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Title 40 —Protection of Environment
Chapter V —Council on Environmental Quality
Subchapter B —Administrative Procedures and Operations

Part 1515 Freedom of Information Act Procedures

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PART 1515—FREEDOM OF INFORMATION ACT PROCEDURES

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PURPOSE

§ 1515.1 FOIA procedures.

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

ORGANIZATION OF CEQ

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

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

§ 1515.3 CEQ organization.

- (a) The Council is made up of a Chair appointed by the President and subject to approval by the Senate who serves in a full-time capacity. Congress has allowed CEQ to consist of a Council of one member who serves as Chairman or Chair.
- (b) The National Environmental Policy Act and the Environmental Quality Improvement Act give the Council the authority to hire any officers and staff that may be necessary to carry out responsibilities and functions specified in these two Acts. Also, the use of consultants and experts is permitted.
- (c) In addition to the Chair, the Council has program and legal staff.
- (d) The Council has no field or regional offices.
- (e) The Council is located at 722 Jackson Place NW., Washington, DC 20503. Office hours are 9 a.m.-5:30 p.m., Monday through Friday, except Federal holidays. To meet with any of the staff, please write or phone ahead for an appointment. The main number is 202-456-6224.

§ 1515.4 CEQ FOIA Officials.

- (a) The Chair shall appoint a Chief Freedom of Information Act Officer (Chief FOIA Officer) who is responsible for overseeing the Council's administration of the Freedom of Information Act and for receiving, routing and overseeing the processing of all Freedom of Information requests as set forth in these regulations. The Chair shall appoint an Appeals Officer, who is responsible for processing and acting upon any appeals and may designate one or more CEQ officials, as appropriate, as FOIA Officers authorized to oversee and process FOIA requests. The Chief FOIA Officer may serve as the Appeals Officer.
- (b) The Chief FOIA officer shall designate a FOIA Public Liaison who is the supervisory official to whom a FOIA requester can raise concerns about the service the FOIA requester has received from the CEQ FOIA Center, described in Section 1515.5(a), following an initial response from the staff of the CEQ FOIA Center

staff. The FOIA Public Liaison shall assist, as appropriate, in reducing delays and increasing understanding of the status of requests. The Chief FOIA officer shall also designate a CEQ FOIA Officer responsible for overseeing CEQ's day-to-day administration of the FOIA and for receiving, routing, and overseeing the processing of all FOIA requests.

PROCEDURES FOR REQUESTING RECORDS

§ 1515.5 Making a Freedom of Information Act request.

- (a) **Availability of records.** The Council maintains a World Wide Web site, <http://www.whitehouse.gov/administration/eop/ceq>, and an online Freedom of Information Act Requester Service Center ("Center"), <http://www.whitehouse.gov/administration/eop/ceq/foia>. From the Center, a requester can find contact information regarding the CEQ's FOIA Public Liaison, as defined in Section 1515.4(b), and access CEQ's Online Reading Room where CEQ makes available records pertaining to matters within the scope of 5 U.S.C. 552(a)(2), as amended, and environmental issues and other documents that, because of the nature of their subject matter, are likely to be the subject of FOIA requests. To save both time and money, CEQ strongly urges requesters to review documents currently available from the Center's Online Reading Room before submitting a request.
- (b) **Requesting information from the Council.**
 - (1) Requesters must make a Freedom of Information Act request in writing. For quickest possible handling, it should be sent via e-mail to: efoia@ceq.eop.gov and must include in the subject line of the e-mail message: "Freedom of Information Act Request." Written requests may also be faxed to (202) 456-0753 or addressed and mailed to: Council on Environmental Quality, Executive Office of the President, 722 Jackson Place NW., Washington, DC 20503. Requesters should mark both the request letter and the envelope "Freedom of Information Act Request" and include their name, address, and sufficient contact information to allow follow up regarding the scope and status of your request.
 - (2) The request should identify or reasonably describe the desired record. It should be as specific as possible, so that the item can be readily found. Blanket requests, such as requests for "all materials relating to" a specified subject are not recommended. Requesters should specify the preferred form or format (including electronic format) for the response. CEQ will accommodate such requests, if the record is readily reproducible in that form or format. Please be aware that FOIA requests and responses may themselves be made available for public inspection.
 - (3) The CEQ FOIA Officer is responsible for acting on all initial requests; however, he or she may consult and refer, pursuant to Section 552(a)(6)(B)(iii)(III) of the FOIA, with another agency if he or she determines that that agency is better able to act on the request. Whenever the CEQ FOIA Officer refers all or any part of the responsibility for responding to a request to another agency, he or she will notify the requester of the referral, the name of the agency and agency official to whom it has been referred, and which portion of the request has been referred. Unless a request is deemed "expedited" as set forth in Section 1515.7 below, the CEQ FOIA Officer will respond to requests in order of receipt. CEQ may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of time and work needed to process the request. CEQ may provide requesters on a slower track an opportunity to limit the scope of their request in order to qualify for faster processing.

- (4) The Council will make a reasonable effort to assist with defining the request to eliminate extraneous and unwanted materials and to keep search and copying fees to a minimum. If budgetary constraints exist, the requester should indicate the maximum fee he or she is prepared to pay to acquire the information. (See also § 1515.11)
- (5) The Freedom of Information Act does not require a government agency to create or research information; rather, it only requires that existing records be made available to the public.

§ 1515.6 CEQ's response to a request.

- (a) Upon receipt of any written request for information or records, under the Act, the CEQ FOIA Officer or his or her designee, will make an initial determination on the request within 20 days (excepting Saturdays, Sundays and Federal holidays) from the date CEQ receives the request unless unusual or exceptional circumstances exist. The CEQ FOIA Officer will provide written notification of the determination, including, if applicable, notification that the request has been referred to another agency for consultation as set forth above in § 1515.5(b)(3). CEQ may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester. It may also toll the 20-day period if necessary to clarify with the requester issues regarding fee assessment. In either case, CEQ's receipt of the requester's response to its request for information or clarification ends the tolling period.
- (b) Requests received by the CEQ FOIA Officer or his or her designee will be assigned an individualized tracking number if they will take more than 10 days to process. Requesters may call the FOIA Public Liaison at (202) 456-6224 and, using the tracking number, obtain information about the request, including the date on which CEQ originally received the request and an estimated date on which CEQ will complete action on the request.
- (c) If it is appropriate to grant the request, a staff member will immediately collect the requested materials in order to accompany, wherever possible, the Freedom of Information Officer's letter conveying decision.
- (d) If a request is denied in part or in full, the letter conveying the decision will be signed by the CEQ FOIA Officer, and will include: The reasons for any denial, including any FOIA exemption(s) applied by the FOIA Officer in denying the request; an estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided, if the volume is otherwise indicated through exemptions on records disclosed in part or, if providing an estimate would harm an interest protected by an applicable exemption; and the procedure for filing an appeal.

§ 1515.7 Expedited processing.

- (a) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve:
 - (1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
 - (2) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information.
- (b) A request for expedited processing may be made at the time of the initial request for records or at any later time.

- (c) A requester who seeks expedited processing must submit a written statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category described in paragraph (a)(2) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category (a)(2) of this section must also establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. Formal certification may be waived as a matter of administrative discretion.
- (d) Within 10 days of its receipt of a request for expedited processing, the CEQ FOIA Officer will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, the request will be placed in the expedited processing track, given priority, and processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

§ 1515.8 Appeals.

- (a) The requester may appeal an adverse determination, in any respect, to the CEQ FOIA Appeals Officer. Any appeal must be received by CEQ within 60 days of the date on the CEQ letter denying the request.
- (b) Appeals must be in writing and may be sent via e-mail to: efoia@ceq.eop.gov. They may also be sent via facsimile to: (202) 456-0753 or via U.S. mail addressed to: FOIA Appeals Officer, Council on Environmental Quality, Executive Office of the President, 722 Jackson Place NW., Washington, DC 20503.
- (c) The appeal letter should specify the records requested and ask the Appeals Officer to review the determination made by the Freedom of Information Officer. The letter should explain the basis for the appeal.
- (d) The Appeals Officer will make a final determination on an appeal within 20 working days (excepting Saturdays, Sundays and Federal holidays) from the date CEQ receives the appeal. The Appeals Officer (or designee) will send a letter to the requester conveying the decision as soon as it is made. If an appeal is denied, in part or in whole, the letter will also include the provisions for judicial review.

§ 1515.9 Extending CEQ's time to respond.

- (a) In unusual circumstances as defined in paragraph (c) of this section, the time limits for responding to a request (§§ 1515.6(a) and 1515.8(d)) may be extended by the Council for not more than 10 working days. Extensions may be granted by the CEQ FOIA Officer in the case of initial requests and by the Appeals Officer in the case of any appeals. The extension period may be split between the initial request and the appeal but may not exceed 10 working days overall. Extensions will be confirmed in writing and set forth the reasons for the extension and the date that the final determination is expected.
- (b) With respect to a request for which a written notice under this section extends the time limits prescribed under § 1515.6(a), the CEQ FOIA Officer will notify the requester, if the request cannot be processed within the time limit specified in § 1515.6(a) and provide an opportunity to limit the scope of the request, so that it may be processed within that time limit or an opportunity to arrange an alternative time frame for processing the request or a modified request. A requester's refusal to reasonably modify the request or arrange such an alternative time frame will be considered as a factor in determining whether exceptional circumstances exist for purposes of 5 U.S.C. 552(a)(6)(C). When CEQ reasonably believes that a requester, or a group of requesters, has submitted a request constituting a single request that

would otherwise satisfy the unusual circumstances specified under this section, CEQ may aggregate those requests for purposes of this paragraph. Multiple requests involving unrelated matters will not be aggregated.

(c) The term “unusual circumstances” means:

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

AVAILABILITY OF INFORMATION

§ 1515.10 Obtaining available information.

- (a) When a request for information has been granted in whole or in part, CEQ will notify the requester in writing, inform the requester in the notice of any fee charged under § 1515.11 and will disclose records to the requester promptly on payment of any applicable fees. The requested material may be made available on CEQ's Online FOIA Center, <http://www.whitehouse.gov/administration/eop/ceq/foia>, and also in the form or format requested if the record is readily reproducible in that form or format with reasonable effort. When a form or format of the response is not requested, CEQ will respond in the form or format in which the document is most accessible to CEQ. “Readily reproducible” means, with respect to electronic format, that the requested record or records can be downloaded or transferred intact to a computer disk or other electronic medium using equipment currently in use by CEQ.
- (b) Records disclosed in part will be marked or annotated to show information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted will also be indicated in the record, if technically feasible.
- (c) The legislative history of the establishment of CEQ states that the Congress intended CEQ to be a confidential advisor to the President on matters of environmental policy. Therefore, members of the public should be aware that communications between CEQ and the President (including communications between their staff) may be confidential; they will usually fall, at a minimum, within Exemption 5 of the Act. The Freedom of Information Officer shall review each request to determine whether the record is exclusively factual or may have factual portions which may be reasonably segregated and made available to the requester. Furthermore, on the recommendation of the CEQ FOIA Officer or Appeals Officer, CEQ will consider the release of an entire record, even if it comes within an exemption or contains policy advice, if its disclosure would not impair Executive policymaking processes or CEQ's participation in decisionmaking.

COSTS

§ 1515.11 Definitions.

For purposes of these regulations:

Commercial use request means a request from or on behalf of a person who seeks information for a use or purpose that furthers the requester's or other person's commercial, trade, or profit interests.

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

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

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

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

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

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

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

§ 1515.12 Fees in general.

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

- (a) **Manual searches.** Time devoted to manual searches shall be charged on the basis of the salary of the employee(s) conducting the search (basic hourly rate(s) of pay for the employee(s), plus 16 percent).
- (b) **Electronic searches.** Fees shall reflect the direct cost of conducting the search. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for and printing records responsive to the FOIA request and operator/programmer salary attributable to the search.
- (c) **Record reviews.** Time devoted to reviewing records shall be charged on the same basis as under paragraph (a) of this section, but shall only be applicable to the review of records located in response to commercial use requests.
- (d) **Duplication.** Fees for copying paper records or for printing electronic records shall be assessed at a rate of \$.15 per page. For other types of copies such as disks or audio visual tapes, CEQ shall charge the direct cost of producing the document(s). If total costs are expected to exceed \$25, the FOIA Officer shall provide the requester with an estimate in writing and, in return, obtain from the requester a commitment to pay the estimated fee. This does not apply if the requester has indicated in advance a willingness to pay fees as high as those anticipated. If a requester wishes to limit costs, the FOIA Officer shall provide

the requester an opportunity to reformulate the request in order to reduce costs. If the requester reformulates a request, it shall be considered a new request and the 20-day period described in § 1515.6(a) shall be deemed to begin when the FOIA Officer receives the request.

(e)

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

(i) The FOIA Officer estimates that the fee will exceed \$250; or

(ii) The requester has previously failed to pay a fee in a timely fashion.

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

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

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

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

§ 1515.13 Fees for categories of requesters.

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

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

(b) **Educational and non-commercial scientific institutions.** CEQ shall provide records to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To qualify for inclusion in this fee category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scholarly research, not an individual goal.

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

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

§ 1515.14 Other charges.

CEQ may apply other charges, including the following:

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

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

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

§ 1515.15 Payment and waiver.

- (a) **Remittances.** Payment shall be made in the form of check or money order made payable to the Treasury of the United States. At the time the FOIA Officer notifies a requester of the applicable fees, the Officer shall inform the requester of where to send the payment.
- (b) **Waiver of fees.** CEQ may waive all or part of any fee provided for in §§ 1515.12 and 1515.13 when the FOIA Officer deems that disclosure of the information is in the general public's interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. In determining whether a fee should be waived, the FOIA Officer may consider whether:
 - (1) The subject matter specifically concerns identifiable operations or activities of the government;
 - (2) The information is already in the public domain;
 - (3) Disclosure of the information would contribute to the understanding of the public-at-large as opposed to a narrow segment of the population;
 - (4) Disclosure of the information would significantly enhance the public's understanding of the subject matter;
 - (5) Disclosure of the information would further a commercial interest of the requester; and
 - (6) The public's interest is greater than any commercial interest of the requester.

§ 1515.16 Other rights and services.

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

§§ 1515.17-1515.19 [Reserved]