

§ 1201.24 [Amended]

■ 3. Amend § 1201.24 as follows:

- a. By removing from the third sentence in paragraph (a) introductory text the words “in electronic form” and adding in their place “electronically”;
- b. By removing from paragraph (a)(1) the words “and telephone number” and adding in their place “telephone number, and email address”;
- c. By removing from paragraph (a)(6) the words “and telephone number” and adding in their place “telephone number, and email address”;
- d. By removing from paragraph (a)(9) the words “the Board’s e-Appeal site (<https://e-appeal.mspb.gov>)” and adding in their place “e-Appeal”; and
- e. By removing from paragraph (c) the words “the e-Appeal site (<https://e-appeal.mspb.gov>)” and adding in their place “e-Appeal” and by removing the words “Board’s Web site” and adding in their place “MSPB’s website”.

■ 4. Revise § 1201.26 to read as follows:

§ 1201.26 Service of Pleadings and Response

(a) *Service*—(1) *Service by the Board*. The appropriate office of the Board will notify each party to the proceeding that a new appeal has been docketed and will attach to the initial order in the proceeding a certificate of service, consisting of a list of the parties to the proceeding or their designated representatives.

(2) *Service by the parties*. The parties must serve on each other one copy of each pleading, as defined by § 1201.4(b), and all documents submitted with it, except for the appeal. They may do so by electronic filing in accordance with § 1201.14, postal mail, facsimile, or commercial or personal delivery. Documents and pleadings must be served on each party and each representative. A certificate of service stating how and when service was made must accompany each pleading. The parties and their representatives must notify the appropriate Board office and one another, in a pleading, of any changes in their address, telephone number, or email address.

(b) *Submission of documents*. Pleadings and attachments filed via postal mail, facsimile, or commercial or personal delivery must be filed on 8½-inch by 11-inch paper. This requirement enables the Board to comply with standards established for U.S. courts. Paper pleadings and attachments may not contain binders, folders, staples, paper clips, or notes adhered to pages. Such items will be removed and not included in the record, or the filing may be rejected. Documents may not be

submitted on an electronic media storage device such as a Compact Disc (CD), Digital Video Disc (DVD), or flash drive. Parties are responsible for reviewing all pleadings to confirm legibility and to minimize the inclusion of nonrelevant personally identifiable information. Pleadings filed via e-Appeal must adhere to the formatting and filing requirements set forth in § 1201.14(h).

(c) *Submission of audio and video evidence*. Audio and video evidence must be submitted according to the formatting and submission requirements set forth in policies posted to the MSPB’s website.

Appendix II to Part 1201—[Amended]

- 5. Amend appendix II to part 1201 by:
 - a. Removing the second sentence of the introductory text; and
 - b. Removing from paragraph 3a the words “26 Federal Plaza, Room 3137–A, New York, New York 10278–0022, Facsimile No.: (212) 264–1417” and adding in their place “1601 Market Street, Suite 1700, Philadelphia, PA 19103, Facsimile No.: (215) 597–3456”.

Jennifer Everling,

Acting Clerk of the Board.

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FEDERAL LABOR RELATIONS AUTHORITY**5 CFR Part 2411****Availability of Official Information**

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Federal Labor Relations Authority (FLRA) amends its regulations for processing records under the Freedom of Information Act (FOIA). The amendments streamline and update procedures for requesting information from the FLRA and procedures that the FLRA follows in responding to requests from the public.

DATES: Effective September 29, 2023.

FOR FURTHER INFORMATION CONTACT: If you have any questions, please contact Thomas Tso, Solicitor, Chief FOIA Officer, Federal Labor Relations Authority, 1400 K Street NW, Washington, DC 20424; (771) 444–5775.

SUPPLEMENTARY INFORMATION: To adapt to recent trends in FOIA requests made to the FLRA, the amendments centralize and streamline its FOIA request system. In addition to some minor non-substantive changes to correct

typographical errors, the FLRA consolidates responsibility under the FOIA regulations for the FLRA’s three-member Authority component, the Office of General Counsel, and the Federal Service Impasses Panel by transferring those responsibilities to the Solicitor of the FLRA (“Solicitor”) as their FOIA representative. The Solicitor serves as the agency’s in-house counsel and typically as the agency’s Chief FOIA Officer. The FLRA revises the relevant regulations in order to reflect the Solicitor’s role as the representative of the Authority, the General Counsel, and the Panel for FOIA matters.

Consistent with the Office of Management and Budget’s 2020 Update to the Uniform Freedom of Information Act Fee Schedule and Guidelines, 85 FR 81955 (Dec. 17, 2020), and the decision of the U.S. Court of Appeals for the District of Columbia Circuit addressing the “educational institution” fee category, the revisions also clarify the individuals who may qualify for reduced fees as an educational or noncommercial scientific institution under 5 CFR 2411.13(c)(2). See *Sack v. Dept. of Defense*, 823 F.3d 687, 693 (D.C. Cir. 2016) (“To be clear, to qualify for reduced fees as an educational institution, the requester—whether teacher or student—must seek the information in connection with his or her role at the educational institution.”).

This rule is internal and procedural rather than substantive. It does not create a right to obtain FLRA records, nor does it create any additional right or privilege not already available to the public as a result of the FOIA Improvement Act of 2016. It merely builds upon and clarifies the previous agency procedures for processing FOIA-related requests.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FLRA has determined that these regulations, as amended, will not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule change will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The amended regulations contain no additional information-collection or record-keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

Public Participation

This rule is published as a final rule. It is exempt from public comment, pursuant to 5 U.S.C. 553(b)(A), as a rule of “agency organization, procedure, or practice.” If you wish to contact the agency, please do so at the above listed address. However, before including your address, phone number, email address, or other personal identifying information in any communications with the agency, you should be aware that your communications—including your personal identifying information—may be made publicly available at any time. While you can ask us in your communications to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 5 CFR Part 2411

Freedom of Information Act.

For the reasons stated in the preamble, the Federal Labor Relations Authority amends 5 CFR part 2411 as follows:

PART 2411—AVAILABILITY OF OFFICIAL INFORMATION

■ 1. The authority for part 2411 continues to read as follows:

Authority: 5 U.S.C. 552, as amended; Freedom of Information Improvement Act of 2016, Pub. L. 114–185, 130 Stat. 528; Openness Promotes Effectiveness in our National Government Act of 2007 (OPEN Government Act), Pub. L. 110–175, 121 Stat. 2524.

■ 2. Amend § 2411.3 by revising paragraph (b) to read as follows:

§ 2411.3 Delegation of authority.

* * * * *

(b) Solicitor/IG. The Solicitor of the FLRA and the IG are delegated the exclusive authority to act upon all requests for information, documents, and records that are received from any person or organization under § 2411.5(a) and (b).

* * * * *

■ 3. Revise § 2411.5 to read as follows:

§ 2411.5 Procedure for obtaining information.

(a) Any person who desires to inspect or copy any records, documents, or other information of the Authority, the General Counsel, the Panel, or the IG, covered by this part, other than those specified in § 2411.4(a)(1) and (c), shall submit an electronic written request via the FOIAXpress system or a written, facsimiled, or email request (*see* FOIAXpress, office and email addresses listed at https://www.flra.gov/foia_contact) as follows:

(1) If the request is for records, documents, or other information in the Authority, the Office of General Counsel, or the Panel, it should be made to the Office of the Solicitor, Washington, DC;

(2) If the request is for records, documents or other information in the offices of the IG in Washington, DC, it should be made to the IG, Washington, DC.

(b) Each request under this part should be clearly and prominently identified as a request for information under the FOIA and, if submitted by mail or otherwise submitted in an envelope or other cover, should be clearly identified as such on the envelope or other cover. A request shall be considered an agreement by the requester to pay all applicable fees charged under § 2411.13, up to \$25.00, unless the requester seeks a waiver of fees. When making a request, the requester may specify a willingness to pay a greater or lesser amount. Fee charges will be assessed for the full allowable direct costs of document search, review, and duplication, as appropriate, in accordance with § 2411.13. If a request does not comply with the provisions of this paragraph, it shall not be deemed received by the Office of the Solicitor or the IG, as appropriate.

■ 4. Amend § 2411.6 by revising paragraphs (a), (c) and (d) to read as follows:

§ 2411.6 Identification of information requested.

(a) *Reasonably describe and identify records.* Each request under this part shall reasonably describe the records being sought in a way that the FLRA can

identify and locate them. A request shall be legible and include all pertinent details that will help identify the records sought. Before submitting a request, a requester may contact the FLRA’s Chief FOIA Officer or FOIA Public Liaison to discuss the records that the individual seeks and to receive assistance in describing the records.

* * * * *

(c) *Public logs.* Upon receipt of a request for records, the Solicitor or the IG, as appropriate, shall enter it in a public log. The log shall state: The request number; the date received; the nature of the records requested; the action taken on the request; the agency’s response date; any exemptions that were applied (if applicable) and their descriptions; and whether any fees were charged for processing the request.

(d) *Consultation, referral, and coordination.* When reviewing records located in response to a request, the Solicitor or the IG, as appropriate, will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, the Solicitor or the IG will proceed in one of the following ways:

(1) *Consultation.* When records originated with the Authority, the General Counsel, the Panel, or the IG, but contain within them information of interest to another agency or other Federal Government component, the Solicitor or the IG, as appropriate, will typically consult with that other entity prior to making a release determination.

(2) *Referral.* (i) When the Solicitor or the IG believes that a different agency or component is best able to determine whether to disclose the record, the Solicitor or the IG will typically refer the responsibility for responding to the request regarding that record to that agency or component. Ordinarily, the agency or component that originated the record is presumed to be the best agency or component to make the disclosure determination. However, if the FLRA and the originating agency or component jointly agree that the FLRA is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever the Solicitor or the IG refers any part of the responsibility for responding to a request to another Federal agency, it must document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name(s) of the agency to which the record was referred, including that agency’s FOIA contact information.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national-security interests. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the Solicitor or the IG should coordinate with the originating agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination should then be conveyed to the requester by the Solicitor or the IG.

■ 5. Revise § 2411.7 to read as follows:

§ 2411.7 Format of disclosure.

(a) After a determination has been made to grant a request in whole or in part, the Solicitor or the IG, as appropriate, will notify the requester in writing. The notice will describe the manner in which the record will be disclosed and will inform the requester of the availability of the Authority's FOIA Public Liaison to offer assistance. The Solicitor or the IG, as appropriate, will provide the record in the form or format requested if the record is readily reproducible in that form or format, provided the requester has agreed to pay and/or has paid any fees required by § 2411.13 of this part. The Solicitor or the IG, as appropriate, will determine on a case-by-case basis what constitutes a readily reproducible format. These offices will make a reasonable effort to maintain their records in commonly reproducible forms or formats.

(b) Alternatively, the Solicitor or the IG, as appropriate, may make a copy of the releasable portions of the record available to the requester for inspection at a reasonable time and place. The procedure for such an inspection will not unreasonably disrupt the operations of the office.

■ 6. Amend § 2411.8 by revising paragraphs (a), (b), (c) introductory text, (c)(4) and (5), (d) introductory text, and (d)(2) introductory text to read as follows:

§ 2411.8 Time limits for processing requests.

(a) The 20-day period (excepting Saturdays, Sundays, and federal public holidays), established in this section, shall commence on the date on which the request is first received by the Solicitor or the IG, but in any event not later than 10 days after the request is first received by the FLRA component responsible for receiving FOIA requests

under part 2411. The 20-day period does not run when:

(1) the Solicitor or the IG makes one request to the requester for information and is awaiting such information that it has reasonably requested from the requester;

(2) it is necessary to clarify with the requester issues regarding fee assessment; or

(3) the Solicitor's or the IG's receipt of the requested information or clarification triggers the commencement of the 20-day period.

(b) A request for records shall be logged by the Solicitor or the IG, as appropriate, pursuant to § 2411.6(c). All requesters must reasonably describe the records sought. An oral request for records shall not begin any time requirement. A written request for records sent to other than the appropriate officer will be forwarded to that officer by the receiving officer, but, in that event, the applicable time limit for response shall begin as set forth in paragraph (a) of this section.

(c) Except as provided in § 2411.11, the Solicitor or the IG, as appropriate, shall, within 20 working days following receipt of the request, as provided by paragraph (a) of this section, respond in writing to the requester, determining whether, or the extent to which, the request shall be complied with.

(4) Whenever possible, subject to the provisions of paragraph (g) of § 2411.13, the response relating to a request for records that involves a fee of less than \$250.00 shall be accompanied by the requested records. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the Solicitor or the IG.

(5) Search fees shall not be assessed to requesters (or duplication fees in the case of an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media requester, as defined by § 2411.13(a)(8)) under this subparagraph if an agency component fails to comply with any of the deadlines in 5 U.S.C. 552(a)(4)(A), except as provided in the following paragraphs (c)(5)(i) through (iii) below:

(i) If the Solicitor or the IG has determined that unusual circumstances apply (as the term is defined in § 2411.11(b)) and the Solicitor or the IG provided a timely written notice to the requester in accordance with § 2411.11(a), a failure described in this paragraph (c)(5) is excused for an additional 10 days. If the Solicitor or the

IG fails to comply with the extended time limit, the Solicitor or the IG may not assess any search fees (or, in the case of a requester described in § 2411.13(a)(8), duplication fees).

(ii) If the Solicitor or the IG determines that unusual circumstances apply and more than 5,000 pages are necessary to respond to the request, the Solicitor or the IG may charge search fees or, in the case of requesters defined in § 2411.13(6) through (8), may charge duplication fees, if the following steps are taken. The Solicitor or the IG must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and must have discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, the Solicitor or the IG may charge all applicable fees incurred in the processing of the request.

(iii) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(d) If a request will take longer than 10 days to process:

(2) Using the tracking number, the requester can find, by calling the Office of the Solicitor, emailing *solmail@flra.gov*, or visiting FOIAXPress (see telephone numbers and addresses at https://www.flra.gov/foia_contact), status information about the request including:

■ 7. Amend § 2411.10 by revising paragraphs (a)(1), (a)(2) introductory text, (a)(2)(ii), (b), and (c) to read as follows:

§ 2411.10 Appeal from denial of request.

(a)(1) When a request for records is denied, in whole or in part, a requester may appeal the denial by submitting a written appeal by mail or online that is postmarked, or in the case of an electronic submission, transmitted, within 90 calendar days after the requester receives notification that the request has been denied or after the requester receives any records being made available, in the event of partial denial. The appeal should clearly identify the agency determination that is being appealed and the assigned request number.

(i) If the denial was made for records related to work performed by the

Authority component of the FLRA, including the IG, the appeal shall be filed with the Chairman of the Authority or the Chairman's designee in Washington, DC.

(ii) If the denial was made for records related to work performed by the Office of the General Counsel, the appeal shall be filed with the General Counsel or the General Counsel's designee in Washington, DC.

(iii) If the denial was made for records related to work performed by the Panel, the appeal shall be filed with the Chairman of the Panel or the Chairman's designee.

(2) The Chairman of the Authority, the General Counsel, or the Chairman of the Panel, or their designees, as appropriate, shall, within 20 working days (excepting Saturdays, Sundays, and federal public holidays) from the time of receipt of the appeal, except as provided in § 2411.11, make a determination on the appeal and respond in writing to the requester, determining whether, or the extent to which, the request shall be granted. An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(ii) Whenever possible, the determination relating to a request for records that involves a fee of less than \$250.00 shall be accompanied by the requested records when there is no history of the requester having previously failed to pay fees in a timely manner. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the Solicitor or the IG.

(b) If, on appeal, the denial of the request for records is upheld in whole or in part by the Chairman of the Authority, the General Counsel, or the Chairman of the Panel, or their designees, as appropriate, the person making the request shall be notified of the reasons for the determination, the name and title or position of the person responsible for the denial, and the provisions for judicial review of that determination under 5 U.S.C. 552(a)(4). The determination will also inform the requester of the mediation services offered by the National Archives, Office of Government Information Services (OGIS) as a non-exclusive alternative to litigation. Mediation is a voluntary process. If the FLRA agrees to participate in the mediation services provided by the OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

(c) Even though no appeal is filed from a denial in whole or in part of a

request for records by the person making the request, the Chairman of the Authority, the General Counsel, or the Chairman of the Panel, or their designees, as appropriate, may, without regard to the time limit for filing of an appeal, sua sponte initiate consideration of a denial under this appeal procedure by written notification to the person making the request. In such event, the time limit for making the determination shall commence with the issuance of such notification.

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■ 8. Revise § 2411.12 to read as follows:

§ 2411.12 Effect of failure to meet time limits.

Failure by the Solicitor or the IG either to deny or grant any request under this part within the time limits prescribed by the FOIA, as amended and these regulations shall be deemed to be an exhaustion of the administrative remedies available to the person making this request.

■ 9. Amend § 2411.13 by revising paragraphs (a) introductory text, (a)(1), (a)(2), (a)(5), paragraph (b) heading, (b)(1), (b)(2), (b)(3), (b)(4)(i), (b)(4)(ii) introductory text, (b)(4)(ii)(D), (b)(4)(iii) introductory text, (b)(4)(iii)(B), (b)(4)(iv), (b)(4)(v), (c) introductory text, (c)(2), (c)(3), (c)(4), (d) introductory text, (d)(1), (d)(4), (e), (f), (g), (h), and (j) to read as follows:

§ 2411.13 Fees.

(a) *Definitions.* For the purpose of this section:

(1) The term *direct costs* means those expenditures that the Solicitor or the IG actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of the rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents as well as all reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Searches may be done manually or by computer using existing programming. The Solicitor or the IG shall ensure that searches are done in the most efficient and least expensive manner reasonably possible.

For example, if duplicating an entire document would be quicker and less expensive, a line-by-line search should not be done.

* * * * *

(5) The term *commercial-use request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Solicitor or the IG will look first to the use to which a requester will put the document requested. Where the Solicitor or the IG has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Solicitor or the IG may seek additional clarification before assigning the request to a specific category.

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(b) *Exceptions to fee charges.* (1) With the exception of requesters seeking documents for a commercial use, the Solicitor or the IG will provide the first 100 pages of duplication and the first two hours of search time without charge. The word *pages* in this paragraph refers to paper copies of standard size, usually 8½ by 11. The term *search time* in this paragraph is based on a manual search for records. In applying this term to searches made by computer, when the cost of the search as set forth in paragraph (d)(2) of this section equals the equivalent dollar amount of two hours of the salary of the person performing the search, the Solicitor or the IG will begin assessing charges for the computer search. No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(2) The Solicitor or the IG will not charge fees to any requester, including commercial-use requesters, if the cost of collecting the fee would be equal to or greater than the fee itself.

(3) As provided in § 2411.8(c)(5), the Solicitor or the IG will not charge search fees (or duplication fees if the requester is an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media, as described in this section), when the time limits are not met.

(4)(i) The Solicitor or the IG will provide documents without charge or at reduced charges if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of

the operations or activities of the government; and is not primarily in the commercial interest of the requester.

(ii) In determining whether disclosure is in the "public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government" under paragraph (b)(4)(i) of this section, the Solicitor or the IG, as appropriate, will consider the following factors:

* * * * *

(D) *The significance of the contribution to the public understanding.* The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. The Solicitor or the IG, as appropriate, shall not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is "important" enough to be made public.

(iii) In determining whether disclosure "is not primarily in the commercial interest of the requester" under paragraph (b)(4)(i) of this section, the Solicitor or the IG, as appropriate, will consider the following factors:

* * * * *

(B) *The primary interest in disclosure.* A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The Solicitor or the IG, as appropriate, ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(iv) A request for a fee waiver based on the public interest under paragraph (b)(4)(i) of this section must address these factors as they apply to the request for records in order to be considered by the Solicitor or the IG.

(v) Requests for a waiver or reduction of fees should be made when the request is first submitted to the Solicitor or the IG. A requester may submit a fee-waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees, and that waiver is denied, the requester must pay any costs

incurred up to the date on which the fee-waiver request was received.

* * * * *

(c) *Level of fees to be charged.* The level of fees to be charged by the Solicitor or the IG, in accordance with the schedule set forth in paragraph (d) of this section, depends on the category of the requester. The fee levels to be charged are as follows:

* * * * *

(2) A request for documents from an educational or non-commercial scientific institution will be charged for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters—whether faculty, staff, or students—must show that the request is being made in connection with their role at the institution, and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(3) The Solicitor or the IG shall provide documents to requesters who are representatives of the news media for the cost of duplication alone, excluding charges for the first 100 pages.

(4) The Solicitor or the IG shall charge requesters who do not fit into any of the categories of this section fees that recover the full direct cost of searching for and duplicating records that are responsive to the request, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. Requests from record subjects for records about themselves filed in Authority, Office of General Counsel, Panel, or IG systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974, which permits fees only for duplication.

(d) The following fees shall be charged in accordance with paragraph (c) of this section:

(1) *Manual searches for records.* The salary rate (*i.e.*, basic pay plus 16 percent) of the employee(s) making the search. Search time under this paragraph and paragraph (d)(2) of this section may be charged for even if the Solicitor or the IG fails to locate records or if records located are determined to be exempt from disclosure.

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(4) *Duplication of records.* Twenty-five cents per page for paper-copy duplication of documents, which the Solicitor or the IG has determined is the reasonable direct cost of making such copies, taking into account the average

salary of the operator and the cost of the duplication machinery. For copies of records produced on tapes, disks, or other media, the Solicitor or the IG shall charge the actual cost of production, including operator time. When paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials, including operator time. For all other forms of duplication, the Solicitor or the IG will charge the direct costs, including operator time.

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(e) *Aggregating requests.* When the Solicitor or the IG reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Solicitor or the IG will aggregate any such requests and charge accordingly.

(f) *Charging interest.* Interest at the rate prescribed in 31 U.S.C. 3717 may be charged to those requesters who fail to pay fees charged, beginning on the 31st day following the billing date. Receipt of a fee by the Solicitor or the IG, whether processed or not, will stay the accrual of interest.

(g) *Advance payments.* The Solicitor or the IG will not require a requester to make an advance payment, *i.e.*, payment before work is commenced or continued on a request, unless:

(1) The Solicitor or the IG estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250. In those circumstances, the Solicitor or the IG will notify the requester of the likely cost and obtain satisfactory assurance of full payment, where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), in which case the Solicitor or the IG requires the requester to pay the full amount owed plus any applicable interest, as provided in this section, or demonstrate that the requester has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester. When the Solicitor or the IG has a reasonable basis to believe that a requester has misrepresented his or her identity in order to avoid paying outstanding fees, it may require that the

requester provide proof of identity. When the Solicitor or the IG acts under paragraph (g)(1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (*i.e.*, 20 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extension of these time limits) will begin only after the Solicitor or the IG has received fee payments described in this section. If the requester does not pay the advance payment within 30 calendar days after the date of the fee determination, the request will be closed.

(h) When a person other than a party to a proceeding before the FLRA makes a request for a copy of a transcript or recording of the proceeding, the Solicitor or the IG, as appropriate, will handle the request under this part.

(j) The fee schedule of this section does not apply to fees charged under any statute that specifically requires the Authority, the General Counsel, the Panel, the Solicitor or the IG to set and collect fees for particular types of records. In instances in which records responsive to a request are subject to a statutorily based fee-schedule program, the Solicitor or the IG will inform the requester of the contact information for that program.

■ 10. Revise § 2411.114 to read as follows.

§ 2411.14 Record retention and preservation.

The Solicitor and the IG shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until such time as disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

■ 11. Revise § 2411.15 to read as follows:

§ 2411.15 Annual report.

Each year, on or around February 1, as requested by the Department of Justice's Office of Information Policy, the Chief FOIA Officer of the FLRA shall submit a report of the activities of the Solicitor and the IG with regard to public information requests during the preceding fiscal year to the Attorney General of the United States and the Director of the OGIS. The report shall include those matters required by 5 U.S.C. 552(e), and it shall be made

available electronically. The Chief FOIA Officer of the FLRA shall make each such report available for public inspection in an electronic format. In addition, the Chief FOIA Officer of the FLRA shall make the raw statistical data used in each report available in a timely manner for public inspection in an electronic format, which shall be available—

(a) Without charge, license, or registration requirement;

(b) In an aggregated, searchable format; and

(c) In a format that may be downloaded in bulk.

Approved: September 21, 2023.

Rebecca J. Osborne,

Federal Register Liaison, Federal Labor Relations Authority.

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 217

RIN 1601-AA94

Designation of Israel for the Visa Waiver Program

AGENCY: Office of the Secretary; Department of Homeland Security (DHS).

ACTION: Final rule; technical amendment.

SUMMARY: Eligible citizens, nationals, and passport holders from designated Visa Waiver Program countries may apply for admission to the United States at U.S. ports of entry as nonimmigrant noncitizens for a period of ninety days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements. The Secretary of Homeland Security, in consultation with the Secretary of State, has designated Israel as a country that is eligible to participate in the Visa Waiver Program. Accordingly, this rule updates the list of countries designated for participation in the Visa Waiver Program by adding Israel.

DATES: This final rule is effective on September 29, 2023. The Secretary's designation was effective on September 26, 2023. The designation will be implemented on November 30, 2023.

FOR FURTHER INFORMATION CONTACT: Anjum Agarwala, Department of Homeland Security, Visa Waiver Program Office, (202) 790-5207.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Visa Waiver Program

Pursuant to section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, the Secretary of Homeland Security (the Secretary), in consultation with the Secretary of State, may designate certain countries as Visa Waiver Program (VWP) countries¹ if certain requirements are met. Those requirements include: (1) a U.S. Government determination that the country meets the applicable statutory requirement with respect to nonimmigrant visitor visa refusals for nationals of the country during the previous full fiscal year; (2) a U.S. Government determination that the country extends or agrees to extend reciprocal privileges to citizens and nationals of the United States; (3) an official certification that it issues machine-readable, electronic passports that comply with internationally accepted standards; (4) a U.S. Government determination that the country's designation would not negatively affect U.S. law enforcement and security interests; (5) an agreement with the United States to report, or make available through other designated means, to the U.S. Government information about the theft or loss of passports; (6) a U.S. Government determination that the government accepts for repatriation any citizen, former citizen, or national not later than three weeks after the issuance of a final executable order of removal; and (7) an agreement with the United States to share information regarding whether citizens or nationals of the country represent a threat to the security or welfare of the United States or its citizens.

The INA also sets forth requirements for continued eligibility and, where appropriate, probation and/or termination of program countries.

Prior to this final rule, the designated countries in the VWP were Andorra, Australia, Austria, Belgium, Brunei, Chile, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg,

¹ All references to "country" or "countries" in the laws authorizing the Visa Waiver Program are read to include Taiwan. *See* Taiwan Relations Act of 1979, Public Law 96-8, section 4(b)(1) (codified at 22 U.S.C. 3303(b)(1)) (providing that "[w]henver the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan"). This is consistent with the United States' one-China policy, under which the United States has maintained unofficial relations with Taiwan since 1979.