



Council on Environmental Quality

40 CFR Parts 1515 and 1516

[CEQ-2024-0001]

RIN 0331-AA02

Freedom of Information Act and Privacy Act Regulations

AGENCY: Council on Environmental Quality.

ACTION: Final rule.

SUMMARY: The Council on Environmental Quality (CEQ) is finalizing its Freedom of Information Act (FOIA) regulations to incorporate amendments to the FOIA set forth in the FOIA Improvement Act of 2016; to conform to guidance for Federal agencies from the Department of Justice; to make them easier for the public to understand and use; and to better reflect CEQ's current policy and practice. These final regulations reaffirm CEQ's commitment to providing the fullest possible disclosure of records to the public. In addition, CEQ is amending its regulations implementing the Privacy Act of 1974 (the Privacy Act) to make them easier for the public to understand and use and to better reflect CEQ's current policy and practice. These final regulations also make administrative changes, including reorganizing, renumbering, and renaming the sections of CEQ's current FOIA and Privacy Act regulations. CEQ considered all of the public comments received on its proposed rule and made changes in response in this final rule.

DATES: The effective date is [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: CEQ established a docket for this action on www.regulations.gov, under docket number CEQ-2024-0001. The docket contains all of the public comments that CEQ received on this action.

FOR FURTHER INFORMATION CONTACT: Samuel Roth, Associate General Counsel, 202-395-5750, Samuel.E.Roth@ceq.eop.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. The FOIA

The FOIA, 5 U.S.C. 552, provides a right of access to certain records that Federal agencies maintain and control. The FOIA directs each Federal agency to publish regulations that describe how the agency will process FOIA requests it receives from members of the public.

CEQ first adopted its FOIA regulations in 1977.¹ In 2010, CEQ amended its regulations to reflect legislative amendments to the FOIA, a 2009 Presidential Memorandum regarding FOIA policy, and additional guidance from the Department of Justice (DOJ) and the Office of Management and Budget (OMB).² CEQ's current FOIA regulations are codified at 40 CFR part 1515.

CEQ is revising and republishing its FOIA regulations in their entirety in order to make several improvements to the current rules. First, CEQ is making updates to reflect a number of important changes to the FOIA made by the FOIA Improvement Act of 2016 (Pub. L. 114-185). Section 3(a) of the Act directs each agency to review its FOIA regulations and update them to implement the changes set forth in the Act. Second, CEQ is including a number of provisions to improve the usefulness and readability of its FOIA regulations consistent with DOJ's 2017 revised Template for Agency Regulations (the Template).³ CEQ modeled this final rule on the Template, which also incorporates the FOIA Improvement Act of 2016's amendments to the FOIA.

¹ CEQ, Freedom of Information Act Procedures; Final Rule, 42 FR 65158 (Dec. 30, 1977).

² CEQ, Revision of Freedom of Information Act Regulations, 75 FR 48585 (Sept. 10, 2010).

³ Template for Agency FOIA Regulations (February 22, 2017), <https://www.justice.gov/oip/template-agency-foia-regulations>.

Third, CEQ is making updates to better convey the FOIA's and the CEQ regulation's requirements to members of the public who are interested in CEQ's operations and activities, so they can easily understand and use CEQ's FOIA process.⁴ Specifically, CEQ referred to the Plain Writing Act of 2010 and the Federal Plain Language Guidelines⁵ in preparing the final rule.

Finally, the final rule reflects updates to CEQ's FOIA policies and procedures, as well as the practical experience of CEQ's FOIA staff. As it does under its current regulations, CEQ will administer the FOIA under the final regulations with a presumption of openness, consistent with the Memorandum of the Attorney General dated March 15, 2022.⁶

B. The Privacy Act

The Privacy Act, 5 U.S.C. 552a, governs each Federal agency's collection, maintenance, use, and dissemination of any information about individuals that it maintains in a system of records. The Privacy Act directs each Federal agency to publish regulations that describe the agency's procedures for carrying out the provisions of the Privacy Act. CEQ first adopted its Privacy Act regulations in 1977,⁷ codified at 40 CFR part 1516.

CEQ is revising and republishing its Privacy Act regulation in its entirety to make it easier for the public to understand and use and to reflect updates to CEQ's Privacy Act procedures over the past five decades.

II. Discussion of Comments on the Notice of Proposed Rulemaking

⁴ See, e.g., E.O. 13563, *Improving Regulation and Regulatory Review*, 76 FR 3821 (Jan. 21, 2011) (stating that "regulations [must be] accessible, consistent, written in plain language, and easy to understand").

⁵ Federal Plain Language Guidelines (1st rev. May 2011), <https://www.plainlanguage.gov/media/FederalPLGuidelines.pdf>.

⁶ Department of Justice, *Freedom of Information Act Guidelines* (March 15, 2022), <https://www.justice.gov/media/1212566/dl>.

⁷ CEQ, *Procedures for Gaining Access to Information Under the Privacy Act of 1974; Final Regulations*, 42 FR 32537 (June 27, 1977); see also *Procedures for Gaining Access to Information Under the Privacy Act of 1974, Correction to Final Regulations*, 42 FR 35960 (July 13, 1977) (technical amendment).

On December 11, 2024, CEQ published a notice of proposed rulemaking for public comment.⁸ The public comment period concluded on January 10, 2025. Two commenters provided input on the proposal during the public comment period. As noted above, their comments are available on *www.regulations.gov* under docket number CEQ-2024-0001.

Comment 1: One commenter recommended that CEQ explicitly incorporate the “presumption of openness” in its FOIA regulations. The presumption of openness, which Congress codified in the FOIA through the FOIA Improvement Act of 2016, directs agencies to withhold information in response to a FOIA request “only if . . . the agency reasonably foresees that disclosure would harm an interest protected by an exemption [under the FOIA],” or disclosure is prohibited by law. 5 U.S.C. 552(a)(8)(A). As the Memorandum of the Attorney General dated March 15, 2022, explains, the presumption means that “[i]nformation that might technically fall within an exemption should not be withheld from a FOIA requester unless the agency can identify a foreseeable harm or legal bar to disclosure.”⁹

As CEQ noted in the preamble to the proposed rule, CEQ currently administers its FOIA program consistent with the presumption of openness and will continue to do so under its revised regulations. CEQ has revised the language of § 1515.16(b) to clarify that it applies the presumption of openness in its FOIA program.

Comment 2: One commenter recommended that CEQ revise § 1515.4 to clarify that, when a FOIA requester submits an appeal, a CEQ official other than the one who was responsible for processing the original request will process the appeal. The commenter observed that the Department of Justice’s Office of Information Policy, which

⁸ CEQ, Freedom of Information Act and Privacy Act Regulations, 89 FR 99799 (Dec. 11, 2024).

⁹ Department of Justice, *Freedom of Information Act Guidelines* (Mar. 15, 2022), <https://www.justice.gov/media/1212566/dl>.

provides guidance to agencies on FOIA administration, recommends this practice.¹⁰

Consistent with this recommendation, the commenter recommended that CEQ delete the last sentence of § 1515.4(b) (“Otherwise, the Chief FOIA Officer or the Chief FOIA Officer’s designee is responsible for processing FOIA appeals.”).

CEQ agrees with the commenter that it is good practice to assign the processing of a FOIA appeal to a different official than the one who was responsible for processing the original FOIA request. CEQ routinely follows this practice in its administration of the FOIA. CEQ is a small agency, however, whose size varies widely from one Presidential Administration to the next. From time to time, it may not be reasonably possible to assign a FOIA appeal to a different official than the one who reviewed the original request, if CEQ lacks sufficient personnel with FOIA expertise. Accordingly, CEQ has inserted a sentence in § 1515.22(b) to explain that, whenever reasonably practicable, CEQ will assign the processing of a FOIA appeal to a different official than the one who was responsible for processing the original request.

Comment 3: One commenter recommended that CEQ modify § 1515.11 and proposed § 1515.20 to change the requirement to include the phrase “Freedom of Information Act Request” in the subject line of a request (or “Freedom of Information Act Appeal” in the subject line of an appeal, as the case may be) into a recommendation.

CEQ agrees with the commenter that the FOIA statute does not impose this requirement. CEQ regularly receives correspondence, however, that is unclear about whether the sender is making a request for records or seeking some other kind of official action. CEQ has changed the language of §§ 1515.11 and 1515.21 to provide that FOIA requests and appeals must clearly identify themselves as such, and encourage, but do not

¹⁰ Department of Justice, OIP Guidance: Adjudicating Administrative Appeals Under the FOIA (Aug. 12, 2021), <https://www.justice.gov/oip/oip-guidance/Adjudicating%20Administrative%20Appeals%20Under%20the%20FOIA>.

require them to use the phrase “Freedom of Information Act Request” or “Freedom of Information Act Appeal.”

Comment 4: One commenter recommended that CEQ change § 1515.19(a)(4) to refer to “records,” rather than “information,” for consistency with the FOIA statute. CEQ has made this change.

III. Summary of the Final Rules

A. Part 1515—Freedom of Information Act Procedures

1. Subpart A—The Council on Environmental Quality’s FOIA Program

Section 1515.1—What is the purpose of the rules in this part? This section describes the purpose of part 1515, which is to set forth CEQ’s FOIA procedures, and explains the limitations of the regulations.

Section 1515.2—What kind of records does CEQ maintain? This section explains CEQ’s activities and legal authorities.

Section 1515.3—Are there any CEQ records that CEQ proactively discloses and for which I do not have to make a request? This section describes CEQ information the public can access without filing a FOIA request. In the final rule, CEQ uses the term “proactive disclose” in the title and provision to improve clarity.

Section 1515.4—Who is responsible for processing FOIA requests and appeals to CEQ? This section explains the roles of Chief FOIA Officer and FOIA Appeals Officer at CEQ.

Section 1515.5—Who can help me with my FOIA request to CEQ? This section explains that FOIA requesters can obtain assistance from CEQ’s FOIA Public Liaison and dispute resolution services from the National Archives and Records Administration’s Office of Government Information Services. In the final rule, CEQ clarifies in

§ 1515.5(b) that CEQ will actively engage when CEQ agrees to participate in the voluntary dispute resolution services consistent with the Template.

Section 1515.6—What are CEQ’s procedures for preserving records? This section explains CEQ’s procedures for preserving records in connection with its administration of the FOIA.

2. Subpart B—Making a FOIA Request and Receiving a Response

Section 1515.11—How do I make a FOIA request to CEQ? This section explains how members of the public may request CEQ records under the FOIA. It also describes CEQ’s procedures for clarifying requests that do not reasonably describe the records that the requester is seeking.

Section 1515.12—Will CEQ keep my request confidential? This section notes that FOIA requests and the identities of FOIA requesters are generally matters of public record. In the final rule, CEQ adds “generally” in the second sentence, for consistency with the third sentence, to account for certain circumstances where CEQ determines it appropriate to withhold a requester’s identity.

Section 1515.13—When will CEQ respond to my request? This section describes CEQ’s timeline for responding to FOIA requests, including circumstances in which CEQ will extend or pause the ordinary time period for processing FOIA requests. In the final rule, CEQ adds to the explanation of “unusual circumstances” in § 1515.13(b)(1) the need to search separate facilities consistent with 5 U.C.C. 552(a)(6)(B)(iii)(I), and adds the term “aggregate” for clarity in § 1515.13(b)(2).

Section 1515.14—What if my request is urgent? This section explains how to ask CEQ to expedite its processing of a FOIA request or appeal.

Section 1515.15—How will CEQ process my request? This section describes CEQ’s procedures for processing requests and circumstances in which CEQ will deny requests. In the final rule, in § 1515.13(b)(3), CEQ changes “will include” to “may

include” before “CEQ’s estimate of the date on which we will respond to your request.” CEQ makes this change because FOIA does not require CEQ to provide such a date, but CEQ considers it a best practice to provide an estimate when it is able to do so.

Section 1515.16—How does CEQ determine when to withhold records or portions of a record? This section describes CEQ’s procedures for applying the statutory exemptions from disclosure set forth in the FOIA.

Section 1515.17—What if I request records that involve another Government office or agency? This section describes CEQ’s procedures for consulting with other Federal agencies regarding whether to disclose or withhold particular records in response to a FOIA request, as well as CEQ’s procedures for referring records to another agency for processing.

Section 1515.18—What happens if CEQ grants my request in full or in part? This section describes CEQ’s procedure for disclosing records in response to a FOIA request.

Section 1515.19—What happens if CEQ denies my request in full or in part? This section describes CEQ’s procedure for withholding records in response to a FOIA request.

3. Subpart C—Appealing a FOIA Request

In the final rule, CEQ revised the numbering from the proposed rule to start with § 1515.21 instead of § 1515.20.

Section 1515.21—Can I appeal CEQ’s response to my request? This section describes how a FOIA requester may appeal a determination that CEQ made in processing the requester’s request.

Section 1515.22—How will CEQ process my appeal? This section describes CEQ’s procedures for upholding, reversing, or modifying a prior determination on appeal. In the final rule, CEQ adds paragraph (e), to clarify that ordinarily, it will not adjudicate an appeal if the request becomes the subject of litigation.

4. Subpart D—Fees for FOIA Requests and Appeals

Section 1515.31—Can CEQ charge fees for processing FOIA requests and appeals? This section explains that CEQ charges fees for processing FOIA requests, but not appeals, and describes the rules that CEQ will follow in determining whether to charge a fee and the amount of the fee. As in CEQ’s current FOIA regulation, the provisions of this section and the subsequent sections reflect OMB’s Uniform Freedom of Information Act Fee Schedule and Guidelines.

Section 1515.32—What is the amount of the fee for processing a request? This section describes how CEQ will determine the amount of the fee for processing a FOIA request.

Section 1515.33—Are there any exceptions for special requesters? This section describes the services that CEQ will exclude from the calculation of fees for non-commercial requesters, in general, and for representatives of non-commercial scientific institutions, educational institutions, and the news media, in particular.

Section 1515.34—Can I apply for a fee waiver? This section describes the availability of fee waivers and explains the criteria CEQ will apply in determining whether to grant a fee waiver.

Section 1515.35—When will CEQ contact me about fee-related matters? This section describes CEQ’s procedures for contacting FOIA requesters to resolve fee-related matters.

Section 1515.36—Do I have to pay fees if CEQ misses the deadline for responding to my request? This section describes the circumstances in which CEQ will not charge fees for processing a FOIA request because CEQ did not respond to the request within the time period set forth in the FOIA.

Section 1515.37—When are fees due and how do I pay them? This section describes when and how FOIA requesters must pay fees to CEQ, including the circumstances in which CEQ may require a FOIA requester to pay fees in advance.

Section 1515.38—What will CEQ do if I do not promptly pay the fee? This section explains when CEQ will charge interest and use debt collection procedures.

5. Subpart E—Confidential Commercial Information and
Preservation of Records

Section 1515.41—How does CEQ handle confidential commercial information? This section implements the requirements of Executive Order (E.O.) 12600, *Predisclosure Notification Procedures for Confidential Commercial Information*,¹¹ which directs Federal agencies to allow submitters of information to designate records that contain confidential commercial information and to notify submitters when a FOIA requester seeks disclosure of confidential commercial information.

B. Part 1516—Privacy Act Implementation

Section 1516.1— What is the purpose of this part? This section describes the purpose of part 1516, which is to set forth CEQ’s Privacy Act procedures.

Section 1516.2—What records does this part cover? This section explains when part 1516 applies and explains the meaning of “record” and “system of records” for purposes of part 1516.

Section 1516.3—When will CEQ disclose records about me? This section describes the conditions under which CEQ will disclose records, which are (1) in response to an individual’s request for the individual’s own records; (2) as part of a routine use of records; or (3) pursuant to one of the other bases for disclosure that appear in section 3 of the Privacy Act, 5 U.S.C. 552a(b).

¹¹ 52 FR 23781 (June 25, 1987).

Section 1516.4—How can I obtain access to CEQ's records about me? This section describes the procedures for an individual to request access to the individual's own records.

Section 1516.5—How can I obtain information about how CEQ has used its records about me? This section describes the procedures for an individual to request an accounting of disclosures of the individual's own records.

Section 1516.6—How can I ask CEQ to correct my records? This section describes the procedures for an individual to request an amendment of the individual's own records and explains how CEQ will review such a request.

Section 1516.7—How can I appeal CEQ's decision to deny my request to access or correct records about me? This section describes the procedures for an individual to appeal CEQ's denial of the individual's request to amend the individual's own records.

Section 1516.8—Will CEQ charge me a fee for a copy of my records? This section describes the fees CEQ will charge for copies of records.

IV. Regulatory Analysis and Notices

A. Regulatory Flexibility Act and Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking

The Regulatory Flexibility Act (RFA), as amended, 5 U.S.C. 601 *et seq.*, and E.O. 13272, *Proper Consideration of Small Entities in Agency Rulemaking*,¹² require agencies to assess the impacts of proposed and final rules on small entities. Under the RFA, small entities include small businesses, small organizations, and small governmental jurisdictions. An agency must prepare an Initial Regulatory Flexibility Analysis (IRFA) unless it determines and certifies that the rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The FOIA authorizes Federal agencies to charge fees only to certain requesters, and only

¹² 67 FR 53461 (Aug. 16, 2002).

in order to recover the direct costs of searching for, reviewing, and duplicating agency records. Under the final rule, CEQ will continue to charge fees in accordance with the FOIA and guidelines from DOJ and OMB. The Privacy Act authorizes Federal agencies to charge fees only to individuals, and accordingly CEQ will not charge fees under the Privacy Act to small entities within the meaning of the RFA.

The fees that CEQ assesses for processing FOIA requests are nominal and will not have a significant impact on a substantial number of small entities within the meaning of the RFA. Accordingly, CEQ hereby certifies that the rule will not have a significant economic impact on a substantial number of small entities.

B. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 2 U.S.C. 1531), requires Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments, and the private sector to the extent that such regulations incorporate requirements specifically set forth in law. Before promulgating a rule that may result in the expenditure by a State, Tribal, or local government, in the aggregate, or by the private sector of \$100 million, adjusted annually for inflation, in any 1 year, an agency must prepare a written statement that assesses the effects on State, Tribal, and local governments and the private sector. 2 U.S.C. 1532. This final rule will apply only to requesters under the FOIA or the Privacy Act and will not result in expenditures of \$100 million or more for State, Tribal, and local governments, in the aggregate, or the private sector in any 1 year. This final action also will not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of 2 U.S.C. 1531–1538.

C. Executive Order 12866, Regulatory Planning and Review

E.O. 12866, as supplemented and affirmed by E.O. 13563 and amended by E.O. 14094, provides that the Office of Information and Regulatory Affairs will review any

regulatory action that qualifies as a “significant regulatory action” within the meaning of the E.O.¹³ The final rule does not qualify as a significant regulatory action.

D. Executive Order 12988, Civil Justice Reform

Under section 3(a) of E.O. 12988,¹⁴ agencies must review their proposed regulations to eliminate drafting errors and ambiguities, draft them to minimize litigation, and provide a clear legal standard for affected conduct. Section 3(b) provides a list of specific matters that agencies must consider when conducting the review required by section 3(a). CEQ has conducted this review and determined that this final rule complies with the requirements of E.O. 12988.

E. Paperwork Reduction Act

This final rule will not impose any new information collection burden that will require additional review or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

F. National Environmental Policy Act (NEPA)

The National Environmental Policy Act of 1969 (NEPA) (Pub. L. 118-5, 42 U.S.C. 4321 *et seq.*), as amended, and the CEQ regulations that implement NEPA, 40 CFR parts 1500 through 1508, require consideration of the environmental effects of proposed actions in agency decision making. NEPA provides for three levels of review. First, agencies may establish in their agency-specific NEPA procedures categorical exclusions (CEs) for categories of actions that normally do not have a significant effect on the human environment, individually or in the aggregate, and apply CEs to individual actions, as appropriate.¹⁵ If an agency proposes to take an action that does not fall within a CE but is not likely to have significant environmental effects (or the significance of

¹³ See E.O. 12866, *Regulatory Planning and Review*, 58 FR 51735, 51737 (Oct. 4, 1993); E.O. 14094, *Modernizing Regulatory Review*, 88 FR 21879, 21879-80 (Apr. 11, 2023); E.O. 13563, *Improving Regulation and Regulatory Review*, 76 FR 3821, 3822 (Jan. 21, 2011).

¹⁴ 61 FR 4729 (Feb. 7, 1996).

¹⁵ 40 CFR 1501.4(a).

whose effects is unknown), CEQ's NEPA regulations direct the agency to prepare an environmental assessment (EA).¹⁶ If, as a result of this assessment, the agency determines that the proposed action will not have significant effects, the agency may make a finding of no significant impact (FONSI), in which case the agency may proceed with the action.¹⁷ Otherwise, the agency must prepare an environmental impact statement (EIS).¹⁸

CEQ has not established a CE for the dissemination of information under the FOIA; the disclosure of records under the Privacy Act; or the preparation, revision, and adoption of regulations generally. Accordingly, CEQ prepared an EA to determine whether the revisions to CEQ's FOIA and Privacy Act regulations would have a significant effect on the human environment. Because, as set forth below, the final regulations will likely result in a small reduction in the use of resources in CEQ's administration of the FOIA and the Privacy Act, CEQ finds that the final rule will have no significant impact on the human environment and that it is therefore unnecessary to prepare an EIS.

1. Environmental Assessment

Purpose and Need: As set forth in the proposed rule and the above Summary of the Final Rule, CEQ adopted its FOIA regulations in 1977 and has not updated them to reflect developments in FOIA law, policy, and practice since 2010. As such, the current regulations fail to reflect current FOIA requirements, including those set forth in the FOIA Improvement Act of 2016. Furthermore, CEQ's current FOIA regulations do not conform in all points to the Template and the directions in the Plain Writing Act of 2010, and do not fully reflect CEQ's current policy and practice with respect to the FOIA. Likewise, CEQ adopted its Privacy Act regulations in 1977, and has not updated them since that time to reflect updates to CEQ's Privacy Act procedures.

¹⁶ *Id.* § 1501.5(a).

¹⁷ *Id.* § 1501.6.

¹⁸ 40 CFR part 1502.

Proposed Action and Alternatives: A summary of the final action, which is one of two action alternatives analyzed in this EA, is set forth in the NPRM and in the above Summary of the Final Rule. Under a no action alternative, CEQ would continue to operate under its current regulations, addressing inconsistencies between the regulations and current law and agency procedure on a case-by-case basis. CEQ has decided that this approach is undesirable because it is confusing to the public and requires CEQ staff to address inconsistencies between the regulation, the law, and agency procedure that CEQ can obviate by updating the regulation.

CEQ considered another action alternative of making only narrowly tailored amendments to its current FOIA regulations in order to implement the FOIA Improvement Act of 2016. While this alternative would eliminate direct inconsistencies between CEQ's regulations and the FOIA, it would not address inconsistencies between CEQ's FOIA regulations, the Template and CEQ's FOIA policies and procedures, or inconsistencies between CEQ's Privacy Act regulations and CEQ's practice in implementing the Privacy Act.

CEQ's preferred alternative is to amend its regulations as described in the proposed rule and this final rule, for the reasons set forth in parts I through III of this preamble.

Environmental Effects of Alternatives: CEQ's FOIA and Privacy Act programs affect the environment primarily through requesters' use of paper and energy in submitting requests and CEQ's use of paper and energy in searching for, reviewing, and duplicating responsive records. CEQ's use of paper and energy for these purposes has remained within the range typical of the operations of a small office. Currently, CEQ accepts FOIA and Privacy Act requests by mail and fax, which require the use of paper and energy to print and transmit requests to CEQ. The final regulations will direct FOIA and Privacy Act requesters to submit their requests electronically if they are able to do so,

thereby reducing the use of paper and energy associated with mailed and faxed requests. CEQ receives requests by fax or mail infrequently, however, so any reduction in the use of resources is likely to be modest. In addition, by improving the public's timely access to information contained in CEQ records, the final regulations support the meaningful involvement of all communities, including communities with environmental justice concerns, in Federal decision-making processes.

List of Agencies and Persons Consulted: CEQ's NEPA staff reviewed and commented on this EA, the proposed rule, and this final rule.

2. Finding of No Significant Impact

Based on the foregoing EA, CEQ finds that implementation of the final regulations will reduce the use of paper and energy resources in CEQ's FOIA and Privacy Act programs, streamline CEQ's FOIA and Privacy Act procedures, make CEQ more accessible and responsive to the public, and improve the opportunity for all communities to access information and be meaningfully involved in Federal decision-making processes. Thus, there will be no significant environmental effects associated with implementation of the proposed action, and it is not necessary for CEQ to prepare an EIS.

CEQ further finds that the final action is not one that normally requires the preparation of an EIS, closely similar to such an action, or an action without precedent.

List of Subjects

40 CFR Part 1515

Administrative practice and procedures, Courts, Freedom of information, Government employees, Records.

40 CFR Part 1516

Administrative practice and procedures, Courts, Government employees, Privacy, Records.

Amy B. Coyle,

Principal Deputy General Counsel.

For the reasons discussed in the preamble, the Council on Environmental Quality revises and republishes 40 CFR parts 1515 and 1516 to read as follows:

PART 1515—FREEDOM OF INFORMATION ACT PROCEDURES

Subpart A—The Council on Environmental Quality’s FOIA Program

Sec.

1515.1 What is the purpose of the rules in this part?

1515.2 What kind of records does CEQ maintain?

1515.3 Are there any CEQ records that CEQ proactively discloses and for which I do not have to make a request?

1515.4 Who is responsible for processing FOIA requests and appeals to CEQ?

1515.5 Who can help me with my FOIA request to CEQ?

1515.6 What are CEQ’s procedures for preserving records?

Subpart B—Making a FOIA Request and Receiving a Response

Sec.

1515.11 How do I make a FOIA request to CEQ?

1515.12 Will CEQ keep my request confidential?

1515.13 When will CEQ respond to my request?

1515.14 What if my request is urgent?

1515.15 How will CEQ process my request?

1515.16 How does CEQ determine when to withhold records or portions of a record?

1515.17 What if I request records that involve another Government office or agency?

1515.18 What happens if CEQ grants my request in full or in part?

1515.19 What happens if CEQ denies my request in full or in part?

Subpart C—Appealing a FOIA Request

Sec.

1515.21 Can I appeal CEQ's response to my request?

1515.22 How will CEQ process my appeal?

Subpart D—Fees for FOIA Requests and Appeals

Sec.

1515.31 Can CEQ charge fees for processing FOIA requests and appeals?

1515.32 What is the amount of the fee for processing a request?

1515.33 Are there any exceptions for special requesters?

1515.34 Can I apply for a fee waiver?

1515.35 When will CEQ contact me about fee-related matters?

1515.36 Do I have to pay fees if CEQ misses the deadline for responding to my request?

1515.37 When are fees due and how do I pay them?

1515.38 What will CEQ do if I do not promptly pay the fee?

Subpart E—Confidential Commercial Information and Preservation of Records

Sec.

1515.41 How does CEQ handle confidential commercial information?

Authority: 5 U.S.C. 552; E.O. 13392, 70 FR 75373, 3 CFR, 2005 Comp., p. 216; Pres. Mem., 74 FR 4685, 3 CFR, 2009 Comp., p. 338.

Section 1515.41 also issued under E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

Subpart A—The Council on Environmental Quality's FOIA Program

§ 1515.1 What is the purpose of the rules in this part?

(a) This part explains how you, a member of the public, may request copies of records from the Council on Environmental Quality (CEQ) under the Freedom of Information Act (FOIA).

You can find the text of the FOIA at 5 U.S.C. 552.

(b) Nothing in this part entitles you to any service or to the disclosure of any record to which you are not entitled under the FOIA.

§ 1515.2 What kind of records does CEQ maintain?

CEQ carries out responsibilities under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347); the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371–4375); Reorganization Plan No. 1 of 1977 (July 15, 1977); and various Executive orders, among other authorities. CEQ maintains certain records on these subjects, among others.

§ 1515.3 Are there any CEQ records that CEQ proactively discloses and for which I do not have to make a request?

Yes. The FOIA requires CEQ to proactively disclose—that is, to make certain records available for public inspection online—records that have been or are likely to become the subject of repeated requests. You can find those records, together with an index, at <https://www.whitehouse.gov/ceq/foia/>.

§ 1515.4 Who is responsible for processing FOIA requests and appeals to CEQ?

(a) CEQ’s Chief FOIA Officer oversees the administration of requests made to CEQ under the FOIA. The Chief FOIA Officer, or the Chief FOIA Officer’s designee, is responsible for processing and granting or denying FOIA requests. The Chair of CEQ appoints the Chief FOIA Officer.

(b) The Chief FOIA Officer may appoint a FOIA Appeals Officer. If the Chief FOIA Officer does so, the FOIA Appeals Officer or the FOIA Appeals Officer’s designee is responsible for processing and granting or denying FOIA appeals. Otherwise, the Chief FOIA Officer or the Chief FOIA Officer’s designee is responsible for processing FOIA appeals.

§ 1515.5 Who can help me with my FOIA request to CEQ?

(a) You may contact CEQ’s FOIA Public Liaison for assistance with your FOIA request, including help in formulating your request and information about the status of your request, or to submit concerns about CEQ’s handling of your request. You can contact CEQ’s FOIA Public Liaison by email at efoia@ceq.eop.gov or by phone at 202-395-5750. For additional contact

information, visit <https://www.foia.gov> and choose “Council on Environmental Quality” in the index of Government agencies.

(b) If you have a dispute with CEQ over its handling of your FOIA request, you may contact the National Archives and Records Administration’s Office of Government Information Services for assistance or dispute resolution services by calling (202) 741-5770 or visiting <https://archives.gov/ogis>. If CEQ agrees to participate in the voluntary dispute resolution services provided by the Office of Government Information Services, CEQ will actively engage as a partner to the process in an attempt to resolve the dispute.

(c) If you are an individual with a disability, CEQ will provide you with access to and use of information and data through its FOIA program that is comparable to the access to and use of the information and data by members of the public who are not individuals with disabilities, unless doing so would impose an undue burden on CEQ.

(d) If your proficiency in English is limited, CEQ will take steps as appropriate to provide you with meaningful access to CEQ’s FOIA program.

§ 1515.6 What are CEQ’s procedures for preserving records?

(a) CEQ preserves records pursuant to title 44 of the United States Code and the Records Schedules issued by the Archivist of the United States.

(b) CEQ will not dispose of or destroy agency records that are the subject of a pending request, appeal, or lawsuit under the FOIA.

Subpart B—Making a FOIA Request and Receiving a Response

§ 1515.11 How do I make a FOIA request to CEQ?

(a) You must make your request by email to efoia@ceq.eop.gov or by completing the request form at <https://www.foia.gov>. If you are not able to make your request by either of these methods, please contact CEQ’s FOIA Public Liaison for assistance.

(b) When making a request to CEQ, you must:

(1) Clearly indicate that you are making a request for records, such as by including “Freedom of Information Act Request” in the subject line if you are submitting your request by email. If your email includes attachments, you must enter your request in the body of the email in addition to the attachment.

(2) Identify or reasonably describe the records you are requesting in sufficient detail to enable CEQ personnel to locate them with a reasonable amount of effort. Make your request as specific as you can. If possible, include the date (or a range of dates), title or name, author, recipient, subject matter, case number, file designation, or reference number for the records you seek.

(3) Explain if you need CEQ to provide the records in a particular form or format. CEQ ordinarily provides records in Portable Document Format (PDF), but CEQ will provide its response in the format you request if it is reasonably practicable to do so.

(4) Provide your contact information, such as your phone number, your email address, or both, so that CEQ is able to contact you, as necessary, regarding the status of your request and to clarify matters related to your request.

(5) Indicate the maximum amount you are willing to pay in fees, as described in subpart E of this part. If you are requesting a fee waiver as part of your initial request, include the statement described at § 1515.34(a).

(6) If applicable, include a signed letter on your institution’s official letterhead, stating that you believe you qualify for a reduction of fees, as described in § 1515.33, because you are a representative of a non-commercial scientific institution, a representative of an educational institution, or a member of the news media.

(c) If you are requesting information that is subject to the Privacy Act of 1974 (*i.e.*, records about you that CEQ maintains in a system of records), you must follow the procedures under part 1516 of this chapter, instead of the procedures in this part.

(d) If you are requesting copies of ethics-related documents that CEQ makes available pursuant to section 105 of the Ethics in Government Act of 1978 (such as CEQ employees' public financial disclosure reports), you must follow the procedures at 5 CFR 2634.603, instead of the procedures in this part. For more information, visit the U.S. Office of Government Ethics website at <https://www.oge.gov>.

(e) If CEQ determines that your request does not reasonably describe the records you are seeking, such that CEQ would not be able to locate the records you have requested with a reasonable amount of effort, CEQ will notify you and explain what additional information you need to provide regarding the records that you seek.

(1) For example, if you request all records related to a broad subject or all communications between CEQ and a third party, we will generally ask you to clarify the scope of your request.

(2) Furthermore, your request must seek existing records of CEQ; we will not create new records or compile new information in order to respond to a FOIA request.

(3) If you have not provided a way to contact you, or you do not respond to our inquiry within 30 working days (*i.e.*, excepting Saturdays, Sundays, and Federal holidays), CEQ will administratively close your request. If possible, we will notify you of the closure.

§ 1515.12 Will CEQ keep my request confidential?

No. CEQ generally will not keep your request confidential. A FOIA request, including the requester's identity, is generally a matter of public record. CEQ publishes logs of requests and requesters at <https://www.whitehouse.gov/ceq/foia/>.

§ 1515.13 When will CEQ respond to my request?

(a) CEQ's Chief FOIA Officer or the Chief FOIA Officer's designee will make an initial determination of how CEQ will respond to your request within 20 working days from the date that CEQ received your request, except as provided in this section.

(b) If CEQ is unable to make a determination within the 20-day period because of "unusual circumstances," we may extend the period of time in which we will respond to your request.

(1) “Unusual circumstances” exist when, in order to properly process your request, CEQ must search for, collect, and appropriately examine a voluminous amount of separate and distinct records, CEQ must consult with another agency or another component of the Executive Office of the President, or CEQ must search at separate facilities.

(2) In determining whether “unusual circumstances” are present, CEQ may aggregate and treat multiple requests on clearly related matters from you (or from other persons acting in concert with you) as a single request.

(3) Before the conclusion of the 20-day period, CEQ will notify you of the “unusual circumstances” that apply and the date by which we estimate we will complete processing your request.

(4) When the extension will exceed 10 working days, CEQ will provide you the opportunity to modify the request or arrange an alternative time period for processing the original or modified request.

(c) If CEQ reasonably requires additional information from you to clarify your request or to resolve fee-related matters, we may toll (*i.e.*, pause) the 20-day period, or any extension of that period, from the date we request information from you until the date you respond. We will only toll the response period one time for the purpose of clarifying your request, but we may toll the response period more than once to resolve fee-related matters.

§ 1515.14 What if my request is urgent?

(a) You may ask CEQ to expedite the processing of your FOIA request or appeal. If CEQ agrees to expedite processing of your request or appeal, we will process it with priority over non-expedited requests and appeals and respond to you as quickly as possible.

(b) CEQ will expedite requests or appeals if:

(1) Failing to expedite the request or appeal could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) You are primarily engaged in disseminating information (*e.g.*, you are a member of the news media), and you have an urgent need to inform the public about an actual or alleged Federal Government activity, beyond the public's right to know about Government activity generally.

(c) You may ask for expedited processing when you make your initial request or appeal, or at any later time.

(d) In order to ask for expedited processing, you must submit a statement, certified to be true and correct, that explains in detail why your request or appeal satisfies the requirements of paragraph (b)(1) or (2) of this section. If you believe that you have an urgent need to inform the public about an actual or alleged Federal Government activity, you should provide examples of other coverage of the same or related subjects, if possible. CEQ may waive the formal certification requirement at its discretion.

(e) CEQ will notify you within 10 calendar days whether we will grant or deny you expedited processing.

(f) If CEQ denies you expedited processing, you may appeal that determination using the procedures in subpart C of this part. We will process your appeal as promptly as we can.

§ 1515.15 How will CEQ process my request?

(a) If your request does not reasonably describe the records you seek; the information you have requested is not a record subject to FOIA; CEQ has already published the information you are requesting; or your request does not follow the procedures described in the regulations in this part, we will deny your request in accordance with § 1515.19.

(b) If your request reasonably describes the records you seek and otherwise comports with the procedures described in this part, CEQ will process your request as follows:

(1) CEQ will acknowledge your request in writing and assign it an individualized tracking number. The written acknowledgment may include CEQ's estimate of the date on which we will respond to your request.

(2) CEQ will search for agency records that respond to your request. CEQ ordinarily will search records in our possession as of the date that we begin our search. We will notify you if we use a different date.

(3) If CEQ finds records that you have requested, we will determine whether to grant your request (*i.e.*, provide you with the records you have requested) or to deny it (*i.e.*, withhold the relevant records from disclosure in accordance with § 1515.16).

(4) Once CEQ has determined whether to grant your request in full, grant it in part and deny it in part, or deny it in full, we will notify you of our determination in writing.

(c) If CEQ determines that it has a voluminous amount of records responsive to your request, or if your request requires CEQ to search for records in multiple locations (electronic or physical), CEQ may provide you with one or more interim responses, releasing responsive records to you on a rolling basis.

§ 1515.16 How does CEQ determine when to withhold records or portions of a record?

(a) If CEQ finds records that are responsive to your request, we will review the records to determine whether to withhold any of the records or portions of individual records.

(b) The FOIA identifies nine exemptions to the requirement that agencies provide agency records upon request. CEQ will only withhold a record or a portion of a record under one of these exemption to the FOIA if CEQ reasonably foresees that disclosing it would harm an interest that the exemption protects. In determining the interests at stake in disclosing or withholding CEQ records, we bear in mind that Congress, in creating CEQ, intended for the CEQ Chair to serve as a confidential advisor to the President and the President's immediate advisors on matters of environmental policy.

(c) CEQ will also withhold a record, or a portion of a record, if disclosing it would violate another provision of the FOIA or a law other than the FOIA.

(d) If the record concerns another government agency, CEQ generally will involve the other agency in determining whether to withhold the record or portions of the record, using the procedures at § 1515.17.

§ 1515.17 What if I request records that involve another Government office or agency?

(a) If CEQ determines that any of the CEQ records you have requested involve another agency in the Federal Government, including another component of the Executive Office of the President, we generally will involve the other agency in reviewing that record in either of two ways.

(1) CEQ may consult with the other agency regarding the record to obtain the other agency's views on whether the record or portions of the record are exempt from disclosure under the FOIA. We will take the other agency's views into consideration when making a final determination of whether to withhold the record or any portions of the record.

(2) CEQ may refer the record to the other agency, in which case the other agency will determine whether the record or portions of the record are exempt from disclosure under the FOIA, and will respond directly to you regarding your request for the record. If CEQ determines to refer records you have requested to another agency, we will notify you of the referral and explain how to contact the other agency's FOIA officials.

(b) CEQ will choose between consulting with another agency about a record and referring the record to the other agency according to the following principles:

(1) Ordinarily, CEQ will use consultation procedures for records that originated with CEQ but that contain information of interest to another agency or office, and CEQ will refer records that originated with another agency to that agency.

(2) CEQ will typically refer a classified record (or a portion of a record) or a record that may be appropriate for classification to the agency that either classified the information or should consider the information for classification.

(c) CEQ may make agreements with other agencies about how CEQ will handle records involving that agency or how that agency will handle records involving CEQ. Any agreement we make will comply with the FOIA and this part.

§ 1515.18 What happens if CEQ grants my request in full or in part?

Once you have paid the fees that are due under subpart E of this part (if any), CEQ will promptly provide you with a copy of the records you requested, except for the records or portions of records we have determined to withhold under § 1515.16. We will follow the procedures in § 1515.19 with respect to those records or portions of records.

§ 1515.19 What happens if CEQ denies my request in full or in part?

(a) CEQ may deny your request in full or in part for these reasons, among others:

(1) CEQ determines to withhold all or a portion of the records you requested under § 1515.16;

(2) Your request does not reasonably describe the records you seek;

(3) The information you requested is not a record subject to the FOIA;

(4) CEQ has already published the records you are requesting;

(5) The records you requested do not exist, cannot be located, or have been destroyed;

(6) The records you requested are not readily reproducible in the form or format you seek; or

(7) Your request does not comport with the procedures set forth in this part.

(b) If CEQ denies your request regarding expedited processing or fee-related matters, we will also treat that as a denial of your request in part and follow the procedures in this section.

(c) If CEQ determines to deny your request in full or in part, we will notify you of the basis for the denial. The notification will include the following information:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemption CEQ applied in determining to withhold records (or portions thereof) under § 1515.16;

(3) An estimate of the volume of the records CEQ is withholding, unless the volume is indicated by markings we have made on the records we are providing;

(4) A statement that you may appeal the denial to CEQ, under subpart C of this part, and an explanation of what you must do to appeal; and

(5) A reminder that you can obtain assistance from CEQ's FOIA Public Liaison and dispute resolution services from the National Archives and Records Administration's Office of Government Information Services.

(d) For each record CEQ discloses in part, we will mark the record clearly to show which portions we are withholding and the FOIA exemptions we applied in determining to withhold those portions, unless doing so would harm an interest protected by an applicable FOIA exemption. If technically feasible, we will mark the record to indicate the location of the portions we are withholding.

Subpart C—Appealing a FOIA Request

§ 1515.21 Can I appeal CEQ's response to my request?

(a) Yes. You may appeal CEQ's response if you disagree with any determination that CEQ made in responding to your request, including CEQ's determination to deny your request in whole or in part, CEQ's determination to deny you expedited processing, CEQ's determination of how to conduct the search for records, and fee-related determinations.

(b) CEQ must receive your appeal within 90 calendar days of the date on which CEQ notified you of the relevant determination in writing.

(c) You must make your appeal by email to efoia@ceq.eop.gov. If you are not able to make your appeal by email, please contact CEQ's FOIA Public Liaison for assistance.

(1) Clearly indicate that you are making an appeal, such as by including "Freedom of Information Act Appeal" in the subject line. If your email includes attachments, you also must explain your request in the body of the email, in addition to the attachment.

(2) If you are not able to make your appeal by email, please contact CEQ's FOIA Public Liaison for assistance.

(d) Your appeal must include your request's individualized tracking number and must identify the specific CEQ determinations you are appealing.

(e) If you fail to properly appeal a determination that CEQ made in processing your request, you may lose your right to challenge that determination in Federal court.

§ 1515.22 How will CEQ process my appeal?

(a) CEQ will review the determinations you have appealed and determine if they are consistent with applicable law and policy. CEQ will conduct this review *de novo*, which means that CEQ will not presume that its prior determinations were correct. Whenever reasonably possible, CEQ will assign your appeal to a different official than the one who was responsible for processing your original request.

(b) CEQ will respond to your appeal within 20 working days from the date that CEQ received your appeal.

(c) If CEQ determines to uphold a determination that you have appealed, CEQ's response will:

(1) Include a statement that identifies our reasons for affirming the decision, including any FOIA exemption CEQ applied in determining to affirm our determination to withhold a record or a portion of a record; and

(2) Explain how to challenge our determination by filing a lawsuit in Federal court and how to seek dispute resolution services from the National Archives and Records Administration's Office of Government Information Services.

(d) If CEQ determines to reverse or modify a determination that you have appealed, we will reprocess your request in accordance with the reversed or modified determination, using the procedures set forth at § 1515.15.

(e) CEQ ordinarily will not adjudicate an appeal if the appealed request becomes the subject of litigation.

Subpart D—Fees for FOIA Requests and Appeals

§ 1515.31 Can CEQ charge fees for processing FOIA requests and appeals?

(a) Yes. CEQ may charge fees for processing your FOIA request.

(b) CEQ will determine whether to charge a fee and the amount of the fee by using the rules in this subpart and the Office of Management and Budget's Uniform Freedom of Information Act Fee Schedule and Guidelines, as amended.¹

(c) CEQ will not charge fees for deciding whether to grant or deny your appeal. If CEQ grants your appeal, we will charge fees for any additional searching, reviewing, or duplication that we carry out as a result of your appeal. For instance, if you appeal our determination of how to conduct the search for records, and we grant your appeal, we will conduct a new search in the manner you requested and will charge you fees accordingly.

§ 1515.32 What is the amount of the fee for processing a request?

(a) CEQ will charge fees equal to:

(1) The basic hourly rate of pay for each employee who participates in searching for records, reviewing records, or duplicating records (including contract employees), multiplied by the total number of hours that the employee worked on your request (rounded to the nearest quarter of an hour), plus 16 percent (to account for employee benefits); plus

(2) The total direct costs that CEQ incurs in searching for, reviewing, or duplicating records, such as the cost of operating computers and other electronic equipment, but excluding overhead expenses such as the cost of office space, heating, and lighting; plus

(3) An additional fee equal to the total direct costs of any additional services that you and CEQ agree upon, such as providing multiple copies of a record.

¹ 52 FR 10016 (Mar. 27, 1987).

(b) In determining the fee under paragraph (a) of this section, CEQ will use the following guidelines:

(1) “Searching for records” is the process of looking for and retrieving the records you requested (including by electronic search) and determining whether individual records contain the information that you seek. CEQ will charge fees for searching for records even if we do not locate any records that respond to your request, or even if we determine not to disclose any of the records that we locate.

(2) “Reviewing records” is the process of examining records to determine whether to withhold them, in accordance with § 1515.16, and preparing records for disclosure (for instance, by marking records to indicate which portions CEQ is withholding).

(i) “Reviewing records” also includes the time CEQ spends obtaining and considering the views of other government agencies under § 1515.17 and the time CEQ spends obtaining and considering formal objections to disclosure under § 1515.41.

(ii) “Reviewing records” does not include time CEQ spends resolving general legal or policy questions regarding the application of exemptions.

(iii) CEQ will charge fees for reviewing records even if we determine not to disclose any of the records that we review.

(3) “Duplicating records” is the process of reproducing records, including scanning or printing records as necessary, in order to provide you with a copy.

(4) CEQ may include employee costs and direct costs that another component of the Executive Office of the President incurs in assisting CEQ with your request.

(c) CEQ will not charge fees if the total is less than \$25.00, or if we determine that the cost of collecting the fee would exceed the amount of the fee.

(d) If CEQ reasonably determines that you (or other persons acting in concert with you) have submitted multiple requests on related matters for the purpose of avoiding fees, we may aggregate those requests and charge fees accordingly.

§ 1515.33 Are there any exceptions for special requesters?

(a) Yes. CEQ makes the following exceptions for special requesters:

(1) CEQ will not charge you fees for searching for records if you are an educational institution, a noncommercial scientific institution, or a representative of the news media.

Otherwise, CEQ will not charge you fees for the first 2 hours of searching for records, unless you are a commercial requester.

(2) CEQ will not charge you fees for reviewing records, unless you are a commercial requester.

(3) CEQ will not charge you fees for the first 100 pages of duplication (or an equivalent cost for duplication in other media), unless you are a commercial requester.

(b) For purposes of applying the exceptions in this section:

(1) You are a representative of a non-commercial scientific institution if your institution operates solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry, and your request is in furtherance of scientific research.

(2) You are a representative of an educational institution if you work for or study at a school that operates a program of scholarly research and your request is in furtherance of scholarly research.

(3) You are a representative of the news media if you or your employer gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience, and your request is in furtherance of these activities. For the purposes of this paragraph (b), *news* means information that is about events of current interest to the public.

(i) If you are a freelance journalist, CEQ will consider you a representative of the news media if you can demonstrate that you have a solid basis to expect that a news media entity will

publish the work to which your request relates, such as a publishing contract or a strong record of past publications.

(ii) If you are a representative of the news media, CEQ will ordinarily presume that your request does not primarily further a commercial interest for purposes of this section and § 1515.34.

(4) You are a commercial requester if you do not qualify as a special requester under paragraph (b)(1), (2), or (3) of this section and your request furthers a commercial, trade, or profit interest or supports litigation in furtherance of those interests.

(c) If you claim to be a representative of a non-commercial scientific institution, an educational institution, or the news media, CEQ may require you to verify your status by providing reasonable documentation, such as a signed letter on official letterhead. If you claim that your request is non-commercial for another reason, CEQ may require you to explain why it is non-commercial.

§ 1515.34 Can I apply for a fee waiver?

(a) Yes. You can apply for a waiver of fees (or a reduction of fees) by submitting a written statement that explains why disclosing the information will meet the conditions in paragraph (c) of this section.

(b) You can apply for a fee waiver at any time before CEQ completes processing your request or an appeal of your request. You can apply for a fee waiver with respect to a part of the records you seek or with respect to all of them.

(c) CEQ will grant you a fee waiver if all of the following conditions are met:

(1) Disclosure of the requested information would shed light on the operations or activities of the Government. The connection between the subject matter of your request, on the one hand, and identifiable operations or activities of the Federal Government, on the other, must be direct and clear, not remote or attenuated.

(2) Disclosure of the requested information would likely contribute significantly to public understanding of those operations or activities, because it would satisfy both of the following criteria:

(i) Disclosure of the requested records would be meaningfully informative about Government operations or activities. (The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.)

(ii) The disclosure would contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your own individual understanding. (CEQ will presume that your request satisfies this criterion if you are a representative of the news media; otherwise, we will consider your expertise in the subject area as well as your ability and intention to effectively convey information to the public.)

(3) Disclosure of the requested information would not primarily advance your commercial, trade, or profit interests.

(d) CEQ will determine whether to grant or deny your request for a fee waiver if and when we would otherwise charge you fees. If we determine prior to that time that we are unlikely to grant your request for a fee waiver, we may notify you of our determination so that you may modify your request.

§ 1515.35 When will CEQ contact me about fee-related matters?

(a) If CEQ determines or estimates that we will charge you more than \$25.00 in fees, we will notify you of our determination or estimate, unless you have already told us that you are willing to pay fees equal to or in excess of the amount we have determined or estimated.

(1) If CEQ can only estimate a part of the fee, we will explain that in the notice.

(2) If you are entitled to 2 hours of searching and 100 pages of duplication for free for the reasons described in § 1515.33, CEQ will advise you of this and explain whether we have already provided these entitlements.

(3) CEQ may ask you to tell us the maximum amount you are willing to pay in fees in writing, in which case we will toll the period for processing your request until you respond.

(b) If CEQ determines or estimates that the fee will exceed the maximum amount you previously told us you were willing to pay, we will inquire with you about modifying your request or increasing the maximum, and we will toll the period for processing your request until you respond.

(c) If you have not provided a way to contact you regarding fee matters, or you do not respond to a fee-related inquiry within 30 calendar days, CEQ will deny your request.

§ 1515.36 Do I have to pay fees if CEQ misses the deadline for responding to my request?

CEQ will not charge search fees or duplication fees if we have failed to grant or deny your request within the period described in § 1515.13, unless:

(a) CEQ determines that unusual circumstances are present, as described in § 1515.13; and

(1) CEQ finishes processing your request within 10 working days of the original deadline; or

(2) Your request seeks more than 5,000 pages of records; CEQ has provided you timely written notice of the unusual circumstances; and we have discussed with you how you could effectively limit the scope of your request (or we made at least three attempts in good faith to do so); or

(b) A court grants CEQ additional time to process your request due to exceptional circumstances, and we finish processing your request within the period set forth in a court order.

§ 1515.37 When are fees due and how do I pay them?

(a) Ordinarily, CEQ will bill you for fees at the time we respond to your FOIA request.

(b) When CEQ determines or estimates that the total fee for your request will exceed \$250, we may require that you pay all or part of the anticipated fee in advance before we will process (or continue to process) your request.

(c) If you have previously failed to pay a FOIA fee that was due to any Government agency within 30 calendar days of the billing date, CEQ may require you to pay the outstanding fee

(including interest) and make an advance payment of the anticipated fee for your current request before we will process (or continue to process) your request.

(d) If CEQ requires you to make an advance payment under this section, we will toll the period for processing your request until we receive the payment. If you do not pay within 30 calendar days, we will deny your request.

(e) CEQ will inform you of how to make a payment at the time that we bill you or require you to make an advance payment.

§ 1515.38 What will CEQ do if I do not promptly pay the fee?

If you do not pay a fee within 30 calendar days of the date of the bill:

(a) CEQ may charge interest, at the rate provided for in 31 U.S.C. 3717, from the 31st day following the date of billing through the date we receive your payment; and

(b) CEQ will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, including its administrative procedures, which provide for the use of consumer reporting agencies, collection agencies, and offset.

Subpart E—Confidential Commercial Information and Preservation of Records

§ 1515.41 How does CEQ handle confidential commercial information?

(a) At the time that a person or entity outside the Federal Government (a submitter) directly or indirectly provides information to CEQ, the submitter must mark or otherwise designate any part of its submission that it considers in good faith to be confidential commercial information.

(1) *Confidential commercial information* means commercial or financial information that comes within the scope of Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *In good faith* means not frivolously.

(3) The submitter also must explain how long CEQ should consider the information to be confidential commercial information, or else CEQ will presume that the designation expires after 10 years.

(b) Prior to disclosing information in response to a FOIA request, CEQ will provide written notice to the submitter if:

(1) The submitter has properly designated the information as confidential commercial information pursuant to paragraph (a) of this section; or

(2) CEQ requires the submitter's views on whether the information is confidential commercial information.

(c) Each notice under paragraph (b) of this section will either describe the information in question or include a copy of the requested records (or portions of records) containing the information. If the matter involves a large number of submitters, CEQ may post or publish the notice in a place or manner reasonably likely to inform the submitters of the potential disclosure, instead of sending individual notifications.

(d) CEQ will not provide a notice under paragraph (b) of this section if:

(1) CEQ has determined to withhold the information under § 1515.16;

(2) Someone other than CEQ has already lawfully published the information; or

(3) A law other than the FOIA requires CEQ to disclose the information.

(e) When CEQ provides a notice under paragraph (b) of this section:

(1) CEQ will give the submitter a reasonable period in which to reply.

(2) If the submitter objects to CEQ disclosing the information (in whole or in part), the submitter must reply to CEQ with a detailed explanation of which FOIA exemptions it believes apply to the information and why the information comes within the scope of those FOIA exemptions. CEQ will consider the submitter's reply, if any, in determining whether to disclose the information in question in response to a FOIA request.

(3) If the submitter does not reply to CEQ during the period stated in the notice, CEQ will deem the submitter to have no objection to CEQ's disclosure of the information, except that CEQ may consider late replies in its discretion.

(f) If CEQ determines to disclose information over a submitter's objection, CEQ will notify the submitter in writing.

(1) The notice will explain why CEQ disagreed with the submitter's objections and describe the information CEQ will disclose (or include a copy of the relevant agency records in the form in which CEQ will release them).

(2) The notice will indicate the date on which CEQ will disclose the information, which will be a reasonable number of calendar days following the date of the notice unless the FOIA requires us to disclose the information more promptly.

(3) CEQ will also provide the notice described in this paragraph (f) when CEQ determines to disclose information that a submitter designated as confidential commercial information not in good faith.

(g) CEQ will notify a submitter who has designated confidential commercial information pursuant to paragraph (b) of this section if a requester files a lawsuit seeking to compel CEQ to disclose the information under the FOIA.

(h) CEQ will notify the relevant FOIA requester whenever it provides a notice under paragraph (b) or (f) of this section, and whenever a submitter files a lawsuit to prevent the disclosure of information.

PART 1516—PRIVACY ACT IMPLEMENTATION

Sec.

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Authority: 5 U.S.C. 552a.

§ 1516.1 What is the purpose of this part?

(a) This part explains how the Council on Environmental Quality (CEQ) manages certain records about individuals under the Privacy Act of 1974 (the Privacy Act). You can find the text of the Privacy Act at 5 U.S.C. 552a.

(b) This part explains how you, a citizen or lawful permanent resident of the United States, can request access to records about yourself, request that CEQ amend or correct those records, or request that CEQ inform you about how it has used those records.

§ 1516.2 What records does this part cover?

(a) This part covers any records about you that CEQ maintains in a system of records.

(b) A record is any item, collection, or grouping of information about you that contains your name or another piece of information that identifies you (for example, your social security number).

(c) CEQ maintains your record in a system of records if CEQ:

(1) Maintains, collects, uses, or disseminates the record as part of a larger group of records; and

(2) Organizes the group by individuals' names or by another piece of information that identifies individuals (such as their Social Security numbers).

§ 1516.3 When will CEQ disclose records about me?

CEQ will only disclose records about you that it maintains in system of records if:

(a) You or your authorized representative submit a request for your own records or agree in writing that CEQ may disclose the records to someone else;

(b) CEQ is making the disclosure as part of one of CEQ's routine uses of the records, which CEQ must have previously established in a written public notice; or

(c) The disclosure qualifies for one of the other exceptions described in section 3 of the Privacy Act, which you can find at 5 U.S.C. 552a(b).

§ 1516.4 How can I obtain access to CEQ's records about me?

(a) You can obtain access to CEQ's records about you by submitting a request by email to efoia@ceq.eop.gov. If you are not able to make your request by email, please contact CEQ's Office of the General Counsel for assistance by calling 202-395-5750.

(b) Your request must describe the records that you want, in enough detail to enable CEQ to locate them with a reasonable amount of effort.

(1) You should name or describe the system of records you want CEQ to search.

(2) If you are not sure which system of records you are interested in, you may request that CEQ inform you which of its systems of records, if any, contain records about you.

(c) To protect the privacy of your records, CEQ will require you to verify your identity before processing your request. CEQ may require you to:

(1) Provide a statement that contains your name, your current address, and your date and place of birth, and sign the statement before a notary public;

(2) Verify your identity using an electronic authentication process; or

(3) Supply additional information as necessary in order to verify your identity.

(d) CEQ may deny your request if:

(1) CEQ prepared the records you are seeking in reasonable anticipation of a civil action or proceeding (that is, a lawsuit or a similar proceeding); or

(2) The Privacy Act exempts the system containing your records from the requirement that CEQ provide those records upon request.

(e) If CEQ grants your request, you may arrange to review your records in person, obtain a copy from CEQ, or both. If you choose to review your records in person, you may choose one

person to accompany you, except that CEQ may first require you to authorize CEQ to discuss your records in that person's presence.

(f) If CEQ denies your request in whole or in part, CEQ will give you the reason for its decision in writing and explain how you can challenge the denial.

§ 1516.5 How can I get information about how CEQ has used its records about me?

You can request information about how CEQ has used its records about you—called an “accounting of disclosures”—using the same procedures you would use to make a request for access to your records under § 1516.4.

§ 1516.6 How can I ask CEQ to correct my records?

(a) You can request that CEQ correct or update its records about you using the same procedures you would use to make a request for access to your records under § 1516.4.

(b) In your request, you must explain exactly what change you are requesting and point out specific pieces of information in your CEQ records that are inaccurate, irrelevant, outdated, or incomplete.

(c) CEQ will review your request, decide whether to grant or deny it, and inform you of the decision within 10 working days (*i.e.*, excepting Saturdays, Sundays, and Federal holidays).

(d) If CEQ denies your request, CEQ will give you the reason for its decision in writing and explain how you can appeal the denial.

§ 1516.7 How can I appeal CEQ's decision to deny my request to access or correct records about me?

(a) If CEQ denies your request to access or correct CEQ's records about you, you can appeal the decision using the same procedures you would use to make a request for access to your records under § 1516.4.

(b) In your appeal, you must include a copy of CEQ's decision denying your request and explain exactly why you believe the decision was wrong.

(c) The General Counsel of CEQ (or the General Counsel's designee) will review your appeal, decide whether to grant or deny it, and inform you of the decision within 30 working

days. If it is necessary to extend the time for making a decision, the Chair of CEQ (or the Chair's designee) will explain why in writing.

(d) If CEQ's General Counsel (or designee) denies your appeal, you may provide CEQ with a concise statement that explains your disagreement with the decision, and you may bring a civil lawsuit against CEQ.

(1) If CEQ subsequently discloses the disputed record under § 1516.4, we will clearly identify the disputed portion of the record and attach a copy of your statement of disagreement.

(2) For more information about filing a civil lawsuit, see 5 U.S.C. 552a(g)(1).

§ 1516.8 Will CEQ charge me a fee for a copy of my records?

If you request a copy of CEQ's records about you, CEQ may charge you a fee of no more than 10 cents per page, which you must pay before CEQ provides you with a copy of your records.

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