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DEPARTMENT OF THE INTERIOR

Office of the Solicitor

43 CFR Part 2

Docket No. DOI-2018-0017

RIN 1093-AA26

Freedom of Information Act Regulations

AGENCY: Office of the Solicitor, Interior

ACTION: Final rule.

SUMMARY: This rule revises the regulations applicable to all of the components, bureaus and offices of the Department of the Interior (Department) that process requests for records under the Freedom of Information Act. The revisions clarify and update procedures for requesting records from the Department and procedures that the Department follows in responding to requests from the public.

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Cindy Cafaro, Departmental FOIA Office, Office of the Solicitor, Department of the Interior: 202-208-5342.

SUPPLEMENTARY INFORMATION:

I. Why we are publishing this rule and what it does.

The Department's Freedom of Information Act (FOIA) offices have been overwhelmed by an exponential increase in the volume and complexity of incoming FOIA requests. Between Fiscal Year (FY) 2016 and FY 2018, the number of FOIA requests received by the Department's bureaus and offices increased 30 percent overall while the number of requests received by the Office of the Secretary FOIA office (OS FOIA) increased 210 percent. During that time, the number of particularly time-consuming complex requests also increased by 55 percent for the Department overall and 355 percent for OS FOIA. The Department's effort to respond in a timely and effective manner to the increased number of requests has been further hindered by a significant increase in FOIA lawsuits, primarily brought by requesters that have not received timely responses to their requests. At the close of FY 2018, the Department was defending 129 FOIA cases compared to just 6 cases at the close of FY 2015 and 30 cases at the close of FY 2016. The lawsuits further impair the ability of the FOIA processors to do their work in an orderly and equitable manner because they impose extra duties on the FOIA processors and the litigated requests typically jump the processing queue ahead of the non-litigated requests.

To address this challenge, the Department has begun a comprehensive effort to improve the quality and capacity of the work performed by its FOIA offices that includes better organization and governance, training, technology, and staffing as set out in [Secretary's Order No. 3371](#). This rule is part of that larger effort. It amends the Department's FOIA regulations to increase the capacity of the Department's FOIA offices to respond to FOIA requests in an effective, transparent, and timely manner by making the procedures for processing FOIA requests more efficient and focused on meeting the Department's statutory obligations under the FOIA.

The Final Rule also amends section 2.31(a) of the Department's regulations to conform with the decision issued by the United States Supreme Court, in *Food Marketing Institute v. Argus Leader Media*, 588 U.S. _ (2019) on June 24, 2019 (slip opinion) ("*Argus Leader*"). The amendment strikes the criteria expressly rejected by the Supreme Court in *Argus Leader* and replaces it with the criteria articulated by the Supreme Court in that case. With respect to this one amendment, the Department is invoking the "good cause" exemption of the Administrative Procedure Act that provides "when an agency finds that for good cause that public notice and comment procedures are impractical, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment." See 5 U.S.C. § 553(b) (3)(B). The Department has determined that notice and comment is unnecessary with respect to this one amendment because the Department has no discretion to apply criteria other than that articulated by the Supreme Court in *Argus Leader*.

II. Comments to the Proposed Rule.

On December 28, 2018, the Department published a proposed rule in the **Federal Register** (83 FR 67175) requesting comments over a 30-day period ending on January 29, 2019. Due to a technical problem with www.regulations.gov that occurred in mid-January, we extended the comment period an additional day to ensure interested parties had the full 30 days to submit their responses. The Department received over 65,000 submittals from industry organizations, non-governmental organizations, representatives of state governments, and private citizens that addressed virtually every change in the proposed rule. Some entities submitted comments multiple times. More than 55,000 of the comments were variations on form letters and contained similar comments. Other comments were substantive and detailed. The comments are posted at

the *Federal eRulemaking* portal: <http://www.regulations.gov> and may be accessed at that website by entering DOI-2018-0017 in the search box. The Department also received comments from the Office of Government Information Services at the National Archives and Records Administration, the Office of Information Policy at the Department of Justice, and Members of Congress. After careful consideration of these comments, the Department modified the proposed changes to sections 2.3, 2.4, 2.5, 2.12, 2.13, 2.15, 2.19, 2.20, 2.24, 2.29, 2.37, 2.45, 2.48, 2.54, 2.66, and 2.70 and withdrew the proposed changes to sections 2.16, 2.17, 2.18, 2.28, 2.51, 2.57, 2.58, 2.59, and 2.62. The comments and the Department's responses are summarized below.

1. General Opposition to the Proposed Rule.

A large majority of the comments submitted by non-governmental organizations, members of the public, and academia expressed general opposition to the proposed rule and many of its major proposals.

2. General Support of the Proposed Rule.

Some comments generally supported the proposed rule or components of it.

3. More Time to Comment.

Some comments requested additional time to comment. The Department received a large number of comments, many of which were substantive and detailed. As a result, the Department is confident that it has had the benefit of sufficient public input. We declined to extend the comment period further because the public as well as the Department will benefit from implementing the regulations as soon as possible.

4. Executive Orders and Statutory Requirements.

Some comments questioned whether the rule constitutes a major federal action significantly affecting the quality of the human environment that requires a detailed statement under the National Environmental Policy Act of 1969 (NEPA). It does not. The rule amends the administrative process by which the Department receives and processes requests under the FOIA. The rule does not have a “reasonably close causal connection” to effects on natural or cultural resources in the environment, as required for NEPA analysis.

A comment also recommended the Department correct the citation to 43 CFR 46.210(i) for the list of categorical exclusions and extraordinary circumstances in the NEPA compliance section and the Department has done so. The rule is also subject, in part, to the exclusion at 43 CFR 46.210(b) for the category of actions, “Internal organizational changes and facility and bureau reductions and closings,” as it restructures the Department’s FOIA program by reassigning roles among different personnel. The Department has reviewed this rule against the Department’s list of extraordinary circumstances at 43 CFR 46.215, as required by 43 CFR 46.205, and has determined (as documented below) that none apply.

Comments also questioned whether this rule would increase burdens and reduce flexibility and freedom of choice for the public under Executive Order (E.O.) 13563. It will not. The rule streamlines existing regulations to increase the Department’s capacity to process requests under the FOIA and provide more records to more requesters in a timely manner. Comments also noted that E.O. 13563 encourages agencies to provide comment periods of at least 60 days. This is true, but it is a suggestion, not a requirement and the 30-day comment period utilized for this

rule is legally sufficient. Additionally, as discussed above, the Department received a large number of comments, many of which are substantive and detailed, indicating that the comment period was adequate. Comments questioned whether the rule violates the FOIA. The Office of the Solicitor carefully reviewed the final rule and we are confident the rule is consistent with the provisions of FOIA. Comments also questioned whether our consultation with American Indian Tribes under E.O. 13175 was sufficient. This rule does not have tribal implications that impose substantial direct compliance costs on Indian Tribal governments under the criteria in E.O. 13175. Although it not required, the Department nevertheless sought consultation with the Indian Tribe that requested it and have added a more specific discussion of our compliance with E.O. 13175 below. Other comments asked us to note that the rule does not affect our trust responsibility to tribes. We agree that it does not.

5. Federal Vacancies Reform Act and Appointments Clause.

Some comments expressed concern that the proposed rule was signed by the Department's Principal Deputy Solicitor, Exercising the Authority of the Solicitor. They asserted that the Principal Deputy Solicitor does not have the authority to sign a proposed or final rule. They also asserted that he was the Acting Solicitor for an unlawfully long period of time and/or if he had not been the Acting Solicitor, he did not have authority to sign the proposed rule. The Department's Principal Deputy Solicitor, Exercising the Authority of the Solicitor is not the Acting Solicitor. Instead, he is a non-principal officer exercising a valid, non-expired delegation of the non-exclusive functions and duties of the Solicitor. As such, no timeline was exceeded and the Federal Vacancies Reform Act and Appointments Clause have not been violated.

Additionally, the Principal Deputy Solicitor has the full authority to sign proposed and final rules.

6. Specific Comments on Provisions of the Proposed Rule.

The following is a discussion of the substantive comments on specific provisions of the proposed rule and the Department's responses:

Section 2.2. In this section of the proposed rule, the Department updated who would provide prior approval for law enforcement exclusions, when necessary, transferring this responsibility from the Office of the Solicitor generally to the Deputy Chief FOIA Officer (DCFO) specifically. Comments expressed concern that this change would politicize access to information. This reflects a misunderstanding of the position and role of the DCFO. The DCFO is a recently created position in the Office of the Solicitor filled by a career Senior Executive Service employee to evaluate, improve, and oversee the Department's FOIA program. The rule, therefore, has not been changed based on these comments.

Sections 2.3(d), 2.5(c), 2.19(b)(2), 2.21(a), 2.37(i), 2.49(e), and 2.66. In these sections of the proposed rule, the Department updated provisions pertaining to Public Liaison functions and/or FOIA Requester Centers. These changes were driven by the 2018 Department of Justice guidance entitled [The Importance of Quality Requester Services: Roles and Responsibilities of FOIA Requester Service Centers and FOIA Public Liaisons](#) and reflect the changing structure of the Department's FOIA program. Comments expressed concern that the intention of the changes was to make it more complex/difficult for requesters to obtain assistance from the Department in making FOIA requests and/or to politicize the FOIA process. This is neither the intention nor

the effect of the changes. The changes are intended to improve the Department's assistance to FOIA requesters by providing one level of support for routine matters (FOIA Requester Centers) and a centralized, higher level of support for matters requiring more assistance (the Public Liaison). In addition, the FOIA Requester Center and Public Liaison functions will continue to be performed by career employees. The rule, therefore, was not changed based on these comments. Some comments sought more detail in these sections, particularly section 2.66. We agree that providing additional detail and clarification in section 2.66 would be helpful and have modified the rule accordingly.

Section 2.3. In this section of the proposed rule, the Department amended paragraph (b) to require that electronic submissions of FOIA requests be made via the electronic portals listed on the Department's FOIA website rather than by email and remove the option to submit requests via facsimile. The Department also deleted the previous paragraph (c), which alerted requesters to a FOIA website that is now discussed in the amended paragraph (b). The change to paragraph (b) will enable the Department to modernize its FOIA request tracking system. The Department expects this will reduce the amount of time the bureau FOIA offices spend on data entry, reduce the number of inadvertent errors made by retyping data from one format to another, and enable staff to apply more of their time to processing requests. Comments expressed concern that this change was intended to prohibit the electronic submission of FOIA requests or hinder the submission of FOIA requests. This reflects a misunderstanding of FOIA portals as well as the intent of the Department. Requesters will still be able to submit their requests electronically and, because requesters will be required to fill in certain data fields in the portals, will be less likely to omit necessary information that must be clarified before the request can be processed. Other

comments expressed concern that rural and tribal communities with limited internet access should be able to submit requests via facsimile. In response to the comments, we have modified paragraph (b) to permit all requesters to continue faxing in requests. Other comments raised concerns about the functionality of the portals, for example, whether they provide confirmation receipts and allow requesters to upload documents. We do not believe it is appropriate to include such technical specifications in the regulations, but we are in the process of upgrading our portal system and will keep this concern in mind. We will also keep in mind the importance of informing requesters of, and redirecting them to, the portals. One comment suggested adding a reference to the Department of Justice portal at FOIA.gov to the regulations. Accordingly, we have added this portal to our FOIA website.

Section 2.4. In this section of the proposed rule, we amended paragraph (a) and deleted paragraphs (e) and (f) to provide that we would not forward requests submitted to a particular bureau or bureau component to another bureau or component. These changes were intended to help the FOIA offices focus on meeting the Department's statutory obligations under the FOIA. Comments expressed concern that these changes would be unduly limiting and inappropriate under the FOIA. After considering those comments, we have further amended paragraph (a) to make it clear that when a bureau receives a request that is clearly intended for another bureau, the bureau will forward the request. This is consistent with 2008 Department of Justice guidance entitled [*New Requirement to Route Misdirected FOIA Requests*](#). Additionally, the section has been amended to advise requesters that they may seek help from the appropriate FOIA contact, as discussed in section 2.3 of the regulations, or FOIA Requester Center to assist them in determining where to direct their requests. Comments also requested that we consider

continuing to forward requests that are not clearly misdirected to provide requesters with excellent customer service. While we wish to provide excellent customer service to requesters, this change would thwart our goal of focusing the efforts of the Department's FOIA offices on meeting our statutory obligations to provide timely and accurate responses to FOIA requesters. We, therefore, decline to require forwarding unless a request has clearly been misdirected, but believe the addition of a reminder of the services offered by FOIA contacts and FOIA Requester Centers will help requesters obtain needed assistance in directing their requests.

Section 2.5. This section of the rule concerns how requesters describe the records they are seeking. We proposed adding language to paragraph (a) requiring requesters to identify the discrete, identifiable agency activity, operation, or program in which they are interested. The purpose of this change was to assist requesters in formulating proper requests for records reflecting the activities and functions of the Department. Comments expressed concern that this change was unclear and could unreasonably burden requesters. Upon consideration of the comments, we have withdrawn this proposed change. Paragraph (d) was also amended to notify requesters that we would not honor a request that "requires the bureau to locate, review, redact, or arrange for inspection of a vast quantity of material." The purpose of this change was to encourage requesters to formulate better-targeted requests. Comments expressed concern that these changes were too inflexible, created a new standard for the description of records, might confuse FOIA processors, and were impermissible under the FOIA. We recognize that our proposed language created confusion. We have therefore withdrawn the proposed change. Also in this section, we added paragraph (e) to clarify how the Department will address requests that do not reasonably describe the records sought. Some comments stated changes to the original

paragraph (d) were unnecessary. Others stated that the changes were vague, too broad, or confusing. We therefore have withdrawn this new paragraph. A comment suggested that requesters should have 60 workdays to respond when asked by the bureau FOIA offices to clarify their requests. The 20 workday standard is unchanged from our current regulations. It provides sufficient time for requesters to respond to such requests and allows the Department to close requests that requesters are not interested in clarifying within a reasonable amount of time. The rule therefore has not been changed based on this comment.

Section 2.6. In this section of the proposed rule, we amended paragraph (f) to provide refunds to requesters that overpaid fees because the bureau placed their request in the wrong fee category. A comment expressed concern that this change was arbitrary and capricious or could price requesters “out of the market.” As this change increases the ability of requesters to obtain refunds for incorrectly charged fees, it was not been changed based on this comment.

Section 2.12. In this section of the proposed rule, we amended paragraph (d) to clarify when the Department will engage in consultations and/or referrals as described in the proposed changes to section 2.13. The purpose of this change was to make the language of section 2.12 consistent with section 2.13. Comments expressed concern that the purpose of this change was unclear and it may prevent the Department from working with other agencies that are the “repositories of records.” This comment appears to misunderstand the consultation and referral process, suggesting that it is a means to collect records from entities outside the Department. As this is not the case, we did not change the rule based on this comment.

Section 2.13. In this section of the proposed rule, we amended each paragraph to clarify and simplify when and how the Department will engage in consultations and referrals. The purpose of this change was to eliminate unnecessary consultations and referrals that may delay the production of records to requesters. Comments expressed concern that we were eliminating “common-sense requirements” to work with other agencies to answer requests or creating exemptions to referrals and the changes may prevent the Department from working with other agencies that are the repositories of records. These comments misapprehend the purpose and impact of the change. We are not eliminating requirements to work with other agencies; rather, we are clarifying when we will engage in referrals and consultations. Additionally, as noted above, consultations and referrals are not a means to collect records from other agencies. The rule therefore was not been changed based on these comments. We did, however, clarify paragraph (b)(2) concerning records that are classified or may be appropriate for classification. Another comment suggested that this section include a protocol for exchanging information with state governments without making the records subject to disclosure under the FOIA. We do not believe records provided to the Department by state governments may be protected from disclosure under the FOIA absent statutory authority to do so and, therefore, the rule has not been changed based on this comment. Another comment suggested that when notifying a requester of a referral, we explicitly note whether the referral is for all or part of the request. We have updated and clarified paragraph (b)(3) in accordance with this comment. Another comment expressed concern about the discussion in paragraph (b)(4) concerning when a referral would be inappropriate, stating that it would allow the Department “not to respond to citizen inquiries.” This reflects a misunderstanding of the provision. Eliminating unnecessary referrals will reduce unnecessary delay and enable the Department to respond more quickly to requests.

Nevertheless, to address any confusion on this point, the Department has clarified this provision by replacing the word “consult” with “coordinate.”

Section 2.14. In this section of the proposed rule, we added a sentence expressly providing that the bureau may modify the ordinary practice of processing requests within a given processing track on a first-in, first-out basis by imposing monthly processing limits in order to treat FOIA requesters equitably by responding to a greater number of FOIA requests each month. The proposed language was intended to allow the bureau to utilize an approach similar to that of the Federal Bureau of Investigation that was favorably acknowledged by the United States Court of Appeals for the D.C. Circuit in *National Security Counselors v. United States Department of Justice*, 848 F.3d 467, 471-72 (D.C. Cir. 2017). Comments expressed concern this change would limit the number of FOIA requests a requester may submit in a given month, monthly processing limits are not authorized by the FOIA, and the approach is unprecedented. Although we do not believe the proposed change would have limited the number of requests that may be submitted in a given month or that it is not authorized under the FOIA, we recognize that the proposed language created confusion and have therefore withdrawn it.

Section 2.15. In this section of the proposed rule, we amended paragraph (c) to clarify the Department’s multitrack processing provisions. The purpose of these changes was to clarify how multitrack processing works in the Department and to re-name the “Exceptional/Voluminous” track as that name was two words long and had created some confusion. Some comments objected to the premise of multitrack processing, stating the amendments attempted to change the statutory timelines of the FOIA. Some comments

questioned wording choices and/or sought clarification. As multitrack processing is expressly authorized by the FOIA (5 U.S.C. § 552(a)(6)(D)(i)), the comments challenging the premise of multitrack processing did not result in a change to the rule. However, based on the comments, we added an introductory phrase to provide additional clarity and transparency as to how we assign particular requests to particular tracks. The additional language clarifies we place requests in processing tracks based on how long it would generally take to process them, not based on how long it will actually take to process them due to other factors, such as existing backlogs.

Sections 2.16, 2.18, 2.19, 2.28, 2.37, 2.51, 2.57, 2.58, 2.59, and 2.62. In these sections of the proposed rule, we proposed changing the phrase “time limit” to “time frame.” The purpose of this change was to address concerns that this language confused requesters about timing issues. Comments suggested the change would create more confusion about timing issues and was perceived as inconsistent with the language of the FOIA (for example, 5 U.S.C. § 552(a)(4)(A)(viii)(II)(aa)). Upon consideration of the comments, we found the changes were not consistent with our purpose and have withdrawn them.

Section 2.17. In the proposed rule, we removed this section to be consistent with proposed changes to section 2.4. Upon consideration of the comments and in light of the final changes to section 2.4, (discussed above), this change is no longer required and we have withdrawn it.

Section 2.20. In this section of the proposed rule, we amended paragraphs (a), (b), and (c) to clarify when and how the Department will grant expedited processing consistent with the

statutory requirements in the FOIA. Comments raised concerns that the changes would harm the FOIA requester community by improperly raising the bar for expedited processing. These comments misapprehend the purpose or effect of the proposed changes. The changes underscore the legal standard for expedited processing established by the United States Court of Appeals for the D.C. Circuit in *Al-Fayed v. Central Intelligence Agency*, 254 F.3d 300 (D.C. Cir. 2001) to assist the FOIA requester community to craft appropriate expedited processing requests. The changes will also help ensure requesters do not receive processing ahead of all other non-expedited requesters unless they qualify under the legal standard. We therefore have not changed the rule based on these comments. However, we further revised paragraph (c) to address what happens when only a portion of a request qualifies for expedited processing. Comments also raised concerns that the change to paragraph (a)(2)(iii), removing a phrase concerning breaking news, would harm transparency, lead to attempts to limit media requests, and was contrary to the public interest. Upon consideration of the comments, we are revising rather than removing this phrase to clarify that we will process expedited processing requests in accordance with the caselaw noted above and the legislative history of the FOIA. Comments also raised concerns about the requirement to consult with the Office of the Solicitor on grants of expedited processing, suggesting that it will allow political interference. This concern is misguided. Attorneys in the Office of the Solicitor are in the best position to apply the legal standard for expedited processing based on their legal expertise. Accordingly, this section was not been changed based on these comments.

Section 2.23. In this section of the proposed rule, we added a phrase to paragraph (c) to allow bureaus to make certain routine withholdings without consulting the Office of the Solicitor.

Comments raised concerns this was an attempt at political interference and that this provision could prevent the FOIA offices from seeking attorney guidance on non-routine matters. We believe this reflects a misunderstanding of both the role of the Office of the Solicitor and the purpose of the proposed change. Currently, the Office of the Solicitor must approve all withholdings to ensure that they are legally justified. The amendments would permit the Office of the Solicitor to pre-approve routine withholdings such as the redaction of social security numbers pursuant to Exemption 6, rather than requiring legal review of those withholdings. This change will enable the FOIA processors and the Department's attorneys to use their time more efficiently and process records that contain routine withholdings more quickly. The rule therefore has not been changed based on these comments. One comment suggested that we issue preapprovals in the form of memoranda that are readily available to the public and cited in response letters. While we decline to include this suggested process in the regulations, we are considering how best to make information concerning the preapproval of routine withholdings available to the public.

Section 2.24. In this section of the proposed rule, we added a phrase to paragraph (b)(4) noting that a bureau will not provide an estimate of the volume of records withheld when it does not have or could not locate any responsive records. The purpose of this change is to acknowledge that we cannot provide an estimate of volume when we do not locate responsive records.

Comments suggested this change was awkward and/or unnecessary. Although it may seem obvious that the bureaus cannot provide an estimate of volume when they do not have or cannot locate responsive records, confusion has arisen on this point in the past. The rule therefore has not been changed based on these comments. We also added a phrase to paragraph (b)(5) stating

that the name and title of the attorney consulted would not be included in a denial notification when the withholding was made pursuant to a preapproval authorized in section 2.23(c).

Comments expressed concern that this change favored secrecy over transparency. Upon consideration of the comments, we have withdrawn this proposed change as inconsistent with our purpose for the rule.

Section 2.27. In this section of the proposed rule, we added the term “due diligence” to paragraph (a), to provide that bureaus must exercise due diligence to promptly notify submitters when we receive a FOIA request for submitter information that may be confidential. This change is necessary because it is not always possible to notify the submitter. For example, an individual submitter may have died or a business submitter may have closed since submitting the records. The Department’s current regulations require without exception that the Department notify submitters. Inserting a due diligence standard permits the Department to discontinue its efforts to notify submitters when such efforts are futile. We believe the FOIA community will benefit from this change because it will allow the Department to move forward with processing requests after it has exercised due diligence in seeking to contact submitters. A comment asked for a definition of due diligence in this context. What constitutes due diligence will vary based on the circumstances. The rule therefore was not been changed based on this comment. Another comment recommended amending the provision to permit the Office of the Solicitor to preapprove the withholding of certain categories of information under Exemption 4 without consulting with the submitter of the information. Another comment requested we communicate with submitters only through email (particularly when we must contact a voluminous number of

submitters). These comments concern parts of the section and rule that we are not proposing to amend. The rule therefore was not changed based on these comments.

Section 2.29. In this section of the proposed rule, we added a new paragraph (c) to provide that a bureau will not notify a submitter of a request for their possibly confidential information when the bureau has exercised due diligence to do so, but was unsuccessful. One comment suggested we add language to the section providing that we will not notify the submitter under specific circumstances (for example, when the submitter has provided “false contact information”). We believe our existing language is sufficiently broad and it is unnecessary to list specific circumstances, as recommend by this comment.

Section 2.45. In this section of the proposed rule, we replaced a phrase in paragraph (a) and removed paragraph (f) to clarify and streamline the factors we consider when evaluating fee waiver requests. Comments raised concerns that the changes were “pointlessly specific,” arbitrary, disadvantageous to requesters, could price requesters “out of the market,” were contrary to the FOIA, and/or were unduly restrictive. Upon consideration of the comments, we have concluded that the change concerning verification in paragraph (a) was not helpful and have withdrawn it. We have also concluded that removing paragraph (f) would lead to confusion rather than useful streamlining and have withdrawn that proposed change. The remaining change in paragraph (a) clarifies the factors we consider when evaluating fee waiver requests. As this information will assist requesters to formulate better fee waiver justifications, we are not changing this aspect of the rule.

Section 2.48. In this section of the proposed rule, we amended and/or redesignated a number of paragraphs in an effort to clarify how we evaluate fee waiver requests. Comments raised concerns that the changes reflected an attempt to create increased requirements for eligibility, an undue burden, unduly restrict the granting of fee waivers to requesters, and/or could price requesters “out of the market.” The purpose of this change was to clarify when the Department will grant fee waivers consistent with the statutory requirement in the FOIA. This clarification will help the FOIA requester community by helping them effectively prepare fee waiver requests. The rule therefore was not been changed based on these comments. Comments raised concerns that the addition of the word “significantly” to paragraph (a)(2) was unreasonably burdensome. This change mirrors the language of the FOIA (5 U.S.C. § 552(a)(4)(A)(iii)) and, therefore, the rule has not been changed based on these comments. Comments raised concerns that changes to paragraph (a)(2)(i) were inaccurate, arbitrary, and imposed an unlawful burden upon requesters. Some of these comments raised particular concerns about the phrase “public domain,” stating it was unclear and unhelpful. Based on these comments, we have removed this phrase and amended the paragraph to clearly state the factors we consider when deciding whether the content of a record is meaningfully informative. A comment raised concerns that changes to paragraph (a)(2)(iv) might only allow subject matter experts to be eligible for a fee waiver. While subject matter expertise is a longstanding factor in receiving a fee waiver, it is not dispositive. The rule therefore has not been changed based on this comment. Comments expressed concern that the changes to paragraph (b) allow the Department to speculate about the commercial interest or activities of a requester rather than focusing on the intended use of the information. Comments also suggested this paragraph is confusing. After considering these comments, we revised the proposed language to make it clear that the bureaus consider the

intended use of the information. A comment to paragraph (b)(5)(ii) recommended that the Department expand the circumstances in which a requester must demonstrate the intended use of the information to make various decisions and notifications required by Exemption 4 of the FOIA. As we do not generally use the fee waiver information discussed in this section to inform our Exemption 4 decisions and notifications, the rule was not changed based on this comment.

Section 2.49. In this section of the proposed rule, we added a new paragraph (a)(3). The purpose of this change was to clarify that requesters will not receive fee estimates until their requests are perfected. A comment stated this change would allow the Department to forgo providing notice to requesters of anticipated fees. We believe this comment reflects a misapprehension of the proposed change. Paragraph (a) simply clarifies that the bureaus will not provide fee notices to requesters until the requests are perfected. Another comment stated that the amendment could potentially price requesters “out of the market.” As the change will not impact fees or other costs incurred by requesters, the rule has not been changed based on this comment. Another comment asked if the current (a)(3) would be replaced with the new (a)(3). It will not, the old (a)(3) is becoming the new (a)(4).

Section 2.54. In this section of the proposed rule, we modified language in paragraph (a) to streamline and clarify our aggregation procedures. Comments expressed concerns that the changes were confusing, arbitrary, could price requesters “out of the market,” would permit the Department to make value judgments, and/or could conflict with existing fee guidelines on aggregation issued by the Office of Management and Budget (OMB) in 1987. Based upon these comments, we revised the changes to paragraph (a) and added a new paragraph (c) to make it

clear when we will aggregate requests for administrative purposes (such as placement in processing tracks) versus when we will do so for fee purposes in accordance with the OMB Fee Guidelines.

Section 2.70. In this section of the proposed rule, we modified the definition of “Educational Institution” to allow more requesters to qualify for this advantaged fee category consistent with *Sack v. Department of Defense*, 823 F.3d 687 (D.C. Cir. 2016). A comment expressed concern that this change was arbitrary and capricious or could price requesters “out of the market.” This comment reflects a misunderstanding of the change as it will enable additional requesters to qualify for this advantaged fee category. Additionally, this classification is just one of many elements of our determination to charge fees to a particular requester for a particular request. The rule therefore has not been changed based on this comment. We also added a phrase to the definition of “Multitrack Processing,” to provide more information to requesters about how the multitrack process works. A comment stated the change “appears to codify Interior’s problematic practice of delaying responses to FOIA requests until a requester files a complaint in court.” This reflects a misunderstanding of the proposed change as well as the concept of multitrack processing. Multitrack processing is expressly authorized by the FOIA (5 U.S.C. § 552(a)(6)(D)(i)) and is not a means of delaying responses to FOIA requests until litigation is filed. This comment therefore did not result in a change to the rule. We also proposed modifying the definition of “Record” to track recent Federal court decisions and the 2017 Department of Justice guidance entitled [*Defining a “Record” under the FOIA*](#). The change was intended to enable the Department to target the records requesters are seeking and avoid unnecessary processing of non-responsive material. Comments suggested the new wording was

unclear or circular, was contrary to the FOIA, could hinder requesters from obtaining information sought, and/or mirrored Privacy Act language. The purpose of the change was to inform the public that the Department would apply the Department of Justice guidance as well as pertinent case law, but we have withdrawn the language as it was unnecessary and created confusion. We also modified the definition of “Representative of the News Media,” by adding a sentence to clarify when employing editorial skills will be a requirement. Comments expressed concern that this change was unduly narrowing, noting that legitimate news outlets often disseminate raw data as part of larger editorial projects. Based upon these comments, we have modified the definition to address that circumstance. A comment expressed concern that this change was arbitrary and capricious or could price requesters “out of the market.” This comment is misguided, as the change in the definition simply clarifies a preexisting legal requirement. Accordingly, the rule was not changed based on this comment.

7. Comments Outside the Scope of this Rulemaking.

Some comments concerned sections of the regulations or issues that we did not raise in the proposed rule. Those comments did not lead to changes to the rule with the exception of one comment discussed in the Technical and Procedural Comments section below.

C. Technical and Procedural Comments

Sections 2.6(b), 2.12(d), 2.13(c), 2.17, and 2.29(c) have received minor technical amendments to fix typographical errors and/or make clarifications.

III. Compliance with laws and executive orders.

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

E.O. 12866 provides that the Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has waived its review of the final rule and therefore has not made a significance determination.

E.O. 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.

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 E.O. 12630, this rule does not have significant takings implications. A takings implication assessment is not required.

6. Federalism (E.O. 13132).

In accordance with E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It would not substantially and directly affect the relationship between the Federal and state governments. A federalism summary impact statement is not required.

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

In accordance with E.O. 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 Executive Order.

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

Under the criteria in E.O. 13175, we have evaluated this rule and determined that it would not have substantial direct effects on one or more Indian tribes, the relationship between the Federal government and Indian Tribes or the distribution of power and responsibilities between the Federal government and Indian Tribes (Executive Order 13175, 65 Fed. Reg. 67429, 67429 (Nov. 6, 2000)). While the rule would simplify the rulemaking process, we do not foresee that it will create any obstacles to Tribes that wish to comment on future Department rulemakings.

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.

10. 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 (NEPA) 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.”

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

This rule is not a significant energy action under the definition in E.O. 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.

12. Clarity of this regulation.

We are required by E.O.s 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

List of Subjects in 43 CFR Part 2

Administrative practice and procedure

Classified information

Courts

Freedom of information

Government employees

Privacy

For the reasons stated in the preamble, the Department of the Interior amends part 2 of title 43 of the Code of Federal Regulations as follows:

PART 2—FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY

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

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

Subpart A—INTRODUCTION

§ 2.2—[Amended]

2. In § 2.2, remove the words “Office of the Solicitor” and add in their place “Deputy Chief FOIA Officer”.

Subpart B—HOW TO MAKE A REQUEST

§ 2.3—[Amended]

3. Amend § 2.3 by:
- a. Revising paragraph (b) to read as set out below.
 - b. Removing paragraph (c).
 - c. Redesignating paragraph (d) as paragraph (c), and removing the words “FOIA Public Liaison” and adding in its place “FOIA Requester Center”.

§ 2.3 Where should you send a FOIA request?

(b) To make a request for Department records, you must write directly to the bureau that you believe maintains those records by utilizing the written forms of submission listed on the Department's FOIA website, <https://www.doi.gov/foia>, or utilizing physical or facsimile addresses of an appropriate FOIA contact, located at <http://www.doi.gov/foia/contacts>.

§ 2.4—[Amended]

4. Amend § 2.4 by:
- a. Revising paragraph (a) to read as set out below, and
 - b. Removing paragraphs (e) and (f).

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

(a) A request to a particular bureau or a bureau component (for example, a request addressed to a regional or field office) will be presumed to seek only records from that particular bureau or component. A request will not be forwarded to another bureau or component unless it is clear on the face of your request that it was misdirected. For example, if you address your request to an appropriate FOIA contact in the National Park Service and ask for records concerning a specific park, but your request is delivered to the Fish and Wildlife Service, your request was clearly misdirected. In such a case, a FOIA contact in the receiving bureau or component will route the request to a FOIA contact in the proper bureau or component. If you need assistance determining where to send a request, you may seek assistance from the bureau's designated FOIA contact or FOIA Requester Center (see §2.66 of this part).

* * * * *

§ 2.5—[Amended]

5. In § 2.5:

a. In paragraph (c), remove the words “FOIA Public Liaison” and add in its place the words “FOIA Requester Center”.

§ 2.6—[Amended]

6. Amend § 2.6 by:

- a. Revising the introductory paragraph (b) to read as set out below, and
- b. In paragraph (f) add the words “or placement in a different fee category” after “partial fee waiver”.

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

(b) If, after taking into consideration your fee category entitlements (see §2.39 of this part), the bureau anticipates processing costs will exceed \$50.00 (see §2.37(g) of this part) and these processing costs exceed the amount you have agreed to pay or you did not agree in writing to pay processing fees or request a fee waiver, the bureau will notify you:

(1) * * *

Subpart C—PROCESSING REQUESTS

§ 2.12—[Amended]

7. In paragraph (d), replace the words “it did not create or that another bureau or a Federal agency is substantially concerned with” with “primarily concern another bureau or Federal Government agency that is subject to FOIA”.

§ 2.13—[Amended]

8. Revise § 2.13 to read as follows:

§2.13 How do consultations and referrals work?

(a) When a bureau (other than the Office of Inspector General) locates responsive records that primarily concern another bureau or Federal Government agency that is subject to FOIA, the bureau will determine whether that bureau or agency would be better able to determine whether the record is exempt from disclosure.

(b) If the bureau processing the request believes that another bureau or agency would be better able to determine whether the record is exempt from disclosure, the bureau will contact that bureau or agency to determine whether it should refer the record to that bureau or agency or consult with that bureau or agency.

(1) If the bureau processing the request refers a record to another bureau or agency, that other bureau or agency will respond to you directly about that record. If the bureau processing the request consults with another bureau or agency, the bureau processing the request will respond to you directly.

(2) If the bureau receives a request for records that another agency has classified under any applicable executive order concerning record classification, or that the bureau believes may be appropriate for classification by another agency, it will refer the request for those records to that agency for response.

(3) Whenever a bureau refers any part of the responsibility for responding to a request to another bureau or agency, it will:

(i) Document the referral;

(ii) Maintain a copy of the referred record; and

(iii) Notify you in writing of the referral, including whether all or part of your request has been referred, the name of the bureau or agency to which the record was referred, and that bureau or agency's FOIA contact information.

(4) If 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 exemption that protects ongoing law enforcement investigations, a referral would be inappropriate and the bureau will coordinate with the agency instead.

(c) When a bureau receives a referral, the bureau will assign the referral to the appropriate processing track as described in § 2.15 of this part and process it according to the date that the consulting or referring bureau or agency received your request as described in §2.14 of this part.

(d) Bureaus may establish written agreements with other bureaus or agencies to eliminate the need for consultations or referrals for particular types of records.

Subpart D—TIMING OF RESPONSES TO REQUESTS

§ 2.15—[Amended]

10. In § 2.15,

- a. In paragraph (c), add the following words “assigned according to the expected complexity of the collection/review/production process of each request and” after the words “tracks are”;
- b. In paragraphs (c)(1), (2), (3), and (4) remove the word “will” and add in its place the words “would generally”; and
- c. In paragraph (c)(4), remove the words “Exceptional/Voluminous” and add in their place the word “Extraordinary”.

§ 2.17—[Amended]

11. In § 2.17, removed the “(e)” and add in its place “(a)”.

§ 2.19—[Amended]

12. In § 2.19:

- a. In paragraph (b)(2), remove the words “its FOIA Public Liaison”, adding in their place the words “the FOIA Public Liaison”.

§ 2.20—[Amended]

13. Revise § 2.20 to read as follows:

§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) 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) 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 that has particular value that will be lost if not disseminated quickly; this ordinarily refers to a breaking news story that concerns a matter of public exigency.

(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 all elements and subcomponents of your request meets each element of 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 of your request by writing to the appropriate FOIA contact in the bureau that maintains the records requested any time before the bureau issues its final response to your request. Bureaus will consult with the Office of the Solicitor before granting expedited processing requests and responses to you will include the name and title of the Office of the Solicitor or Office of General Counsel attorney consulted. If only a portion of your request would qualify for expedited processing, we will:

(1) Assign the portion of the request that qualifies for expedited processing a new processing number and place it in the expedited processing track as described in § 2.15 of this part;

(2) Place the remainder of the request that does not qualify for expedited processing into the appropriate processing track as described in § 2.15 of this part; and

(3) Inform you of the basis for the partial denial of expedited processing and your right to file an appeal as set forth in § 2.20(g) of this subpart.

(d) When making a request for expedited processing of an administrative appeal, submit the request to the appropriate deciding official for FOIA appeals.

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

(f) 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.

(g) If expedited processing is denied, the bureau will:

(1) Inform you of the basis for the denial, including an explanation of why the expedited processing request does not meet the Department's expedited processing criteria under this section; and

(2) Notify you of the right to appeal the decision on expedited processing in accordance with the procedures in subpart H of this part.

(h) If you appeal the bureau's expedited processing decision, that portion of your appeal (if it is properly formatted under §2.59 of this part) will be processed before appeals that do not challenge expedited processing decisions.

(i) 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—[Amended]

14. In § 2.21 paragraph (a), remove the words “its FOIA Public Liaison” and add in their place the words “the FOIA Public Liaison”.

§ 2.23—[Amended]

15. In § 2.23 paragraph (c), remove the word “record” and add in its place the words “record (unless the Office of the Solicitor has expressly preapproved such a withholding)”.

§ 2.24—[Amended]

16. In § 2.24 paragraph (b)(4), after the word “unless” add the words “the bureau notes that it does not have or could not locate responsive records or that including”.

Subpart F—HANDLING CONFIDENTIAL INFORMATION**§ 2.27—[Amended]**

17. In § 2.27 paragraph (a), add the words “exercise due diligence to” following the word “must”.

§ 2.29—[Amended]

18. In § 2.29:

- a. In paragraph (a), remove the word “or” after the “;”.
- b. In paragraph (b), add the words “or prohibited” after the word “required” and change the existing period to “; or”.
- c. Add a new paragraph (c) to read as set out below.

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

* * * * *

(c) The bureau has exercised due diligence to notify the submitter, but its efforts were unsuccessful.

§2.31—[Amended]

19. In § 2.31, revise paragraph (a) to read as set out below.

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

(a) To rely on Exemption 4 as a basis for nondisclosure, the submitter must explain why the information is confidential information. To do this, the submitter must provide a detailed written statement that explains why the information is a trade secret or, if the information is not a trade secret, certification that the information is both customarily and actually treated as private by the owner of the information. The statement must also include any available background on whether

the information was provided to the government under an assurance that the government would keep it private.

* * * * *

Subpart G—FEES

§ 2.37—[Amended]

20. In paragraph (i), remove the words “FOIA Public Liaison” and add in their place the words “FOIA Requester Center”.

§ 2.45—[Amended]

21. In § 2.45 paragraph (a), remove the words “based on all available information” and add in their place the words “considering the information you have provided”.

§ 2.47—[Amended]

22. In § 2.47 paragraph (d), remove the number “30” and add in its place the number “90”.

§ 2.48—[Amended]

23. Revise § 2.48 to read as follows:

§ 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 (a)(1) through (a)(4) of this section. You must address and meet each of these criteria in order to demonstrate that you are entitled to a fee waiver.

- (1) How the records concern the operations or activities of the Federal government. The subject of the request must concern discrete, identifiable agency activities, operations, or programs with a connection that is direct and clear, not remote or attenuated.
- (2) How disclosure is likely to contribute significantly to public understanding of those operations or activities, including:
 - (i) How the contents of the records are meaningfully informative. The disclosure of information that is already readily available to you from other sources or easily accessible to the public, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding and the bureau informs you of where the requested information is already available;
 - (ii) What the logical connection is between the content of the records and the operations or activities of the Federal government;
 - (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 expertise in the subject area as well as your identity, vocation, qualifications, and your 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 furthering 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 you intend to disseminate the information). If we have categorized you as a representative of the news media under § 2.38, we will presume you have this ability and intent;
 - (vi) Whether the records would confirm or clarify data that has been released previously; and

(vii) 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 request 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. To determine whether disclosure of the requested records is primarily in your commercial interest (based on your intended use of the information), the bureau will consider:

- (1) Whether the requested disclosure would further any commercial interest of yours.
- (2) If you have a commercial interest, the bureau must determine whether that is the primary interest furthered by the request by balancing the commercial interest against the public interest in disclosure of the records. When the requirements of paragraph (a) are satisfied and any commercial interest is not the primary interest furthered by the request, this balancing test shows a waiver or reduction of fees is justified. Bureaus ordinarily will presume that, when a news media requester has satisfied paragraph (a) above, the request is not primarily in the commercial interest of the requester.
- (3) You are encouraged to provide explanatory information regarding these considerations.
- (4) The bureau will not find that disclosing the requested records will be primarily in your commercial interest where the public interest is greater than any identified commercial interest in disclosure.
- (5) If you 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 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 records as part of the news gathering process, we will ordinarily presume that the public interest outweighs your commercial interest. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.
- (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—[Amended]

24. In § 2.49,

- a. Remove the word “or” from paragraph (a)(2);
- b. Redesignate paragraph (a)(3) as (4);
- c. Add a new paragraph (a)(3) as set out below;
- d. In the newly redesignated (a)(4), replace the word “previously” with the word “already”; and
- e. In paragraph (e), remove the words “FOIA Public Liaison” and add in their place the words “FOIA Requester Center”.

2.49 When will you be notified of anticipated fees?

(a)*****

(2) ***

(3) Your request does not reasonably describe the records sought and/or does not explicitly state that you will pay all fees associated with the processing of the request, that you will pay fees up to a specified amount, and/or that you are seeking a fee waiver; or

§ 2.54—[Amended]

25. In § 2.54, add a new paragraph (c) to read as set out below:

§ 2.54 When will the bureau combine or aggregate requests?

* * * * *

(c) The bureau may administratively aggregate requests without charging fees accordingly when it reasonably believes you, or a group of requesters acting in concert with you, are dividing a single request into a series of requests on a single subject or related subjects.

(1) The bureau may presume that multiple requests on a single subject or related subjects made within a 30-day period are dividing a single request into a series of requests.

(2) The bureau may administratively 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.

Subpart I—GENERAL INFORMATION

§ 2.66—[Amended]

26. Revise § 2.66 as follows:

§ 2.66 What are FOIA Requester Centers and the FOIA Public Liaison?

(a) FOIA Requester Centers typically serve as your first point of contact for questions about how the FOIA works. Before and after you make a request, FOIA Requester Centers can assist you by:

- (1) Identifying information that is already posted and available;
 - (2) Informing you about the types of records maintained by the bureau;
 - (3) Providing guidance on formulating effective requests;
 - (4) Describing the Department's various processing tracks and the average processing times for the various tracks;
 - (5) Answering questions about expedited processing standards and the FOIA's fee provisions;
- and
- (6) Answering questions about the status of an existing request.
- (b) The FOIA Public Liaison is responsible for:
- (1) Assisting in reducing delays;
 - (2) Increasing transparency and understanding of the status of requests; and
 - (3) Assisting in the resolution of disputes between you and the agency.
- (c) If you need further information or assistance after contacting the applicable FOIA Requester Center and the FOIA Public Liaison, you may wish to seek dispute resolution services from the Office of Government Information Services.
- (d) Contact information for the FOIA Requester Centers and FOIA Public Liaison is available at <https://www.doi.gov/foia/foiacenters>.

§ 2.70—[Amended]

27. In § 2.70:

- a. In the definition of "Educational institution", add a new second sentence after the words "scholarly research." to read as follows: "Teachers (if they demonstrate how the requested records will further their teaching, scholarly research, or production of scholarly works) and students (if they demonstrate how the requested records will further their coursework or other

school-sponsored activities) may also qualify as an educational institution for the purposes of this definition.”;

b. In the definition of “Multitrack processing”, after the words “first-in/first-out basis” add the words “, but other factors, such as litigation, may affect the sequence and/or timing of processing”; and

c. In the definition of “Representative of the news media”, add a new sentence two after the words “work to an audience.” to read as follows: “Simply distributing copies of released records, electronically or otherwise, does not qualify as using editorial skills to turn the raw materials into a distinct work.”

Dated: October 24, 2019.



Rachel Spector

Deputy Chief Freedom of Information Act Officer