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SOURCE: 41 FR 36902, Sept. 1, 1976, unless otherwise noted.

### Subpart A—Requests for Information

#### § 2.100 Definitions.

For the purposes of this part:

- (a) *EPA* means the United States Environmental Protection Agency.
- (b) *EPA Record* or, simply *record* means any document, writing, photograph, sound or magnetic recording, drawing, or other similar thing by which information has been preserved, from which the information can be retrieved and copied, and over which EPA has possession or control. It may

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include copies of the records of other Federal agencies (see §2.111(d)). The term includes informal writings (such as drafts and the like), and also includes information preserved in a form which must be translated or deciphered by machine in order to be intelligible to humans. The term includes documents and the like which were created or acquired by EPA, its predecessors, its officers, and its employees by use of Government funds or in the course of transacting official business. However, the term does not include materials which are the personal records of an EPA officer or employee. Nor does the term include materials published by non-Federal organizations which are readily available to the public, such as books, journals, and periodicals available through reference libraries, even if such materials are in EPA's possession.

(c) *Request* means a request to inspect or obtain a copy of one or more records.

(d) *Requestor* means any person who has submitted a request to EPA.

(e) The term *commercial use request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requestor or the person on whose behalf the request is made. In determining whether a requestor properly belongs in this category, EPA must determine the use to which a requestor will put the documents requested. Moreover, where EPA has reasonable cause to doubt the use to which a requestor will put the records sought, or where that use is not clear from the request itself, EPA may seek additional clarification before assigning the request to a specific category.

(f) The term *non-commercial scientific institution* refers to an institution that is not operated on a *commercial* basis as that term is referenced in paragraph (e) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(g) The term *educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate

higher education, an institution or professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(h) The term *representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of *news*) who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of *freelance* journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but EPA may also look to the past publication record of a requestor in making this determination.

(i) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searching for material must be done in the most efficient and least expensive manner so as to minimize costs for both the EPA and the requestor. For example, EPA will not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. *Search* will be distinguished, moreover, from *review* of material in order to determine whether the material is exempt from disclosure (see paragraph (j) of this section). Searches may be done manually or by computer using existing programming.

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(j) The term *review* refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (e) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving legal or policy issues regarding the application of exemptions. (Documents must be reviewed in responding to all requests; however, review time may only be charged to Commercial Use Requesters.)

(k) The term *duplication* refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

[41 FR 36902, Sept. 1, 1976, as amended at 50 FR 51658, Dec. 18, 1985; 53 FR 216, Jan. 5, 1988]

### § 2.101 Policy on disclosure of EPA records.

(a) EPA will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the rights of persons in business information entitled to confidential treatment, and the need for EPA to promote frank internal policy deliberations and to pursue its official activities without undue disruption.

(b) All EPA records shall be available to the public unless they are exempt from the disclosure requirements of 5 U.S.C 552.

(c) All nonexempt EPA records shall be available to the public upon request regardless of whether any justification or need for such records has been shown by the requestor.

(d) When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as, but not limited to, the Government Printing Office or the National Technical Information Service, EPA will inform the

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requester of the steps necessary to obtain records from the sources.

[41 FR 36902, Sept. 1, 1976, as amended at 53 FR 216, Jan. 5, 1988]

### § 2.102 [Reserved]

### § 2.103 Partial disclosure of records.

If a requested record contains both exempt and nonexempt material, the nonexempt material shall be disclosed, after the exempt material has been deleted in accordance with § 2.119.

### § 2.104 Requests to which this subpart applies.

(a) This subpart applies to any written request (other than a request made by another Federal agency) received by any EPA office, whether or not the request cites the Freedom of Information Act, 5 U.S.C. 552. See §§ 2.107(a) and 2.112(b) regarding the treatment of requests which are directed by the requestor to offices other than those listed in § 2.106.

(b) Any written request to EPA for existing records prepared by EPA for routine public distribution, e.g., pamphlets, copies of speeches, press releases, and educational materials, shall be honored. No individual determination under § 2.111 is necessary in such cases, since preparation of the records for routine public distribution itself constitutes a determination that the records are available to the public.

### § 2.105 Existing records.

(a) The Freedom of Information Act, 5 U.S.C. 552, does not require the creation of new records in response to a request, nor does it require EPA to place a requestor's name on a distribution list for automatic receipt of certain kinds of records as they come into existence. The Act establishes requirements for disclosure of existing records.

(b) All existing EPA records are subject to routine destruction according to standard record retention schedules.

### § 2.106 Where requests for agency records shall be filed.

(a) A request for records may be filed with the EPA Freedom of Information Officer, A-101, 401 M Street, SW., Washington, DC 20460.