

EPA-APPROVED NEBRASKA REGULATIONS

Nebraska citation	Title	State effective date	EPA approval date	Explanation
STATE OF NEBRASKA Department of Environmental Quality Title 129—Nebraska Air Quality Regulations				
129-1	Definitions	9/25/05	8/11/10 [insert FR page number where the document begins].	Requirements for t-butyl acetate are still in effect.
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129-17	Construction Permits—When Required.	9/25/05	8/11/10 [insert FR page number where the document begins].	
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129-30	Open Fires, Prohibited; Exceptions.	9/25/05	8/11/10 [insert FR page number where the document begins].	
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PART 70—[AMENDED]

■ 3. The authority citation for Part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Appendix A—[Amended]

■ 4. Appendix A to Part 70 is amended by adding paragraph (j) under the heading “Nebraska; City of Omaha; Lincoln-Lancaster County Health Department” to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

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Nebraska; City of Omaha; Lincoln-Lancaster County Health Department

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(j) The Nebraska Department of Environmental Quality approved a revision to NDEQ Title 129, Chapter 1 on June 2, 2005, which became effective September 25, 2005. This revision was submitted on May 27, 2009. We are approving this program revision effective October 12, 2010.

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[FR Doc. 2010-19566 Filed 8-10-10; 8:45 am]

BILLING CODE 6560-50-P

COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Part 1515

RIN 0331-ZA01

Revision of Freedom of Information Act Regulations

AGENCY: Council on Environmental Quality.

ACTION: Final Rule.

SUMMARY: This document amends the Council on Environmental Quality’s (CEQ) regulations governing the disclosure of information pursuant to the requests made under the Freedom of Information Act (FOIA). These revisions also reflect the principles established by President Obama’s Presidential Memoranda on “Transparency and Open Government” and “Freedom of Information Act” issued on January 21, 2009 and Attorney General Holder’s Memorandum on “The Freedom of Information Act (FOIA)” issued on March 19, 2009. Additionally, the regulations have been updated to reflect CEQ’s policy and practices and reaffirm its commitment to providing the fullest possible disclosure of records to the public. The regulations provide for an online FOIA Requester Service Center and Reading Room; electronic FOIA requests; access to records published or released under FOIA in electronic format, provided the record is readily reproducible in that form or format; designation of a Chief FOIA Officer and FOIA Public Liaison; referral of requests to appropriate Federal agencies or consultation with another agency, if appropriate; review of requests in order of receipt; multi-tacking of FOIA requests based on the amount of time and work involved in processing requests; revision of CEQ’s initial determination period from 10 days to 20 days, beginning on the date CEQ receives a written request; assignment of individualized tracking numbers for certain requests; tolling of the time limit for CEQ to act on a request; expedited processing of FOIA requests upon showing a showing of compelling need; CEQ consultations with a requester to

determine if a FOIA request may be modified to allow for a more timely response, or to arrange an alternative time frame for a response; informing the requester of the volume of requested material withheld and the extent of deletions in records released in response to a FOIA request; increase in time for appeal from 45 to 60 days from the date of denial of a request; extension of the time limit to respond to a request in “unusual circumstances,” and aggregation of clearly related requests by a single requester or group of requesters. Further, CEQ’s fee structure is revised to include a method for computing fees based upon the classification of the requester and the base pay of the employee making the search, an increase of copying costs from \$0.10 to \$0.15 per page, and a provision for waiving fees. Additional administrative changes include reorganizing, renumbering, and renaming of the FOIA subsections and updating addresses and telephone numbers.

DATES: This final rule is effective September 10, 2010.

FOR FURTHER INFORMATION CONTACT: Elizabeth Moss, FOIA Coordinator, 722 Jackson Place, NW., Washington, DC 20503 or (202) 456-6550.

SUPPLEMENTARY INFORMATION: On November 13, 2009, the Council on Environmental Quality published a proposed rule that revised its existing regulations under the FOIA and added new provisions implementing the “Openness Promotes Effectiveness in our National Government Act of 2007” (OPEN Government Act of 2007), Public Law 110-175, 121 Stat. 2524 (Dec. 31, 2007) and the “Electronic Freedom of Information Act Amendments of 1996” (Electronic FOIA Amendments), Public

Law 104–231, 110 Stat. 3048 (Oct. 2, 1996). See 74 FR 58576, Nov. 13, 2009. Interested persons were afforded an opportunity to participate in the rulemaking through submission of written comments on the proposed rule. CEQ received three responses to its proposed rule. CEQ has addressed the modifications suggested by the commenters and has made other revisions to its proposed rule for clarity as well.

CEQ coordinates Federal environmental efforts and works closely with agencies White House offices in the development of environmental policies and initiatives. CEQ was established within the Executive Office of the President by Congress as part of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, (NEPA); additional responsibilities were provided by the Environmental Quality Improvement Act of 1970, 42 U.S.C. 4372 *et seq.* CEQ's current FOIA regulations are published at 40 CFR part 1515 and are available on the CEQ's FOIA Web site at: <http://www.whitehouse.gov/administration/eop/ceq/foia>. Promulgated in 1977, 42 FR 65158 (Dec. 30, 1977), they have not been revised since to reflect current law or CEQ's policy and practice of conducting its activities in an open manner and providing the public with accurate and timely information about its activities. Amendments to the FOIA, including OPEN Government Act of 2007 and the 1996 Electronic FOIA Amendments, require changes in CEQ FOIA practices to promote openness and transparency in government, provide for public access to information in an electronic format and ensure a prompt and effective response to the public's requests for information. In addition, the Freedom of Information Reform Act of 1986 (1986 Act), Public Law 99–570, 100 Stat. 3207 (1986), the DOJ's "New FOIA Fee Waiver Policy Guidance" (April 2, 1987) and the OMB's Uniform FOIA Fee Schedule and Guidelines, 52 FR 10012, March 27, 1987, established pursuant to the FOIA, require amendments to the FOIA fee provisions, including a method for computing fees that is based upon the classification of the requester and the base pay of the employee making the search and a provision for waiving fees. Finally, the Presidential Memorandum of January 21, 2009, "Transparency and Openness," 74 FR 4685, and the Attorney General's March 19, 2009 FOIA policy guidance have advised Federal agencies to apply a presumption of disclosure in FOIA decision-making. The Attorney General's guidance further

advises that agencies should release information to the fullest extent of the law, including information that may be legally withheld, provided there is no foreseeable harm to an interest protected by an exemption or the disclosure is not prohibited by law.

Consistent with these laws and guidance, CEQ undertook a comprehensive review of its FOIA regulations. As a result CEQ proposes to revise its regulations to more clearly reflect current law, CEQ's current organizational structure, its record system configuration, and FOIA policy and practice as well as to eliminate outdated regulatory provisions. CEQ has modeled many of the provisions in today's rules on similar regulations previously adopted by other Federal agencies. Thus, many are identical to or closely resemble the requirements adopted by other Federal agencies, and as such represent regulatory "best practices" concerning FOIA procedures. The fee provisions reflect OMB's FOIA fee provisions. Additional provisions reorganize and renumber current FOIA regulations to reflect and implement the FOIA amendments referenced above.

CEQ's policy of disclosure follows the Presidential Memorandum and the Attorney General's guidance. Congress established CEQ to advise the President on matters of environmental policy. Therefore, members of the public should be advised that communications between CEQ and the President (and their staff) may be confidential and thus may not be released if they fall within a FOIA exemption. However, based on the recommendation of the CEQ FOIA Officer or Appeals Officer, CEQ considers the release of an entire record, even if it comes within an exemption or contains policy advice, if its disclosure would not impair Executive Branch policymaking processes or CEQ's participation in decision-making.

Comments

CEQ received three responses to its request for comments: one from an organization that represents state and local associations of home builders and regularly relies on FOIA as part of its advocacy and two from private citizens who submit FOIA requests. Each of these responses contained several comments, which are available at the CEQ Proactive Disclosure Reading Room at: <http://www.whitehouse.gov/administration/eop/ceq/foia/readingroom>.

In general, all commenters supported CEQ's proposed regulatory revisions. One commenter observed that it was encouraging to see that CEQ was bringing its FOIA response practices "up

to date"; another noted that the regulatory changes will facilitate greater access and public disclosure of information: "the public in general and FOIA requesters will greatly benefit from these proposed changes." Within this context, all three commenters requested clarifications and, in several instances, additions to the FOIA regulations.

One commenter was "encouraged" that CEQ's proposed revisions specifically respond to the Presidential Memorandum of January 21, 2009 and the Attorney General's March 19, 2009, FOIA policy guidance but noted that "CEQ makes no mention of a presumption of openness, full disclosure, or increased transparency anywhere in its revisions." The same commenter states that CEQ's proposed deletion of § 1515.10(c) is in direct conflict with the 2009 directives. A commitment to the Presidential Memorandum as well as the Attorney General's guidelines is the driving force behind the revision of CEQ's FOIA regulations. CEQ has revised Section 1515.10(c) to make this intention clear.

One commenter stated that CEQ's designation of its Chief FOIA Officer as also the agency's Appeals Officer constitutes "a conflict of interest." CEQ appreciates the commenter's interest in ensuring that FOIA appeals decisions are rendered on their own merits and without consideration of potentially conflicting administrative or policy considerations. However, CEQ has observed no such conflicts and, to the contrary, has found that its FOIA program has functioned well with a Chief FOIA Officer who benefits from the practical experience of appeals work. Moreover, CEQ remains a small agency that typically does not maintain sufficient career staff with FOIA expertise to ensure that the Chief FOIA Officer and Appeals Officer positions can be maintained by different individuals. Therefore, Section 1515.4(b) of the final regulation makes clear that the Chief FOIA Officer is responsible for oversight of the CEQ's administration of the Freedom of Information Act; he or she does not encounter FOIA requests and responses directly but, rather, designates a CEQ FOIA Officer to manage daily business, including receiving, routing, and overseeing the processing of all FOIA requests. The Chief FOIA Officer maintains general familiarity with CEQ's FOIA practice, which makes the Chief FOIA Officer the logical choice for Appeals Officer.

Two commenters expressed concerns about CEQ's proposed response time. The first asserts that CEQ would like to

use a “complicated formula of tolling to delay a timely response” and that Section 1515.6 “should not be put into practice or into the CEQ’s rules.” The OPEN Government Act of 2007 amended FOIA’s existing time period provision by setting forth statutory provisions regarding when the time period commences and when and how often it can be “tolled,” or stopped. Section 1515.6 of CEQ’s revised regulations are consistent with those statutory provisions (See OPEN Government Act § 6 (codified at 5 U.S.C. 552(a)(6)(A)). CEQ proposed shortening the interval during which a requester can file an appeal from 45 days to 30 days once the requester has received an adverse determination through a request for clarification. While supporting this proposed reduction of the interval, a commenter noted inconsistencies between the time period specified in the section-by-section analysis of the proposed regulation and the regulatory language itself. CEQ has decided to provide a 60-day time period for submitting an appeal.

One comment questions the justification for CEQ’s adjustment of its fee schedule. CEQ finds that this modest adjustment, the first since the initial publication of CEQ’s FOIA regulations in 1977, reflects the increased cost of human resources, specifically the base salary of FOIA staff, in addition to a rise in paper costs and copying equipment. The final fee adjustment is consistent with OMB Fee Guidelines (See 52 FR 10012).

The same commenter states that CEQ’s policy of consulting requesters about costs associated with a search likely to surface a voluminous amount of records before the search constitutes a means to “withhold information.” CEQ experience with requests for voluminous records, including extensive e-mail records, confirms that consulting with requesters can reduce costs and provide for more timely and informative responses. FOIA provides for two hours of free search time and copies the first 100 pages of records at no cost to all but commercial requesters.

One commenter requested the addition of language in the preamble or the regulations that provides for the protection of sensitive archeological information in response to FOIA requests. Several other statutes and regulations relating to cultural resources provide this authority for withholding of archeological resource information. CEQ does not typically maintain non-public records related to archeological sites, but would protect those records in accordance with FOIA and other applicable law. CEQ finds that the

regulations adequately protect these interests and has declined to specifically identify other applicable authorities at this time.

Another comment concerned the intersection of the proposed regulations with CEQ’s NEPA regulations, specifically 40 CFR 1506(f) which provides that Environmental Impact Statements, the comments received, and the underlying information be made available to the public by Federal agencies pursuant to FOIA at no charge to the extent practicable. The commenter suggested that this section should be referenced in the preamble or the rule. CEQ agrees that its FOIA resources, particularly its Proactive Disclosure Reading Room, should be used to advance NEPA’s goals of transparency and public accountability in decision-making. As resources allow, CEQ will use its Proactive Disclosure Reading Room and associated Web sites (particularly <http://www.nepa.gov>) to make environmental documents more accessible to the public.

Section-by-Section Analysis

Section 1515.1. The FOIA, 5 U.S.C. 552, allows the public access to Federal agency records except those that are protected from release by nine specified exemptions. Language is added to the end of this section advising requesters that the regulations should be read together with the FOIA.

Sections 1515.2(b) and 1515.2(c). Sections 1515.2(b) and Section 1515.2(c) are deleted in their entirety. Information about CEQ’s purpose and functions is available online at <http://www.whitehouse.gov/administration/eop/ceq>. In 1995 Congress passed the Federal Reports Elimination and Sunset Act (Pub. L. 104–66) aimed at reducing paperwork in government, in part through the elimination of a list of reports identified in House Document No. 103–7. CEQ’s Environmental Quality Report was listed on page 41. In addition, CEQ no longer maintains the “Quarterly Reports” referred to in Section 1515.2(c)

Sections 1515.3(a) and (c). These sections have been revised to reflect the current organizational structure of CEQ. Although the National Environmental Policy Act creates CEQ to have three members appointed by the President and confirmed by the Senate (42 U.S.C. 4342), in accordance with CEQ annual appropriations, the Council consists of one member.

Section 1515.3(e). This section has been deleted to reflect CEQ’s current organizational structure. CEQ currently has an Associate Director for

Communications but does not have a “Public Affairs” office.

Section 1515.3(f). The hours of operation and CEQ telephone number and zip code have been updated in this section.

Section 1515.4(a). The Open Government Act of 2007, amending 5 U.S.C. 552(j), requires agencies to designate a Chief FOIA Officer who is responsible for the efficient and appropriate compliance with and implementation of the FOIA. At CEQ, this official may also serve as the FOIA Appeals Officer and, along with the FOIA Public Liaison designated in Subsection 1515.3(d), is designated to provide a clear point of contact for the public in dealing with the CEQ on FOIA matters. Thus, a new Section 1515.4(a) implements these laws and incorporates the information described in the current Section 1515.5(a).

Section 1515.4(b). The OPEN Government Act of 2007, amending 5 U.S.C. 552(k)(6), requires agencies to designate a FOIA Public Liaison who reports to the Chief FOIA Officer and whose role is to provide information to the public regarding the status of its FOIA requests and to receive “concerns about the service a requester has received from the [FOIA Requester Service] Center.” The OPEN Government Act of 2007, at 5 U.S.C. 552(l), further directs the Public Liaison to “assist, as appropriate, in reducing delays, increasing transparency and understanding of the status of requests, and resolving disputes.” At CEQ, the FOIA Public Liaison is the FOIA Officer responsible for reviewing and making the initial determination on a FOIA request. Thus, a new Section 1515.4(b) is added to implement these laws and CEQ current practice.

Section 1515.5(a). The language in this section has been deleted, and the information concerning CEQ’s “Chief FOIA Officer” and “Appeals Officer” has been moved to a new Section 1515.4. In addition, this section has been renamed “Availability of Records.” Pursuant to Section 2(c)(i) of E.O. 13392, CEQ maintains an online FOIA Requester Service Center “which shall serve as the first place that a FOIA requester can contact to seek information concerning the status of the person’s FOIA request and appropriate information about the agency’s FOIA response.” The 1996 FOIA Amendments, amending 5 U.S.C. 552(a)(2), requires agencies to make records that may be the subject of future requests, including computer telecommunications, created on or after November 1, 1996, available by electronic means. Accordingly, language

is added to this section to implement these laws.

Section 1515.5(b)(1). To reflect current CEQ practice, the language in this section is deleted in its entirety and replaced with the process the public follows when requesting information from CEQ. Like the original section, the new Section 1515.5(b)(1) requires all requests to be in writing and provides updated address and telephone contact information. It has also been revised to add language notifying requesters that they may submit FOIA requests via e-mail or facsimile.

Section 1515.5(b)(2). The first two sentences of this section are deleted in their entirety, and the information contained in these deletions are reorganized and stated in Section 1515.5(b)(1). The language in current Section 1515.5(b)(3) is moved to this section. Additionally, the 1996 Amendments, amending 5 U.S.C. 552(a)(3)(B), require agencies to provide records in the form or format requested “if the record is readily reproducible by the agency in that form or format.” Accordingly, language is added to this section notifying requesters to specify the form or format in which they wish to receive their response; otherwise CEQ will produce the request in the form or format most accessible to CEQ. Requesters are advised that FOIA requests themselves are part of CEQ’s agency records subject to public release under FOIA.

Section 1515.5(b)(3). This language has been reorganized and incorporated into Section 1515.5(b)(2). In addition, the Open Government Act of 2007, amending 5 U.S.C. 552(a)(6)(B)(iii)(III), grants agencies the authority to consult with another agency with a substantial interest in the determination of the request. The 1996 Amendments, amending 5 U.S.C. 552(a)(6)(D)(i) and (ii), allow agencies to provide for multi-track processing of requests for records based on the amount of time and/or work involved in processing of requests and to allow a FOIA requester whose request does not qualify for the fastest multi-track processing an opportunity to limit the scope of the request in order to qualify for faster processing. Thus language is added to this section to implement these amendments.

Section 1515.5(b)(5). The Open Government Act of 2007, amending 5 U.S.C. 552(a)(6)(A), provides that the statutory time period for determination commences “on the date on which the request is first received by the appropriate component of the agency, but in any event not later than ten days after the request is first received by any component of the agency that is

designated in the agency’s regulations under this section to receive requests.” The language in the current Section 1515.5(b)(5) is deleted to reflect current law. In addition, the new § 1515.6 contains new language notifying requesters that the determination period begins on the date CEQ receives the request.

Section 1515.6(a) This section renumbers and revises current Section 1515.5(c)(1). The 1996 Act, amending 5 U.S.C. 552(a)(6)(A)(i), lengthened the time within which agencies must respond to FOIA requests from 10 to 20 working days. Moreover, the OPEN Government Act of 2007 added Sections 552(a)(6)(A)(ii)(I) and (II) to the FOIA which provide authority for agencies to toll the 20 day determination period. Specifically, an agency “may make one request to the requester for information and toll” the statutory time period “while it is awaiting such information that it has reasonably requested from the requester.” It may also toll the time period “if necessary to clarify with the requester issues regarding fee assessment.” There is no limit given for the number of times the agency may go back to a requester to clarify issues regarding fee assessments, which may need to be done in stages as the records are being located and processed. In both situations, the agency’s receipt of the requester’s response to the agency’s request “ends the tolling period.” Accordingly, the time limit for determination is revised and language is added to this subsection to implement these laws.

Section 1515.6(b). The OPEN Government Act of 2007, which added 5 U.S.C. 552(a)(7), requires agencies to assign a tracking number for each request that will require more than 10 days to process and provide requesters with information regarding the status of their request. It further requires agencies to establish a phone number or an internet site to enable requesters to inquire about the status of their request. Accordingly, this section has been added to implement these requirements.

Section 1515.6(c). This section renumbers current Section 1515.5(c)(2).

Section 1515.6(d). This section renumbers and revises current Section 1515.5(c)(4). The 1996 Act and the OPEN Government Act of 2007, amending 5 U.S.C. 552(a)(2), require agencies in the event of a denial, in whole or in part, to indicate the extent of any deletion made in released records and publicly available records and to inform the requester of the estimated volume of material withheld. Thus language is added to this section to implement these laws.

Section 1515.7. The 1996 Act, amending 5 U.S.C. 552(a)(6)(E)(i), directs agencies to provide for expedited processing of FOIA requests in cases of “compelling need” and in other cases, if any, determined by the agency. Thus this new subsection 1515.7 is added which tracks the language of the FOIA amendments. The FOIA also sets out procedures for handling requests for expedited processing and for appeals which are followed and incorporated in this section.

Section 1515.8(a). This section renumbers and revises current § 1515.5(d)(1) and explains the appeals process to a FOIA request determination. In order to streamline CEQ’s FOIA process and provide prompt responses, the time period for filing an appeal is increased to 60 days.

Section 1515.8(b). This section is added to advise requesters that they may file written appeals via e-mail or facsimile.

Section 1515.8(d). This section renumbers and revises current § 1515.5(d)(4). Language is added to notify requesters that the 20 day appeal determination period does not include Saturdays, Sundays, and Federal holidays.

Section 1515.9. This section renumbers and revises current Section 1515.5(e). The FOIA at 5 U.S.C. 552(a)(6)(B) and Section 1515.5(e) of CEQ’s current regulations permit CEQ, upon written notice to the requester, to extend the time limit for acting on a request or appeal if “unusual circumstances” exist. The 1996 Act, amending 5 U.S.C. 552(a)(6)(B)(ii), expanded this authority to permit agencies to further extend the response time by notifying the requesters and providing them with an opportunity to either limit the scope of their request so that no extension is needed, or to arrange with the agency an alternative time frame for processing the request. Accordingly, a new § 1515.9(b) is added to implement this law, and the definition of “unusual circumstances” currently at § 1515.5(e)(i), (ii) and (iii) is renumbered and restated in a new § 1515.9(c).

Section 1515.10(a). The 1996 Act, amending 5 U.S.C. 522(a)(3) (C) and (D) requires agencies to provide requested records in any form or format requested, if the record is readily reproducible by the agency in that form or format. Agencies must make reasonable efforts to maintain their records in forms or formats that are reproducible electronically and to search for requested records in electronic form or format, except when such efforts would significantly interfere with the operation

of the agency's automated information system. Accordingly, language is added to this section to implement this law. Language is also added to this section advising requesters that CEQ will make requested materials available at its online FOIA Center.

Section 1515.10(b). The OPEN Government Act of 2007, amending 5 U.S.C. 522(b), amends the current FOIA provision listing exemptions and generally requiring agencies to indicate directly "on the released portion of the record" the amount of information deleted, by adding the requirement that agencies also indicate "the exemption under which the deletion is made." Accordingly, this section is added as § 1515.10(b) which follows the language of this law.

Section 1515.10(c). In a Memorandum to Heads of Executive Departments and Agencies dated January 21, 2009, the President directed Federal agencies to implement the FOIA with a presumption of openness and in favor of disclosure. CEQ is committed to operating transparently and subject to public scrutiny and accountability and has revised this provision of its regulations accordingly while providing for the withholding of confidential communications in accordance with CEQ's authorizing legislation.

Section 1515.11. The current § 1515.15 regarding "Costs" is deleted in its entirety, and is replaced with updated fee structure and policy, §§ 1515.11 through 1515.15, to be consistent with "The Freedom of Information Reform Act of 1986," Public Law 99-570, 1801-1804, 100 Stat. 3207, 3207-48 (1986), which established the current FOIA fee structure and waiver standard, and subsequent policy guidance and guidelines issued by the U.S. Department of Justice, "New FOIA Fee Waiver Policy Guidance" (4-2-87), and the Office of Management and Budget, "Uniform Freedom of Information Act Fee Schedule and Guidelines." 52 FR 1007, March 27, 1987. CEQ's fee structure includes a method for computing fees that is based upon the classification of the requester and the base pay of the employee making the search, an increase of copying costs from \$0.10 to \$0.15 per page, and provides for waiver of fees.

Section 1515.16. This new section advises requesters that CEQ's FOIA regulations do not "entitle any person, as of right, to any service or to the disclosure of any records to which such person is not entitled under the FOIA."

Regulatory Analysis and Notices

Administrative Procedure Act

This rulemaking is in compliance with the Administrative Procedure Act (5 U.S.C. 553). Interested persons were invited to submit written comments to CEQ on the proposed regulation. CEQ reviewed all comments received and made modifications to the proposal which appear warranted.

Regulatory Flexibility Act

For purposes of the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), the final rule will not have a significant economic impact on a substantial number of small entities. The rule addresses only the procedures to be followed: (1) To request CEQ records; or (2) in the production or disclosure of CEQ materials and information in litigation where CEQ is not a party. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for certain categories of requesters. CEQ's proposed fee structure is in accordance with DOJ guidelines and based upon OMB fee schedules which calculate costs based upon the category of requester and kind of employee duplicating the records. Thus, fees assessed by CEQ are nominal and will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), the final rule would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation).

Executive Order 12866

In issuing this regulation, CEQ has adhered to the regulatory philosophy and the applicable principles of regulation as set forth in Section 1 of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735. This final rule has not been reviewed by the Office of Management and Budget under that Executive Order since it is not a significant regulatory action within the meaning of the Executive Order.

Executive Order 12988

CEQ has reviewed this regulation in light of Section 3 of Executive Order 12988, Civil Justice Reform, and

certifies that it meets the applicable standards provided therein.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not impose any reporting or recordkeeping requirements.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, and the CEQ regulations which implement the NEPA, 40 CFR 1500-1508, impose requirements for considering the environmental impacts of proposed agency decisions and actions. They provide for each agency to develop a list of categories of actions called categorical exclusions (CEs) that are determined through agency experience to typically have no significant environmental impact and thus may generally be excluded from detailed analysis and documentation. It further directs agencies to prepare an environmental impact statement (EIS) for "major Federal actions significantly affecting the quality of the human environment." If an action may have a significant impact and the agency has not decided to prepare an EIS, the agency must prepare an environmental assessment (EA). If, as a result of this assessment, the agency makes a Finding of No Significant Impact (FONSI), no further action is necessary. If it will have a significant effect, then the agency uses the EA to develop an EIS.

CEQ's NEPA regulations do not have a CE for either the dissemination of information under the FOIA or the preparation, revision, and adoption of regulations, directives, and other guidance documents. Thus, as set forth in CEQ's November 13, 2009 **Federal Register** notice for its proposed rulemaking, CEQ developed an EA to determine whether the proposed revisions to CEQ's FOIA regulations may or may not have a significant impact on the human environment. CEQ received no comments on the EA. Because these rules pertain solely to procedures regarding the dissemination of information and will have not only a minimal impact on CEQ resources, including paper consumption, but will conserve resources and improve the FOIA process, CEQ has found that these final regulations will have no significant impact on the human environment and therefore, an EIS is not required.

List of Subjects in 40 CFR Part 1515

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

■ Accordingly, for the reasons set forth in the preamble, the Council on Environmental Quality revises 40 CFR 1515 to read as follows:

PART 1515—FREEDOM OF INFORMATION ACT PROCEDURES

Sec.

Purpose

1515.1 FOIA procedures.

Organization of CEQ

1515.2 About the Council on Environmental Quality (CEQ).

1515.3 CEQ organization.

1515.4 CEQ FOIA Officials.

Procedures for Requesting Records

1515.5 Making a Freedom of Information Act request.

1515.6 CEQ's response to a request.

1515.7 Expedited processing.

1515.8 Appeals.

1515.9 Extending CEQ's time to respond.

Availability of Information

1515.10 Obtaining available information.

Costs

1515.11 Definitions.

1515.12 Fees in general.

1515.13 Fees for categories of requesters.

1515.14 Other charges.

1515.15 Payment and waiver.

1515.16 Other rights and services.

1515.17–1515.19 [Reserved]

Authority: 5 U.S.C. 552, as amended by Pub. L. 93–502, Pub. L. 99–570, Pub. L. 104–231, Pub. L. 110–175; E.O. 13392; Pres. Mem. 74 FR 4685. Source: 42 FR 65158, Dec. 30, 1977, unless otherwise noted.

Purpose

§ 1515.1 FOIA procedures.

The Freedom of Information Act (5 U.S.C. 552), as amended, commonly known as FOIA, is a Federal law that creates a procedure for any person to request documents and other records from United States Government agencies. The law requires every Federal agency to make available to the public the material requested, unless the material falls under one of the limited exemptions stated in Section 552(b) of the Act. These procedures explain how the Council on Environmental Quality (CEQ)—one of several agencies in the Executive Office of the President—will carry out the FOIA. They are written from the standpoint of a FOIA requester and should be read together with the FOIA, which provides additional information about access to records maintained by CEQ. This information is furnished for the guidance of the public and in compliance with the requirements of Section 552 of title 5, United States Code, as amended.

