agency will charge review fees at the same rates as those charged for a search under paragraph (c)(1)(i) of this section.

(d) *Limitations on charging fees.* (1) The Agency will charge no search or review fees for requests by educational institutions or noncommercial scientific institutions, or representatives of the news media.

(2) The Agency will charge no search fee or review fee for a quarter-hour period unless more than half of that period is required for search or review.

(3) Except for requesters seeking records for a commercial use, offices will provide without charge:

(i) The first 100 pages of duplication, and

(ii) The first two hours of search.

(4) The Agency will charge no fee when a total fee calculated under paragraph (c) of this section is \$14.00 or less for any request.

(5) The provisions of paragraphs (d)(3) and (4) of this section work together. This means that for requesters other than those seeking records for a commercial use, the Agency will charge no fee unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than \$14.00.

(6) If EPA fails to comply with the FOIA's time limits for responding to a request, EPA will not charge search fees, or, in the instance of requesters described in paragraphs (b)(4) through (6) of this section, duplication fees, except as follows:

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

(ii) If EPA determined that unusual circumstances as defined by the FOIA apply and more than 5,000 pages are necessary to respond to the request, EPA may charge search fees, or, in the case of requesters described in paragraph paragraphs (b)(4) through (6) of this section, may charge duplication fees, if the following steps are taken: EPA must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and the EPA must have discussed with the requester by written mail, e-mail, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii), which includes notification to the requester of the availability of the FOIA Public Liaison and the right to seek dispute resolution services from the Office of Government Information Services. If this exception is satisfied, EPA may charge all applicable fees incurred in the processing of the request; or

(iii) If a court determines that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(e) *Notice of anticipated fees in excess of \$25.00.* When the Agency determines or estimates that the fees the Agency will charge under this Section will amount to more than \$25.00, the Agency will notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. The amount of \$25.00 is cumulative for multi-office requests. If the Agency can only readily estimate a portion of the fee, the Agency will advise the requester that the estimated fee may be only a portion of the total fee. When the Agency notifies a requester that actual or estimated fees will amount to more than \$25.00, the Agency will do no further work on the request until the requester agrees to pay the anticipated total fee. The Agency will exclude time from the twenty (20) working day

time limit. EPA will memorialize any such agreement in writing. A notice under this paragraph will offer the requester an opportunity to discuss the matter with Agency personnel to reformulate the request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Apart from the other provisions of this section, when the Agency chooses as a matter of administrative discretion to provide a special service—such as certifying that records are true copies or sending records by other than ordinary mail—the Agency will ordinarily charge the direct costs of providing the service.

(g) *Charging interest.* EPA may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. The Agency will assess interest charges at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until the Agency receives payment. EPA will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset. The Agency will assess no penalty against FOIA requesters for exercising their statutory right to ask the Agency to waive or reduce a fee or to dispute a billing. If a fee is in dispute, the Agency will suspend penalties upon notification.

(h) *Delinquent requesters.* If requesters fail to pay all fees within 60 calendar days of the fees assessment, the Agency will place the requester on a delinquency list. The Agency will not process subsequent FOIA requests until the requester makes payment of the overdue fees.

(i) *Aggregating requests.* When the Agency 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 Agency may aggregate those requests and charge accordingly. The Agency may presume that multiple requests of this type made within a 30-day period have been made to avoid fees. When requests are separated by a longer period, the Agency will

aggregate them only if there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. The Agency will not aggregate multiple requests involving unrelated matters.

(j) *Advance payments.* (1) For requests other than those described in paragraphs (j)(2) and (3) of this section, the Agency will not require the requester to make an advance payment (that is, a payment made before EPA begins or continues work on a request). Payment owed for work already completed (that is, a prepayment before the Agency sends copies to a requester) is not an advance payment.

(2) When the Agency determines or estimates that a total fee to be charged under this section will be more than \$250.00, it may require the requester to make an advance payment of an amount up to the amount of the entire anticipated fee before beginning to process the request, except when it receives a satisfactory assurance of full payment from a requester that has a history of prompt payment.

(3) When a requester has previously failed to pay a properly charged FOIA fee to the Agency within 30 calendar days of the date of billing, the Agency may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the Agency begins to process a new request or continues to process a pending request from that requester.

(4) When the Agency requires advance payment or payment due under paragraph (j)(3) of this section, the Agency will not consider the request, and EPA will do no further work on the request until the requester makes the required payment.

(k) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any other statute that specifically requires an agency to set and

collect fees for particular types of records. When records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, EPA will inform requesters of the steps for obtaining records from those sources so that they may do so most economically.

(l) *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 paragraph (c) of this section when the Agency determines, based on all available information, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) To determine whether the request meets the first fee waiver requirement, the Agency 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.

(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 when nothing new would be added to the public's understanding.

(iii) The contribution to an understanding of the subject by the public is likely to result from the 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. The Agency will consider a requester's expertise in the subject area and ability and intention to effectively convey information to the public. The Agency presumes 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 public understanding of government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. The Agency will not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is “important” enough to be made public.

(3) To determine whether the request meets the second fee waiver requirement, the Agency 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 Agency will consider any commercial interest of the requester (with reference to the definition of “commercial use request” in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. The Agency will give the requester 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 Agency ordinarily will presume that when a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. The Agency will not presume that disclosure to data brokers or others who merely compile and market government information for direct economic return is to primarily serve the public interest.

(4) When only some of the requested records satisfy the requirements for a waiver of fees, the Agency will grant a waiver for only those records.

(5) Requests for the waiver or reduction of fees must address the factors listed in paragraphs (k)(l) through (3) of this section, as far as they apply to each request. Offices will exercise their discretion to consider the cost-effectiveness of their investment of administrative resources in deciding whether to grant waivers or reductions of fees and will consult the appropriate EPA offices as needed. Requesters must submit requests for the waiver or reduction of fees along with the request.

(6) When the EPA denies a fee waiver request, EPA will do no further work on the request until it receives an assurance of payment from the requester, or until the requester appeals the fee waiver adverse determination and the EPA completes its final appeal determination pursuant to § 2.104(j).

## **§ 2.108 Other rights and services.**

Nothing in this Subpart shall be construed to entitle any person, as a right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

[FR Doc. 2019-13290 Filed: 6/25/2019 8:45 am; Publication Date: 6/26/2019]