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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 17, 2012.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

§ 9.1 [Amended]

■ 2. The table in § 9.1 is amended by removing the entries ''§ 721.10509'' and ''§ 721.10515'' under the undesignated center heading ''Significant New Uses of Chemical Substances.''

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.10509 [Removed]

■ 4. Remove § 721.10509.

§ 721.10515 [Removed]

■ 5. Remove § 721.10515.

[FR Doc. 2012–31403 Filed 12–28–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 2

RIN 1093–AA15

Freedom of Information Act Regulations

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: This rule revises the regulations that the Department of the Interior (the ''Department'') follows in processing records under the Freedom of Information Act (''FOIA''). The revisions clarify and update procedures for requesting information from the Department and procedures that the Department follows in responding to requests from the public. The revisions also incorporate clarifications and updates resulting from changes to the FOIA and case law. Finally, the revisions include current cost figures to be used in calculating and charging fees and increase the amount of information that members of the public may receive from the Department without being charged processing fees.

DATES: Effective January 30, 2013.

SUPPLEMENTARY INFORMATION:

I. Why We're Publishing This Rule and What It Does

A. Introduction

The regulations are being revised to update, clarify, and streamline the language of procedural provisions, and to incorporate certain changes brought about by the amendments to the FOIA under the OPEN Government Act of 2007, Public Law 110–175, 121 Stat. 2524. Additionally, the regulations are being updated to reflect developments in the case law and to include current cost figures to be used in calculating and charging fees.

The revisions also incorporate changes to the language and structure of the FOIA regulations in order to improve the Department's FOIA performance. More nuanced multitrack processing can be found at § 2.15. Partial fee waivers are expressly permitted under § 2.45. Revisions of the Department's fee schedule can be found at §§ 2.42, 2.49(a)(1), and Appendix A. The duplication charge for physical records or scanning records increased from thirteen to fifteen cents a page. The amount at or below which the Department will not charge a fee increased from $30.00 to $50.00.

On September 13, 2012, the Department published a proposed rule in the **Federal Register** (77 FR 56592) and requested comments over a 60-day period ending on November 13, 2012. All comments received were considered in drafting this final rule.

B. Discussion of Comments

Six commenters responded to the invitation for comments, including one commenter from a subcomponent of a Federal agency and five commenters from non-Federal sources. While most of the commenters generally supported the proposed changes, they identified thirty specific issues or recommendations, which the Department addressed as follows:

The Final Rule Should Include More Information in Its Introductory Section

One commenter suggested that § 2.1 discuss how to submit a FOIA request (and also expressed concern that the regulations might only allow FOIA requests to be submitted to the Department electronically). Because § 2.3 directly addresses where to send a FOIA request (and specifically discusses where to find the physical and email addresses of each bureau's FOIA Officer), the Department has not adopted this suggestion.

The Final Rule Should Not Create Unnecessary Burdens for Requesters

One commenter suggested that requiring requesters to ''write directly to the bureau that you believe maintains those records'' in § 2.3(b) was overly burdensome and creates barriers to access, because requesters may not know where the records are maintained. However, § 2.3(d) specifically notes that ''[q]uestions about where to send a FOIA request should be directed to the bureau that manages the underlying program or to the appropriate FOIA Public Liaison, as discussed in § 2.66.'' Therefore, the Department does not believe § 2.3 is unduly burdensome and has not amended it.

The Final Rule Should Provide Examples of How Requesters Can Reasonably Describe the Records They Seek

One commenter suggested that examples of how requesters can reasonably describe the records they seek be added to § 2.5(b), and the Department has adopted this suggestion.

The Final Rule Should Not Use the Ambiguous Phrase ''Does Not Hear From You''

One commenter suggested, in the context of § 2.5, that the use of ''does not hear from you'' was ambiguous. The Department has adopted this suggestion

by replacing the ambiguous phrase with ''does not receive a written response from you'' everywhere it occurred (§§ 2.5, 2.6, and 2.51).

The Final Rule Should Allow Requesters More Time To Respond to the Department's Communications and Make Advance Payments

One commenter suggested that the time for requesters to respond to the Department in §§ 2.5(c), 2.6(c), and 2.50(e) be expanded from 20 workdays (the time period in the draft version of the final rule, as well as in the Department's previous version of the final rule) to 30 workdays. As the commenter notes, the Department does ''expend[] numerous resources to produce documents pursuant to the FOIA, and the agency has an interest in resolving FOIA matters in an organized and timely fashion.'' Although the commenter believes the 20 workday deadline is ''unreasonable and arbitrary,'' it has been the standard for the Department for over a decade and the Department believes that it is reasonable and comports with the statutory FOIA processing deadlines. The Department therefore declines to adopt this suggestion.

The Final Rule Should Require the Department To Notify Requesters in Advance Before Charging Them the Direct Costs of Converting Records to the Format They Request

One commenter suggested § 2.8(b) be revised to require a bureau to inform requesters in advance if it intends to charge the requester any direct costs for converting the requested records into a requested format. The Department has adopted this suggestion by adding a cross reference to § 2.44 and adding this scenario to the examples given in § 2.44(b).

The Final Rule Should Not Confuse Expedited Processing Requests and FOIA Requests

One commenter suggested that the juxtaposition of §§ 2.10 and 2.11 could lead to confusion about what kinds of ''requests'' were being referenced in these sections. The Department agrees and has adopted this suggestion by amending § 2.10.

The Final Rule Should Elaborate on the Department's Consultation and Referral Process

One commenter suggested that, in § 2.13(c) and (e), the Department notify requesters of whether part of the request or entire request has been referred, and the Department has adopted this suggestion. The same commenter also suggested that the Department provide the requester with the contact information (in addition to the name) of the person the request had been referred to, and the Department has adopted this suggestion. Another commenter expressed concerns about § 2.13, stating that portions of it were ''ambiguous and have no legal basis.'' This commenter specified that § 2.13(e) permitted the Department to withhold the identity of outside agencies to which the Department refers FOIA requests, under limited circumstances, and §§ 2.13(f)(2) and 2.13(f)(4) did not have concrete examples. The Department has carefully reviewed § 2.13(e) and finds it to be unambiguous and consistent with law and policy. The Department has also concluded that adding examples to §§ 2.13(f)(2) and 2.13(f)(4) would not be beneficial, as the situations that will arise under these sections are highly fact specific and general examples would be bulky and would not be illuminating. However, the Department agrees that the previous versions of §§ 2.13(a) and 2.13(h) were unintentionally confusing. The Department therefore has adopted this suggestion in part and revised these sections for clarity.

The Final Rule Should Not Expand the Time Period for Determining Whether the Department Will Comply With a Request

One commenter suggested that the multiple tracks for processing FOIA requests outlined in § 2.15 violated FOIA's requirement that agencies ''determine within 20 days [or longer in unusual circumstances] * * * after the receipt of any [FOIA] request whether to comply with such request * * * '' 5 U.S.C. 552(a)(6)(A). However, § 2.15 does not alter the statutory requirement for a bureau to determine whether it will comply with a request. To the contrary, it implements 5 U.S.C. 552(a)(6)(D)(i), which specifically permits agencies to promulgate regulations ''providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.'' This provision of the FOIA recognizes that a bureau exercising due diligence can determine whether it will comply with a request within the statutory timeframe, but may need additional time to search for and process the records in question. It also recognizes that simple requests should not have to wait for long periods of time while more complex requests are processed. To clarify this point, the Department has added paragraph (f) to this section. (The Department has also corrected a typographical error in § 2.15(c)(3) that may have created confusion about processing times.) The same commenter also suggested the definition of ''review'' in § 2.70 would violate FOIA's mandated time limits. However, the definition addresses when fees will be charged to a requester, not how long a bureau has to respond to a FOIA request. Neither § 2.15 nor § 2.70 expands the time period for determining whether to comply with a request and therefore neither have been amended.

The Final Rule Should Help Set Requesters' Expectations of When To Expect a Response

One commenter suggested a clause and a sentence be added to § 2.16(a) referring to the potential of a 10-day extension, to help set the requester's expectations of when to expect a response. The Department has adopted the suggestion to refer to the potential extension, but consolidated the suggested language. The final rule already has a provision discussing when the bureau may extend the basic time limit (§ 2.19) and a cross reference to it has been added to § 2.16(a). The Department has also amended § 2.16(a) to more exactly track the language of 5 U.S.C. 552(a)(6)(A)(i).

The Final Rule Should Not Exceed the FOIA's Temporary Suspension Authority

One commenter expressed concern that the provisions in § 2.18(b) exceeded the FOIA's provisions for temporarily suspending the statutory response period because a temporary suspension was allowed to occur more than once if the bureau needed to clarify issues regarding fee assessments. However, 5 U.S.C. 552(a)(6)(A) makes it clear that, although a temporary suspension can occur only once when a bureau is reasonably asking for clarifying information unrelated to fee assessments (and the temporary suspension ends with a requester's response), temporary suspensions of the statutory response period can occur as many times as is necessary when a bureau needs clarifying information regarding a fee assessment. This section therefore does not exceed FOIA's temporary suspension authority and has not been amended.

The Final Rule Should Require the Department To Include a Brief Description of the Subject of the Request in Acknowledgement Letters

One commenter suggested that the Department add a clause to § 2.21(b) requiring bureaus to provide a brief description of the subject of the request in its acknowledgment letter. The

Department declines to adopt the portion of the suggestion about making this description mandatory, due to the increased burden it would place on bureaus (especially those with a high rate of FOIA requests) and the dampening effect this would have on experimenting with new forms of written acknowledgments that could more quickly serve requesters (such as post cards). The Department has, however, added a sentence to § 2.21(b) noting this information may be included.

The Final Rule Should Clarify When Procedural Benefits Are Denied Versus When Records Are Denied

A commenter suggested modifying § 2.23 to clarify when a request is being denied as opposed to the denial of procedural benefits under FOIA. The Department agrees this would be helpful and has made the suggested modifications, along with a few minor clarifications. The Department also made a minor change to paragraph (a)(3) of this section because a some material that had previously been included in § 2.13(h), amendments to which were discussed above, made more sense in this context.

The Final Rule Should Require the Department to State the Precise Volume of Denied Material and Provide a Detailed Justification of Its Withholdings

One commenter suggested § 2.24 be amended to state that, where possible, the requester will be provided with the precise volume of denied material, rather than an estimated volume. Although the Department has declined to adopt this exact suggestion (because it believes the change would have a significant negative impact on the Department's processing and response times while providing the requester with very little, if any, additional, meaningful information), it has amended § 2.25 to more exactly track the language of 5 U.S.C. 552(b), which the commenter referenced. Another commenter suggested § 2.24 be amended to require ''a detailed justification for [a] denial,'' citing case law requiring detailed justifications in a litigation context. The Department has considered this suggestion, but declined to adopt it because it is not required at an administrative level and would have a tremendous negative impact on the Department's processing and response times.

The Final Rule Should Correctly State What Types of Information Can Be Protected Under the Trade Secrets Act

One commenter suggested that § 2.36 be amended to state that only trade secrets can be withheld under the Trade Secrets Act, 18 U.S.C. 1905. However, the Trade Secrets Act is a broadly worded criminal statute that prohibits the unauthorized disclosure of more than simply ''trade secrets.'' *See, e.g., Bartholdi Cable Co.* v. *FCC,* 114 F.3d 274, 281 (D.C. Cir. 1997) (citing *CAN Fin. Corp* v. *Donovan,* 830 F.2d 1132, 1140 (D.C. Cir. 1987) and declaring: ''[W]e have held that information falling within Exemption 4 of FOIA also comes within the Trade Secrets Act.''); *Parker* v. *Bureau of Land Mgmt.,* 141 F. Supp. 2d 71, 77 n.5 (D.D.C. 2001) (''Although FOIA exemptions are normally permissive rather than mandatory, the D.C. Circuit has held that the disclosure of material which is exempted under [Exemption 4 of the FOIA] is prohibited under the Trade Secrets Act''). This section therefore has not been amended.

The Final Rule Should Reflect Three Fee Categories, Rather Than Four

One commenter suggested that §§ 2.38 and 2.70 be amended to reflect that the FOIA provides for three fee categories, not four. While the Department agrees that only three categories are referred to in the FOIA, it has found over many years that requesters appreciate and benefit from the additional clarity provided by having one of the broader categories split in two. The Department therefore has not adopted this suggestion.

The Final Rule Should Use Individualized Local Locality Payments

One commenter suggested that § 2.41(b) be amended from ''the fees will be the average hourly General Schedule (''GS'') base salary, plus the District of Columbia locality payment'' to ''the fees will be the average hourly General Schedule (''GS'') base salary, plus any applicable locality payment.'' The Department utilized the District of Columbia (''DC'') locality payments as its standardized locality payment in its previous version of the final rule and found it to be both efficient and reasonable. It allows the Department to create a standard chart that all bureaus can use to calculate fees, rather than each bureau calculating different amounts for different employees (in the Department, it is not unusual for people who work on the same request to be in multiple geographic locations) and requesters being confused by widely varying charges for the same work. It makes sense to use the DC locality as the standard, given the large numbers of the Department's FOIA professionals and processors that are based in DC The Department therefore has not adopted this suggestion.

The Final Rule Should Not Unduly Limit Agency Decisions on Fee Waivers and Appeals

One commenter suggested that § 2.45(c) unduly limits bureau decisions on fee waivers and this would negatively impact appeal decisions under § 2.57. However, § 2.45(c) merely allows a bureau to make fee waiver decisions based on what is submitted to it by the requester, rather than being required to seek additional information (although it is free to do so, at its discretion). The Department therefore has not amended these sections.

The Final Rule Should Further Clarify When Fees May Be Waived

One commenter suggested adding the following sentence to § 2.45(d) in order to further assist the Department in setting expectations for requesters regarding fee waivers: ''A fee waiver is tied to the subject of the request in addition to the identity of the requester.'' The Department is concerned that adopting this suggestion would give the mistaken impression that only these two criteria are at issue in fee waiver determinations. But, in response to this comment, § 2.45(d) now includes two cross references. These cross references, to the fee waiver criteria in §§ 2.45(a) and 2.48, will help set requesters' expectations regarding fee waivers.

The Final Rule Should Say More About Where and How To File a Fee Waiver

One commenter suggested that § 2.46 discuss where and how to file a fee waiver request. Because § 2.6 directly addresses where and how to file fee waiver requests (and § 2.46 already cross references § 2.6), the Department believes adopting this suggestion is not necessary.

The Final Rule Should Not Be Narrower than FOIA's Fee Waiver Standards

One commenter expressed concern that § 2.48(a)(4), which outlines one of the four criteria bureaus are asked to consider when evaluating a fee waiver request, was narrower than FOIA's fee waiver standards. However, this provision does not narrow the scope of 5 U.S.C. 552(a)(4)(A)(iii), it simply helps the Department analyze whether the disclosure of the information is likely to contribute significantly to public understanding of the operations or

activities of the government. Because § 2.48(a)(4) is not narrower than FOIA's fee waiver standards, the Department has not adopted this suggestion. The same commenter also expressed concern about a change of phrasing in § 2.48(a)(3)(iv) from the parallel provision in the previous version of the final rule. The Department did not intend to change the provision's meaning. Therefore, in accordance with the commenter's suggestion, the word ''unlikely'' has been removed and the phrase ''less likely'' restored.

The Final Rule Should Require the Department to Allow Requesters To Pay in Installments

One commenter suggested that § 2.50(e) be amended to require the Department to ''collaborate with FOIA requesters to establish a payment schedule that would permit requesters to pay [advance payments] in installments instead of closing out requests.'' As the commenter notes, this provision mirrors the applicable provision in the previous version of the final rule. Changing it would greatly add to the complexity, uncertainty, and time spent processing advance fee payments, impairing the Department's FOIA processing. The Department therefore declines to adopt this suggestion.

The Final Rule Should Clearly Articulate its Rationale for Combining or Aggregating Requests

One commenter suggested the Department should articulate its rationale for combining or aggregating requests more clearly in § 2.54. The Department agrees the previous version of this section was unintentionally confusing. The lettering/numbering therefore has been amended. Additionally, a ''will'' in § 2.54(a)(2) has been amended to ''may.''

The Final Rule Should Provide Examples of Types of Records the Department May Charge Fees for Outside the Scope of FOIA

One commenter suggested it may be helpful to include examples of the particular types of records that a bureau may charge fees for outside of the scope of the FOIA in § 2.55. The Department has carefully considered this suggestion and has concluded that examples in this area would be so specific and narrow that they would be more distracting than illuminating. The Department therefore has not adopted this suggestion.

The Final Rule Should Allow Bureaus Not Only To Waive Fees Discretionarily, But Also To Reduce them Discretionarily

One commenter suggested that § 2.56 be amended to allow for the discretionary reduction of fees (in addition to the discretionary waiver of fees) and the Department has adopted this suggestion. The same commenter also suggested that new language be added to give Department employees additional, broader discretion for waiving or reducing fees, for example, whenever ''the interest of the United States Government would be served.'' The Department has declined to adopt this suggestion, because it is concerned that it would create unrealistic expectations on the part of requesters, undercut FOIA's statutory fee requirements, and provide Department employees with an unacceptably vague standard.

The Final Rule Should Strengthen the Regulations to Expand Online Disclosures

One commenter suggested that the Department require all responses to FOIA requests be posted online (except those that implicate the Privacy Act) and that it adopt a policy to proactively disclose information to the greatest extent possible. The Department has carefully considered this suggestion, but declines to adopt it because it believes the final rule reflects the appropriate balance between providing useful information and an appropriate use of the Department's resources.

The Final Rule Should Specifically Discuss Working With the Office of Government Information Services (''OGIS'')

Two commenters suggested the final rule discuss the services offered by OGIS. The Department agrees that OGIS's role in the FOIA process should be noted in the final rule. Rather than waiting until after an appeal decision has been made to introduce this information (as one of the commenters suggested), the Department has adopted this suggestion by requiring bureaus to provide information on OGIS in letters taking final action on a request, which will ensure maximum dissemination of the information at the most appropriate stage of the process. The revised § 2.21(a) both clarifies the provision and requires the Department to provide notice of the services offered by OGIS to all of the Department's FOIA requesters, rather than just the ones that file appeals.

The Final Rule Should Include Procedures for Confidential Business Information

One commenter suggested the Department require submitters of older records to provide additional information to explain why the information is still confidential and its release would still be harmful after the passage of time. However, § 2.28(g) already requires this, so the Department believes adopting this suggestion is not necessary.

The Final Rule Should Not Contravene Transparency Goals

One commenter asserted, in addition to a number of specific comments, that the final rule directly contravenes transparency goals. The Department has carefully considered this assertion, but believes the final rule improves overall processing and increases transparency, so no changes have been made based on this comment.

The Final Rule Should Not Change the FOIA, Exceed the Scope of the Department's Rulemaking Authority, or Be Contrary to Law

One commenter's entire comment was: ''NO.Do not change the freedom of info act.'' As noted above, this rule consists of the regulations that the Department follows in processing records under the FOIA. It does not change the FOIA itself in any way. Another commenter asserted, in addition to a number of specific comments, that the final rule exceeded the scope of the Department's rulemaking authority and was ''contrary to law.'' The Department has carefully considered these assertions, but believes the final rule was fully within the scope of the Department's rulemaking authority and completely consistent with all applicable laws, so no changes have been made based on this comment.

C. Technical and Procedural Comments

A number of commenters made suggestions related to minor word choices, minor clarifications, and additional citations, many of which have been adopted without further comment. The Department has also fixed a few minor typographical errors. Additionally, the Department added cross references, and/or made very minor clarifications in the following sections: 2.7(a) and (b), 2.15(a), 2.17, 2.19(c), 2.20(c), 2.22(c), 2.33, 2.41(a) and (c), 2.42(a), 2.43(a), and 2.60(b). Finally, in the interests of clarity, the Department also added phrases to §§ 2.31(a) and 2.63(c) and a second paragraph to § 2.37(f).

II. Compliance With Laws and Executive Orders

1. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This rule does not have a significant or unique effect on State, local or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630)

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required.

6. Federalism (E.O. 13132)

In accordance with Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. It would not substantially and directly affect the relationship between the Federal and state governments. A Federalism Assessment is not required.

7. Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

8. Consultation With Indian Tribes (E.O. 13175)

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. This rule does not have tribal implications that impose substantial direct compliance costs on Indian Tribal governments.

9. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required.

9. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required. Pursuant to Department Manual 516 DM 2.3A(2), Section 1.10 of 516 DM 2, Appendix 1 excludes from documentation in an environmental assessment or impact statement ''policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject late to the NEPA process, either collectively or case-by-case.''

10. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required. This rule will not have a significant effect on the nation's energy supply, distribution, or use.

List of Subjects in 43 CFR Part 2

Freedom of information.

David J. Hayes,

Deputy Secretary of the Interior.

For the reasons stated in the preamble, the Department of the Interior amends 43 CFR subtitle A as follows:

PART 2—FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY

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

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461.

■ 2. The heading of part 2 is revised to read as set forth above.

Subparts F through H [Redesignated as Subparts J through L]

■ 3. Subpart F (consisting of § 2.41), subpart G (consisting of §§ 2.45 through 2.79), and subpart H (consisting of §§ 2.80 through 2.90) are redesignated as subpart J, subpart K, and subpart L.

■ 4. Subparts A through E are revised to read as follows:

Subpart A—Introduction

Sec.

2.1 What should you know up front?

2.2 What kinds of records are not covered by the regulations in subparts A through I of this part?

Subpart B—How to Make a Request

2.3 Where should you send a FOIA request?

2.4 Does where you send your request affect its processing?

2.5 How should you describe the records you seek?

2.6 How will fee information affect the processing of your request?

2.7 What information should you include about your fee category?

2.8 Can you ask for records to be disclosed in a particular form or format?

2.9 What if your request seeks records about another person?

2.10 May you ask for the processing of your request to be expedited?

2.11 What contact information should your request include?

Subpart C—Processing Requests

2.12 What should you know about how bureaus process requests?

2.13 How do consultations and referrals work?

Subpart D—Timing of Responses to Requests

2.14 In what order are responses usually made?
2.15 What is multitrack processing and how does it affect your request?
2.16 What is the basic time limit for responding to a request?
2.17 When does the basic time limit begin for misdirected FOIA requests?
2.18 When can the bureau suspend the basic time limit?
2.19 When may the bureau extend the basic time limit?
2.20 When will expedited processing be provided and how will it affect your request?

Subpart E—Responses to Requests

2.21 How will the bureau respond to requests?
2.22 How will the bureau grant requests?
2.23 When will the bureau deny a request or procedural benefits?
2.24 How will the bureau deny requests?
2.25 What if the requested records contain both exempt and nonexempt material?

Subpart A—Introduction

§ 2.1 What should you know up front?

(a) Subparts A through I of this part contain the rules that the Department follows in processing records under the Freedom of Information Act (FOIA), 5 U.S.C. 552.

(b) Definitions of terms used in Subparts A through I of this part are found at § 2.70.

(c) Subparts A through I of this part should be read in conjunction with the text of the FOIA and the OMB Fee Guidelines.

(d) The Department's FOIA Handbook and its attachments contain detailed information about Department procedures for making FOIA requests and descriptions of the types of records maintained by different Department bureaus or offices. This resource is available at *http://www.doi.gov/foia/guidance.cfm.*

(e) Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under subparts A through I and subpart K of this part.

(f) Part 2 does not entitle any person to any service or to the disclosure of any record that is not required under the FOIA.

(g) Before you file a FOIA request, you are encouraged to review the Department's electronic FOIA libraries at *http://www.doi.gov/foia/libraries.cfm.* The material you seek may be immediately available electronically at no cost.

§ 2.2 What kinds of records are not covered by the regulations in subparts A through I of this part?

Subparts A through I of this part do not apply to records that fall under the law enforcement exclusions in 5 U.S.C. 552(c)(1)–(3). These exclusions may be used only in the limited circumstances delineated by the statute and require both prior approval from the Office of the Solicitor and the recording of their use and approval process.

Subpart B—How To Make a Request

§ 2.3 Where should you send a FOIA request?

(a) The Department does not have a central location for submitting FOIA requests and it does not maintain a central index or database of records in its possession. Instead, the Department's records are decentralized and maintained by various bureaus and offices throughout the country.

(b) To make a request for Department records, you must write directly to the bureau that you believe maintains those records.

(c) Address requests to the appropriate FOIA contact in the bureau that maintains the requested records. The Department's FOIA Web site, *http://www.doi.gov/foia/index.cfm*, lists the physical and email addresses of each bureau's FOIA Officer, along with other appropriate FOIA contacts at *http://www.doi.gov/foia/contacts.cfm.*

(d) Questions about where to send a FOIA request should be directed to the bureau that manages the underlying program or to the appropriate FOIA Public Liaison, as discussed in § 2.66 of this part.

§ 2.4 Does where you send your request affect its processing?

(a) A request to a particular bureau component (for example, a request addressed to a regional or field office) will be presumed to seek only records from that particular component.

(b) If you seek records from an entire bureau, submit your request to the bureau FOIA Officer. The bureau FOIA Officer will forward it to the bureau component(s) that he or she believes has or are likely to have responsive records.

(c) If a request to a bureau states that it seeks records located at another specific component of the same bureau, the appropriate FOIA contact will forward the request to the other component.

(d) If a request to a bureau states that it seeks records from other unspecified components within the same bureau, the appropriate FOIA contact will send the request to the Bureau FOIA Officer. He or she will forward it to the components that the bureau FOIA Officer believes have or are likely to have responsive records.

(e) If a request to a bureau states that it seeks records of another specified bureau, the bureau will route the misdirected request to the specified bureau for response.

(f) If a request to a bureau states that it seeks records from other unspecified bureaus, the bureau's FOIA Officer may forward the request to those bureaus which he or she believes have or are likely to have responsive records. If the bureau FOIA Officer forwards the request, they will notify you in writing and provide the name of a contact in the other bureau(s). If it does not forward the request, the bureau will return it to you, advise you to submit the request directly to the other bureaus, notify you that it cannot comply with the request, and close the request.

§ 2.5 How should you describe the records you seek?

(a) You must reasonably describe the records sought. A reasonable description contains sufficient detail to enable bureau personnel familiar with the subject matter of the request to locate the records with a reasonable amount of effort.

(b) You should include as much detail as possible about the specific records or types of records that you are seeking. This will assist the bureau in identifying the requested records (for example, time frames involved or specific personnel who may have the requested records). For example, whenever possible, identify:

(1) The date, title or name, author, recipient, and subject of any particular records you seek;

(2) The office that created the records you seek;

(3) The timeframe for which you are seeking records; and

(4) Any other information that will assist the bureau in locating the records.

(c) The bureau's FOIA Public Liaison can assist you in formulating or reformulating a request in an effort to better identify the records you seek.

(d) If the request does not reasonably describe the records sought, the bureau will inform you what additional information is needed. It will also notify you that it will not be able to comply with your FOIA request unless you provide the additional information requested within 20 workdays. If you receive this sort of response, you may wish to discuss it with the bureau's designated FOIA contact or its FOIA Public Liaison (see § 2.66 of this part). If the bureau does not hear from you within 20 workdays after asking for

additional information, it will presume that you are no longer interested in the records and will close the file on the request.

§ 2.6 How will fee information affect the processing of your request?

(a) Your request must explicitly state that you will pay all fees associated with processing the request, that you will pay fees up to a specified amount, and/or that you are seeking a fee waiver.

(b) If the bureau anticipates that the fees for processing the request will exceed the amount you have agreed to pay, or if you did not agree in writing to pay processing fees and the bureau anticipates the processing costs will exceed your entitlements, the bureau will notify you:

(1) Of the estimated processing fees;

(2) Of its need for either an advance payment (see § 2.50 of this part) or your written assurance that you will pay the anticipated fees (or fees up to a specified amount); and

(3) That it will not be able to fully comply with your FOIA request unless you provide the written assurance or advance payment requested.

(c) If the bureau does not receive a written response from you within 20 workdays after requesting the information in paragraph (b) of this section, it will presume that you are no longer interested in the records and will close the file on the request.

(d) If you are seeking a fee waiver, your request must include sufficient justification (see the criteria in §§ 2.45, 2.48, and 2.56 of this part). Failure to provide sufficient justification will result in a denial of the fee waiver request. If you are seeking a fee waiver, you may also indicate the amount you are willing to pay if the fee waiver is denied. This allows the bureau to process the request for records while it considers your fee waiver request.

(e) The bureau will begin processing the request only after the fee issues are resolved.

(f) If you are required to pay a fee and it is later determined on appeal that you were entitled to a full or partial fee waiver, you will receive an appropriate refund.

§ 2.7 What information should you include about your fee category?

(a) A request should indicate your fee category (that is, whether you are a commercial-use requester, news media, educational or noncommercial scientific institution, or other requester as described in §§ 2.38 and 2.39 of this part).

(b) If you submit a FOIA request on behalf of another person or organization (for example, if you are an attorney submitting a request on behalf of a client), the bureau will determine the fee category by considering the underlying requester's identity and intended use of the information.

(c) If your fee category is unclear, the bureau may ask you for additional information (see § 2.51 of this part).

§ 2.8 Can you ask for records to be disclosed in a particular form or format?

(a) Generally, you may choose the form or format of disclosure for records requested. The bureau must provide the records in the requested form or format if the bureau can readily reproduce the record in that form or format.

(b) The bureau may charge you the direct costs involved in converting records to the requested format if the bureau does not normally maintain the records in that format (see § 2.44 of this part).

§ 2.9 What if your request seeks records about another person?

(a) When a request seeks records about another person, you may receive greater access by submitting proof that the person either:

(1) Consents to the release of the records to you (for example, a notarized authorization signed by that person); or

(2) Is deceased (for example, a copy of a death certificate or an obituary).

(b) At its discretion, the bureau can require you to supply additional information if necessary to verify that a particular person has consented to disclosure or is deceased.

§ 2.10 May you ask for the processing of your request to be expedited?

You may ask for the processing of your request to be expedited. The bureau will determine whether to expedite the processing of your request using the criteria outlined in § 2.20.

§ 2.11 What contact information should your request include?

A request should include your name, mailing address, daytime telephone number (or the name and telephone number of an appropriate contact), email address, and fax number (if available) in case the bureau needs additional information or clarification of your request.

Subpart C—Processing Requests

§ 2.12 What should you know about how bureaus process requests?

(a) Except as described in §§ 2.4 and 2.13 of this part, the bureau to which the request is addressed is responsible for responding to the request and for making a reasonable effort to search for responsive records.

(b) In determining which records are responsive to a request, the bureau will include only records in its possession and control on the date that it begins its search.

(c) The bureau will make reasonable efforts to search for the requested records in electronic form or format, except when these efforts would significantly interfere with the operation of the bureau's automated information system.

(d) If a bureau receives a request for records in its possession that it did not create or that another bureau or a Federal agency is substantially concerned with, it may undertake consultations and/or referrals as described in § 2.13.

§ 2.13 How do consultations and referrals work?

(a) Consultations and referrals can occur within the Department or outside the Department.

(1) Paragraphs (b) and (c) of this section addresses consultations and referrals that occur within the Department when the bureau has responsive records.

(2) Paragraphs (d) through (g) of this section address consultations and referrals that occur outside the Department when the bureau has responsive records.

(3) Paragraph (h) of this section addresses what happens when the bureau has no responsive records but believes responsive records may be in the possession of a Federal agency outside the Department.

(b) If a bureau (other than the Office of Inspector General) receives a request for records in its possession that another bureau created or is substantially concerned with, it will either:

(1) Consult with the other bureau before deciding whether to release or withhold the records; or

(2) Refer the request, along with the records, to that other bureau for direct response.

(c) The bureau that originally received the request will notify you of the referral in writing. When the bureau notifies you of the referral, it will tell you whether the referral was for part or all of your request and provide the name and contact information for the other bureau.

(d) If, while responding to a request, the bureau locates records that originated with another Federal agency, it usually will refer the request and any responsive records to that other agency for a release determination and direct response.

(e) If the bureau refers records to another agency, it will document the

referral and maintain a copy of the records that it refers and notify you of the referral in writing, unless the notification will itself disclose a sensitive, exempt fact. When the bureau notifies you of the referral, it will tell you whether the referral was for part or all of your request and provide the name and contact information for the other agency. You may treat such a response as a denial of records and file an appeal, in accordance with the procedures in § 2.59 of this part.

(f) If the bureau locates records that originated with another Federal agency while responding to a request, the bureau will make the release determination itself (after consulting with the originating agency) when:

(1) The record is of primary interest to the Department (for example, a record may be of primary interest to the Department if it was developed or prepared according to the Department's regulations or directives, or in response to a Departmental request);

(2) The Department is in a better position than the originating agency to assess whether the record is exempt from disclosure;

(3) The originating agency is not subject to the FOIA; or

(4) It is more efficient or practical depending on the circumstances.

(g) If the bureau receives a request for records that another Federal agency has classified under any applicable executive order concerning record classification, it must refer the request to that agency for response.

(h) If the bureau receives a request for records not in its possession, but that the bureau believes may be in the possession of a Federal agency outside the Department, the bureau will return the request to you, may advise you to submit it directly to the agency, will notify you that the bureau cannot comply with the request, and will close the request.

Subpart D—Timing of Responses to Requests

§ 2.14 In what order are responses usually made?

The bureau ordinarily will respond to requests according to their order of receipt within their processing track.

§ 2.15 What is multitrack processing and how does it affect your request?

(a) Bureaus use processing tracks to distinguish simple requests from more complex ones on the basis of the estimated number of workdays needed to process the request.

(b) In determining the number of workdays needed to process the request, the bureau considers factors such as the number of pages involved in processing the request or the need for consultations.

(c) The basic processing tracks are designated as follows:

(1) Simple: requests in this track will take between one to five workdays to process;

(2) Normal: requests in this track will take between six to twenty workdays to process;

(3) Complex: requests in this track will take between twenty-one workdays and sixty workdays to process; or

(4) Exceptional/Voluminous: requests in this track involve very complex processing challenges, which may include a large number of potentially responsive records, and will take over sixty workdays to process.

(d) Bureaus also have a specific processing track for requests that are granted expedited processing under the standards in § 2.20 of this part. These requests will be processed as soon as practicable.

(e) Bureaus must advise you of the track into which your request falls and, when appropriate, will offer you an opportunity to narrow your request so that it can be placed in a different processing track.

(f) The use of multitrack processing does not alter the statutory deadline for a bureau to determine whether to comply with your FOIA request (see § 2.16 of this part).

§ 2.16 What is the basic time limit for responding to a request?

(a) Ordinarily, the bureau has 20 workdays after the date of receipt to determine whether to comply with (for example, grant, partially grant, or deny) a FOIA request, but unusual circumstances may allow the bureau to take longer than 20 workdays (see § 2.19).

(b) A consultation or referral under § 2.13 of this part does not restart the statutory time limit for responding to a request.

§ 2.17 When does the basic time limit begin for misdirected FOIA requests?

The basic time limit for a misdirected FOIA request (see § 2.4(e) of this part) begins no later than ten workdays after the request is first received by any component of the Department that is designated to receive FOIA requests.

§ 2.18 When can the bureau suspend the basic time limit?

(a) The basic time limit in § 2.16 of this part may be temporarily suspended for the time it takes you to respond to one written communication from the bureau reasonably asking for clarifying information.

(b) The basic time limit in § 2.16 may also repeatedly be temporarily suspended for the time it takes you to respond to written communications from the bureau that are necessary to clarify issues regarding fee assessment (see § 2.51 of this part).

§ 2.19 When may the bureau extend the basic time limit?

(a) The bureau may extend the basic time limit if unusual circumstances exist. Before the expiration of the basic 20 workday time limit to respond, the bureau will notify you in writing of:

(1) The unusual circumstances involved; and

(2) The date by which it expects to complete processing the request.

(b) If the processing time will extend beyond a total of 30 workdays, the bureau will:

(1) Give you an opportunity to limit the scope of the request or agree to an alternative time period for processing; and

(2) Make available its FOIA Public Liaison (see § 2.66 of this part) to assist in resolving any disputes between you and the bureau.

(c) If the bureau extends the time limit under this section and you do not receive a response in accordance with § 2.16(a) in that time period, you may consider the request denied and file an appeal in accordance with the procedures in § 2.59.

(d) Your refusal to reasonably modify the scope of a request or arrange an alternative time frame for processing a request after being given the opportunity to do so may be considered for litigation purposes as a factor when determining whether exceptional circumstances exist.

§ 2.20 When will expedited processing be provided and how will it affect your request?

(a) The bureau will provide expedited processing upon request if you demonstrate to the satisfaction of the bureau that there is a compelling need for the records. The following circumstances demonstrate a compelling need:

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

(2) Where there is an urgency to inform the public about an actual or alleged Federal Government activity and the request is made by a person primarily engaged in disseminating information.

(i) In most situations, a person primarily engaged in disseminating

information will be a representative of the news media.

(ii) If you are not a full time member of the news media, to qualify for expedited processing here, you must establish that your main professional activity or occupation is information dissemination, although it need not be your sole occupation.

(iii) The requested information must be the type of information which has particular value that will be lost if not disseminated quickly; this ordinarily refers to a breaking news story of general public interest.

(iv) Information of historical interest only or information sought for litigation or commercial activities would not qualify, nor would a news media deadline unrelated to breaking news.

(b) If you seek expedited processing, you must submit a statement that:

(1) Explains in detail how your request meets one or both of the criteria in paragraph (a) of this section; and

(2) Certifies that your explanation is true and correct to the best of your knowledge and belief.

(c) You may ask for expedited processing at any time by writing to the appropriate FOIA contact in the bureau that maintains the records requested. When making a request for expedited processing of an administrative appeal, submit the request to the FOIA Appeals Officer.

(d) The bureau must notify you of its decision to grant or deny expedited processing within 10 calendar days of receiving an expedited processing request.

(e) If expedited processing is granted, the request will be given priority, placed in the processing track for expedited requests, and be processed as soon as practicable.

(f) If expedited processing is denied, the bureau will notify you of the right to appeal the decision on expedited processing in accordance with the procedures in subpart H of this part.

(g) If you appeal the decision on expedited processing, your appeal (if it is properly formatted under § 2.59 of this part) will be processed ahead of other appeals.

(h) If the bureau has not responded to the request for expedited processing within 10 calendar days, you may file an appeal (for nonresponse in accordance with § 2.57(a)(8) of this part).

Subpart E—Responses to Requests

§ 2.21 How will the bureau respond to requests?

(a) When the bureau informs you of its decision to comply with a request by granting, partially granting, or denying the request, it will do so in writing and in accordance with the deadlines in subpart D of this part. The bureau's written response will include a statement about the services offered by the Office of Government Information Services (OGIS), using standard language that can be found at: *http://www.doi.gov/foia/news/guidance/index.cfm*.

(b) If the bureau determines that your request will take longer than 10 workdays to process, the bureau immediately will send you a written acknowledgment that includes the request's individualized tracking number and processing track (see § 2.15(e)). The acknowledgement may also include a brief description of the subject of your request.

§ 2.22 How will the bureau grant requests?

(a) Once the bureau makes a determination to grant a request in full or in part, it must notify you in writing.

(b) The notification will inform you of any fees charged under subpart G of this part.

(c) The bureau will release records (or portions of records) to you promptly upon payment of any applicable fees (or before then, in accordance with § 2.37(c) of this part).

(d) If the records (or portions of records) are not included with the bureau's notification, the bureau will advise you how, when, and where the records will be made available.

§ 2.23 When will the bureau deny a request or procedural benefits?

(a) A bureau denies a request when it makes a decision that:

(1) A requested record is exempt, in full or in part;

(2) The request does not reasonably describe the records sought;

(3) A requested record does not exist, cannot be located, or is not in the bureau's possession; or

(4) A requested record is not readily reproducible in the form or format you seek.

(b) A bureau denies a procedural benefit only, and not access to the underlying records, when it makes a decision that:

(1) A fee waiver, or another fee-related issue, will not be granted; or

(2) Expedited processing will not be provided.

(c) The bureau must consult with the Office of the Solicitor before it denies a fee waiver request or withholds all or part of a requested record.