Organization of CEQ

§ 1515.2 About the Council on Environmental Quality (CEQ).

The Council on Environmental Quality (“CEQ” or “the Council”) was created by the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 through 4347). The Council's authority is primarily derived from that Act, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371–4374), Reorganization Plan No. 1 of 1977 (July 15, 1977), and Executive Order 11514, “Protection and Enhancement of Environmental Quality,” March 5, 1970, as amended by Executive Order 11991, May 24, 1977.

§ 1515.3 CEQ organization.

(a) The Council is made up of a Chair appointed by the President and subject to approval by the Senate who serves in a full-time capacity. Congress has allowed CEQ to consist of a Council of one member who serves as Chairman or Chair.

(b) The National Environmental Policy Act and the Environmental Quality Improvement Act give the Council the authority to hire any officers and staff that may be necessary to carry out responsibilities and functions specified in these two Acts. Also, the use of consultants and experts is permitted.

(c) In addition to the Chair, the Council has program and legal staff.

(d) The Council has no field or regional offices.

(e) The Council is located at 722 Jackson Place NW., Washington, DC 20503. Office hours are 9 a.m.–5:30 p.m., Monday through Friday, except Federal holidays. To meet with any of the staff, please write or phone ahead for an appointment. The main number is 202–456–6224.

§ 1515.4 CEQ FOIA Officials.

(a) The Chair shall appoint a Chief Freedom of Information Act Officer (Chief FOIA Officer) who is responsible for overseeing the Council's administration of the Freedom of Information Act and for receiving, routing and overseeing the processing of all Freedom of Information requests as set forth in these regulations. The Chair shall appoint an Appeals Officer, who is responsible for processing and acting upon any appeals and may designate one or more CEQ officials, as appropriate, as FOIA Officers authorized to oversee and process FOIA requests. The Chief FOIA Officer may serve as the Appeals Officer.

(b) The Chief FOIA officer shall designate a FOIA Public Liaison who is the supervisory official to whom a FOIA requester can raise concerns about the service the FOIA requester has received from the CEQ FOIA Center, described in Section 1515.5(a), following an initial response from the staff of the CEQ FOIA Center staff. The FOIA Public Liaison shall assist, as appropriate, in reducing delays and increasing understanding of the status of requests. The Chief FOIA officer shall also designate a CEQ FOIA Officer responsible for overseeing CEQ's day-to-day administration of the FOIA and for receiving, routing, and overseeing the processing of all FOIA requests.

Procedures for Requesting Records

§ 1515.5 Making a Freedom of Information Act request.

(a) *Availability of records.* The Council maintains a World Wide Web site, <http://www.whitehouse.gov/administration/eop/ceq>, and an online Freedom of Information Act Requester Service Center (“Center”), <http://www.whitehouse.gov/administration/eop/ceq/foia>. From the Center, a requester can find contact information regarding the CEQ's FOIA Public Liaison, as defined in Section 1515.4(b), and access CEQ's Online Reading Room where CEQ makes available records pertaining to matters within the scope of 5 U.S.C. 552(a)(2), as amended, and environmental issues and other documents that, because of the nature of their subject matter, are likely to be the subject of FOIA requests. To save both time and money, CEQ strongly urges requesters to review documents currently available from the Center's Online Reading Room before submitting a request.

(b) *Requesting information from the Council.* (1) Requesters must make a Freedom of Information Act request in writing. For quickest possible handling, it should be sent via e-mail to: efoia@ceq.eop.gov and must include in the subject line of the e-mail message: “Freedom of Information Act Request.” Written requests may also be faxed to (202) 456–0753 or addressed and mailed to: Council on Environmental Quality, Executive Office of the President, 722 Jackson Place NW., Washington, DC 20503. Requesters should mark both the request letter and the envelope “Freedom of Information Act Request” and include their name, address, and sufficient contact information to allow follow up regarding the scope and status of your request.

(2) The request should identify or reasonably describe the desired record.

It should be as specific as possible, so that the item can be readily found. Blanket requests, such as requests for "all materials relating to" a specified subject are not recommended. Requesters should specify the preferred form or format (including electronic format) for the response. CEQ will accommodate such requests, if the record is readily reproducible in that form or format. Please be aware that FOIA requests and responses may themselves be made available for public inspection.

(3) The CEQ FOIA Officer is responsible for acting on all initial requests; however, he or she may consult and refer, pursuant to Section 552(a)(6)(B)(iii)(III) of the FOIA, with another agency if he or she determines that that agency is better able to act on the request. Whenever the CEQ FOIA Officer refers all or any part of the responsibility for responding to a request to another agency, he or she will notify the requester of the referral, the name of the agency and agency official to whom it has been referred, and which portion of the request has been referred. Unless a request is deemed "expedited" as set forth in Section 1515.7 below, the CEQ FOIA Officer will respond to requests in order of receipt. CEQ may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of time and work needed to process the request. CEQ may provide requesters on a slower track an opportunity to limit the scope of their request in order to qualify for faster processing.

(4) The Council will make a reasonable effort to assist with defining the request to eliminate extraneous and unwanted materials and to keep search and copying fees to a minimum. If budgetary constraints exist, the requester should indicate the maximum fee he or she is prepared to pay to acquire the information. (See also § 1515.11)

(5) The Freedom of Information Act does not require a government agency to create or research information; rather, it only requires that existing records be made available to the public.

§ 1515.6 CEQ's response to a request.

(a) Upon receipt of any written request for information or records, under the Act, the CEQ FOIA Officer or his or her designee, will make an initial determination on the request within 20 days (excepting Saturdays, Sundays and Federal holidays) from the date CEQ receives the request unless unusual or exceptional circumstances exist. The CEQ FOIA Officer will provide written

notification of the determination, including, if applicable, notification that the request has been referred to another agency for consultation as set forth above in § 1515.5(b)(3). CEQ may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester. It may also toll the 20-day period if necessary to clarify with the requester issues regarding fee assessment. In either case, CEQ's receipt of the requester's response to its request for information or clarification ends the tolling period.

(b) Requests received by the CEQ FOIA Officer or his or her designee will be assigned an individualized tracking number if they will take more than 10 days to process. Requesters may call the FOIA Public Liaison at (202) 456-6224 and, using the tracking number, obtain information about the request, including the date on which CEQ originally received the request and an estimated date on which CEQ will complete action on the request.

(c) If it is appropriate to grant the request, a staff member will immediately collect the requested materials in order to accompany, wherever possible, the Freedom of Information Officer's letter conveying decision.

(d) If a request is denied in part or in full, the letter conveying the decision will be signed by the CEQ FOIA Officer, and will include: The reasons for any denial, including any FOIA exemption(s) applied by the FOIA Officer in denying the request; 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 exemptions on records disclosed in part or, if providing an estimate would harm an interest protected by an applicable exemption; and the procedure for filing an appeal.

§ 1515.7 Expedited processing.

(a) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve:

(1) 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

(2) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information.

(b) A request for expedited processing may be made at the time of the initial request for records or at any later time.

(c) A requester who seeks expedited processing must submit a written statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category described in paragraph (a)(2) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category (a)(2) of this section 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. Formal certification may be waived as a matter of administrative discretion.

(d) Within 10 days of its receipt of a request for expedited processing, the CEQ FOIA Officer will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, the request will be placed in the expedited processing track, given priority, and processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

§ 1515.8 Appeals.

(a) The requester may appeal an adverse determination, in any respect, to the CEQ FOIA Appeals Officer. Any appeal must be received by CEQ within 60 days of the date on the CEQ letter denying the request.

(b) Appeals must be in writing and may be sent via e-mail to: efoia@ceq.eop.gov. They may also be sent via facsimile to: (202) 456-0753 or via U.S. mail addressed to: FOIA Appeals Officer, Council on Environmental Quality, Executive Office of the President, 722 Jackson Place NW., Washington, DC 20503.

(c) The appeal letter should specify the records requested and ask the Appeals Officer to review the determination made by the Freedom of Information Officer. The letter should explain the basis for the appeal.

(d) The Appeals Officer will make a final determination on an appeal within 20 working days (excepting Saturdays, Sundays and Federal holidays) from the date CEQ receives the appeal. The Appeals Officer (or designee) will send a letter to the requester conveying the

decision as soon as it is made. If an appeal is denied, in part or in whole, the letter will also include the provisions for judicial review.

§ 1515.9 Extending CEQ's time to respond.

(a) In unusual circumstances as defined in paragraph (c) of this section, the time limits for responding to a request (§§ 1515.6(a) and 1515.8(d)) may be extended by the Council for not more than 10 working days. Extensions may be granted by the CEQ FOIA Officer in the case of initial requests and by the Appeals Officer in the case of any appeals. The extension period may be split between the initial request and the appeal but may not exceed 10 working days overall. Extensions will be confirmed in writing and set forth the reasons for the extension and the date that the final determination is expected.

(b) With respect to a request for which a written notice under this section extends the time limits prescribed under § 1515.6(a), the CEQ FOIA Officer will notify the requester, if the request cannot be processed within the time limit specified in § 1515.6(a) and provide an opportunity to limit the scope of the request, so that it may be processed within that time limit or an opportunity to arrange an alternative time frame for processing the request or a modified request. A requester's refusal to reasonably modify the request or arrange such an alternative time frame will be considered as a factor in determining whether exceptional circumstances exist for purposes of 5 U.S.C. 552(a)(6)(C). When CEQ reasonably believes that a requester, or a group of requesters, has submitted a request constituting a single request that would otherwise satisfy the unusual circumstances specified under this section, CEQ may aggregate those requests for purposes of this paragraph. Multiple requests involving unrelated matters will not be aggregated.

(c) The term "unusual circumstances" means:

- (1) The need to search for and collect the requested records from establishments that are separate from the office processing the request;
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or
- (3) The need for consultation, which will be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having

substantial subject-matter interest therein.

Availability of Information

§ 1515.10 Obtaining available information.

(a) When a request for information has been granted in whole or in part, CEQ will notify the requester in writing, inform the requester in the notice of any fee charged under § 1515.11 and will disclose records to the requester promptly on payment of any applicable fees. The requested material may be made available on CEQ's Online FOIA Center, <http://www.whitehouse.gov/administration/eop/ceq/foia>, and also in the form or format requested if the record is readily reproducible in that form or format with reasonable effort. When a form or format of the response is not requested, CEQ will respond in the form or format in which the document is most accessible to CEQ. "Readily reproducible" means, with respect to electronic format, that the requested record or records can be downloaded or transferred intact to a computer disk or other electronic medium using equipment currently in use by CEQ.

(b) Records disclosed in part will be marked or annotated to show information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted will also be indicated in the record, if technically feasible.

(c) The legislative history of the establishment of CEQ states that the Congress intended CEQ to be a confidential advisor to the President on matters of environmental policy. Therefore, members of the public should be aware that communications between CEQ and the President (including communications between their staff) may be confidential; they will usually fall, at a minimum, within Exemption 5 of the Act. The Freedom of Information Officer shall review each request to determine whether the record is exclusively factual or may have factual portions which may be reasonably segregated and made available to the requester. Furthermore, on the recommendation of the CEQ FOIA Officer or Appeals Officer, CEQ will consider the release of an entire record, even if it comes within an exemption or contains policy advice, if its disclosure would not impair Executive policymaking processes or CEQ's participation in decisionmaking.

Costs

1515.11 Definitions.

For purposes of these regulations: *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 or other person's commercial, trade, or profit interests.

Direct costs means those costs incurred in searching for and duplicating (and, in the case of commercial use requests, reviewing) documents to respond to a FOIA request. Direct costs include, for example, salaries of employees who perform the work and costs of conducting large-scale computer searches.

Duplicate means to copy records to be released to the FOIA requester. Copies can take the form of paper, audio-visual materials, or electronic records, among others.

Educational institution means a school that operates a program of scholarly research.

Non-commercial scientific institution means an institution that is not operated on a commercial basis and that operates solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

Representative of the news media means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

Review means to examine a record to determine whether any portion of the record may be withheld and to process a record for disclosure, including by redacting it.

Search means to look for and retrieve records covered by a FOIA request, including by looking page-by-page or line-by-line to identify responsive material within individual records.

§ 1515.12 Fees in general.

CEQ shall charge fees that recoup the full allowable direct costs it incurs in responding to FOIA requests. CEQ may assess charges for time spent searching for records even if CEQ fails to locate the records or if the records are located and determined to be exempt from disclosure. In general, CEQ shall apply the following fee schedule, subject to §§ 1515.13 through 1515.15:

(a) *Manual searches.* Time devoted to manual searches shall be charged on the basis of the salary of the employee(s) conducting the search (basic hourly

rate(s) of pay for the employee(s), plus 16 percent).

(b) *Electronic searches.* Fees shall reflect the direct cost of conducting the search. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for and printing records responsive to the FOIA request and operator/programmer salary attributable to the search.

(c) *Record reviews.* Time devoted to reviewing records shall be charged on the same basis as under paragraph (a) of this section, but shall only be applicable to the review of records located in response to commercial use requests.

(d) *Duplication.* Fees for copying paper records or for printing electronic records shall be assessed at a rate of \$.15 per page. For other types of copies such as disks or audio visual tapes, CEQ shall charge the direct cost of producing the document(s). If total costs are expected to exceed \$25, the FOIA Officer shall provide the requester with an estimate in writing and, in return, obtain from the requester a commitment to pay the estimated fee. This does not apply if the requester has indicated in advance a willingness to pay fees as high as those anticipated. If a requester wishes to limit costs, the FOIA Officer shall provide the requester an opportunity to reformulate the request in order to reduce costs. If the requester reformulates a request, it shall be considered a new request and the 20-day period described in § 1515.6(a) shall be deemed to begin when the FOIA Officer receives the request.

(e)(1) *Advance payments required.* The FOIA Officer may require a requester to make an advance deposit of up to the amount of the entire anticipated fee before the FOIA Officer begins to process the request if:

- (i) The FOIA Officer estimates that the fee will exceed \$250; or
- (ii) The requester has previously failed to pay a fee in a timely fashion.

(2) When the FOIA Officer requires a requester to make an advance payment, the 20-day period described in § 1515.6(a) shall begin when the FOIA Officer receives the payment.

(f) *No assessment of fee.* CEQ shall not charge a fee to any requester if:

- (1) The cost of collecting the fee would be equal to or greater than the fee itself; or

(2) After the effective date of these regulations CEQ fails to comply with a time limit under the Freedom of Information Act for responding to the request for records where no unusual or exceptional circumstances apply.

§ 1515.13 *Fees for categories of requesters.*

CEQ shall assess fees for certain categories of requesters as follows:

(a) *Commercial use requesters.* In responding to commercial use requests, CEQ shall assess fees that recover the full direct costs of searching for, reviewing, and duplicating records.

(b) *Educational and non-commercial scientific institutions.* CEQ shall provide records to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To qualify for inclusion in this fee 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 sought to further scholarly research, not an individual goal.

(c) *Representatives of the news media.* CEQ shall provide records to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages.

(d) *All other requesters.* CEQ shall charge requesters who do not fall within paragraphs (a) through (c) of this section fees that recover the full direct cost of searching for and duplicating records, excluding charges for the first 100 pages of reproduction and the first two hours of search time.

§ 1515.14 *Other charges.*

CEQ may apply other charges, including the following:

(a) *Special charges.* CEQ shall recover the full cost of providing special services, such as sending records by express mail, to the extent that CEQ elects to provide them in that manner.

(b) *Interest charges.* CEQ may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the FOIA Officer sent the billing. Interest shall be charged at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing.

(c) *Aggregating requests.* When the FOIA Officer reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of avoiding fees, the FOIA Officer shall aggregate those requests and charge accordingly.

§ 1515.15 *Payment and waiver.*

(a) *Remittances.* Payment shall be made in the form of check or money order made payable to the Treasury of the United States. At the time the FOIA Officer notifies a requester of the applicable fees, the Officer shall inform the requester of where to send the payment.

(b) *Waiver of fees.* CEQ may waive all or part of any fee provided for in §§ 1515.12 and 1515.13 when the FOIA Officer deems that disclosure of the information is in the general public's 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. In determining whether a fee should be waived, the FOIA Officer may consider whether:

- (1) The subject matter specifically concerns identifiable operations or activities of the government;
- (2) The information is already in the public domain;
- (3) Disclosure of the information would contribute to the understanding of the public-at-large as opposed to a narrow segment of the population;
- (4) Disclosure of the information would significantly enhance the public's understanding of the subject matter;
- (5) Disclosure of the information would further a commercial interest of the requester; and
- (6) The public's interest is greater than any commercial interest of the requester.

§ 1515.16 *Other rights and services.*

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

§§ 1515.17–1515.19 [Reserved]

Dated: August 5, 2010.

Nancy H. Sutley,

Chair, Council on Environmental Quality.

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 192, 193, and 195

[Docket No. PHMSA-2008-0301; Amdt. Nos. 192-114; 193-22; 195-94]

RIN 2137-AE41

Pipeline Safety: Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Edits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule.