

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a 100 yard radius safety zone around the USS MIDWAY lasting 2 hours during the U.S. ARMY’s parachute demonstration. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T11–130 to read as follows:

#### **§ 165.T11–130 Safety Zone; San Diego Bay, San Diego, California.**

(a) *Location.* The following area is a safety zone: all water surface to the bottom encompassing a 100-yard radius around USS MIDWAY.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector San Diego (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP’s designated representative.

(2) To seek permission to enter, contact the COTP or the COTP’s representative by VHF–FM Channel 21A or by telephone at 619–278–7033. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP’s designated representative.

(d) *Enforcement period.* This section will be enforced from 10 a.m. to noon on September 18, 2023.

Dated: September 8, 2023.

**J.W. Spittler,**

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. 2023–19870 Filed 9–13–23; 8:45 am]

**BILLING CODE 9110–04–P**

#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 2**

[OGC–2022–0885; FRL 5630–01–OGC]

**RIN 2025–AA38**

#### **Freedom of Information Act Regulations Update; Phase II**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) finalizes revisions to 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.

**DATES:** This rule is effective on November 13, 2023.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID

No. OGC–2022–0885. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

**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:**

#### **Table of Contents**

- I. General Information
- II. Background
- III. Summary of Provisions Finalized as Proposed
- IV. Summary of Changes From Proposal
- V. Statutory and Executive Orders Reviews

#### **I. General Information**

##### *A. Does this action apply to me?*

This discussion is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This discussion includes the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not included could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in 40 CFR part 2. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

##### *B. What action is the Agency taking?*

This action finalizes changes to EPA’s FOIA regulations at 40 CFR part 2. The changes alter the process by which individuals and entities request records from EPA under the Act. EPA makes changes to clarify certain provisions and align with the FOIA and with EPA and government-wide policy.

In the 2019 “Freedom of Information Act Regulations Update,” 84 FR 30028, July 26, 2019 (Phase I Rule), EPA stated its intention to conduct a second rulemaking phase to make discretionary and modernizing changes. Consistent with that statement, EPA is finalizing the proposal published on November 17, 2022 with certain changes. See

Freedom of Information Act Regulations Update; Phase II, 87 FR 68946.

## II. Background

This action is the second phase in a two-phase process to update the Agency's FOIA regulations. On June 26, 2019, effective July 26, 2019, EPA issued the Phase I Rule to "bring EPA's regulations into compliance with nondiscretionary provisions of the amended statute and reflect changes in the Agency's organization, procedure, or practice." 84 FR 30028.

## III. Summary of Provisions Finalized as Proposed

Below is a summary of the provisions that EPA finalizes in the same form that they were proposed.

### A. Time for Response to Modification Request

EPA adds a statement that requires a requester to modify a request within 20 calendar days after an EPA notice that the request is not reasonably described. 40 CFR 2.102(c) requires that requesters reasonably describe the records that they are seeking. EPA did, and continues to, provide requesters with an opportunity to discuss and modify a request that does not reasonably describe the records sought. Previously, however, there was no clear timeline for requesters to modify a request. If a requester sufficiently modifies the request to meet the requirements of 40 CFR 2.102(c) within 20 calendar days, EPA will not close the request.

### B. Readability and Useful Information

EPA reorganizes, but makes no substantive changes to, 40 CFR 2.100(a) by moving to separate paragraphs the sentences describing other regulations relevant to the release of information.

EPA creates a new paragraph (f) in section 2.100 to direct the public to the Agency's website ([epa.gov/foia](http://epa.gov/foia)) for records made publicly available in compliance with 5 U.S.C. 522(a)(2)(D)(ii)(II).

EPA consolidates the provisions in EPA's FOIA regulations that discuss the timing of EPA's response to FOIA requests to simplify and accurately represent EPA's obligations under the FOIA. This change combines into section 2.104(a) previous sections 2.101(a)(4) and 2.102(a), and directly incorporates into section 2.104(a) the FOIA's language on timing of response from 5 U.S.C. 522(a)(6)(A)(i). EPA also explains at section 2.104(f) that EPA will work with requesters to come to an agreement regarding alternative timeframes for processing the request

when EPA provides notice pursuant to 5 U.S.C. 522(a)(6)(B)(i) and (ii).

EPA adds to section 2.104(a)(2) providing that a request submitted after 5:00 p.m. Eastern Time is considered received on the next business day. This change states the corollary of the already existing and unchanged language stating that requests submitted before 5:00 p.m. are considered received on that business day. EPA modifies section 2.108(b) to state that appeals submitted after 5:00 p.m. Eastern Time are considered received on the next business day.

### C. Consistency With Government-Wide Policy

EPA makes three changes, found at sections 2.106, 2.108(d)(3), and 2.108(e)(1), which discuss the preservation of records, handling of appeals after FOIA litigation, and the contents of adverse administrative appeals decisions.

EPA updates 40 CFR 2.107(b) to state that payments by check or money order should be made out to the Treasury of the United States.

EPA revises all references to EPA's electronic submission website, FOIAonline ([www.FOIAonline.gov](http://www.FOIAonline.gov)), to a more general location, EPA's FOIA website ([www.epa.gov/foia](http://www.epa.gov/foia)). EPA will identify for requesters the electronic submission platform's new link on EPA's FOIA website.

### D. 2019 Phase I Regulations

EPA removes the clause in 40 CFR 2.103(b) that described the phrase "determinations required by 5 U.S.C. 522(a)(6)(A)." 40 CFR 2.103(b) previously stated "[Listed positions within EPA] are authorized to make determinations required by 5 U.S.C. 522(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 of the exemptions under the FOIA, and to issue 'no records' responses." 40 CFR 2.103(b) now states that "[Listed positions within EPA] are authorized to make determinations required by 5 U.S.C. 522(a)(6)(A)."

EPA does not reinstate any methods of submission that EPA removed through the issuance of the 2019 FOIA Regulations Update. See 2019 FOIA Regulations Update, 84 FR 30028 at 30030, July 26, 2019. EPA continues to accept FOIA requests through its FOIA submission website, an electronic submission website established pursuant to 5 U.S.C. 522(m), and U.S. Mail and overnight delivery sent to the National FOIA Office.

### E. General Processing Changes

EPA changes the "ordinary" search cut-off date identified in section 2.103(a) from the date the request was received to the date the Agency begins its search for responsive records.

EPA adds a provision at 40 CFR 2.107(l) that states EPA may aggregate FOIA requests when EPA reasonably believes that multiple requests—submitted either by a requester or by a group of requesters acting in concert—constitute a single request that would otherwise give rise to unusual circumstances and the requests involve related matters.

EPA adds a provision at 40 CFR 2.104(f) that states EPA may assign multiple tracking numbers to a request with distinct parts that will be processed by separate regions or program offices. EPA will notify the requester of the separate tracking numbers for the distinct parts of the request, which thereafter would be processed and responded to separately and will be provided with separate appeal rights on completion.

EPA modifies the methods of submission of FOIA appeals, located at section 2.108(a), to match the methods of submission of FOIA requests.

### F. Fee Rates Update

EPA establishes new fee rates, located at 40 CFR 2.107(f)(2)(ii) tied to the U.S. Office of Personnel and Management's General Schedule (GS) scale. EPA now has two fee rates for Agency personnel time spent processing FOIA requests, one rate for grades GS–12 and below and a second rate for those with grades GS–13 and above. Both rates are adjusted for the value of benefits, expressed in quarter-hour rates, and rounded to the nearest \$1 increment. As of the date of signature, the proposed rates would be calculated as explained below.

#### Employees GS–12 and Below

Average Quarter-Hour Rate of GS–9 Step 1, GS–10 Step 1, GS–11 Step 1, and GS–12 Step 1 (\$8.83) + Benefits (16% or \$1.41) = \$10.25 = (rounded to the nearest \$1 increment) \$10.00/quarter hour

#### Employees GS–13 and Above

Average Quarter-Hour Rate for GS–13 Step 1, GS–14 Step 1, and GS–15 Step 1 (\$15.24) + Benefits (16% or \$2.43) = \$17.67 = (rounded to the nearest \$1 increment) \$18.00/quarter-hour

### G. Minimum Fee Threshold

EPA increases the minimum fee threshold, located at 40 CFR 2.107(g)(1), to an amount calculated by formula,

which, as of the publication of this rule is \$250. That formula would apply a fourteen (14) times multiplier to the rate set in 40 CFR 2.107(e)(2)(ii)(B), rounded to the nearest \$5 increment. As of the date of signature, the minimum fee threshold would be calculated as explained below.

Fee rate listed in 40 CFR

$$2.107(f)(2)(ii)(B) (\$18.00) \times 14 = \$252 \\ = (\text{rounded to the nearest } \$5 \\ \text{increment}) \$250$$

#### H. Automatic Agreement To Pay Fees

EPA removes the provision specifying that a requester automatically agrees to pay up to \$25 in fees when they submit a FOIA request. Because EPA raises the minimum fee threshold, EPA believes that an automatic agreement to fees at any amount at or above \$250 may dissuade some requesters from submitting FOIA requests.

#### I. Assurance of Payment Threshold

EPA raises the assurance of payment threshold, located at 40 CFR 2.107(h)(1), to an amount calculated by formula, which, as of the publication of this rule is \$250. When EPA estimates fees or accumulates actual fees equaling or exceeding the assurance of payment threshold, EPA seeks from a requester an assurance that the requester will pay the fees associated with the FOIA request. The formula would tie the assurance of payment threshold to the minimum fee threshold (40 CFR 2.107(g)(1)).

#### J. Advanced Payment Threshold

EPA increases the advanced payment threshold, located at 40 CFR 2.107(h)(2), to an amount that would currently calculate to \$450 and proposes a formula for calculating the advanced payment threshold that will be self-escalating as EPA's costs increase in future years. When EPA estimates fees or accumulates actual fees equaling or exceeding the advanced payment threshold, EPA may seek advanced payment from a requester of the estimated or actual fees associated with the FOIA request.

Fee rate listed in proposed 40 CFR

$$2.107(f)(2)(ii)(B) (\$18.00) \times 25 = \$450$$

#### K. Estimated or Actual Fee Assessment

EPA adds language at 2.107(h)(5) explaining that EPA's reassessment of actual or estimated fees may result in EPA re-seeking assurance of payment or advanced payment. This provision provides clarity and informs the public regarding EPA's practices by describing a scenario where EPA has previously informed the requester of the amount of actual or estimated fees and, after

further processing, EPA has updated its actual or estimated fee assessment.

#### L. Failure To Pay Charged Fees

EPA revises the provisions applicable to delinquent requesters. Previous EPA regulations discussed the failure to pay fees in several separate locations (previous sections 2.107(h) and (j)). EPA consolidates these provisions into 40 CFR 2.107(k). EPA also adds a sentence stating that the Agency may share information regarding delinquent requesters with other Federal agencies.

### IV. Summary of Changes From Proposal

Below is a summary of the changes from what EPA proposed and what EPA finalizes today.

#### A. Environmental Justice Expedited Processing Criteria

EPA proposed, and here finalizes, a provision to allow requesters to seek expedited processing of their request if the records sought pertain to an environmental justice-related need and will be used to inform an affected community. 5 U.S.C. 552(a)(6)(E)(i) provides that EPA may issue regulations "providing for expedited processing of requests for records (I) in cases in which the person requesting the records demonstrates a compelling need; and (II) in other cases determined by the agency." (emphasis added). The Act defines what constitutes a "compelling need," *id.* at section 552(a)(6)(E)(v), and does not limit the "other cases" that the Agency may determine merit expedited processing.

EPA finalizes the proposed provision with two minor changes. EPA makes the first change to reflect a change in relevant descriptive language used in Executive Order 14096. EPA modifies the phrase "disproportionately high and adverse human health or environmental effects" to read "disproportionate and adverse human health or environment effects." This change will ensure consistency with EPA policy but is not intended to have substantive impact on EPA's implementation on the environmental justice-need expedited processing provision.

EPA makes the second change to improve the readability of the environmental justice expedited processing criteria. EPA reorganizes but does not substantively change 40 CFR 2.107(g)(ii). As proposed, the provision specified considerations in both 2.107(g)(ii) and in the subsequent subparagraphs. The reorganization identifies in a list format the specific elements EPA will consider. EPA believes that this change is clearer than

the proposal and will benefit requesters by providing a set of elements that flow in a logical and express manner.

The provision providing expedited processing for an environmental justice-related need is in addition to and does not modify the provision granting expedited processing for requests demonstrating a "compelling need," which the FOIA provides at 5 U.S.C. 552(a)(6)(E)(i)(I). This new expedited processing category targets a recognized need for communities with environmental justice concerns to have timely access to information.

Executive Order 14096 defines environmental justice as "the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment[.]" EPA recognizes that timely access to information contained in EPA records improves the opportunity for meaningful involvement by communities with environmental justice concerns.

To determine whether an application for expedited processing qualifies under this provision, the Agency will consider: (1) whether the requested records relate to actual or alleged Federal government activity, including Agency records containing environmental information or data; (2) the extent to which there is a pressing need to inform the community about the Federal government activity; (3) the extent to which the community is potentially experiencing disproportionate and adverse human health or environmental effects; and (4) the requester's ability and intention to effectively convey the information to members of the community.

EPA will use EJScreen as a source of facts to determine whether the community cited by the requester is potentially experiencing environmental justice concerns. As EPA previously explained in the preamble to the proposed rule, EJScreen is an environmental justice mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining environmental and demographic indicators into Environmental Justice indexes. EJScreen's "Supplemental Indexes" are thirteen indexes calculated by combining a single environmental indicator and the supplemental demographic index. The Supplemental Indexes do not factor in racial status. EJScreen may also be a valuable tool for requesters to assess whether the community about which they are seeking records may be affected

by disproportionate and adverse human health or environmental effects. More information regarding EJSscreen is available at this link: <https://www.epa.gov/ejscreen/environmental-justice-indexes-ejscreen>. EPA notes that it will consider additional information the requester provides if the additional information is not adequately reflected in the methods and tools available to the Agency, like EJSscreen's Supplemental Indexes, and the Agency is not otherwise prohibited from considering the information.

One commenter suggested that EPA "make[] clear that any criteria be applied flexibly and generously to accomplish the goals of this provision." EPA acknowledges the commenter's concern and will implement the provision consistent with the regulatory text. As such, EPA provides the following examples of types of requests that EPA would consider as evidencing a pressing need to inform a community potentially experiencing environmental justice-related concerns.

- Requests for EPA-held data or communications that are reasonably likely to contain information that is directly relevant to an environmental harm affecting a community potentially experiencing environmental justice-related concerns.
- Requests for information about or relevant to an action or policy, existing or in development, that is reasonably likely to have a direct, imminent, and cognizable connection to a threat to human health in a community experiencing environmental justice-related concerns.

On the other hand, EPA would *not* consider the following types of requests to show a pressing need to inform the community.

- Requests for information about a nation-wide action or policy, either existing or in development, that is largely only of general interest to the public.
- Requests for environmental data without a direct and cognizable connection to the community.
- Requests for information that is primarily in the commercial interest of the requester.
- Requests for communications which are not reasonably likely to contain information related to the community.
- Requests for wholly publicly available information.
- Requests for information about an environmental concern not affecting or not reasonably likely to affect the community.

One commenter suggested that EPA remove the evaluation criteria regarding the requester's intent and ability to effectively convey the information to members of the community that is potentially experiencing disproportionate and adverse human health or environmental effects. EPA declines to make this change. The purpose of considering the requesters intent and ability to effectively convey the information to members of the community is to ensure that those seeking the information can and are likely to meet the information needs of members of the community. EPA believes that this consideration is essential to both the purpose and effective implementation of the provision.

For clarity on how EPA intends to implement the "ability and intention" element, EPA provides the following examples that EPA would consider as evidencing an ability and intent to inform the community potentially experiencing environmental justice-related concerns:

- The requester is a membership or community-based organization with active members in the community and that disseminates environmental- or health-related information to those members.
- The requester is a news organization with active subscribers in the community and that disseminates environmental- or health-related information to those subscribers.
- The requester has demonstrated a particular technical expertise in the subject area and has previously directly disseminated information to the community or similar communities.

EPA would consider the following types of requests to *not* show an intent and ability to inform the community potentially experiencing environmental justice-related concerns:

- The requester's stated ability to disseminate the information to the community is limited to passive or indirect means (e.g., dissemination through a website, newsletter, or other publication without indication of directly reaching members of the community).
- A requester without either a direct connection to the community or a demonstrated expertise in the subject matter.
- A requester without a direct connection to the community and without a mission and history of disseminating information to the community.

—The Agency may consider previous failures to disseminate to the community information a requester received from EPA through an expedited request for records.

#### *B. Definition of Reasonably Described Requests*

EPA proposed modifying previous section 2.102(c) to state that "Requesters should reasonably describe the records sought in sufficient detail to enable agency personnel to locate them with a reasonable amount of effort." One commenter suggested to use alternative language from *Truitt v. Department of State*. See 897 F.2d 540 (D.C. Cir. 1990). EPA agrees with the comment and changes the sentence, which is now located at section 2.102(b)(1), to state that "Requesters must reasonably describe the records sought in sufficient detail to enable a professional employee of the agency who is familiar with the subject area of the request to locate the records with reasonable amount of effort." See *Truitt v. Dept of State*, 897 F.2d 540, 545 n.36 (D.C. Cir. 1990), quoting H.R. Rep. No. 93–876, 93d Cong., 2d Sess. 5–6 (1974).

#### *C. Requests for Waiver and Reduction of Fees*

EPA proposed to incorporate a requirement that a 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 fee waiver request. EPA does not finalize that proposed provision at this time.

#### *D. Language Referring to Appeal Letter*

EPA received one comment about the use of the term "appeal letter" in the section of the regulations discussing administrative appeals, 40 CFR 2.108. The comment stated that the use of the word "letter" was misleading and implied that physical mail is suggested or preferred for purposes of appeal. Dropping the term "letter" would provide clarity to requesters. EPA reviewed the use of the word "letter" and related terms and updated 40 CFR 2.108(c). These changes have no substantive impact on EPA or the public and are meant solely for clarity.

#### *E. Grammatical Edit*

EPA received one comment noting that the hyphen is not needed in the phrase "90-calendar days" and should be removed. EPA agrees with the commentor will make the suggested change at 40 CFR 2.108(a).

## V. Statutory and Executive Orders Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

### 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. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA.

### C. 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. In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule has no net burden on the small entities subject to the rule. This final rule does not impose any new requirements on small entities, and the EPA FOIA regulation's requirements apply equally to all FOIA requesters. This rule raises the FOIA fee rates, which EPA applies when EPA charges for the direct costs of EPA staff's time. This change does not represent a significant economic impact and any impact will be offset by increasing the minimum fee threshold. If EPA does not accumulate chargeable fees in an amount above the minimum fee threshold, then EPA does not charge fees. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

### D. 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.

### E. 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.

### F. 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.

### G. 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.

### H. Executive Order 13211: Actions Concerning Regulations 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.

### I. National Technology Transfer and Advancement Act

This rule does not involve technical standards.

### J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color) and low-income populations.

The EPA believes that this type of action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate

and adverse effects on people of color, low-income populations and/or indigenous peoples. Although this action does not concern human health or environmental conditions, the EPA identifies and addresses environmental justice concerns by finalizing a provision to allow requesters to seek expedited processing of their request if the records sought pertain to an environmental justice-related need and will be used to inform an affected community. See section IV.A. of this preamble.

### K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 2

Environmental protection, Administrative practice and procedure, Confidential business information, Freedom of information, Government employees.

**Michael S. Regan,**  
Administrator.

For the reasons set forth in the preamble, the EPA amends title 40 of the Code of Federal Regulations, part 2 as follows:

## PART 2—PUBLIC INFORMATION

■ 1. The authority citation for part 2 continues to read as follows:

**Authority:** 5 U.S.C. 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:

## PART 2—PUBLIC INFORMATION

### 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.
2.105	[Reserved]
2.106	Preservation of records.
2.107	Fees.
2.108	Administrative appeals.
2.109	Other rights and services.

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

#### § 2.100 General provisions.

(a) *General.* 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. Information routinely provided to the public as part of a regular EPA activity may be provided to the public without following this subpart.

(b) *Other regulatory provisions.* (1) Subpart B of this part contains requirements pertaining to the confidentiality of business information.

(2) 40 CFR part 16 contains requirements pertaining to Privacy Act requests.

(c) *Statutory-based fee schedule programs.* 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.

(d) *National FOIA Office.* 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.

(e) *FOIA Public Liaison.* The Chief FOIA Officer designates the FOIA Public Liaisons. The FOIA Public Liaisons report to the Chief FOIA Officer. 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. 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. The public can find more information about the FOIA Public Liaisons at EPA's website.

(f) *Other record availability.* Records required by FOIA to be made available for public inspection and copying are accessible through EPA's FOIA website, <http://www.epa.gov/foia>. EPA also proactively discloses records and information through the Agency's website, [www.epa.gov](http://www.epa.gov).

#### **§ 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, linked to at [www.epa.gov/foia](http://www.epa.gov/foia);

(2) An electronic government submission website established pursuant to 5 U.S.C. 552(m), such as [FOIA.gov](http://www.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 7309C, Washington, DC 20460.

(b) EPA will not treat a request submitted by any method other than those listed in § 2.101(a) as a FOIA request, and the Agency will not re-route such a request.

(c) 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."

(d) 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.

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

(b)(1) Requesters must reasonably describe the records sought in sufficient detail to enable a professional employee of the Agency who is familiar with the subject area of the request to locate the

records with a reasonable amount of effort.

(2) If EPA determines that a request does not reasonably describe the requested records as provided in § 2.102(b)(1), 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 § 2.102(b)(1). If the requester fails to modify the request to meet the requirements of § 2.102(b)(1) within 20 calendar days, EPA will not process the submission and close the request. If the requester does modify the request to meet the requirements of § 2.102(b)(1), EPA will consider the request received as of the date the modification is received by EPA.

(3) 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.

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

(a) *In general.* Upon receipt of a FOIA request under § 2.101(a), 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 that the Agency begins its search. 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).

(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 EPA's 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 any record 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 record to that other agency or consult with that other agency prior to making any release determination.

(f) *Assigning tracking numbers.* EPA may assign multiple tracking numbers to a FOIA request that contains unrelated parts that will be processed separately by multiple regions or headquarters program offices.

## § 2.104 Responses to requests.

(a) *Timing of response.* (1) Consistent with 5 U.S.C. 552(a)(6)(A) and upon any request for records made pursuant to this subpart, EPA shall determine within 20 working days after receipt of any such request whether to comply with such request and shall immediately notify the person according to this section.

(2) A requester submitting a request electronically must do so before 5:00 p.m. Eastern Time for the Agency to consider the request as received on that date, and a request submitted electronically at or after 5 p.m. Eastern Time will be considered received by the National FOIA Office on the next business day.

(3) The timeframe for response may be extended if unusual circumstances exist per paragraph (f) of this section, including when EPA asserts unusual circumstances and arranges an alternative timeframe with the requester, or exceptional circumstances exist per paragraph (g) of this section. The timeframe for response may be tolled per paragraph (e) of this section.

(b) *Agency failure to respond.* 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.

(c) *Acknowledgment of request.* 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.

(d) *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.

(e) *Tolling the request.* EPA 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.

(f) *Unusual circumstances.* (1) 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.

(2) 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.

(3) EPA will 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.

(g) *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, an environmental justice-related need, or both.

(i) A compelling need is defined as either:

(A) 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

(B) 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.

(ii) For purposes of this provision, an environmental justice-related need means a pressing need to inform a community that is potentially experiencing disproportionate and adverse human health or environmental effects. The Agency will consider:

(A) Whether the requested records relate to actual or alleged Federal government activity, including Agency records containing environmental information or data.

(B) The extent to which there is a pressing need to inform the community about the Federal government activity. A pressing need to inform does not include requests where the disclosure is primarily in the commercial interest of the requester.

(C) The extent to which the community is potentially experiencing disproportionate and adverse human health or environmental effects.

(D) The requester's ability and intention to effectively convey the information to members of the community.

(iii) If the Agency grants a request for expedited processing under paragraph (g)(1)(ii) of this section, the Agency will also waive fees established under § 2.107(f) for the request.

(2) Requesters must make a written 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.

(i) For example, if the requester fits within the category described in paragraph (g)(1)(i)(B) 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.

(ii) If the requester fits within the category described in paragraph (g)(1)(i)(B) 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.

(h) *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.

(i) *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.

(j) *Content of final determination letter.* The appropriate official will issue the final determination letter in accordance with § 2.103(b) 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 § 2.108 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.

#### § 2.105 [Reserved]

#### § 2.106 Preservation of records.

The Agency will preserve all correspondence pertaining to the FOIA requests that it receives, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 4.2. 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 this section, except where fees are limited under paragraph (g) of this section or where a waiver or reduction of fees is granted under paragraph (n) of this section.

(b) *How to pay fees.* Requesters must pay fees by check, money order, electronically at <https://www.pay.gov/>, to the Treasury of the United States.

(c) *Contractor rates.* When any search, review, or duplication task is performed by a contractor, EPA will charge for staff time at the contractor's actual pay rate, but not exceeding the rates set under paragraph (f)(2)(ii) of this section.

(d) *Rounding staff time.* Billable staff time is calculated by rounding to the nearest quarter-hour.

(e) *Types of requests for fee purposes.* For purposes of this section, the five types of request categories are defined

in paragraphs (e)(1) through (5) of this section. These request categories will be charged for the types of fees as noted, subject to the restrictions in paragraph (g) of this section and unless a fee waiver has been granted under paragraph (n) of this section. Paragraph (f) of this section defines and explains how the Agency calculates each type of fee.

(1) *Commercial-use Request.* (i) 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.

(ii) For a commercial-use request, the Agency will charge the requester for search, review, and duplication.

(2) *Educational institution request.* (i) 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 eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly research.

(ii) For an educational institution request, the Agency will charge the requester for duplication, except that the Agency will furnish the first 100 pages of duplication at no charge.

(3) *Noncommercial scientific institution request.* (i) Noncommercial scientific institution means an institution not operated on a "commercial" basis, as defined in paragraph (e)(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 eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial



use, but are sought in furtherance of scientific research.

(ii) For a noncommercial scientific institution request, the Agency will charge the requester for duplication, except that the Agency will furnish the first 100 pages of duplication at no charge.

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

(ii) For representative of the news media requests, the Agency will charge a requester for duplication, except that the Agency will furnish the first 100 pages of duplication at no charge.

(5) *Other requests.* (i) Other requesters are requesters that are not commercial requesters, educational institutions, noncommercial scientific institutions, or representatives of the news media.

(ii) The Agency will charge other requesters for 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.

(f) *Types of fees.* Paragraphs (f)(1) through (4) of this section are definitions of the types of fees and explanations of how the Agency calculates each type of fee.

(1) *Direct costs.* 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.

(2) *Search.* (i) 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. 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.

(ii) Search fees will equal the direct costs of search. Personnel will bill their time at the following rates using the current Office of Personnel Management

General Schedule (GS) pay table for Washington–Baltimore–Arlington, DC–MD–VA–WV–PA. The current calculations of these rates may be found at [www.epa.gov/foia](http://www.epa.gov/foia).

(A) GS–12 level or below (or equivalent pay scale): The average of GS–9 to GS–12 (Step 5), plus 16 percent, rounded to the nearest \$1 increment per quarter hour.

(B) GS–13 level or above (or equivalent pay scale): The average of GS–13 to GS–15 (Step 5), plus 16 percent, rounded to the nearest \$1 increment per quarter hour.

(iii) For requests that require the retrieval of records stored by an agency at a Federal Records Center operated by NARA, additional costs will be charged in accordance with the Transactional Billing Rate Schedule established by NARA.

(3) *Review.* (i) 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.

(ii) 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 (f)(2)(ii) of this section.

(4) *Duplication.* (i) 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, disc, or compact disc), 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.

(ii) 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. The Agency will charge operator time at the same rates as those charged for search under paragraph (f)(2)(ii) of this section.

(g) *Limitations on charging fees.* (1) The Agency will charge no fee when a total fee calculated under paragraph (c) of this section is less than fourteen times the rate in paragraph (f)(2)(ii)(B) of this section rounded to the nearest \$5.00 increment for any request. The current calculation of this threshold may be found at [www.epa.gov/foia](http://www.epa.gov/foia).

(2) The restrictions in paragraphs (e)(1)(ii), (2)(ii), (3)(ii), (4)(ii), and (5)(ii) and minimum fee threshold in (g)(1) 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 more than two hours plus the cost of duplication in excess of 100 pages totals more than fourteen times the rate in paragraph 2.107(f)(2)(ii)(B) of this section rounded to the nearest \$5.00 increment. The current calculation of this threshold may be found at [www.epa.gov/foia](http://www.epa.gov/foia).

(3) 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 (e)(2) through (4) 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 paragraphs (e)(2) through (4) 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, email, 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.

(h) *Assurance of payment and advanced payment of fees.* (1) If EPA determines that the actual or estimated fees exceed the amount in paragraph (g)(1) of this section, the Agency will notify the requester of the actual or estimated amount, toll the processing clock, and will do no further work on the request until the requester agrees in writing to pay the anticipated total fee.

(2) If EPA determines that the actual or estimated fees exceed twenty-five times the amount in paragraph (f)(2)(ii)(B) of this section, the Agency will notify the requester of the actual or estimated amount, and may toll the processing clock and do no further work on the request until the requester pays the estimated or actual fee. The current calculation of this amount may be found at [www.epa.gov/foia](http://www.epa.gov/foia).

(3) After providing the requester with estimated fee amounts, EPA will provide the requester with an opportunity to discuss with the Agency how to modify the request to meet the requester's needs at a lower cost.

(4) EPA calculates the estimated or actual fee cumulatively for multi-component requests. If only a part of the fee can be estimated readily, the Agency will advise the requester that the estimated fee may be only a portion of the total fee.

(5) If, after the requester provided an assurance of payment or paid an initially estimated or actual amount of fees, the Agency increases the estimated or actual amount of fees, the Agency will notify the requester, stop further processing of the request, and toll any deadline for responding to the request.

Once the requester provides assurance of payment or pays the fees, the time to respond to the request will resume from where it was at the date of the tolling notification.

(i) *Charges for other services.* Although not required to provide special services, if EPA chooses to do so as a matter of administrative discretion, the direct costs of providing the service will be charged to the requester. Examples of such services include certifying that records are true copies, sending records by other than EPA's electronic FOIA management system or U.S. Mail, or providing multiple copies of the same document.

(j) *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.

(k) *Delinquent requesters.* (1) If a requester fails to pay all fees charged to the requester under the FOIA by EPA or any other Federal agency within 60 calendar days of the date the fees were billed, the Agency will treat the requester as delinquent. The Agency may share information regarding delinquent requesters with other Federal agencies.

(2) Before EPA continues processing a pending FOIA request or begins processing any new FOIA requests from a delinquent requester, the delinquent requester must pay the full amount due, plus any applicable interest, on that prior request and make an advance payment of the full amount of any anticipated fee.

(3) When the Agency requires payment under paragraph (h)(2) of this section, the request will not be considered received until the required payment is made. If the requester does not pay the outstanding balance and the advance payment within 30 calendar days after the date of EPA's fee determination, the request will be closed.

(l) *Aggregating requests.* If a requester or a group of requesters acting in concert submit two or more requests that involve related matters and paragraphs (l)(1), (2), or both of this section, apply then the Agency may aggregate those requests and charge fees accordingly. Multiple FOIA requests involving unrelated matters shall not be aggregated. An aggregated group of FOIA requests will be treated as a single FOIA request under this subpart, including evaluation of whether unusual circumstances exist.

(1) The Agency reasonably believes that if the requests constituted a single request, such a request would result in unusual circumstances pursuant to § 2.104(f); or

(2) The Agency reasonably believes that the requester or requesters acting together are attempting to divide a request into a series of requests for the purpose of avoiding fees. The Agency may presume that such requests have been submitted to avoid fees if submitted within a 30-day period. When requests are submitted by a period greater than 30 days, the Agency will aggregate them only if there exists a solid basis for determining that aggregation is warranted under all the circumstances involved.

(m) *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.

(n) *Waiver or reduction of fees.* (1) A request for a waiver or reduction of FOIA fees must be made at the time of the initial submission of a FOIA request. An untimely request for a waiver or reduction of fees will be denied.

(2) Requests for the waiver or reduction of fees must address the factors listed in paragraphs (n)(4) through (6) of this section, as far as they apply to each request. EPA components 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 components as needed. Requesters must submit requests for the waiver or reduction of fees along with the request.

(3) 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.

(4) 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:

(i) Likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) Is not primarily in the commercial interest of the requester.

(5) 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.

(6) 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 (e)(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.

#### **§ 2.108 Administrative appeals.**

(a) *Appeals of adverse determinations.* To appeal an adverse determination, a requester must submit an appeal in writing within 90 calendar days from the date of the letter communicating the Agency’s adverse determination, and by one of the following methods:

(1) EPA’s FOIA submission website, linked to at [www.epa.gov/foia](http://www.epa.gov/foia);

(2) 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

(3) Overnight delivery service to National FOIA Office, U.S. Environmental Protection Agency, 1200 Pennsylvania NW, Room 7309C, Washington, DC 20460.

(b) *Timing for administrative appeals submitted electronically.* Requesters submitting appeals electronically must do so before 5 p.m. Eastern Time for the Agency to consider the appeal as received on that date, and appeals submitted electronically at or after 5 p.m. Eastern Time will be considered received by the National FOIA Office on the next business day.

(c) *Content of administrative appeal.* The appeal may include as much or as little related information as the requester wishes. The appeal must clearly identify the office’s determination that is being appealed and the assigned request tracking number. For quickest handling of appeals sent via U.S. Mail or overnight delivery service, the requester must mark their appeal letter and its envelope with “Freedom of Information Act Appeal.”

(d) *Authority to make decision on 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) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(e) *Timing of decision on appeal.* EPA will make the decision on the appeal in writing, normally within 20 working days of its receipt by the National FOIA Office.

(1) 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, inform the requester of dispute resolution services offered by the Office of Government Information Service of the National Archives and Records Administration, and inform the

requester of the FOIA provisions for judicial review of the decision.

(2) If the Agency reverses or modifies the adverse determination on appeal, 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.

(f) *When appeal is required.* 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.

**§ 2.109 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. 2023-19699 Filed 9-13-23; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2022-0910; FRL-10564-03-R9]

**Air Quality Implementation Plan; California; El Dorado County Air Quality Management District; Stationary Source Permits**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing a revision to the El Dorado County Air Quality Management District’s (EDCAQMD or “District”) portion of the California State Implementation Plan (SIP). This revision governs the District’s issuance of permits for stationary sources, and focuses on the preconstruction review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA or “the Act”).

**DATES:** This rule is effective October 16, 2023.

**ADDRESSES:** The EPA has established a docket for this action under Docket No. EPA-R09-OAR 2022-0910. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly

available, e.g., Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Camille Cassar, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; by phone: (415) 947-4164; or by email to [cassar.camille@epa.gov](mailto:cassar.camille@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms “we,” “us,” and “our” refer to the EPA.

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**I. Proposed Action**

On March 31, 2023,<sup>1</sup> the EPA proposed to approve the rule listed in Table 1 into the California SIP.<sup>2</sup>

TABLE 1—SUBMITTED RULE

Rule No.	Rule title	Revised	Submitted
Rule 523-1 .....	Federal Non-Attainment New Source Review .....	December 7, 2021	March 9, 2022.

For areas designated nonattainment for one or more National Ambient Air Quality Standards (NAAQS), the applicable SIP must include preconstruction review and permitting requirements for new or modified major stationary sources of such nonattainment pollutant(s) under part D of title I of the Act, commonly referred to as Nonattainment New Source Review (NNSR). The rule listed in Table 1 contains the District’s NNSR permit program applicable to new and modified major sources located in the designated nonattainment areas in El Dorado County. Our proposed action

contains more information on the rule and our evaluation.

**II. Public Comments**

The EPA’s proposed action provided a 30-day public comment period. During this period, no comments were submitted on our proposal.

**III. EPA Action**

No comments were submitted on our proposal. We continue to find that Rule 523-1 satisfies the relevant requirements for a CAA NNSR program for ozone and PM<sub>2.5</sub> nonattainment areas,<sup>3</sup> as well as the associated

visibility requirements for sources subject to review under such a program in accordance with 40 CFR 51.307. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is approving the submitted rule.

Additionally, all sanctions and sanctions clocks triggered by our February 2, 2000 final limited approval and limited disapproval action (65 FR 4887) will be permanently terminated on the effective date of this final approval action. In our interim final determination to defer sanctions (88 FR 19225), issued concurrently with our proposed approval action, we explained

<sup>1</sup> 88 FR 19233.

<sup>2</sup> Concurrent with our proposed approval action, we issued an interim final determination that the District had satisfied the requirements of title I, part D of the CAA permitting program for nonattainment areas within the jurisdiction of the EDCAQMD. See 88 FR 19225 (March 31, 2023). The effect of our

interim final determination was that the imposition of sanctions that had been triggered in a February 2, 2000 final limited approval and limited disapproval action (65 FR 4887) was deferred.

<sup>3</sup> As discussed in our proposed action, we determined that Rule 523-1 satisfies the NNSR program requirements applicable to nonattainment

areas classified as Severe for ozone and Moderate for PM<sub>2.5</sub>, and that the submittal addressed the NNSR requirements both the 2008 and 2015 ozone NAAQS, as well as the 2006 PM<sub>2.5</sub> NAAQS. 88 FR 19233, 19235.