§ 2.24 How will the bureau deny requests?

(a)The bureau must notify you in writing of any denial of your request.

(b) The denial notification must include:

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

(2) A brief statement of the reasons for the denial, including a reference to any FOIA exemption(s) applied by the bureau to withhold records in full or in part;

(3) An estimate of the volume of any records or information withheld, for example, by providing the number of pages or some other reasonable form of estimation, unless such an estimate would harm an interest protected by the exemption(s) used to withhold the records or information;

(4) The name and title of the Office of the Solicitor attorney consulted (if the bureau is denying a fee waiver request or withholding all or part of a requested record); and

(5) A statement that the denial may be appealed under subpart H of this part and a description of the requirements set forth therein.

§ 2.25 What if the requested records contain both exempt and nonexempt material?

If responsive records contain both exempt and nonexempt material, the bureau will consult with the Office of the Solicitor, as discussed in § 2.23(c). After consultation, the bureau will partially grant and partially deny the request by:

(a) Segregating and releasing the nonexempt information, unless the nonexempt material is so intertwined with the exempt material that disclosure of it would leave only meaningless words and phrases;

(b) Indicating on the released portion of the record the amount of information deleted and the FOIA exemption under which the deletion was made, unless doing so would harm an interest protected by the FOIA exemption used to withhold the information; and

(c) If technically feasible, placing the information required by paragraph (b) of this section at the place in the record where the deletion was made.

■ 5. Subparts F through I are added to read as follows:

Subpart F—Handling Confidential Information

Sec.

2.26 How will the bureau interact with the submitter of possibly confidential information?
2.27 When will the bureau notify a submitter of a request for their possibly confidential information?
2.28 What information will the bureau include when it notifies a submitter of a request for their possibly confidential information?

2.29 When will the bureau not notify a submitter of a request for their possibly confidential information?
2.30 How and when may a submitter object to disclosure of confidential information?
2.31 What must a submitter include in a detailed Exemption 4 objection statement?
2.32 How will the bureau consider the submitter's objections?
2.33 What if the bureau determines it will disclose information over the submitter's objections?
2.34 Will a submitter be notified of a FOIA lawsuit?
2.35 Will you receive notification of activities involving the submitter?
2.36 Can a bureau release information protected by Exemption 4?

Subpart G—Fees

2.37 What general principles govern fees?
2.38 What are the requester fee categories?
2.39 Does your requester category affect the fees you are charged?
2.40 How will fee amounts be determined?
2.41 What search fees will you have to pay?
2.42 What duplication fees will you have to pay?
2.43 What review fees will you have to pay?
2.44 What fees for other services will you have to pay?
2.45 When will the bureau waive fees?
2.46 When may you ask the bureau for a fee waiver?
2.47 How will the bureau notify you if it denies your fee waiver request?
2.48 How will the bureau evaluate your fee waiver request?
2.49 When will you be notified of anticipated fees?
2.50 When will the bureau require advance payment?
2.51 What if the bureau needs clarification about fee issues?
2.52 How will you be billed?
2.53 How will the bureau collect fees owed?
2.54 When will the bureau combine or aggregate requests?
2.55 What if other statutes require the bureau to charge fees?
2.56 May the bureau waive or reduce your fees at its discretion?

Subpart H—Administrative Appeals

2.57 When may you file an appeal?
2.58 How long do you have to file an appeal?
2.59 How do you file an appeal?
2.60 Who makes decisions on appeals?
2.61 How are decisions on appeals issued?
2.62 When can you expect a decision on your appeal?
2.63 Can you receive expedited processing of appeals?
2.64 Must you submit an appeal before seeking judicial review?

Subpart I—General Information

2.65 Where are records made available?
2.66 What are public liaisons?
2.67 When will the Department make records available without a FOIA request?
2.68 How will FOIA materials be preserved?
2.69 How will a bureau handle a request for federally-funded research data?
2.70 What definitions apply to subparts A through I of this part?

Subpart F—Handling Confidential Information

§ 2.26 How will the bureau interact with the submitter of possibly confidential information?

(a) The Department encourages, but does not require, submitters to designate confidential information in good faith at the time of submission. Such designations assist the bureau in determining whether information obtained from the submitter is confidential information, but will not always be determinative.

(b) If, in the course of responding to a FOIA request, a bureau cannot readily determine whether information is confidential information, the bureau will:

(1) Consult with the submitter under §§ 2.27 and 2.28; and

(2) Provide the submitter an opportunity to object to a decision to disclose the information under §§ 2.30 and 2.31 of this subpart.

§ 2.27 When will the bureau notify a submitter of a request for their possibly confidential information?

(a) Except as outlined in § 2.29 of this subpart, a bureau must promptly notify a submitter in writing when it receives a FOIA request if either:

(1) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4 of the FOIA, found at 5 U.S.C. 552(b)(4); or

(2) The bureau believes that requested information may be protected from disclosure under Exemption 4.

(b) If a large number of submitters are involved, the bureau may publish a notice in a manner reasonably calculated to reach the attention of the submitters (for example, in newspapers or newsletters, the bureau's Web site, or the **Federal Register**) instead of providing a written notice to each submitter.

§ 2.28 What information will the bureau include when it notifies a submitter of a request for their possibly confidential information?

A notice to a submitter must include:

(a) Either a copy of the FOIA request or the exact language of the request;

(b) Either a description of the possibly confidential information located in response to the request or a copy of the responsive records, or portions of records, containing the information;

(c) A description of the procedures for objecting to the release of the possibly confidential information under §§ 2.30 and 2.31 of this subpart;

(d) A time limit for responding to the bureau—no less than 10 workdays from receipt or publication of the notice (as set forth in § 2.27(b) of this subpart)—to object to the release and to explain the basis for the objection;

(e) Notice that information contained in the submitter's objections may itself be subject to disclosure under the FOIA;

(f) Notice that the bureau, not the submitter, is responsible for deciding whether the information will be released or withheld;

(g) A request for the submitter's views on whether they still consider the information to be confidential if the submitter designated the material as confidential commercial or financial information 10 or more years before the request; and

(h) Notice that failing to respond within the time frame specified under § 2.28(d) of this subpart will create a presumption that the submitter has no objection to the disclosure of the information in question.

§ 2.29 When will the bureau not notify a submitter of a request for their possibly confidential information?

The notice requirements of § 2.28 of this subpart will not apply if:

(a) The information has been lawfully published or officially made available to the public; or

(b) Disclosure of the information is required by a statute other than the FOIA or by a regulation (other than this part) issued in accordance with the requirements of Executive Order 12600.

§ 2.30 How and when may a submitter object to the disclosure of confidential information?

(a) If a submitter has any objections to the disclosure of confidential information, the submitter should provide a detailed written statement to the bureau that specifies all grounds for withholding the particular information under any FOIA exemption (see § 2.31 of this subpart for further discussion of Exemption 4 objection statements).

(b) A submitter who does not respond within the time period specified under § 2.28(d) of this subpart will be considered to have no objection to disclosure of the information. Responses received by the bureau after this time period will not be considered by the bureau unless the appropriate bureau FOIA contact determines, in his or her sole discretion, that good cause exists to accept the late response.

§ 2.31 What must a submitter include in a detailed Exemption 4 objection statement?

(a) To rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information is confidential information. To do this, the submitter must give the bureau a detailed written statement. This statement must include a specific and detailed discussion of why the information is a trade secret or, if the information is not a trade secret, the following three categories must be addressed (unless the bureau informs the submitter that a response to one of the first two categories will not be necessary):

(1) Whether the Government required the information to be submitted, and if so, how substantial competitive or other business harm would likely result from release;

(2) Whether the submitter provided the information voluntarily and, if so, how the information fits into a category of information that the submitter does not customarily release to the public; and

(3) A certification that the information is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

(b) If not already provided, the submitter must include a daytime telephone number, an email and mailing address, and a fax number (if available).

§ 2.32 How will the bureau consider the submitter's objections?

(a) The bureau must carefully consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(b) The bureau, not the submitter, is responsible for deciding whether the information will be released or withheld.

§ 2.33 What if the bureau determines it will disclose information over the submitter's objections?

If the bureau decides to disclose information over the objection of a submitter, the bureau must notify the submitter by certified mail or other traceable mail, return receipt requested. The notification must be sent to the submitter's last known address and must include:

(a) The specific reasons why the bureau determined that the submitter's disclosure objections do not support withholding the information;

(b) Copies of the records or information the bureau intends to release; and

(c) Notice that the bureau intends to release the records or information no less than 10 workdays after receipt of the notice by the submitter.

§ 2.34 Will a submitter be notified of a FOIA lawsuit?

If you file a lawsuit seeking to compel the disclosure of confidential information, the bureau must promptly notify the submitter.

§ 2.35 Will you receive notification of activities involving the submitter?

If any of the following occur, the bureau will notify you:

(a) The bureau provides the submitter with notice and an opportunity to object to disclosure;

(b) The bureau notifies the submitter of its intent to disclose the requested information; or

(c) A submitter files a lawsuit to prevent the disclosure of the information.

§ 2.36 Can a bureau release information protected by Exemption 4?

If a bureau determines that the requested information is protected from release by Exemption 4 of the FOIA, the bureau has no discretion to release the information. Release of information protected from release by Exemption 4 is prohibited by the Trade Secrets Act, a criminal provision found at 18 U.S.C. 1905.

Subpart G—Fees

§ 2.37 What general principles govern fees?

(a) The bureau will charge for processing requests under the FOIA in accordance with this subpart and with the OMB Fee Guidelines.

(b) The bureau may contact you for additional information to resolve fee issues.

(c) The bureau ordinarily will collect all applicable fees before sending copies of records to you.

(d) You may usually pay fees by check, certified check, or money order made payable to the ''Department of the Interior'' or the bureau.

(1) Where appropriate, the bureau may require that your payment be made in the form of a certified check.

(2) You may also be able to pay your fees by credit card. You may contact the bureau to determine what forms of payment it accepts.

(e) The bureau should ensure that it conducts searches, review, and duplication in the most efficient and the least expensive manner so as to minimize costs for both you and the bureau.

(f) If the Department does not comply with any of the FOIA's statutory time limits:

(1) The bureau cannot assess search fees for your FOIA request, unless unusual or exceptional circumstances apply; and

(2) Depending on your fee category, the bureau may not be able to assess duplication fees for your FOIA request, as discussed in § 2.39(b) of this subpart.

§ 2.38 What are the requester fee categories?

(a) There are four categories of requesters for the purposes of determining fees—commercial-use, educational and noncommercial scientific institutions, representatives of news media, and all others.

(b) The bureau's decision to place you in a particular fee category will be made on a case-by-case basis based on your intended use of the information and, in most cases, your identity. If you do not submit sufficient information in your FOIA request for the bureau to determine your proper fee category, the bureau may ask you to provide additional information (see § 2.51 of this subpart).

(c) See § 2.70 of this part for the definitions of each of these fee categories.

§ 2.39 How does your requester category affect the fees you are charged?

(a) You will be charged as shown in the following table:

Requester Category	Search fees	Review fees	Duplication fees
Commercial use requester	Yes	Yes	Yes.
Educational and non-commercial scientific institutions	No	No	Yes (first 100 pages, or equivalent volume, free).
Representative of news media requester	No	No	Yes (first 100 pages, or equivalent volume, free).
All other requesters	Yes (first 2 hours free)	No	Yes (first 100 pages, or equivalent volume, free).

(b) If you are in the fee category of a representative of the news media or an educational and noncommercial scientific institution and the Department does not comply with any of the FOIA's statutory time limits, the Department cannot assess duplication fees for the FOIA request in question, unless unusual or exceptional circumstances apply to the processing of the request.

§ 2.40 How will fee amounts be determined?

(a) The bureau will charge the types of fees discussed below unless a waiver of fees is required under § 2.39 of this subpart or has been granted under § 2.45 or § 2.56.

(b) Because the types of fees discussed below already account for the overhead costs associated with a given fee type, the bureau should not add any additional costs to those charges.

§ 2.41 What search fees will you have to pay?

(a) The bureau will charge search fees for all requests, subject to the restrictions of §§ 2.37(f), 2.39, and 2.40(a) of this subpart. The bureau may charge you for time spent searching even if it does not locate any responsive records or if it determines that the records are entirely exempt from disclosure.

(b) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be the average hourly General Schedule (GS) base salary, plus the District of Columbia locality payment, plus 16 percent for benefits, of employees in the following three categories, as applicable:

(1) Clerical—Based on GS–6, Step 5, pay (all employees at GS–7 and below are classified as clerical for this purpose);

(2) Professional—Based on GS–11, Step 7, pay (all employees at GS–8 through GS–12 are classified as professional for this purpose); and

(3) Managerial—Based on GS–14, Step 2, pay (all employees at GS–13 and above are classified as managerial for this purpose).

(c) You can review the current fee schedule for the categories discussed above in paragraph (b) of this section at *http://www.doi.gov/foia/fees-waivers.cfm.*

(d) Some requests may require retrieval of records stored at a Federal records center operated by the National Archives and Records Administration. For these requests, bureaus will charge additional costs in accordance with the Transactional Billing Rate Schedule established by the National Archives and Records Administration.

§ 2.42 What duplication fees will you have to pay?

(a) The bureau will charge duplication fees, subject to the restrictions of §§ 2.37(f), 2.39, and 2.40(a) of this subpart.

(b) If photocopies or scans are supplied, the bureau will provide one copy per request at the cost determined by the table in appendix A to this part.

(c) For other forms of duplication, the bureau will charge the actual costs of producing the copy, including the time spent by personnel duplicating the requested records. For each quarter hour spent by personnel duplicating the requested records, the fees will be the same as those charged for a search under § 2.41(b) of this subpart.

(d) If the bureau must scan paper records to accommodate your preference to receive records in an electronic format, you will pay both the per page amount noted in Appendix A to this part and the time spent by personnel scanning the requested records. For each quarter hour spent by personnel scanning the requested records, the fees will be the same as those charged for a search under § 2.41(b) of this subpart.

§ 2.43 What review fees will you have to pay?

(a) The bureau will charge review fees if you make a commercial-use request, subject to the restrictions of §§ 2.37(f), 2.39, and 2.40(a) of this subpart.

(b) The bureau will assess review fees in connection with the initial review of the record (the review conducted by the bureau to determine whether an exemption applies to a particular record or portion of a record).

(c) The Department will not charge for reviews at the administrative appeal stage of exemptions applied at the initial review stage. However, if the appellate authority determines that an exemption no longer applies, any costs associated with the bureau's re-review of the records to consider the use of other exemptions may be assessed as review fees.

(d) The bureau will charge review fees at the same rates as those charged for a search under § 2.41(b) of this subpart.

(e) The bureau can charge review fees even if the record(s) reviewed ultimately is not disclosed.

§ 2.44 What fees for other services will you have to pay?

(a) Although not required to provide special services, if the bureau chooses to do so as a matter of administrative discretion, it will charge you the direct costs of providing the service.

(b) Examples of these services include certifying that records are true copies under subpart L of this part, providing multiple copies of the same record, converting records to a requested format, obtaining research data under § 2.69 of this part, or sending records by means other than first class mail.

(c) The bureau will notify you of these fees before they accrue and will obtain your written assurance of payment or an advance payment before proceeding. See §§ 2.49 and 2.50 of this subpart.

§ 2.45 When will the bureau waive fees?

(a) The bureau will release records responsive to a request without charge (in other words, it will give you a full fee waiver) or at a reduced charge (in other words, it will give you a partial fee waiver, as discussed further in paragraph (b) of this section) if the bureau determines, based on all available information, that you have demonstrated (under the factors listed in § 2.48 of this subpart) that disclosing the information is:

(1) In the public interest because it is likely to contribute significantly to public understanding of government operations or activities, and

(2) Not primarily in your commercial interest.

(b) A partial fee waiver may be appropriate if some but not all of the requested records are likely to contribute significantly to public understanding of the operations and activities of the government.

(c) When deciding whether to waive or reduce fees, the bureau will rely on the fee waiver justification submitted in your request letter. If the letter does not include sufficient justification, the bureau will deny the fee waiver request. The bureau may, at its discretion, request additional information from you (see § 2.51 of this subpart).

(d) The burden is on you to justify entitlement to a fee waiver. Requests for fee waivers are decided on a case-by-case basis under the criteria discussed above in paragraph (a) of this section and § 2.48 of this subpart. If you have received a fee waiver in the past, that does not mean you are automatically entitled to a fee waiver for every request submitted.

(e) Discretionary fee waivers are addressed in § 2.56 of this subpart.

(f) The bureau must not make value judgments about whether the information at issue is ''important'' enough to be made public; it is not the bureau's role to attempt to determine the level of public interest in requested information.

§ 2.46 When may you ask the bureau for a fee waiver?

(a) You should request a fee waiver when your request is first submitted to the bureau (see § 2.6 of this part).

(b) You may submit a fee waiver request at a later time if the underlying record request is still either pending or on administrative appeal.

§ 2.47 How will the bureau notify you if it denies your fee waiver request?

If the bureau denies your request for a fee waiver, it will notify you, in writing, of the following:

(a) The basis for the denial, including a full explanation of why the fee waiver request does not meet the Department's fee waiver criteria in § 2.48 of this subpart.

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

(c) The name and title of the Office of the Solicitor attorney consulted; and

(d) Your right to appeal the denial to the FOIA Appeals Officer, under the procedures in § 2.57 of this part, within 30 workdays after the date of the fee waiver denial letter.

§ 2.48 How will the bureau evaluate your fee waiver request?

(a) In deciding whether your fee waiver request meets the requirements of § 2.45(a)(1) of this subpart, the bureau will consider the criteria listed in paragraphs one through four below. You must address each of these criteria.

(1) How the records concern the operations or activities of the Federal government.

(2) How disclosure is likely to contribute to public understanding of those operations or activities, including:

(i) How the contents of the records are meaningfully informative;

(ii) The logical connection between the content of the records and the operations or activities;

(iii) How disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding;

(iv) Your identity, vocation, qualifications, and expertise regarding the requested information and information that explains how you plan to disclose the information in a manner that will be informative to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding

(v) Your ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject (for example, how and to whom do you intend to disseminate the information).

(3) How disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding, including:

(i) Whether the information being requested is new;

(ii) Whether the information would confirm or clarify data that has been released previously;

(iii) How disclosure will increase the level of public understanding of the operations or activities of the Department or a bureau that existed prior to disclosure; and

(iv) Whether the information is already publicly available. If the Government previously has published the information you are seeking or it is routinely available to the public in a library, reading room, through the Internet, or as part of the administrative record for a particular issue, it is less likely that there will be a significant contribution from release.

(4) How the public's understanding of the subject in question will be enhanced to a significant extent by the disclosure.

(b) In deciding whether the fee waiver meets the requirements in § 2.45(a)(2) of this subpart, the bureau will consider any commercial interest of yours that would be furthered by the requested disclosure.

(1) You are encouraged to provide explanatory information regarding this consideration.

(2) The bureau will not find that disclosing the requested information will be primarily in your commercial interest where the public interest is greater than any identified commercial interest in disclosure.

(3) If you do have a commercial interest that would be furthered by disclosure, explain how the public interest in disclosure would be greater than any commercial interest you or your organization may have in the documents.

(i) Your identity, vocation, and intended use of the requested records are all factors to be considered in determining whether disclosure would be primarily in your commercial interest.

(ii) If you are a representative of a news media organization seeking information as part of the news gathering process, we will presume that the public interest outweighs your commercial interest.

(iii) If you represent a business/corporation/association or you are an attorney representing such an organization, we will presume that your commercial interest outweighs the public interest unless you demonstrate otherwise.

§ 2.49 When will you be notified of anticipated fees?

(a) The bureau will notify you under this section unless:

(1) The anticipated fee is less than $50 (you will not be charged if the fee for processing your request is less than $50, unless multiple requests are aggregated under § 2.54 of this subpart).

(2) You have been granted a full fee waiver; or

(3) You have previously agreed to pay all the fees associated with the request.

(b) If none of the above exceptions apply, the bureau will:

(1) Promptly notify you of the estimated costs for search, review, and/or duplication;

(2) Ask you to provide written assurance within 20 workdays that you will pay all fees or fees up to a designated amount;

(3) Notify you that it will not be able to comply with your FOIA request unless you provide the written assurance requested; and

(4) Give you an opportunity to reduce the fee by modifying the request.

(c) If the bureau does not receive your written assurance of payment under paragraph (b)(2) of this section within 20 workdays, the request will be closed.

(d) After the bureau begins processing a request, if it finds that the actual cost will exceed the amount you previously agreed to pay, the bureau will:

(1) Stop processing the request;

(2) Promptly notify you of the higher amount and ask you to provide written assurance of payment; and

(3) Notify you that it will not be able to fully comply with your FOIA request unless you provide the written assurance requested; and

(4) Give you an opportunity to reduce the fee by modifying the request.

(e) If you wish to modify your request in an effort to reduce fees, the bureau's FOIA Public Liaison can assist you.

§ 2.50 When will the bureau require advance payment?

(a) The bureau will require advance payment before starting further work when it finds the estimated fee is over $250 and:

(1) You have never made a FOIA request to the Department requiring the payment of fees; or

(2) You did not pay a previous FOIA fee within 30 calendar days of the date of billing.

(b) If the bureau believes that you did not pay a previous FOIA fee within 30 calendar days of the date of billing, the bureau will require you to either:

(1) Demonstrate you paid prior fee within 30 calendar days of the date of billing; or

(2) Pay any unpaid amount of the previous fee, plus any applicable interest penalties (see § 2.53 of this subpart), and pay in advance the estimated fee for the new request.

(c) When the bureau notifies you that an advance payment is due, it will give you an opportunity to reduce the fee by modifying the request.

(d) The bureau may require payment before records are sent to you; such a payment is not considered an ''advance payment'' under § 2.50(a) of this subpart.

(e) If the bureau requires advance payment, it will start further work only after receiving the advance payment. It will also notify you that it will not be able to comply with your FOIA request unless you provide the advance payment. Unless you pay the advance payment within 20 workdays after the date of the bureau's fee letter, the bureau will presume that you are no longer interested and will close the file on the request.

§ 2.51 What if the bureau needs clarification about fee issues?

(a) If your FOIA request does not contain sufficient information for the bureau to determine your proper fee category or leaves another fee issue unclear, the bureau may ask you to provide additional clarification. If it does so, the bureau will notify you that it will not be able to comply with your FOIA request unless you provide the clarification requested.

(b) If the bureau asks you to provide clarification, the 20-workday statutory time limit for the bureau to respond to the request is temporarily suspended.

(1) If the bureau hears from you within 20 workdays, the 20-workday statutory time limit for processing the request will resume (see § 2.16 of this part).

(2) If you still have not provided sufficient information to resolve the fee issue, the bureau may ask you again to provide additional clarification and notify you that it will not be able to comply with your FOIA request unless you provide the additional information requested within 20 workdays.

(3) If the bureau asks you again for additional clarification, the statutory time limit for response will be temporarily suspended again and will resume again if the bureau hears from you within 20 workdays.

(c) If the bureau asks for clarification about a fee issue and does not receive a written response from you within 20 workdays, it will presume that you are no longer interested and will close the file on the request.

§ 2.52 How will you be billed?

If you are required to pay a fee associated with a FOIA request, the bureau processing the request will send a bill for collection.

§ 2.53 How will the bureau collect fees owed?

(a) The bureau may charge interest on any unpaid bill starting on the 31st day following the billing date.

(b) The bureau will assess interest charges at the rate provided in 31 U.S.C. 3717 and implementing regulations and interest will accrue from the billing date until the bureau receives payment.

(c) The bureau will follow the provisions of the Debt Collection Act of 1982 (Public Law 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset to collect overdue amounts and interest.

(d) This section does not apply if you are a state, local, or tribal government.

§ 2.54 When will the bureau combine or aggregate requests?

(a) The bureau may aggregate requests and charge accordingly when it reasonably believes that you, or a group of requesters acting in concert with you, are attempting to avoid fees by dividing a single request into a series of requests on a single subject or related subjects.

(1) The bureau may presume that multiple requests of this type made within a 30-day period have been made to avoid fees.

(2) The bureau may aggregate requests separated by a longer period only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved.

(b) The bureau will not aggregate multiple requests involving unrelated matters.

§ 2.55 What if other statutes require the bureau to charge fees?

(a) The fee schedule in appendix A to this part does not apply to fees charged under any statute that specifically requires the bureau to set and collect fees for particular types of records.

(b) If records otherwise responsive to a request are subject to a statutorily-based fee schedule, the bureau will inform you whom to contact to obtain the records.

§ 2.56 May the bureau waive or reduce your fees at its discretion?

(a) The bureau may waive or reduce fees at its discretion if a request involves furnishing:

(1) A copy of a record that the bureau has reproduced for free distribution;

(2) One copy of a personal document (for example, a birth certificate) to a person who has been required to furnish it for retention by the Department;

(3) One copy of the transcript of a hearing before a hearing officer in a grievance or similar proceeding to the employee for whom the hearing was held;

(4) Records to donors with respect to their gifts;

(5) Records to individuals or private nonprofit organizations having an official, voluntary, or cooperative relationship with the Department if it will assist their work with the Department;

(6) A reasonable number of records to members of the U.S. Congress; state, local, and foreign governments; public international organizations; or Indian tribes, when to do so is an appropriate courtesy, or when the recipient is carrying on a function related to a Departmental function and the waiver will help accomplish the Department's work;

(7) Records in conformance with generally established business custom (for example, furnishing personal reference data to prospective employers of current or former Department employees); or

(8) One copy of a single record to assist you in obtaining financial benefits to which you may be entitled (for example, veterans or their dependents, employees with Government employee compensation claims).

(b) You cannot appeal the denial of a discretionary fee waiver or reduction.

Subpart H—Administrative Appeals

§ 2.57 When may you file an appeal?

(a) You may file an appeal when:

(1) The bureau withholds records, or parts of records;

(2) The bureau informs you that your request has not adequately described the records sought;

(3) The bureau informs you that it does not possess or cannot locate responsive records and you have reason to believe this is incorrect or that the search was inadequate;

(4) The bureau did not address all aspects of the request for records;

(5) You believe there is a procedural deficiency (for example, fees are improperly calculated);

(6) The bureau denied a fee waiver;

(7) The bureau did not make a decision within the time limits in § 2.16 or, if applicable, § 2.18; or

(8) The bureau denied, or was late in responding to, a request for expedited

processing filed under the procedures in § 2.20 of this part.

(b) An appeal under paragraph (a)(8) of this section relates only to the request for expedited processing and does not constitute an appeal of the underlying request for records. Special procedures apply to requests for expedited processing of an appeal (see § 2.63 of this subpart).

(c) Before filing an appeal, you may wish to communicate with the contact person listed in the FOIA response, the bureau's FOIA Officer, and/or the FOIA Public Liaison to see if the issue can be resolved informally. However, appeals must be received by the FOIA Appeals Officer within the time limits in § 2.58 of this subpart or they will not be processed.

§ 2.58 How long do you have to file an appeal?

(a) Appeals covered by § 2.57(a)(1) through (5) of this subpart must be received by the FOIA Appeals Officer no later than 30 workdays from the date of the final response.

(b) Appeals covered by § 2.57(a)(6) of this subpart must be received by the FOIA Appeals Officer no later than 30 workdays from the date of the letter denying the fee waiver.

(c) Appeals covered by § 2.57(a)(7) of this subpart may be filed any time after the time limit for responding to the request has passed.

(d) Appeals covered by § 2.57(a)(8) of this subpart should be filed as soon as possible.

(e) Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

§ 2.59 How do you file an appeal?

(a) You must submit the appeal in writing by mail, fax or email to the FOIA Appeals Officer (using the address available at *http://www.doi.gov/foia/appeals.cfm)*. Your failure to send an appeal directly to the FOIA Appeals Officer may delay processing.

(b) The appeal must include:

(1) Copies of all correspondence between you and the bureau concerning the FOIA request, including the request and the bureau's response (if there is one); and

(2) An explanation of why you believe the bureau's response was in error.

(c) The appeal should include your name, mailing address, daytime telephone number (or the name and telephone number of an appropriate contact), email address, and fax number (if available) in case the Department needs additional information or clarification.

(d) An appeal concerning a denial of expedited processing or a fee waiver denial should also demonstrate fully how the criteria in § 2.20 or §§ 2.45 and 2.48 of this part are met.

(e) All communications concerning an appeal should be clearly marked with the words: ''FREEDOM OF INFORMATION APPEAL.''

(f) The Department will reject an appeal that does not attach all correspondence required by paragraph (b)(1) of this section, unless the FOIA Appeals Officer determines, in his or her sole discretion, that good cause exists to accept the defective appeal. The time limits for responding to an appeal will not begin to run until the correspondence is received.

§ 2.60 Who makes decisions on appeals?

(a) The FOIA Appeals Officer is the deciding official for FOIA appeals.

(b) When necessary, the FOIA Appeals Officer will consult other appropriate offices, including the Office of the Solicitor for denials of records and fee waivers.

(c) The FOIA Appeals Officer normally will not make a decision on an appeal if the request becomes a matter of FOIA litigation.

§ 2.61 How are decisions on appeals issued?

(a) A decision on an appeal must be made in writing.

(b) A decision that upholds the bureau's determination will notify you of the decision and your statutory right to file a lawsuit.

(c) A decision that overturns, remands, or modifies the bureau's determination will notify you of the decision. The bureau then must further process the request in accordance with the appeal determination.

§ 2.62 When can you expect a decision on your appeal?

(a) The basic time limit for responding to an appeal is 20 workdays after receipt of an appeal meeting the requirements of § 2.59 of this subpart.

(b) The FOIA Appeals Officer may extend the basic time limit, if unusual circumstances exist. Before the expiration of the basic 20-workday time limit to respond, the FOIA Appeals Officer will notify you in writing of the unusual circumstances involved and of the date by which he or she expects to complete processing of the appeal.

(c) If the Department is unable to reach a decision on your appeal within the given time limit for response, the FOIA Appeals Officer will notify you of:

(1) The reason for the delay; and

(2) Your statutory right to seek review in a United States District Court.

§ 2.63 Can you receive expedited processing of appeals?

(a) To receive expedited processing of an appeal, you must demonstrate to the Department's satisfaction that the appeal meets one of the criteria under § 2.20 of this part and include a statement that the need for expedited processing is true and correct to the best of your knowledge and belief.

(b) The FOIA Appeals Officer will advise you whether the Department will grant expedited processing within 10 calendar days of receiving the appeal.

(c) If the FOIA Appeals Officer decides to grant expedited processing, he or she will give the appeal priority over other pending appeals and process it as soon as practicable.

§ 2.64 Must you submit an appeal before seeking judicial review?

Before seeking review by a court of the bureau's adverse determination, you generally must first submit a timely administrative appeal.

Subpart I—General Information

§ 2.65 Where are records made available?

Records that are required by the FOIA to be made proactively available for public inspection and copying are accessible on the Department's Web site, *http://www.doi.gov/foia/libraries.cfm*. They may also be available at bureau office locations.

§ 2.66 What are public liaisons?

(a) Each bureau has a FOIA Public Liaison that can assist individuals in locating bureau records.

(b) FOIA Public Liaisons report to the Department's Chief FOIA Officer and you can raise concerns to them about the service you have received.

(c) FOIA Public Liaisons are responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in resolving disputes.

(d) A list of the Department's FOIA Public Liaisons is available at *http://doi.gov/foia/servicecenters.cfm*.

§ 2.67 When will the Department make records available without a FOIA request?

(a) Each bureau must:

(1) Determine which of its records must be made publicly available under the FOIA (for example, certain frequently requested records);

(2) Identify additional records of interest to the public that are appropriate for public disclosure; and

(3) Post those records in FOIA libraries.

(b) Because of these proactive disclosures, you are encouraged to review the Department's FOIA libraries

before filing a FOIA request. The material you seek may be immediately available electronically at no cost.

§ 2.68 How will FOIA materials be preserved?

(a) Each bureau must preserve all correspondence pertaining to the requests that it receives under subpart B of this part, as well as copies of all requested records, until disposition or destruction is authorized by the General Records Schedule 14 of the National Archives and Records Administration (NARA) or another NARA-approved records schedule.

(b) Materials that are identified as responsive to a FOIA request will not be disposed of or destroyed while the request or a related appeal or lawsuit is pending. This is true even if they would otherwise be authorized for disposition or destruction under the General Records Schedule 14 of NARA or another NARA-approved records schedule.

§ 2.69 How will a bureau handle a request for federally-funded research data?

(a) If you request research data that were used by the Federal Government in developing certain kinds of agency actions, and the research data relate to published research findings produced under an award, in accordance with OMB Circular A–110:

(1) If the bureau was the awarding agency, it will request the research data from the recipient;

(2) The recipient must provide the research data within a reasonable time; and

(3) The bureau will review the research data to see if it can be released under the FOIA.

(b) If the bureau obtains the research data solely in response to your FOIA request, the bureau may charge you a reasonable fee equaling the full incremental cost of obtaining the research data.

(1) This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients.

(2) This fee is in addition to any fees the agency may assess under the FOIA.

(c) The bureau will forward a copy of the request to the recipient, who is responsible for searching for and reviewing the requested information in accordance with these FOIA regulations. The recipient will forward a copy of any responsive records that are located, along with any recommendations concerning the releasability of the data, and the total cost incurred in searching for, reviewing, and providing the data.

(d) The bureau will review and consider the recommendations of the recipient regarding the releasability of the requested research data. However, the bureau, not the recipient, is responsible for deciding whether the research data will be released or withheld.

§ 2.70 What definitions apply to subparts A through I of this part?

For the purposes of subparts A through I of this part, the following definitions apply:

Bureau means any major component of the Department administering its own FOIA program. A list of these components is available at: *http://www.doi.gov/foia/contacts.cfm.*

Commercial interest means a commercial, trade, or profit interest as these terms are commonly understood. Your status as profitmaking or non-profitmaking is not the deciding factor in determining whether you have a commercial interest.

Commercial use means a use that furthers your commercial, trade or profit interests or that of the person on whose behalf the request is made.

Confidential information means trade secrets or commercial or financial information (that is privileged or confidential and obtained by the Department from a person) that may be protected from disclosure under Exemption 4 of the FOIA.

Department means the Department of the Interior.

Direct costs means those resources that the bureau expends in searching for and duplicating (and, in the case of commercial-use requests, reviewing) records to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space and of heating or lighting a facility.

Duplication means reproducing 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, audiovisual materials, or electronic records, among others.

Educational institution means any school that operates a program of scholarly research. In order to fall within this category, you must show that the request is authorized by and made under the auspices of, a qualifying institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research.

Exceptional circumstances means a delay that does not result from a predictable workload of requests (unless the bureau demonstrates reasonable progress in reducing its backlog of pending requests).

Exempt means the record in question, or a portion thereof, is not subject to disclosure due to one or more of the FOIA's nine statutory exemptions, found at 5 U.S.C. 552(b)(1)–(9).

Exemption means one or more of the FOIA's nine statutory exemptions, found at 5 U.S.C. 552(b)(1)–(9).

Expedited processing means giving a FOIA request priority and processing it ahead of other requests pending in the bureau because you have shown a compelling need for the records.

Fee category means one of the four categories, discussed in §§ 2.38 and 2.39, that agencies place you in for the purpose of determining whether you will be charged fees for search, review, and duplication.

FOIA means the Freedom of Information Act, 5 U.S.C. 552, as amended.

FOIA libraries means a physical or electronic compilation of records required to be made available to the public for inspection and copying under 5 U.S.C. 552(a)(2). It also includes a physical or electronic compilation of records that the bureau, at its discretion, makes available to the public for inspection and copying.

Frequently requested records means records that have been released to any person in response to a FOIA request and that have been requested, or that the bureau anticipates will be requested, at least two more times under the FOIA.

Multitrack processing means placing simple requests, requiring relatively minimal review, in one processing track and more voluminous and complex requests in one or more other tracks. Requests in each track are processed on a first-in/first-out basis.

Noncommercial scientific institution means an institution that is not operated for commerce, trade or profit, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, you 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.

OMB Fee Guidelines means the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget at 52 FR 10012 (Mar. 27, 1987).

Published means, for the purposes of § 2.69 of this subpart only, when:

(1) Research findings are published in a peer-reviewed scientific or technical journal; or

(2) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

Recipient means, for the purposes of § 2.69 of this subpart only, an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

Record means an agency record that is either created or obtained by an agency and is under agency possession and control at the time of the FOIA request, or is maintained by an entity under Government contract for the purposes of records management.

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. The term *news* as used in this definition means information that is about current events or that would be of current interest to the public. Examples of news media entities are newspapers, television, Web sites, or radio stations broadcasting to the public at large, and publishers of periodicals (but only if such entities qualify as disseminators of news) who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all inclusive. As methods of news delivery evolve, alternative representatives of news media may come into being. A freelance journalist will qualify as a news-media entity if he or she can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by that entity (for example, a publication contract would present a solid basis for such an expectation).

Research data means, for the purposes of § 2.69 of this subpart only, the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. The term *recorded* as used in this definition excludes physical objects (e.g., laboratory samples). Research data also do not include:

(1) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(2) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

Review means the examination of a record located in response to a request to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential information submitter under subpart G of this part, but it excludes time spent resolving general legal or policy issues regarding the application of FOIA exemptions.

Search means the process of looking for and retrieving records responsive to a request. Search time includes page-by-page or line-by-line identification of information within records; and the reasonable efforts expended to locate and retrieve electronic records.

Submitter means any person or entity outside the Federal Government from whom the Department obtains confidential information, directly or indirectly. The term includes, but is not limited to individuals, corporations, and state, local, tribal, and foreign governments.

Unusual circumstances means the need to search for and collect requested records from field facilities or other establishments that are separate from the office processing the request; the need to search for, collect, and examine a voluminous amount of separate and distinct records which are demanded in a single request; or the need for consultation, which shall be conducted with all practicable speed, with another agency, or among two or more components of the Department, having a substantial interest in the determination of the request.

Workday means a regular Federal workday. It excludes Saturdays, Sundays, or Federal legal public holidays. Items arriving or delivered after 5 p.m. Eastern Time will be deemed received on the next workday.

You means a person requesting records, or filing an appeal, under the FOIA.

Appendix A to Part 2 [Removed]

■ 6. Appendix A to Part 2 is removed.

Appendix B to Part 2 [Removed]

■ 7. Appendix B to Part 2 is removed.

Appendix C to Part 2 [Redesignated as Appendix A to Part 2]

■ 8. Appendix C to Part 2 is redesignated as Appendix A to Part 2 and revised to read as follows.

Appendix A to Part 2—Fee Schedule

Types of Records	Fee
(1) Physical records:	
Pages no larger than 8.5 × 14 inches, when reproduced by standard office copying machines or scanned into an electronic format	$.15 per page ($.30 for double-sided copying).
Color copies of pages no larger than 8.5 × 11 inches	$.90 per page.
Pages larger than 8.5 × 14 inches	Direct cost to DOI.
Color copies of pages no larger than 11 × 17 inches	$1.50 per page.
Photographs and records requiring special handling (for example, because of age, size, or format).	Direct cost to DOI.
(2) Electronic records:	
Charges for services related to processing requests for electronic records.	Direct cost to DOI.

Types of Records	Fee
(3) Certification	Fee.
Each certificate of verification attached to authenticate copies of records.	$.25
(4) Postage:	
Charges that exceed the cost of first class postage, such as express mail or overnight delivery.	Postage or delivery charge.
(5) Other Services:	
Cost of special services or materials, other than those provided for by this fee schedule, when requester is notified of such costs in advance and agrees to pay them.	Direct cost to DOI.

Appendix D to Part 2 [Removed]

■ 9. Appendix D to Part 2 is removed.

Appendix E to Part 2 [Removed]

■ 10. Appendix E to Part 2 is removed.

Appendix F to Part 2 [Redesignated as Appendix B to Part 2]

■ 11. Appendix F to Part 2 is redesignated as Appendix B to Part 2.

[FR Doc. 2012–31117 Filed 12–28–12; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2012–0003]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p.376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows: