representing the entire multi-Tribal jurisdiction on the Committee.

Nominations must include the following information about each nominee:

(1) A letter from the Tribe supporting the nomination of the individual to serve as a Tribal representative for the Committee;

(2) A resume reflecting the nominee’s qualifications and experience in Indian education; resume to include the nominee’s name, Tribal affiliation, job title, major job duties, employer, business address, business telephone and fax numbers (and business email address, if applicable);

(3) The Tribal interest(s) to be represented by the nominee (see Section IV, Part F of Federal Register notice of intent at 80 FR 69161 and whether the nominee will represent other interest(s) related to this rulemaking, as the Tribe may designate; and

(4) A brief description of how the nominee will represent Tribal views, communicate with Tribal constituents, and have a clear means to reach agreement on behalf of the Tribe(s) they are representing.

(5) A statement on whether the nominee is only representing one Tribe’s views or whether the expectation is that the nominee represents a specific group of Tribes.

To be considered, nominations must be received by the close of business on the date listed in the Dates section, at the location indicated in the Addresses section.

If you already submitted a nomination prior to the December 24, 2015, deadline or May 31, 2016 deadline, your application will still be considered.

V. Certification

For the above reasons, I hereby certify that the Accountability Negotiated Rulemaking Committee is in the public interest.

Dated: August 8, 2016.

Lawrence S. Roberts,
Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2016–19599 Filed 8–16–16; 8:45 am]
BILLING CODE 4337–15–P

DEPARTMENT OF LABOR
Office of the Secretary

29 CFR Part 70
RIN 1290–AA30

Revision of the DOL FOIA Regulations

AGENCY: Office of the Secretary, Department of Labor.

ACTION: Notice of proposed rulemaking, request for comments.

SUMMARY: This rule proposes revisions to the Department of Labor’s regulations under the Freedom of Information Act (FOIA), found in our regulations. The regulations are being revised to update and streamline the language of several procedural provisions, and to incorporate changes brought about by amendments to the FOIA under the OPEN Government Act of 2007 and the FOIA Improvement Act of 2016.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before October 17, 2016. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (https://www.regulations.gov) will accept comments until Midnight Eastern Time at the end of that day.

ADDRESSES: You may submit comments by any of the following methods:

• FAX: (202) 693–5389. Send your comments to the attention of Ramona Branch Oliver.
• Mail: Ramona Branch Oliver, Director, Office of Information Services, MALS Division, Office of the Solicitor, U.S. Department of Labor, Suite N–2420, 200 Constitution Avenue NW., Washington, DC 20210.
• E-mail: oliver.ramona@dol.gov. Please indicate “Comments on FOIA Rule” in the subject line.
• To ensure proper handling, please reference Docket No. DOL–2016–007 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Ramona Branch Oliver, Director, Office of Information Services, 202–693–5391.

Discussion: This rule proposes revisions to the Department’s regulations under the FOIA, found at 29 CFR part 70, to update and streamline the language of several procedural provisions and to incorporate certain of the changes brought about by the amendments to the FOIA under the OPEN Government Act of 2007, Public Law 110–175, 121 Stat. 2524 and the FOIA Improvement Act of 2016, Public Law 114–185, 130 Stat. 538 (enacted June 30, 2016). The Department of Labor last published FOIA regulations on May 30, 2006.

The proposed revisions to the Department’s FOIA regulations in 29 CFR part 70 incorporate changes to the language and structure of the regulations. Revisions provisions include § 70.1 (General provisions), § 70.2 (Definitions), § 70.3 (Policy), § 70.4 (Proactive disclosure of Department records), § 70.19 (Requirements for making a request), § 70.20 (Responsibility for responding to requests), § 70.21 (Time limits and order in which requests must be processed), § 70.38 (Definitions related to costs), and § 70.40 (Charges assessed for the production of records). Current sections have been renamed § 70.1 (from Purpose and scope to General provisions), § 70.4 (from Public reading rooms to Proactive disclosure of Departmental records), § 70.19 (from Requests for access to records to Requirements for making requests), § 70.21 (from Form and content of responses to Responses to requests), and § 70.26 (from Business information to Confidential commercial information). Also, in lieu of using the term “disclosure officer,” DOL is using the word “component” to refer to the decentralized agency FOIA components throughout the draft regulation.

As the Department of Labor was completing preparation of this Notice of Proposed Rulemaking to update its FOIA regulation, Congress passed on June 13, 2016 and the President signed on June 30, 2016, the FOIA Improvement Act of 2016. The Department has incorporated changes to this proposed rule to address provisions of the FOIA Improvement Act of 2016. Specifically, the following sections of this NPRM were revised to reflect statutory changes: Section 70.1(d) and (f); Sec. 70.3; Sec. 70.4; Sec. 70.19(d); Sec. 70.21(d) and (e); Sec. 70.25(c); and Sec. 70.40(e). Comments on these proposed provisions based on the text of the amended statute are welcomed. The Department will consider those comments, along with any other comments received, and if appropriate will revise the regulation to ensure the rule aligns with the amended statute.

Regulatory Flexibility Act: The Secretary of Labor, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters, and only for certain classes of requester and when particular conditions are satisfied. Thus, fees assessed by the Department are nominal. Further, the “small entities” that make FOIA requests, as compared with individual requesters and other requesters, are relatively few in number. EO 12866: This regulation has been drafted and reviewed in accordance
PART 70—PRODUCTION OR DISCLOSURE OF INFORMATION OR MATERIALS

Subpart A—General

Sec.
70.1 General provisions.
70.2 Definitions.
70.3 Policy.
70.4 Proactive disclosure of Departmental records.
70.5 Compilation of new records.
70.6 Disclosure of originals.
70.7–70.18 [Reserved]

Subpart B—Procedures for Disclosure of Records Under the Freedom of Information Act

70.19 Requirements for making a request.
70.20 Responsibility for responding to requests.
70.21 Responses to requests.
70.22 Appeals from denial of requests.
70.23 Action on appeals.
70.24 Form and content of action on appeals.
70.25 Time limits and order in which requests and appeals must be processed.
70.26 Confidential commercial information.
70.27 Preservation of records.
70.28–70.37 [Reserved]

Subpart C—Costs for Production of Records

70.38 Definitions related to costs.
70.39 Statutes specifically providing for setting of fees.
70.40 Charges assessed for the production of records.
70.41 Reduction or waiver of fees.
70.42 Consent to pay fees.
70.43 Payment of fees.
70.44 Other rights and services.
70.45–70.52 [Reserved]

Subpart D—Public Records and Filings

70.53 Office of Labor-Management Standards.
70.54 Employee Benefits Security Administration.

Appendix A to Part 70—FOIA Components Appendix B to Part 70—[Reserved]


Subpart E—Executive Order 12866

Authority: Executive Order 12866, § 3(f), 58 FR 31955, July 21, 1993. Management and Budget has determined that this rule is not a significant regulatory action under Executive Order 12866, § 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by that Office.

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

Small Business Regulatory Enforcement Fairness Act of 1995: This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (as amended), 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 29 CFR Parts 70

Administrative practice and procedure; Freedom of Information Act; Privacy.

For the reasons stated in the preamble, the Department of Labor proposes to amend 29 CFR part 70, as follows:

PART 70—PRODUCTION OR DISCLOSURE OF INFORMATION OR MATERIALS

Subpart A—General

Sec.
70.1 General provisions.
70.2 Definitions.
70.3 Policy.
70.4 Proactive disclosure of Departmental records.
70.5 Compilation of new records.
70.6 Disclosure of originals.
70.7–70.18 [Reserved]

Subpart B—Procedures for Disclosure of Records Under the Freedom of Information Act

70.19 Requirements for making a request.
70.20 Responsibility for responding to requests.
70.21 Responses to requests.
70.22 Appeals from denial of requests.
70.23 Action on appeals.
70.24 Form and content of action on appeals.
70.25 Time limits and order in which requests and appeals must be processed.
70.26 Confidential commercial information.
70.27 Preservation of records.
70.28–70.37 [Reserved]
§ 70.2 Definitions.

As used in this part:
(a) The terms agency, person, party, rule, order, and adjudication have the meaning attributed to these terms by the definitions in 5 U.S.C. 551.
(b) Confidential commercial or financial information means commercial or financial information received or obtained by the Department from a submitter, directly or indirectly, that arguably may be protected from disclosure under Exemption 4 of the FOIA.
(c) The Department means the Department of Labor.
(d) FOIA Component means an official component of the Department that has authority to disclose or withhold records under the FOIA and to whom requests to inspect or copy records in its custody should be addressed. Department of Labor components are listed in Appendix A to this part.
(e) Record means any information that would be an agency record subject to the requirements of this part when maintained by an agency in any format, including an electronic format, and any information described under this part that is maintained for an agency by an entity under Government contract, for the purposes of records management.
(f) Request means any written request for records made pursuant to 5 U.S.C. 552(a)(3) and which meets the requirements of this part.
(g) Requester means any person who makes a request.
(h) Search means to look for, manually or by automated means, Department records for the purpose of locating them in response to a pending request.
(i) The Secretary means the Secretary of Labor.
(j) Submitter means any person or entity from whom the Department receives or obtains confidential commercial or financial information, directly or indirectly. The term submitter includes, but is not limited to corporations, labor organizations, non-profit organizations, and local, state, and tribal and foreign governments.
(k) Unusual circumstances means, to the extent reasonably necessary for the proper processing of a FOIA request:
(1) The need to search for and collect the requested records from physically separate facilities;
(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that 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.

§ 70.3 Policy.

All agency records, except those exempt from mandatory disclosure by one or more provisions of 5 U.S.C. 552(b), will be made promptly available to any person submitting a written request in accordance with the procedures of this part. The Department will withhold records under the FOIA only when the Department reasonably foresees that disclosure would harm an interest protected by a FOIA exemption or is prohibited by law. Whenever the Department determines that full disclosure of a requested record is not possible, the Department will consider whether partial disclosure is possible and will take reasonable steps to segregate and release nonexempt material. As set forth in Sec. 70.4, the Department proactively identifies and discloses records of interest to the public.

§ 70.4 Proactive disclosure of Departmental records.

Records that are required by the FOIA, 5 U.S.C. 552(a)(2), to be made available for public inspection in an electronic format may be accessed through the Department’s Web site at http://www.dol.gov/dol/foia/. Each component is responsible for determining which of its records are required to be made publicly available, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. Each component must review and update its Web site of posted records and indices on an ongoing basis.

§ 70.5 Compilation of new records.

Nothing in 5 U.S.C. 552 or this part requires that any agency or component create a new record in order to respond to a request for records. A component must, however, make reasonable efforts to search for records that already exist in electronic form or format, except when such efforts would significantly interfere with the operation of the component’s automated information systems. The component will determine what constitutes a reasonable effort on a case-by-case basis.

§ 70.6 Disclosure of originals.

(a) No original record or file in the custody of the Department of Labor, or of any component or official thereof, will on any occasion be given to any agent, attorney, or other person not officially connected with the Department without the written consent of the Secretary, the Solicitor of Labor or the Inspector General.
(b) The individual authorizing the release of the original record or file must ensure that a copy of the document or file is retained in the component that had custody and/or control when an original document or file is released pursuant to this subpart.

§ 70.7–70.18 [Reserved]

Subpart B—Procedures for Disclosure of Records Under the Freedom of Information Act

§ 70.19 Requirements for making a request.

(a) General information. The Department of Labor has a decentralized system for responding to requests submitted under the FOIA. Each agency component has the ability to receive FOIA requests in writing by mail, delivery service/courier or facsimile at its designated mailing address. Any FOIA request submitted electronically, by email, must be submitted to foiarequests@dol.gov. Requests under this part submitted to any other email address will not be accepted.
(b) To make a request for records of the Department, whenever possible, a requester should write directly to the FOIA office of the component that maintains the records sought. Submitting the request directly to the FOIA office of the component that maintains the records sought will facilitate the quickest response. The requester must provide a mailing address to receive correspondence, and it may facilitate processing if telephone and email contact information are provided.

(1) The Department’s components for the purposes of the FOIA are listed in Appendix A to this part. The function and mailing address of each Department of Labor component is available on the Department’s FOIA Web site at http://www.dol.gov/dol/foia. This page also provides other information that is helpful in determining where to make a request.
(2) Requesters who cannot determine the proper FOIA office component or who are requesting records from multiple components may also send requests to the Office of the Solicitor, Office of Information Services, 200 Constitution Avenue NW., Room N–2420, Washington, DC 20210 or by email to foiarequests@dol.gov. Note that, pursuant to Sec. 70.25(a), the time for the component to respond to a request begins to run when the request is received by the proper component, but no later than 10 working days after
receipt in any component identified in Appendix A.

(c) Description of records sought. Requesters must describe the record or records sought in sufficient detail to enable Department personnel to locate them with a reasonable amount of effort. To the extent possible, the request should provide enough identifying information to help the component identify the requested records, such as the subject of the record, the date or approximate date when the record was created, the record’s title or name, case or file number, reference number, the person or office or the office location that created it, and any other pertinent identifying details. Prior to submitting the request, a requester may wish to consult the references provided in Sec. 70.1, the relevant FOIA Requester Service Center or the FOIA Public Liaison to discuss the records they are seeking and to receive assistance on how to describe the records.

(d) Deficient descriptions and revised requests. If the description is insufficient, so that a knowledgeable employee who is familiar with the subject area of the request cannot identify the record with a reasonable amount of effort, the component processing the request will notify the requester and describe what additional information is needed to process the request.

(1) Requesters who are attempting to modify or reformulate their requests may discuss their requests with the component’s designated FOIA contact, the FOIA Public Liaison, or a representative of OIS, each of whom is available to assist the requester in reasonably describing the records sought. Every reasonable effort will be made to assist a requester in the identification and location of the records sought. If the requester fails to reasonably describe the records sought, the agency’s response to the request may be delayed.

(2) Any amended request must be confirmed in writing and meet the requirements for a request under this part.

(3) While an agency component awaits a requester’s modified FOIA request, the processing time limits described in Sec. 70.25(a)(1) will be tolled (that is, the processing time clock will be stopped) until clarification is received from the requester.

§ 70.20 Responsibility for responding to requests.

(a) In general. Except in the instances stated in paragraph (d) of this section, the component that first receives a request for a record and maintains that record is the component responsible for responding to the request. In determining which records are responsive to a request, a component ordinarily will include only records in its possession as of the date that the component begins the search; if any other date is used, the component will inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), is not considered responsive to a request. When it is determined that records responsive to a request may be located in multiple components of the Department, the Office of Information Services may coordinate the Department’s response. If the Office of Information Services deems a consolidated response appropriate, it will issue such a response on behalf of the Department.

(b) Authority to grant or deny requests. Pursuant to relevant exemptions under 5 U.S.C. 552(b), the head of a component, or designee, is authorized to grant or to deny any request for records that are maintained by that component.

(c) Re-routing of misdirected requests. Where a component’s FOIA office determines that a request was misdirected within the Department, the receiving component’s FOIA office will work with OIS to facilitate the routing of the request to the FOIA office of the proper component(s).

(d) Consultations and referrals. When a component receives a request for a record, it will determine if another component of the Department, or of the Federal Government, is better able to determine whether the record can be disclosed or is exempt from disclosure under the FOIA. If the receiving component determines that it is not best able to process the record, then the receiving component will either:

(1) Respond to the request after consulting with the component or agency best able to determine whether to disclose the record and with any other component or agency that has a substantial interest in the record; or

(2) Refer the responsibility for responding to the request regarding that record to the component best able to determine whether to disclose it, or to another agency that originated the record (but only if that entity is subject to the FOIA). Ordinarily, the component or agency that originated the record will be presumed to be best able to determine whether to disclose it.

(e) Notice of referral. Whenever a component refers all or any part of the responsibility for responding to a request to another component or agency, the component will notify the requester of the referral and inform the requester of the name of each component or agency to which the request has been referred and provide contact information for that component or agency.

(f) Classified records. Any request for classified records which are in the custody of the Department of Labor will be referred to the classifying agency under paragraphs (d) and (e) of this section.

§ 70.21 Responses to requests.

(a) In general. Components should, to the extent practicable, communicate with requesters using the method that is most likely to increase the speed and efficiency of the communication, including by electronic means, such as by email.

(b) Acknowledgements of requests. A component will acknowledge each new request and assign it an individualized tracking number. Components will include in the acknowledgment a brief description of the records sought to allow the requesters to more easily keep track of their requests.

(c) Granting a request. After a component makes a determination to grant a request in full or in part, the component will notify the requester in writing. The component will provide the record in the form or format requested if the record is readily reproducible in that form or format, provided the requester has agreed to pay and/or has paid any fees required by subpart C of this part. The component will determine on a case-by-case basis what constitutes a readily reproducible format. Each component should make reasonable efforts to maintain its records in commonly reproducible forms or formats.

(d) Adverse determinations of requests. A component making an adverse determination denying a request in any respect must notify the requester in writing. Adverse determinations or denials of requests, include decisions that: the requested record is exempt, in whole or in part, from release pursuant to one or more exemptions under the FOIA, 5 U.S.C. 552; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily producible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials for requests for expedited processing.
(e) Content of the denial. The denial notice must be signed by the component agency head or a designee and will include:

(1) The name and title or position of the person responsible for the denial;
(2) A brief statement of the reason or reasons for the denial, including any FOIA exemption or exemptions applied or procedural reasons relied upon by the component in denying the request;
(3) 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 deletions on records disclosed in part, or if providing an estimate would harm an interest protected by the exemption under which the deletion was made;
(4) The right of the requester to seek assistance from the FOIA Public Liaison; and
(5) In the case of an adverse determination:

(i) a statement that the denial may be appealed as described under Sec. 70.22; and
(ii) a statement notifying the requester of the right to seek dispute resolution services from the Department’s FOIA Public Liaison or the Office of Government Information Services (within the National Archives and Records Administration).

(f) Markings on released documents. Markings on released documents must be clearly visible to the requester. Records disclosed in part shall be marked to show the amount of information deleted and the exemption(s) under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the records, if technically feasible.

§70.22 Appeals from denial of requests.

(a) A requester may appeal to the Solicitor of Labor when one or more of the following has occurred: A request for access to records has been denied in whole or in part; a requester disputes a determination that records cannot be located or have been destroyed; a requester disputes a determination by a component concerning the assessment or waiver of fees; a requester disputes the denial of a request for expedited processing or a component fails to respond to a request within the time limits set forth in the FOIA. The appeal must be filed within 90 days of the date of the action being appealed.

(b) The appeal must state in writing the grounds for appeal, and it may include any supporting statements or arguments, but such statements are not required. In order to facilitate processing of the appeal, the appeal must include the assigned request number (if applicable), appellant’s mailing address and daytime telephone number, as well as copies of the initial request and the component’s response. If mailed, the envelope and the letter of appeal should be clearly marked: “Freedom of Information Act Appeal.” Any amendment to the appeal must be in writing and received prior to a decision on the appeal.

(c) The appeal should be addressed to the Solicitor of Labor, Office of the Solicitor, FOIA Appeals Unit, Division of Management and Administrative Legal Services, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2420, Washington, DC 20210. Appeals also may be submitted by fax to 202–693–5338 or by email to foiaappeals@dol.gov. Appeals submitted to any other email address will not be accepted.

§70.23 Action on appeals.

The Solicitor of Labor, or designee, will review the appellant’s appeal and make a determination de novo whether the action of the component was proper and in accordance with the applicable law.

§70.24 Form and content of action on appeals.

The disposition of an appeal will be issued by the Solicitor of Labor or designee in writing. A decision affirming, in whole or in part, the decision below will include a brief statement of the reason or reasons for the affirmation, including the FOIA exemption or exemptions relied upon, and its relation to each record withheld. Consistent with the statute, the appeal determination will also advise the requester of the availability of the mediation services of the Office of Government Information Services as a non-exclusive alternative to litigation, and the statutory right to judicial review of the denial by the United States District Court for the judicial district in which the requester resides or maintains his or her principal place of business, the judicial district in which the requested records are located, or the District of Columbia. If it is determined on appeal that a record should be disclosed, the record will be provided in accordance with the decision on appeal.

If it is determined that records should be denied in whole or in part, the appeal determination will include 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 deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption.

§70.25 Time limits and in which requests and appeals must be processed.

(a) Time limits. The FOIA establishes a 20 business day deadline for regular requests and appeals, and a 10 calendar day time limit for making determinations regarding expedited processing. Components of the Department of Labor will comply with the time limits required by the FOIA for responding to and processing requests and appeals, unless there are exceptional circumstances within the meaning of 5 U.S.C. 552(a)(6)(C). A component or the designated appeal authority will notify a requester whenever they are unable to respond to or process the request or appeal within the time limits established by the FOIA.

(b) Multitrack processing. All components must designate a specific track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (d) of this section. A component may also designate additional processing tracks that distinguish between simple and complex requests based on the estimated amount of work and/or time needed to process the request, including based on the number of pages involved and the need for consultations or referrals. Components shall advise the requesters of the track into which their request falls and, when appropriate, shall offer the requester an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the component’s faster track.

(c) Unusual circumstances.

(1) Where the statutory time limits for processing a request cannot be met because of “unusual circumstances,” as set forth in the FOIA at 5 U.S.C. 552(a)(6)(B)(i–iii), and the component determines to extend the time limits on that basis, the component shall, before the expiration of the 20 working day deadline to respond, notify the requester in writing of the unusual circumstances and of the date by which processing of the request can be expected to be completed. This extension should not ordinarily exceed ten business days. If the component intends to extend the
deadline to respond by more than ten
working days, the component must:
(i) Provide the requester with an
opportunity either to modify the request
so that it may be processed within the
time limits or to arrange an alternative
time period with the component for
processing the request or a modified
request;
(ii) Make available to the requester the
contact information for the designated
FOIA contact and the FOIA Public
Liaison to assist the requester; and
(iii) Notify the requester of the right to
seek dispute resolution services from the
Office of Government Information
Services (OGIS).

(d) Aggregating requests. Where a
component reasonably believes that
multiple requests submitted by a
requester, or by a group of requesters
acting in concert, constitute a single
request that would otherwise involve
unusual circumstances, and the requests
involve clearly related matters, they
may be aggregated. Components shall
not aggregate multiple requests
involving unrelated matters.
(e) Expedited processing.
(1) Requests and appeals will be taken
out of order and given expedited
processing whenever it is determined
that they involve:
(i) 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;
(ii) An urgency to inform the public
about an actual or alleged federal
government activity, if made by a
person primarily engaged in
disseminating information;
(iii) The loss of substantial due
process rights; or
(iv) A matter of widespread
and exceptional media interest in which
there exists possible questions about the
government’s integrity which affect
public confidence.
(2) A request for expedited processing
may be made at the time of the initial
request for records or at any later time.
For a prompt determination, a request
for expedited processing must be
received by the proper component.
Requests based on paragraphs (e)(1)(i),
(ii), (iii), and (iv) of this section must be
submitted to the component that
maintains the records requested.
(3) A requester who seeks expedited
processing must submit a 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 in
paragraph (e)(1)(iii) 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. Such a requester
also must establish a particular urgency
to inform the public about the
government activity involved in the
request—one that goes beyond the
public’s general right to know about
government activity. The existence of
numerous articles published on a given
subject can be helpful in establishing
the requirement that there be an
“urgency to inform” the public on a
topic. As a matter of administrative
discretion, a component may waive the
formality of certification.
(4) Within ten calendar days of its
receipt of a request for expedited
processing, the proper component will
decide whether to grant the request and
will notify the requester of the decision.
If a request for expedited treatment is
granted, the request will be given
priority and will be processed as soon
as practicable. If a request for expedited
processing is denied, any appeal of that
decision will be acted on expeditiously.

§70.26 Confidential commercial
information.
(a) In general. Confidential
commercial information will be
disclosed under the FOIA only in
accordance with this section and E.O.
12,600, “Predisclosure Notification
Procedures for Confidential Commercial
Information.”
(b) Designation of confidential
commercial information. A submitter of
confidential commercial information will
use good-faith efforts to designate,
by appropriate markings, either at the
time of submission or at a reasonable
time thereafter, any portions of its
submission that it considers to be
protected from disclosure under
Exemption 4. These designations will
expire ten years after the date of the
submission unless the requester
requests, and provides justification for,
a longer designation period.
(c) Notice to submitters. A
component will provide a submitter with
prompt written notice of a FOIA request
that seeks its confidential commercial
information. If a submitter objects to
disclosure, it is required to
produce a detailed written statement.
The statement must show why the
information is a trade secret or
commercial or financial information
that is privileged or confidential. In the
event that a submitter fails to respond
to the notice within the time specified,
the submitter will be considered to have
no objection to disclosure of the
information. Information provided by a
submitter under this paragraph may
itself be subject to disclosure under the
FOIA.
(d) Notice of intent to disclose. A
component will consider a submitter’s
timely objections and specific grounds
for non-disclosure in deciding whether
to disclose confidential commercial
information. Whenever a component
decides to disclose confidential
commercial information over the
objection of a submitter, the component
will give the submitter written notice,
which will include:
(1) A statement of the reason(s) why
each of the submitter’s disclosure
objections were not sustained;
(2) A description of the confidential
commercial information to be disclosed;
and
(3) A specified disclosure date, which
will be a reasonable time subsequent to
the notice.
(e) Exceptions to notice requirements.
The notice requirements of paragraphs
(c) and (d) of this section will not apply
if:
(1) The component determines that
the information should not be disclosed;
are not to be destroyed while they are the subject of a pending request, appeal, or lawsuit under the Act.

§ 70.28–70.37 [Reserved]

Subpart C—Costs for Production of Records

§ 70.38 Definitions related to costs.

The following definitions apply to this subpart:

(a) Request, in this subpart, includes any request, as defined by Sec. 70.2(f), as well as any appeal filed in accordance with Sec. 70.22.

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

(c) Reproduction means the process of making a copy of a record necessary to respond to a request. Such copy can take the form of paper, microform, audio-visual materials or electronic records (such as a CD or other media).

(d) Search means the process of looking for and retrieving records or information that is responsive to a FOIA request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. FOIA components will ensure that searches are done in the most efficient and least expensive manner reasonably possible. A search does not include the review of material, as defined in paragraph (e) of this section, which is performed to determine whether material is exempt from disclosure.

(e) Review means the process of examining records, including audio-visual, electronic mail, etc., located in response to a request to determine whether any portion of the located record is exempt from disclosure, and accordingly may be withheld. It also includes the act of preparing materials for disclosure, i.e., doing all that is necessary to excise them and otherwise prepare them for release. Review time includes time spent consulting any submitter, and considering and responding to any objections to disclosure made by a submitter under Sec. 70.26, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(f) Commercial use request means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade or profit interests, which can include furthering those interests through litigation. When considering fee issues, components will determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because a component has reasonable cause to doubt a requester’s stated use, the component will provide the requester a reasonable opportunity to submit further clarification.

(g) Educational institution means an institution which:

(1) Is a preschool, public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, or

(2) Operates a program or programs of scholarly research. To qualify under this definition, the program of scholarly research in connection with which the information is sought must be carried out under the auspices of the academic institution itself as opposed to the individual scholarly pursuits of persons affiliated with an institution. For example, a request from a professor for information that will assist in writing of a book, independent of his or her institutional responsibilities, would not qualify under this definition, whereas a request predicated upon research funding granted to the institution would meet its requirements. A request from a student enrolled in an individual course of study at an educational institution would not qualify as a request from the institution.

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

(i) 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. Examples of news media
entities include television or radio stations that broadcast “news” to the public at large and publishers of periodicals that disseminate “news” and make their products available through a variety of means to the general public, as well as news organizations that operate solely on the Internet. Alternative media may be considered to be news-media entities. These examples are not all inclusive.

(1) Factors indicating status as a news media representative include press accreditation, guild membership, a history of continuing publication, business registration, and/or Federal Communication Commission licensing, among others.

(2) For purposes of this definition, news media is information that is about current events or that would be of current interest to the public.

(3) A freelance journalist will be treated as a representative of the news media if the person can demonstrate a solid basis for expecting publication of matters related to the requested information through a qualifying news media entity. A publication contract with a qualifying news media entity satisfies this requirement. An individual’s past publication record with such organizations is also relevant in making this determination.

§ 70.39 Statutes specifically providing for setting of fees.

This subpart will not apply to fees charged under any statute, other than the FOIA, that specifically requires an agency to set and collect fees for particular types of records.

§ 70.40 Charges assessed for the production of records.

(a) General. Components shall charge for processing requests under the FOIA in accordance with the provisions of this section and with the OMB Guidelines. In order to resolve any fee issues that arise under this section, a component may contact a requester for additional information. Components will ensure that searches, review, and duplication are conducted in the most efficient and least expensive manner. A component ordinarily will collect all applicable fees before sending copies of records to the requester.

(b) There are three types of charges assessed in connection with the production of records in response to a request, specifically, charges for costs associated with:

(1) Searching for or locating responsive records (search costs),

(2) Reproducing such records (reproduction costs), and

(3) Reviewing records to determine whether any materials are exempt (review costs).

(c)(1) There are four types of requesters:

(i) Commercial use requesters,

(ii) Educational and non-commercial scientific institutions,

(iii) Representatives of the news media, and

(iv) All other requesters.

(2) Depending upon the type of requester, as set forth in paragraph (c)(1) of this section, the charges outlined in paragraph (d) of this section may be assessed.

(d) Types of charges that will be assessed for each type of request.

(1) Commercial use request. When a requester makes a commercial use request, search costs, reproduction costs and review costs will be assessed in their entirety.

(2) Educational or non-commercial scientific institution request. When an educational or non-commercial scientific institution makes a request, only reproduction costs will be assessed, excluding charges for the first 100 pages.

(3) Request by representative of news media. When a representative of the news media makes a request, only reproduction costs will be assessed, excluding charges for the first 100 pages.

(4) All other requesters. Requesters making a request which does not fall within paragraphs (d)(1), (2), or (3) of this section will be charged search costs and reproduction costs, except that the first 100 pages of reproduction and the first two hours of search time will be furnished without charge. Where computer searches are involved, the monetary equivalent of two hours of search time by a professional employee will be deducted from the total cost of computer processing time.

(e) Charges for each type of activity.

(1) Search costs.

(i) When a search for records is performed by a clerical employee, a rate of $5.00 per quarter hour will be applicable. When a search is performed by professional or supervisory personnel, a rate of $10.00 per quarter hour will be applicable. Components will charge for time spent searching even if they do not locate any responsive records or they withhold the records located as exempt from disclosure.

(ii) For computer searches of records, components will be charged the direct costs of conducting the search, except as provided in paragraph (e)(4) of this section.

(iii) If the search for requested records requires transportation of the searcher to the location of the records or transportation of the records to the searcher, all transportation costs in excess of $5.00 may be added to the search cost.

(2) Reproduction costs. The standard copying charge for records in black and white paper copy is $0.15 per page. This charge includes the operator’s time to duplicate the record. When responsive information is provided in a format other than 8½ × 11 or 11 × 14 inch black and white paper copy, such as computer tapes, disks and color copies, the requester may be charged the direct costs of the tape, disk, audio-visual or whatever medium is used to produce the information, as well as the direct cost of reproduction, including operator time. The component may request that if a medium is requested other than paper, the medium will be provided by the requester.

(3) Review costs. Costs associated with the review of records, as defined in § 70.38(e), will be charged for work performed by a clerical employee at a rate of $5.00 per quarter hour when applicable. When professional or supervisory personnel perform work, a rate of $10.00 per quarter hour will be charged, when applicable. Except as noted in this paragraph, charges may only be assessed for review the first time the records are analyzed to determine the applicability of specific exemptions to the particular record or portion of the record. Thus a requester would not be charged for review at the administrative appeal level with regard to the applicability of an exemption already applied at the initial level. When, however, a record has been withheld pursuant to an exemption which is subsequently determined not to apply and is reviewed again at the appellate level to determine the potential applicability of other exemptions, the costs attendant to such additional review will be assessed.

(4) Limitations on charging fees. If a component fails to comply with the time limits in which to respond to a request it shall not assess certain fees except:

(i) If there are unusual circumstances (as that term is defined in Sec. 70.25(c)) and the component has provided timely written notice, the component is permitted ten additional days to respond to the request. After the expiration of the ten additional days, the component is no longer permitted to assess search fees or, in the instances of requests from requesters described in Sec. 70.38 (h) and (i), duplication fees.

(ii) If there are unusual circumstances (as that term is defined in Sec. 70.25(c)), and more than 5,000 pages of
documents are deemed to be responsive to the request, the component may continue to charge assessable fees for as long as it takes to process the request, provided that the component has provided timely written notice and discussed with the requester via telephone, email, or written mail (or made at least three good-faith attempts to do so) how the requester could effectively limit the scope of the pending request.

(iii) If a court has determined that exceptional circumstances exist, as defined in the FOIA, 5 U.S.C. 552(a)(6)(C) the agency’s failure to comply with any time limits of the FOIA are excused for the length of time provided by the court order.

(5) Mailing cost. Where requests for copies are sent by mail, no postage charge will be made for transmitting by regular mail a single copy of the requested record to the requester, or for mailing additional copies where the total postage cost does not exceed $5.00. However, where the volume of paper copy or method of transmittal requested is such that transmittal charges to the Department are in excess of $5.00, the transmittal costs will be added.

(f) Aggregating requests for purposes of assessing costs.

(1) Where a component reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the disclosure officer may aggregate those requests and charge accordingly.

(2) Components may presume that multiple requests of this type made within a 30-day period have been submitted in order to avoid fees. Where requests are separated by a longer period, disclosure officers will aggregate them only where a solid basis exists for determining that aggregation is warranted under all of the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(g) Interest charges. Components will assess interest on an unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the component. Components will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) Authentication of copies.

(1) Fees. The FOIA does not require certification or attestation under seal of copies of records provided in accordance with its provisions. Pursuant to provisions of the general user-charge statute, 31 U.S.C. 9701 and Subchapter II of title 29 U.S.C., the following charges will be made when, upon request, such services are rendered by the agency in its discretion:

(i) For certification of true copies, $10.00 each certification.

(ii) For attestation under seal of the Department, $10.00 each attestation under seal.

(2) Authority and form for attestation under seal. Authority is hereby given to any officer or officers of the Department of Labor designated as authentication officer or officers of the Department to sign and issue attestations under the seal of the Department of Labor.

(i) Transcripts. Fees for transcripts of an agency proceeding, as defined in the Administrative Procedure Act, 5 U.S.C. 5521(12) will be assessed in accordance with the provisions of this subpart.

(j) Privacy Act requesters. A request from an individual or on behalf of an individual for a record maintained by that individual’s name or other unique identifier which is contained within a component’s system of records, will be treated under the fee provisions at 29 CFR 71.6.

§ 70.41 Waiver or reduction of fees.

(a) Requirements for waiver or reduction of fees.

(1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (e) of Sec. 70.40, where a Component determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) To determine whether the requirement of paragraph (a)(1)(i) of this section is met, components will consider the following factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. The component will consider any commercial interest of the requester (with reference to the definition of “commercial use request” in Sec. 70.38(f)), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters will be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is
“primarily in the commercial interest of the requester.” A fee waiver or reduction is justified when the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The component ordinarily will presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver will be granted only for those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraph (a) of this section, insofar as they apply to each request.

(b) Submission. Requests for a waiver or reduction of fees should be made when the request is first submitted to the component and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester will be required to pay any costs incurred up to the date the fee waiver request was received.

(c) Appeal rights. Requesters dissatisfied with the component's determination of fee waiver or reduction requests may follow the procedures for appeal under Sections 70.22 and 70.23.

§ 70.42 Consent to Pay Fees.

(a) The Department will not assess or collect fees where the fee to be assessed, after deducting any free pages and/or search time, is less than $25.00. When making a request, a requester may specify a willingness to pay up to a certain amount, e.g., $50.00 or $200.

(b) No request will be processed if a component reasonably believes that the fees are likely to exceed the amount to which the requester has originally consented, absent supplemental written consent by the requester to proceed after being notified of this determination.

(c) When a component determines or estimates that the fees to be assessed in accordance with this section will exceed $25.00, the component shall notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component must advise the requester accordingly. Such notice may invite the requester to reformulate the request to satisfy his or her needs at a lower cost.

(d) Components must make available their FOIA contact to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

§ 70.43 Payment of fees.

(a) De minimis costs. As noted in Sec. 70.42(a), the Department has determined it will not assess or collect fees below $25.00. In these cases, the cost of collecting and processing a fee equals or exceeds the amount of the fee which would otherwise be assessed. The Department will assess fees where the costs to be assessed, after deduction of any free pages and/or search time, is $25.00 or higher.

(b) How payment will be made. Requesters will pay fees assessed by check or money order made payable to the Treasury of the United States, and sent to the component that is processing the request.

(c) Advance payments and billing.

(1) Prior to beginning to process a request, the component will make a preliminary assessment of the amount that can properly be charged to the requester for search and review time and copying costs. Where a component determines or estimates that a total fee to be charged under this section will be more than $250.00, the component will require the requester to make an advance payment of an amount up to the entire anticipated fee before beginning to process the request. The component may waive the advance payment where the component receives a satisfactory assurance of full payment from a requester who has a history of prompt payment of an amount similar to the one anticipated by the request.

(2) Where a requester has previously failed to pay a properly charged FOIA fee to any component of the Department of Labor within 30 days of the date of billing, a component will require the requester to pay the full amount due, plus any applicable interest as provided in Sec. 70.40(f) and to make an advance payment of the full amount of any anticipated fee, before the component begins to process a new request or appeal or continues to process a pending request or appeal from that requester.

(3) For a request other than those described in paragraphs (c)(1) and (2) of this section, a component will not require the requester to make an advance payment before beginning to process a request. Payment owed for work already completed on a request pursuant to consent of the requester is not an advance payment and a component may require the requester to make a payment for such work prior to releasing any records to the requester.

(d) Time limits to respond extended when advance payments are requested. When a component has requested an advance payment of fees in accordance with paragraph (c) of this section, the time limits prescribed in Sec. 70.25 will only begin to run after the component has received the advance payment.

§ 70.44 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 records to which such person is not entitled under the FOIA.

§ 70.45–70.52 [Reserved]

Subpart D—Public Records and Filings

§ 70.53 Office of Labor-Management Standards.

(a) The following documents in the custody of the Office of Labor-Management Standards are public information available for inspection and/or purchase of copies in accordance with paragraphs (b) and (c) of this section.


(2) Data and information contained in any report or other document filed pursuant to the reporting requirements of 29 CFR parts 458, which are the regulations implementing the standards of conduct provisions of the Civil Service Reform Act of 1978, 5 U.S.C. 7120, and the Foreign Service Act of 1980, 22 U.S.C. 4117. The reporting requirements are found in 29 CFR 458.3.


(b) The documents listed in paragraph (a) of this section are available from: U.S. Department of Labor, Office of Labor-Management Standards, Public Disclosure Room, N–5608, 200 Constitution Avenue NW., Washington, DC 20210. Reports filed pursuant to section 201 of the Labor-Management Reporting and Disclosure Act of 1959

(c) Pursuant to 29 U.S.C. 435(c) which provides that the Secretary will by regulation provide for the furnishing of copies of the documents listed in paragraph (a) of this section, upon payment of a charge based upon the cost of the service, these documents are available at a cost of $.15 per page for record copies furnished. Authentication of copies is available in accordance with the fee schedule established in Sec. 70.40. In accordance with 5 U.S.C. 552(a)(4)(A)(vi), the provisions for fees, fee waivers and fee reductions in subpart C of this part do not supersede these charges for these documents.

(d) Upon request of the Governor of a State for copies of any reports or documents filed pursuant to sections 201, 202, 203, or 211 of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 524–528, 79 Stat. 888; 29 U.S.C. 431–433, 441), or for information contained therein, which have been filed by any person whose principal place of business or headquarters is in such State, the Office of Labor-Management Standards will:

(1) Make available without payment of a charge to the State agency designated by law or by such Governor, such requested copies of information and data, or

(2) Require the person who filed such reports and documents to furnish such copies or information and data directly to the State agency thus designated.

§ 70.54 Employee Benefits Security Administration.

(a) The annual financial reports (Form 5500) and attachments/schedules as filed by employee benefit plans under the Employee Retirement Income Security Act (ERISA) are in the custody of the Employee Benefits Security Administration (EBSA) at the address indicated in paragraph (b) of this section, and the right to inspect and copy such reports, as authorized under ERISA, at the fees set forth in this part, may be exercised at such office.

(b) The mailing address for the documents described in this section is: U.S. Department of Labor, Employee Benefits Security Administration, Public Documents Room, 200 Constitution Avenue NW., Washington, DC 20210.

Appendix A to Part 70—FOIA Components

The following list identifies the individual agency components of the Department of Labor for the purposes of the FOIA. Each component is responsible for making records in its custody available for inspection and copying, in accordance with the provisions of the FOIA and this part. Unless otherwise specified, the mailing addresses for the following national office components are listed below. Updated contact information for national and regional offices can be found on the DOL Web site at http://www.dol.gov/dol/foia.

U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

1. Office of the Secretary (OSEC)
2. Office of the Solicitor (SOL)
4. Office of the Assistant Secretary for Administration and Management (OASAM),
5. Office of the Assistant Secretary for Policy (OASP).
7. Office of Congressional and Intergovernmental Affairs (OCIA).
16. Employment and Training Administration (ETA).
17. Mine Safety and Health Administration (MSHA), 201 12th Street, South, Arlington, Virginia 22202.
18. Occupational Safety and Health Administration (OSHA).
21. Employees’ Compensation Appeals Board (ECAB).
24. Wage and Hour Division (WHD).
25. Women’s Bureau (WB).

Signed at Washington, DC, on August 1, 2016.

Thomas E. Perez,
Secretary of Labor.

[FR Doc. 2016–18594 Filed 8–16–16; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52


Air Plan Approval; Kentucky; Removal of Stage II Gasoline Vapor Recovery Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve changes to the Kentucky State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky through its Energy and Environment Cabinet (EEC) on May 3, 2016. This SIP revision seeks to remove Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in the State and allow for the decommissioning of existing Stage II equipment in Boone, Campbell and Kenton Counties in Kentucky. EPA has preliminarily determined that Kentucky’s May 3, 2016, SIP revision is approvable because it is consistent with the Clean Air Act (CAA or Act).

DATES: Written comments must be received on or before September 16, 2016.


FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory...