

Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A "Categorical Exclusion Determination" is available for inspection or copying where indicated under ADDRESSES.

#### 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:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T08-108 is added to read as follows:

#### § 165.T08-108 Security Zones; Captain of the Port Houston-Galveston Zone.

(a) *Location.* The following areas are designated as security zones:

(1) *Houston, TX.* The Houston Ship Channel and all associated turning basins, bounded by a line drawn between Houston Ship Channel Light 132 (LLNR-24445) and Houston Ship Channel Light 133 (LLNR-24450) west to the T & N Rail Road Swing Bridge at the entrance to Buffalo Bayou, including all waters adjacent to the ship channel from shoreline to shoreline and the first 200 yards of connecting waterways.

(2) *Morgan's Point, TX.* The Barbours Cut Ship Channel and Turning Basin containing all waters west of a line drawn between Junction Light "Barbours Cut" 29°41'12" N, 94°59'12" W (LLNR-23525), and Houston Ship Channel Light 91, 29°41'00" N, 94°59'00" W (LLNR-23375) (NAD 1983).

(3) *Bayport, TX.* The Port of Bayport, Bayport Ship Channel and Bayport Turning Basin containing all waters south of latitude 29°36'45" N and west of the Bayport Ship Channel Light 9 (LLNR-23295) (NAD 1983).

(4) *Texas City, TX.* The Port of Texas City Channel, Turning Basin and Industrial Canal containing all waters bounded by the area South and West of a line drawn from Texas City Channel Light 19 (LLNR 24810) through Cut B Inner Range Front Light (LLNR 24765) and terminating on land in position 29°23'16" N, 94°53'15" W (NAD 1983).

(5) *Freeport, TX.* (i) The Dow Barge Canal containing all waters bounded by its junction with the Intracoastal Waterway, by a line drawn between the eastern point at 28°56'48" N, 95°18'20" W, and the western point at 28°56'40" N, 95°18'33" W (NAD 1983).

(ii) The Brazos Harbor containing all waters west of a line drawn between the northern point at 28°56'27" N, 95°20'00" W, and the southern point 28°56'09" N, 95°20'00" W (NAD 1983) at its junction with the Old Brazos River Cut.

(b) *Effective dates.* This section is effective from 8 a.m. on October 15, 2002 through 8 a.m. on April 15, 2003.

(c) *Regulations.* (1) Entry into these zones is prohibited except for the following:

(i) Commercial vessels operating at waterfront facilities within these zones;

(ii) Commercial vessels transiting directly to or from waterfront facilities within these zones;

(iii) Vessels providing direct operational/logistic support to commercial vessels within these zones;

(iv) Vessels operated by the appropriate port authority or by facilities located within these zones; and

(v) Vessels operated by Federal, State, county, or municipal agencies.

(2) Other persons or vessels requiring entry into a zone described in this section must request express permission to enter from the Captain of the Port Houston-Galveston, or his designated representative.

(3) To request permission as required by these regulations contact "Houston Traffic" via VHF Channels 11/12 or via phone at (713) 671-5103.

(4) All persons and vessels shall comply with the instructions of the Captain of the Port Houston-Galveston and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: October, 11 2002.

**Kevin S. Cook,**

*Captain, U.S. Coast Guard, Captain of the Port Houston-Galveston.*

[FR Doc. 02-28090 Filed 11-4-02; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 2

[OEI-2002-0005; FRL-7404-4]

RIN 2025-AA04

#### Revised Freedom of Information Act Regulations

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** This document revises subpart A of the Environmental Protection Agency (EPA or Agency) regulations implementing the Freedom of Information Act (FOIA). EPA is streamlining and condensing its regulations, in accordance with the principles of the National Performance Review, and is using simpler language whenever possible. In addition, the regulations contain new provisions implementing the Electronic Freedom of Information Act Amendments of 1996 (E-FOIA) and update cost figures for calculating and charging fees.

**EFFECTIVE DATE:** November 5, 2002.

**FOR FURTHER INFORMATION CONTACT:** Betty A. Lopez, Records, Privacy and

FOIA Branch, Collection Strategies Division, Office of Information Collection, Office of Environmental Information (OEI), EPA, 1200 Pennsylvania Ave, NW. (2822T), Washington, DC 20460. Phone, (202) 566-1667; Fax, (202) 566-2147. e-mail, [hq.foia@epa.gov](mailto:hq.foia@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. How Can I Get Copies Of This Document and Other Related Information ?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OEI-2002-0005. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Public Reading Room telephone number is (202) 566-1744.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.A. 1. Once in the system, select "search," then key in the appropriate docket identification number.

##### II. Background Information

On April 12, 2000, the EPA published a proposed rule to revise 40 CFR part 2, subpart A, and add new provisions implementing the Electronic Freedom of Information Act Amendments of 1996, Public Law 104-231. See 65 FR 19703,

April 12, 2000. Interested persons were afforded an opportunity to participate in the rulemaking through submission of written comments on the proposed rule. The Agency received eight comments on its proposed rule. The Agency has adopted several of the suggested changes made by the commenters and has also made other revisions to its proposed rule for clarity.

New provisions implementing the suggested changes made by the commenters are found at § 2.100(a), § 2.101(a), § 2.101(c) (electronic availability of records), § 2.102(a)—§ 2.102(d) (process for requesting records), § 2.103 (responsibility for responding for requests), § 2.104(a) (deadline for response), § 2.104(b) (timing of responses, acknowledgment), § 2.104(c) (multitrack processing), § 2.104(d) (unusual circumstances), § 2.104(e) (expedited processing), § 2.104(f) (annotation of applicable exemption), § 2.104(h) (denial of records), § 2.104(i) (denial of fee waivers), § 2.104(j)(2) (appeal of Inspector General determinations), § 2.104(j)(4) (closing of appeal if litigation initiated), § 2.104(k) (exhaustion of administrative appeal rights), § 2.105 (exemption categories), § 2.107(b)(3) (format of disclosure), and § 2.107(b)(8) (searches for electronic records). Revisions to the Agency's fee schedule are found at §§ 2.107(c) and (d).

##### Comments

The Agency received a total of eight comments from the following: a nonprofit group that regularly uses the FOIA; an association that represents electric utilities, international affiliates, and industry associates; a manufacturing and services company; a law firm on behalf of a manufacturing company; a law firm on behalf of an ad hoc group of electric utilities and trade associations; a citizen; an association that represents cattle feeders and family ranchers; and the EPA Office of Inspector General.

In some instances, commenters suggested particular changes to the proposed rule. Several of the suggested changes have been accepted and incorporated into the Agency's final rule. For example, several commenters suggested the rule should list the FOIA statutory exemptions and refer to subpart B of these regulations to further address the handling of confidential business information. The Agency agrees and has modified § 2.100(a) to include a reference to subpart B of these regulations and has listed the statutory exemptions at § 2.105.

The Agency also agrees with one commenter's suggestion to include the e-mail addresses of the Agency's Freedom of Information (FOI) Offices, a reference to the Agency's online forms for filing FOIA requests, and clarification that a FOIA request must be in writing and may be submitted by mail, facsimile (fax), or electronically. Accordingly, the Agency has revised § 2.101(a) to include the e-mail addresses and the last sentence of § 2.102(a) recommending that envelopes, fax cover sheets, or e-mail subject lines be marked, "Freedom of Information Act Request." Since telephone and fax numbers are subject to change, the Agency has not included the numbers in the final rule. Current telephone and fax numbers may be obtained from the Agency's web site.

One commenter suggested the deletion of the phrase "created by EPA" in § 2.101(c) and rescission of an allegedly erroneous interpretation of the statutory phrase "created on or after November 1, 1996." The Agency disagrees with the commenter and believes that these phrases are in accordance with the plain language of the statute.

The Agency agrees with one commenter's suggestion to revise § 2.102(c) to match the language of FOIA at 5 U.S.C. 552(a)(3)(A) on what constitutes a reasonable request. Accordingly, the Agency has modified § 2.102(c) concerning the description of records sought.

One commenter suggested the Agency amend § 2.103(a) to provide that EPA will review all responsive records "in its possession as of the date the FOI Office begins processing the request." The Agency disagrees with the suggestion but has modified § 2.103(a) to clarify that only those records in EPA's possession as of the date the FOIA request was received in the appropriate FOI Office will be considered within the scope of the request.

Further, the Agency agrees with the suggestion of two commenters that § 2.103(c) be revised to set forth the standard EPA will use to decide whether to refer a request to another Federal agency. Accordingly, § 2.103(c) has been revised to state that where records responsive to the request originated with another Federal agency, EPA will either refer the request to the other agency or, after consultation, respond to the request itself. In addition, whenever all or any part of a request has been transferred to another agency for response, EPA will notify the requestor.

Three commenters suggested that the language in §§ 2.104(b) and (k) regarding proposed time limits does not comply with the time limits prescribed by FOIA at 5 U.S.C. 552(a)(6)(A)(i) and (ii), which provide that an agency must always respond to an initial FOIA request within 20 working days and to an appeal within 20 working days. The commenters recommended that § 2.104(b) be rewritten to delete the language “[c]omponents *ordinarily* will respond to requests no later than twenty (20) working days from the date the request is received.” Similarly, the commenters recommended that § 2.104(k) be rewritten to delete the language “[t]he decision on an appeal will be made normally in writing, within 20 working days of its receipt.” The Agency has modified § 2.104(b) to clarify that unusual circumstances may provide for a response outside the 20 working day statutory time limit. Also, § 2.104(k) has been modified by removing any reference to time limits. Moreover, § 2.104(l) has been modified to clarify that judicial action may be taken should EPA not respond to an appeal within the statutory 20 working day time limit.

The Agency agrees with the suggestion of two commenters to change § 2.104(c) to comport with the requirements of FOIA at 5 U.S.C. 552(a)(6)(C)(i) concerning when requesters may be deemed to have exhausted their administrative remedies. Accordingly, the Agency has modified § 2.104(b) to provide notice that requesters have a right to seek immediate judicial review when the Agency fails to respond to a request within the statutory 20 working day period or any authorized extension of time.

Three commenters suggested that proposed § 2.104(d) provides no standards to guide the Agency when distinguishing between simple and complex requests based on the amount of work or time (or both) expended for processing a request. The Agency believes that the current language, stating that the amount of work or time (or both) to process a request, as well as informing requesters that they have the opportunity to limit the scope of their requests in order to qualify for faster processing, directly comports with the statutory language and therefore it declines to revise § 2.104(d).

One commenter suggests that the “as soon as practicable” language in proposed § 2.104(e) should be changed to provide that the Agency shall notify a requester in writing, “within 20 days of the date the request is received” of the unusual circumstances that warrant

delay and of the extended date for response. The commenter also suggests that the Agency should incorporate the statutory definition of “unusual circumstances” to avoid any confusion. In response to the commenter’s suggestions, the Agency has inserted the phrase “as defined in the FOIA” into this provision to alert requesters to the statutory basis of the definition of the term “unusual circumstances,” although we have retained the proposed language in § 2.104(e) regarding notification.

Two commenters suggested changes to § 2.104(f) concerning expedited processing. Specifically, one commenter recommended that the Agency use the multitask authority to expedite requests that are likely to be the subject of multiple requests. Another commenter suggested that the expedited processing provision is too narrow and should be rewritten so that it guarantees expedited processing to any requester who “demonstrates a compelling need” for the requested records. The Agency declines to adopt the first comment because it believes that it is implicit in the current language of § 2.104(f) that those requests being given expedited processing will receive immediate priority. Moreover, the current language of § 2.104(l) clearly states that when a requester meets the criteria set out in the regulation for establishing a compelling need, expedited processing will be granted. Accordingly, a “guarantee of expedited processing” is unnecessary and the Agency declines to adopt the second comment.

Three commenters suggested that the proposal retain the language for listing withheld records as it appears in existing 40 CFR 2.113. The Agency agrees and has revised § 2.104(i)(2) to include the language for identifying records being withheld.

The EPA Office of Inspector General requested that the rule be revised to delegate authority to the Counsel to the Inspector General to respond to appeals of denials of requests for Office of Inspector General records. The Office of Inspector General commented that appeals of denials of access to Office of Inspector General records are currently handled by EPA’s General Counsel and, in its view, Inspector General independence requires that the Office of Inspector General maintain full responsibility for, and custody and control over, all Office of Inspector General records. The Agency agrees and has added § 2.104(j)(2) to authorize the Counsel to the Inspector General to act on appeals of denials of requests for Office of Inspector General records, unless the Counsel to the Inspector General has signed the adverse initial

determination, in which case the General Counsel, or their designee, would respond to the appeal.

One commenter suggested that the Agency should eliminate proposed § 2.104(j)(3), which stated that the Agency would take no further action on an appeal if the request becomes a matter of FOIA litigation, because it penalizes requesters who exercise their statutory right to sue the Agency if the Agency fails to respond to the requester’s appeal within 20 working days, as provided by § 2.104(j)(4). This language is not intended to penalize requesters or to suggest that EPA will take no further action on the matter but to indicate that once a lawsuit has been filed, any further actions on behalf of the Agency will be taken in the context of the litigation and not the administrative appeal process. Therefore, EPA has added language in § 2.104(j)(4) to reflect that once an appellant has initiated litigation because the Agency has not resolved an appeal in a timely manner, any further action on the records in dispute will take place through the lawsuit.

The Agency agrees with one commenter’s suggestion to revise § 2.104(l) because an administrative appeal is not necessary when the Agency has not made a timely initial determination. Accordingly, the Agency has inserted language in §§ 2.104(b) and (l) stating that if EPA fails to respond to a request within the statutory 20 working day period or any authorized extension of time, the requester may seek judicial review to obtain the records without first making an administrative appeal.

The Agency has removed the word “component” from the proposed regulations, and replaced it with “Agency” or “office” as appropriate to reflect more accurately the Agency’s organizational structure.

### III. Statutory Authority

EPA is issuing this rule under the authority of 5 U.S.C. 301, 552 (as amended), and 553.

### IV. Administrative Requirements

#### A. Regulatory Flexibility Act, as amended

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies

that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as that term is defined in the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

EPA has determined that this final rule will have only a small economic impact on the small entities that submit FOI requests to EPA for records. Under the FOIA, agencies may recover only the direct costs of processing FOI requests. EPA's proposed fees are nominal and have been calculated to recover only the direct costs of processing a FOI request. The revision to the fee schedule is minimal and reflects a more specific breakdown of direct costs by the kind of EPA employee involved in processing a FOI request. Therefore, under 5 U.S.C. 605(b), I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

#### B. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective November 5, 2002.

#### C. Paperwork Reduction Act

This final rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It pertains solely to the dissemination of information under the FOIA.

#### D. Environmental Impact

This final rule is expected to have no environmental impact. It pertains solely to the dissemination of information under the FOIA.

#### E. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether this final rule is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and therefore is not subject to OMB review.

#### F. Executive Order 13132 on Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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."

This final rule 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, as specified in Executive Order 13132. This final rule simply revises EPA's regulations

implementing the FOIA. Thus, the requirements of section 6 of the Executive Order do not apply to this final rule.

#### G. Executive Order 13175 on Consultation with Indian Tribal Governments

Executive Order 13175, entitled, "A Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

#### H. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. Under section 205, for any rule subject to section 202, EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that this final rule does not include a federal mandate as defined in UMRA. This final rule does not include a federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of \$100 million or more, and does not

establish regulatory requirements that may significantly or uniquely affect small governments.

#### *I. Executive Order 13045*

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined under Executive Order 12866.

#### *J. National Technology Transfer and Advancement Act of 1995*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when EPA decides not to use available and applicable voluntary consensus standards.

This final rule does not involve any technical standards, and EPA is not considering the use of any voluntary consensus standards. Accordingly, this final rule is not subject to the requirements of the NTTAA.

#### *K. Executive Order 13211 (Energy Effects)*

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. EPA has concluded that this rule is not

likely to have any adverse energy effects.

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

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

Dated: October 30, 2002.

**Christie Whitman,**

*Administrator, Environmental Protection Agency.*

For the reasons set out in the preamble, 40 CFR part 2 is amended as follows:

#### **PART 2—PUBLIC INFORMATION**

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

**Authority:** 5 U.S.C. 301, 552 (as amended) and 553; secs. 114, 205, 208, 301, and 307, Clean Air Act, as amended (42 U.S.C. 7414, 7525, 7542, 7601, 7607); secs. 308, 501 and 509(a), Clean Water Act, as amended (33 U.S.C. 1318, 1361, 1369(a)); sec. 13, Noise Control Act of 1972 (42 U.S.C. 4912); secs. 1445 and 1450, Safe Drinking Water Act (42 U.S.C. 300j-4, 300j-9); secs. 2002, 3007, and 9005, Solid Waste Disposal Act, as amended (42 U.S.C. 6912, 6927, 6995); secs. 8(c), 11, and 14, Toxic Substances Control Act (15 U.S.C. 2607(c), 2610, 2613); secs. 10, 12, and 25, Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136h, 136j, 136w); sec. 408(f), Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 346(f)); secs. 104(f) and 108, Marine Protection Research and Sanctuaries Act of 1972 (33 U.S.C. 1414(f), 1418); secs. 104 and 115, Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9604 and 9615); sec. 505, Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2005).

2. Part 2, subpart A, 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 requests for records are to be filed.
- 2.102 Procedures for making requests.
- 2.103 Responsibility for responding to requests.
- 2.104 Responses to requests and appeals.
- 2.105 Exemption categories.
- 2.106 Preservation of records.
- 2.107 Fees.
- 2.108 Other rights and services.

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

###### **§ 2.100 General provisions.**

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

(b) When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as, but not limited to, the Government Printing Office or the National Technical Information Service, EPA will inform the requester of the steps necessary to obtain records from these sources.

###### **§ 2.101 Where requests for records are to be filed.**

(a) You may request records by writing to the Records, FOIA, and Privacy Branch, Office of Environmental Information, Environmental Protection Agency, 1200 Pennsylvania Avenue (2822T), NW, Washington, DC 20460; e-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov). You may also access EPA Headquarters and Regional Freedom of Information Offices' Web sites at <http://www.epa.gov/foia> and submit a request via an online form. If you believe the records sought may be located in an EPA regional office, you should send your request to the appropriate regional FOI Officer as indicated in the following list:

(1) Region I (CT, ME, MA, NH, RI, VT): EPA, FOI Officer, One Congress Street, Suite 1100, Boston, MA 02114-2023; e-mail: [r1foia@epa.gov](mailto:r1foia@epa.gov).

(2) Region II (NJ, NY, PR, VI): EPA, FOI Officer, 290 Broadway, 26th Floor, New York, NY 10007-1866; e-mail: [r2foia@epa.gov](mailto:r2foia@epa.gov).

(3) Region III (DE, DC, MD, PA, VA, WV): EPA, FOI Officer, 1650 Arch Street, Philadelphia, PA 19103-2029; e-mail: [r3foia@epa.gov](mailto:r3foia@epa.gov).

(4) Region IV (AL, FL, GA, KY, MS, NC, SC, TN): EPA, Freedom of

Information Officer, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303-8960; e-mail: [r4foia@epa.gov](mailto:r4foia@epa.gov).

(5) Region V (IL, IN, MI, MN, OH, WI): EPA, Freedom of Information Officer, 77 West Jackson Boulevard, Chicago, IL 60604-3507; e-mail: [r5foia@epa.gov](mailto:r5foia@epa.gov).

(6) Region VI (AR, LA, NM, OK, TX): EPA, Freedom of Information Officer, 1445 Ross Avenue, Dallas, TX 75202-2733; e-mail: [r6foia@epa.gov](mailto:r6foia@epa.gov).

(7) Region VII (IA, KS, MO, NE): EPA, Freedom of Information Officer, 901 North Fifth Street, Kansas City, KS 66101; e-mail: [r7foia@epa.gov](mailto:r7foia@epa.gov).

(8) Region VIII (CO, MT, ND, SD, UT, WY): EPA, Freedom of Information Officer, 999 18th Street, Suite 500, Denver, CO 80202-2466, e-mail: [r8foia@epa.gov](mailto:r8foia@epa.gov).

(9) Region IX (AZ, CA, HI, NV, AS, GU): EPA, Freedom of Information Officer, 75 Hawthorne Street, San Francisco, CA 94105; e-mail: [r9foia@epa.gov](mailto:r9foia@epa.gov).

(10) Region X (AK, ID, OR, WA): EPA, Freedom of Information Officer, 1200 Sixth Avenue, Seattle, WA 98101; e-mail: [r10foia@epa.gov](mailto:r10foia@epa.gov).

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

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

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

(a) *How made and addressed.* You may make a request for EPA records that are not publicly available under § 2.201(a)-(b) by writing directly to the appropriate FOI Officer, as listed in § 2.101(a). Only written requests for records will be accepted for processing under this subpart. For records located at EPA Headquarters, or in those

instances when you cannot determine where to send your request, you may send it to the Records, FOIA, and Privacy Branch, Office of Environmental Information, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; e-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov). That office will forward your request to the regional FOI Office it believes most likely to have the records that you want. Your request will be considered received as of the date it is received by the correct FOI Office.

Misdirected requests will not be considered received by EPA until the appropriate FOI Office receives the request. For proper handling, you should mark both your request letter and its envelope or e-mail subject line "Freedom of Information Act Request." You should also include your name, mailing address, and daytime telephone number in the event we need to contact you.

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

(c) *Description of records sought.* Your request should reasonably describe the records you are seeking in a way that will permit EPA employees to identify and locate them. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter. If known, you should include any file designations or descriptions for the records that you want. The more specific you are about the records or type of records that you want, the more likely EPA will be able to identify and locate records responsive to your request. If EPA determines that your request does not reasonably describe the records, it will tell you either what additional information you need to provide or why your request is otherwise insufficient. EPA will also give you an opportunity to discuss and modify your request to meet the requirements of this section. Should it be necessary for you to provide a revised description of the records you are seeking, the time necessary to do so will be excluded from the statutory 20 working day period (or any authorized extension of time) that EPA has to respond to your request as discussed in § 2.104.

(d) *Agreement to pay fees.* If you make a FOIA request, EPA will consider your request to be an agreement that you will pay all applicable fees charged under § 2.107, up to \$25.00, unless you seek a

waiver of fees. The EPA office responsible for responding to your request ordinarily will confirm this agreement in writing. When making a request, you may specify a willingness to pay a greater or lesser amount. Should it be necessary for you to provide a written agreement to pay additional fees, the time necessary to do so will be excluded from the statutory 20 working day period (or any authorized extension of time).

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

(a) *In general.* Except as stated in paragraphs (c), (d), (e), and (f) of this section, the EPA office that has possession of that record is the office responsible for responding to you. In determining which records are within the scope of a request, an office will ordinarily include only those records in its possession as of the date the request was received in the Headquarters or Regional FOI Office. If any other date is used, the office will inform you of that date.

(b) *Authority to grant or deny requests.* The head of an office, or that individual's designee, is authorized to grant or deny any request for a record of that office or other Agency records when appropriate.

(c) *Authority to grant or deny fee waivers or requests for expedited treatment.* The head of the Headquarters FOIA Office and Regional FOI Officers, or their designees, are authorized to grant or deny fee waivers or requests for expedited treatment.

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

(1) Consult with the Federal agency where the record or portion thereof originated and then respond to your request, or

(2) Direct the FOI Office to refer your request to the Federal agency where the record or portion thereof originated. Whenever all or any part of the responsibility for responding to a request has been referred to another agency, the FOI Office will notify you accordingly.

(e) *Law enforcement information.* Whenever a request is made for a record containing information that relates to an investigation of a possible violation of law and was originated by another agency, the receiving office will either direct the FOI Office to refer the request to that other agency or consult with that other agency prior to making any release determination.

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

(a) Unless the Agency and the requester have agreed otherwise, or when unusual circumstances exist as provided in paragraph (e) of this section, EPA offices will respond to requests no later than 20 working days from the date the request is received and logged in by the appropriate FOI Office. EPA will ordinarily respond to requests in the order in which they were received. If EPA fails to respond to your request within the 20 working day period, or any authorized extension of time, you may seek judicial review to obtain the records without first making an administrative appeal.

(b) On receipt of a request, the FOI Office ordinarily will send a written acknowledgment advising you of the date it was received and of the processing number assigned to the request for future reference.

(c) *Multitrack processing.* The Agency uses three or more processing tracks by distinguishing between simple and complex requests based on the amount of work and/or time needed to process the request, including limits based on the number of pages involved. The Agency will advise you of the processing track in which your request has been placed and of the limits of the different processing tracks. The Agency may place your request in its slower track(s) while providing you the opportunity to limit the scope of your request in order to qualify for faster processing within the specified limits of the faster track(s). If your request is placed in a slower track, the Agency will contact you either by telephone or by letter, whichever is most efficient in each case.

(d) *Unusual circumstances.* When the statutory time limits for processing a request cannot be met because of "unusual circumstances," as defined in the FOIA, and the time limits are extended on that basis, you will be notified in writing, as soon as practicable, of the unusual circumstances and of the date by which processing of the request should be completed. When the extension is for more than 10 working days, the Agency will provide you with an opportunity either to modify the request so that it may be processed within the 10 working day time limit extension or to arrange an alternative time period for processing the original or modified request.

(e) *Expedited processing.* (1) Requests or appeals will be taken out of order and given expedited treatment whenever EPA determines that such requests or appeals involve a compelling need, as follows:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

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

(2) A request for expedited processing must be made at the time of the initial request for records or at the time of appeal.

(3) If you are seeking expedited processing, you must submit a statement, certified to be true and correct to the best of your knowledge and belief, explaining in detail the basis for the request. For example, if you fit within the category described in paragraph (e)(1)(ii) of this section and are not a full-time member of the news media, you must establish that you are a person whose primary professional activity or occupation is information dissemination, although it need not be your sole occupation. If you fit within the category described in paragraph (e)(1)(ii) of this section, you 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 your request for expedited processing, the head of the Headquarters FOI Staff or Regional FOI Officer will decide whether to grant your request and will notify you of the decision. If your request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If your request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

(f) *Grants of requests.* Once an office makes a determination to grant a request in whole or in part, it will release the records or parts of records to you and notify you of any applicable fee charged under § 2.107. Records released in part will be annotated, whenever technically feasible, with the applicable FOIA exemption(s) at that part of the record from which the exempt information was deleted.

(g) *Adverse determinations of requests.* Once the Agency makes an adverse determination of a request, the requestor will be notified of that determination in writing. An adverse determination consists of a determination to withhold any requested record in whole or in part; a determination that a requested record

does not exist or cannot be located; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver; or a denial of a request for expedited treatment.

(h) *Initial denials of requests.* The Deputy Administrator, Assistant Administrators, Regional Administrators, the General Counsel, the Inspector General, Associate Administrators, and heads of headquarters staff offices are delegated the authority to issue initial determinations. However, the authority to issue initial denials of requests for existing, located records (other than initial denials based solely on § 2.204(d)(1)) may be redelegated only to persons occupying positions not lower than division director or equivalent. Each letter will include:

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

(2) A brief statement of the reason(s) for the denial, including an identification of records being withheld (individual, or if a large number of similar records are being denied, by described 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; and

(4) A statement that the denial may be appealed under, and a description of the requirements of, paragraph (j) of this section.

(i) Denial of fee waiver. The letter denying a request for a fee waiver or expedited treatment will be signed by the head of the Headquarters FOI Staff or Regional FOI Officers.

(j) Appeals of adverse determinations. If you are dissatisfied with any adverse determination of your request by an office, you may appeal that determination to the Headquarters Freedom of Information Staff, Records, Privacy and FOIA Branch, Office of Information Collection, Office of Environmental Information, Environmental Protection Agency, 1200 Pennsylvania Avenue (2822T), NW., Washington, DC 20460; e-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov). The appeal must be made in writing, and it must be submitted to the Headquarters FOI Staff no later than 30 calendar days from the



date of the letter denying the request. The Agency will not consider appeals received after the 30-day limit. The appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the determination being appealed (including the assigned FOIA request number, if known). For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal." Unless the Administrator directs otherwise, the General Counsel or his/her designee will act on behalf of the Administrator on all appeals under this section, except that:

(1) In the case of an adverse initial determination by the General Counsel or his/her designee, the Administrator or his/her designee will act on the appeal;

(2) The Counsel to the Inspector General will act on any appeal where the Inspector General or his/her designee has made the initial adverse determination; however, if the Counsel to the Inspector General has signed the initial adverse determination, the General Counsel or his/her designee will act on the appeal;

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

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

(k) The decision on your appeal will be made in writing, normally within 20 working days of its receipt by the Headquarters Freedom of Information Staff. A decision affirming an adverse determination in whole or in part will contain a statement of the reason(s) for the decision, including any FOIA exemption(s) applied, and inform you of the FOIA provisions for judicial review of the decision. If the adverse determination is reversed or modified on appeal, you will be notified in a written decision. This written decision will either have the requested information that has been determined on appeal to be releasable attached to it, or your request will be returned to the appropriate office so that it may be reprocessed in accordance with the appeal decision.

(l) If you wish to seek judicial review of any adverse determination, you must first appeal that adverse determination under this section, except when EPA has not responded to your request within the statutory 20 working day time limit. In such cases, you may seek judicial review without making an administrative appeal.

#### **§ 2.105 Exemption categories.**

(a) The FOIA, 5 U.S.C. 552(b), establishes the following nine categories of information which are exempt from the mandatory disclosure requirements of 5 U.S.C. 552(a):

(1)(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy; and

(ii) Are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding information or refers to particular types of information to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the affected agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such

disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

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

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

#### **§ 2.107 Fees.**

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

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

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

(2) *Direct costs* means those expenses that the Agency actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee



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

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

(4) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by, and is made under the auspices of, a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

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

(6) *Representative of the news media or news media requester* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A

publication contract would be the clearest proof, but FOI Officers will also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use.

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

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

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

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

(ii) *Educational or non-commercial scientific requests.* Requesters from educational or scientific institutions, whose purpose is scholarly, noncommercial research, will be charged only for the cost of record duplication, except that the first 100 pages of duplication will be furnished at no charge.

(iii) *News media requests.* Requesters who are representatives of the news

media, and whose purpose in seeking records is noncommercial, will be charged only for the cost of duplication, except that the first 100 pages of duplication will be furnished at no charge.

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

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

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

(B) For searches and retrievals of requested records, either manually or electronically, conducted by clerical personnel, the fee will be \$4.00 for each quarter hour of time. For searches and retrievals of requested records, either manually or electronically, requiring the use of professional personnel, the fee will be \$7.00 for each quarter hour of time. For searches and retrievals of requested records, either manually or electronically, requiring the use of managerial personnel, the fee will be \$10.25 for each quarter hour of time.

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

(ii) *Duplication.* Duplication fees will be charged to all requesters, subject to the limitations of paragraph (d) of this section. For either a photocopy or a computer-generated printout of a record (no more than one copy of which need be supplied), the fee will be fifteen (15) cents per page. For electronic forms of duplication, other than a computer-generated printout, offices will charge the direct costs of that duplication. Such

direct costs will include the costs of the requested electronic medium on which the copy is to be made and the actual operator time and computer resource usage required to produce the copy, to the extent they can be determined.

(iii) *Review.* Review fees will be charged only to requesters who make a commercial use request. Review fees will be charged 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). No charge will be made for review at the administrative appeal level for an exemption already applied. However, records or portions of records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies; the costs of that review will be charged when it is made necessary by a change of circumstances. Review fees will be charged at the same rates as those charged for a search under paragraph (c)(1)(i) of this section.

(d) *Limitations on charging fees.* (1) No search or review fees will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

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

(i) The first 100 pages of duplication, and

(ii) The first two hours of search.

(4) Whenever a total fee calculated under paragraph (c) of this section is \$14.00 or less for any request, no fee will be charged.

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

(e) *Notice of anticipated fees in excess of \$25.00.* When the Agency determines or estimates that the fees to be charged under this section will amount to more than \$25.00, the Agency will notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. The amount of \$25.00 is cumulative for multi-office requests. If only a portion 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. When a requester has been notified that actual or estimated fees will amount to more than \$25.00, EPA will do no further work on the request until the requester agrees to pay the anticipated total fee. This time will be excluded from the twenty (20) working day time limit. EPA will memorialize any such agreement in writing. A notice under this paragraph will offer the requester an opportunity to discuss the matter with Agency personnel in order to reformulate the request to meet the requester's needs at a lower cost.

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

(g) *Charging interest.* EPA may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the Agency. 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. No penalty will be assessed against FOIA requesters for exercising their statutory right to ask that a fee be waived or reduced or to dispute a billing. If a fee is in dispute, penalties will be suspended upon notification.

(h) *Delinquent requesters.* If requesters fail to pay all fees within 60 calendar days of the fees assessment, they will be placed on a delinquency list. Subsequent FOIA requests will not be processed until payment of the overdue fees has first been made.

(i) *Aggregating requests.* When the Agency reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the Agency may aggregate those requests and charge accordingly. The Agency may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. When requests are separated by a longer period, the Agency will aggregate them only if there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple

requests involving unrelated matters will not be aggregated.

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

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

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

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

(k) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any other statute that specifically requires an agency to set and collect fees for particular types of records. When records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, EPA will inform requesters of the steps for obtaining records from those sources so that they may do so most economically.

(l) *Waiver or reduction of fees.* (1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section when a FOI Office determines, based on all available information, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) To determine whether the first fee waiver requirement is met, FOI Offices 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 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. A requester's expertise in the subject area and ability and intention to effectively convey information to the public will be considered. It will be presumed 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. FOI Offices will not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is "important" enough to be made public.

(3) To determine whether the second fee waiver requirement is met, FOI Offices 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. FOI Offices will consider any commercial interest of the requester (with reference to the definition of "commercial use request" in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters will be given 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. FOI Offices 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. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

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

(5) Requests for the waiver or reduction of fees must address the factors listed in paragraphs (k) (1)–(3) of this section, insofar as they apply to each request. FOI Offices will exercise their discretion to consider the cost-effectiveness of their investment of administrative resources in deciding whether to grant waivers or reductions of fees and will consult the appropriate EPA offices as needed. Requests for the waiver or reduction of fees must be submitted along with the request.

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

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

Nothing in this subpart shall be construed to entitle any person, as a right, to any service or to the disclosure

of any record to which such person is not entitled under the FOIA.

[FR Doc. 02–28081 Filed 11–4–02; 8:45 am]

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[CA242–0373a; FRL–7395–8]

#### **Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Imperial County Air Pollution Control District's (ICAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from Soil Decontamination Operations, Organic Solvent Degreasing Operations, and Organic Solvents. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on January 6, 2003 without further notice, unless EPA receives adverse comments by December 5, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.  
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, California 92243–2850

A copy of the rules may also be available via the Internet at <http://>