

**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

**36 CFR Part 1250**

[NARA-07-0003]

RIN 3095-AB42

**Public Availability and Use of Federal Records**

**AGENCY:** National Archives and Records Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The National Archives and Records Administration (NARA) is proposing to revise its regulations implementing the Freedom of Information Act (FOIA). The proposed revisions update the regulations for access and release of information under the FOIA among NARA's archival holdings and NARA's own operational records.

**DATES:** Comments are due by November 13, 2007.

**ADDRESSES:** NARA invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* Submit comments by facsimile transmission to 301-837-0319.
- *Mail:* Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Planning Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001.
- *Hand Delivery or Courier:* Deliver comments to 8601 Adelphi Road, College Park, MD.

**FOR FURTHER INFORMATION CONTACT:** Laura McCarthy at (301) 837-3023 or via fax number 301-837-0319.

**SUPPLEMENTARY INFORMATION:** The proposed revisions to NARA's regulations on public availability and use of Federal records modify several of the procedures and responsibilities of NARA staff in response to requests submitted under the provisions of the Freedom of Information Act (FOIA). The proposed revisions update NARA's regulations to incorporate changes that

have occurred since the last revision of 36 CFR part 1250, including:

- Reflecting the legal transfer of certain official military personnel records to the National Archives of the United States in 2005. The transfer of these records to NARA expands the application of 36 CFR part 1250 to twentieth-century military personnel records that are archival records; those military personnel records that have not been transferred to NARA remain under the legal custody of the agency that created them.
- Incorporating the provisions of Executive Order 13392, "Improving Agency Disclosure of Information," by revising § 1250.22 to include the establishment of FOIA Customer Service Centers and the designation of FOIA Public Liaisons. The proposed rule also advises the public of a new e-mail address for the submission of FOIA requests to NARA.
- Extending the time the former and incumbent President have to respond to notification of the proposed release of presidential records consistent with E.O. 13233, Further Implementation of the Presidential Records Act (issued November 1, 2001). Executive Order 13233 allows the Presidents at least 90 days to make a determination concerning the release of presidential records.
- Incorporating changes to the fee schedule for self-service copies.
- Revising NARA's procedures for identifying records containing confidential commercial information in § 1250.82. We propose to provide a 10 day response time for the submitter, instead of the current five day period, to respond to notification of the release of confidential commercial information in the records. We also propose to change our public notification procedures to include a method of notifying multiple submitters by posting on our Web site or publishing a notice concerning the release of confidential commercial information.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant

impact on a substantial number of small entities because this regulation will affect only persons and organizations who file FOIA requests with NARA. This regulation does not have any federalism implications.

**List of Subjects in 36 CFR Part 1250**

Archives and records, Confidential business information, Freedom of information.

For the reasons set forth in the preamble, NARA proposes to amend part 1250 of title 36, Code of Federal Regulations, as follows:

**PART 1250—PUBLIC AVAILABILITY AND USE OF FEDERAL RECORDS**

1. Revise the authority citation for part 1250 to read as follows:

**Authority:** 44 U.S.C. 2104(a); 5 U.S.C. 552; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333, as amended by E.O. 13292, 68 FR 15315, March 28, 2003; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235., E.O. 13392, 70 FR 75371, 3 CFR, 2006 Comp., p. 216.

2. Revise the section heading of § 1250.1 to read as follows:

**§ 1250.1 What is the scope of this part?**

\* \* \* \* \*

3. Amend § 1250.2 by revising the section heading; redesignating paragraph (k) as paragraph (l); and adding a new paragraph (k) to read as follows:

**§ 1250.2 What definitions apply to this part?**

\* \* \* \* \*

(k) *Search* means the process of looking for and retrieving records or information responsive to a 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.

\* \* \* \* \*

4. Amend § 1250.6 by revising paragraph (c) in the table to read as follows:

**§ 1250.6 Does FOIA cover all the records at NARA?**

\* \* \* \* \*

If you want access to . . . Then access is governed by . . .

(c) Records of Congress and legislative branch agencies. Parts 1254 through 1260 of this chapter. FOIA does not apply to these records.

\* \* \* \* \*

5. Revise § 1250.8 to read as follows:

**§ 1250.8 Does NARA provide access to all the executive branch records housed at NARA facilities?**

(a) NARA provides access to the following records:

(1) NARA operational records; and  
(2) Archival records, including those Official Military Personnel Files that have been transferred to the legal custody of NARA.

(b) NARA does not provide access to the following records:

(1) Other military and civilian records that remain in the legal custody of the agencies that created them; access to such records is governed by the FOIA, Privacy Act, and other access regulations of the creating agencies. Military personnel records that are less than 62 years old from the date of the individual's separation from the military and medical records of former members of the military are held at NARA's National Personnel Records Center (NPRC), located in St. Louis, Missouri. The NPRC also houses the records of former civilian employees of the Federal government. The NPRC processes FOIA requests for these records under authority delegated by the originating agencies, not under the provisions of this part; and

(2) In our national and regional records centers, NARA stores records that agencies no longer need for day-to-day business. These records remain in the legal custody of the agencies that created them. Access to these records is through the originating agency; NARA does not process FOIA requests for these records.

6. Amend § 1250.10 by revising paragraphs (a) and (b) to read as follows:

**§ 1250.10 Do I need to use FOIA to gain access to records at NARA?**

(a) Most archival records held by NARA have no restrictions to access and are available to the public for research without filing a FOIA request. You may either visit a NARA facility as a researcher to view and copy records or you may write to request copies of specific records.

(b) If you seek access to archival records that are restricted and not available to the public, you must file either a FOIA request or, if the records are restricted because they contain classified national security information, a mandatory declassification review request (see part 1256 of this chapter for procedures to request access to information) to gain access to these materials. See 36 CFR 1256.76 for information on filing mandatory declassification review requests.

\* \* \* \* \*

7. Amend § 1250.12 by revising paragraph (c) to read as follows:

**§ 1250.12 What types of records are available in NARA's FOIA Reading Room?**

\* \* \* \* \*

(c) Any of this material that was created after October 31, 1996, will also be placed on NARA's Web site at <http://www.archives.gov/foia/electronic-reading-room.html>.

\* \* \* \* \*

8. Revise § 1250.14 to read as follows:

**§ 1250.14 If I do not use FOIA to request records, will NARA treat my request differently?**

If you request executive branch agency records that contain restrictions under the provisions of the FOIA, you must submit a FOIA request. Alternatively, you may submit a mandatory review request for those records that are restricted because they contain national security classified information. If you request records that are publicly available we will respond to your request as promptly as possible, whether you invoke FOIA or not.

9. Amend § 1250.20 to revise paragraph (a) and add new paragraph (d) to read as follows:

**§ 1250.20 What do I include in my FOIA request?**

\* \* \* \* \*

(a) Describe the records you wish to access with enough detail for NARA staff to find them with a reasonable amount of effort. The more information you provide, the better possibility NARA has of finding the records you requested. Information that helps us find records includes:

(1) The agencies, offices, or individuals involved; and

(2) The approximate date when the records were created.

\* \* \* \* \*

(d) You may find NARA's "Freedom of Information Act Reference Guide" helpful in making your request. The "Guide" is available on our Web site at <http://www.archives.gov/foia/foia-guide.html>. You may request a paper copy of the "Guide" by writing the NARA FOIA officer at the address provided in 36 CFR 1250.22(d). For additional information about the FOIA, you may refer directly to the statute (5 U.S.C. 552, as amended).

10. Add new paragraph (g) to § 1250.22 to read as follows:

**§ 1250.22 Where do I send my FOIA request?**

\* \* \* \* \*

(g) In accordance with the provisions of Executive Order 13392, NARA has established FOIA Customer Service

Centers and designated FOIA Public Liaisons at all NARA facilities that process FOIA requests. If you have questions about the processing of your FOIA request, you may contact the designated FOIA Customer Service Center for the facility processing your request. If you continue to have concerns after that initial contact, you may wish to contact the designated FOIA Public Liaison for the facility processing your request. A list of NARA's FOIA Customer Service Centers and Public Liaisons can be found at <http://www.archives.gov/foia/contacts.html>. You may request a paper copy of the list by writing to the NARA FOIA Officer at the address provided in paragraph (d) of this section.

11. Revise § 1250.24 to read as follows:

**§ 1250.24 Will you accept a FOIA request electronically?**

Yes, you may submit a FOIA electronically to [foia@nara.gov](mailto:foia@nara.gov). The body of the message must contain all of the information listed in § 1250.20.

12. Amend § 1250.26 by revising paragraphs (a) and (e) to read as follows:

**§ 1250.26 How quickly will NARA respond to my FOIA request?**

(a) NARA will acknowledge all FOIA requests within 20 working days. We will inform you if a response to your request may take longer than the usual amount of time because of its complexity.

\* \* \* \* \*

(e) If you have requested Presidential records and NARA grants you access, we must inform the incumbent and former Presidents of our intention to disclose information from those records. After receiving the notice, and pursuant to the provisions of the current Executive Order on the implementation of the Presidential Records Act, the incumbent and former president have at least 90 days in which to invoke Executive Privilege to deny access to the requested information. NARA will send you an initial response to your FOIA request within 20 working days and inform you of the status of your request. However, the final response to your FOIA request can only be made at the end of the Presidential notification period.

\* \* \* \* \*

13. Amend § 1250.28 by revising the section heading and paragraph (b) to read as follows:

**§ 1250.28 Will NARA ever expedite the review of the records I requested under the FOIA?**

\* \* \* \* \*

(b) We can expedite only those requests, or segments of requests, for records under our control. If another agency controls the records you requested, NARA must refer the request to that agency for processing. If your request is referred to another agency, we will inform you and suggest that you seek expedited review from that agency. Similarly, some records under our control contain information that remains under the control of another agency, such as classified national security information, which may require referral to the classifying agency for declassification review. NARA cannot expedite the review of national security classified records nor can we shorten the Presidential notification period described in § 1250.26(e).

14. Revise § 1250.32 to read as follows:

**§ 1250.32 How quickly will NARA process an expedited request?**

We will respond to your request for expedited processing within 10 calendar days of our receipt of your request. If we grant your request, the NARA office responsible for the review of the requested records will process your request as quickly as possible. We will inform you if we deny your request for expedited processing. If you decide to appeal that denial, we will also expedite our review of your appeal.

15. Amend § 1250.56 by revising paragraph (c)(1) to read as follows:

**§ 1250.56 Fee schedule for NARA operational records.**

\* \* \* \* \*

(c) *Reproduction fees*—(1) Self-service photocopying. At NARA facilities with self-service photocopiers, you may make reproductions of released paper documents. For reproductions made at NARA facilities in the Washington, DC area the cost is 25 cents per page. For reproductions made in NARA field locations the cost is 20 cents per page.

16. Revise § 1250.60 to read as follows:

**§ 1250.60 How will NARA determine if I am eligible for a fee waiver or fee reduction for NARA operational records?**

(a) If you request a fee waiver, NARA considers furnishing the requested records without charge or at a fee below those listed in § 1250.56. To be eligible for a fee waiver or reduction you must explain:

(1) How the requested records pertain to the operations and activities of the Federal Government. There must be a clear connection between the identifiable operations or activities of the federal government and the subject of your request.

(2) How the release will reveal meaningful information about Federal Government activities that is not already publicly known.

(3) How the disclosure to you will advance the understanding of the general public on the issue.

(4) Your expertise or understanding of the requested records.

(5) How you intend to disseminate the requested information to a broad spectrum of the public.

(6) How disclosure will lead to a significantly greater understanding of the Government by the public.

(b) After reviewing your request and determining that there is a substantial public interest in release, NARA also reviews your request to determine if the disclosure will further your commercial interests. If it does, you are not eligible for a fee waiver or reduction.

17. Amend § 1250.74 by revising paragraph (c) to read as follows:

**§ 1250.74 Where do I send my appeal?**

\* \* \* \* \*

(c) If you invoke FOIA and are denied access to national security information accessioned into the National Archives of the United States, you must appeal determinations that the records remain classified for reasons of national security to the agency with responsibility for declassifying that information. Only designated officials of the originating agency or responsible agency, or by NARA under a written authority, may allow access to accessioned records that contain classified national security information. NARA provides you with the necessary appeal information in those cases. You can find additional information on access to national security classified records at NARA in 36 CFR part 1256.

18. Revise § 1250.76 to read as follows:

**§ 1250.76 May I submit my FOIA appeal electronically?**

Yes, you may submit a FOIA appeal to [nara@foia.gov](mailto:nara@foia.gov). The body of the message must contain all of the information listed in § 1250.72(b).

19. Revise § 1250.78 to read as follows:

**§ 1250.78 How does NARA handle appeals?**

(a) NARA will respond to your appeal within 20 working days after its receipt by the appropriate designated appeal official. If we reverse or modify our initial decision, we will inform you in writing and reprocess your request. If we do not change our initial decision, our response to you will explain the reasons for our decision, any FOIA

exemptions that apply, and your right to judicial review of our decision.

(b) An adverse determination by the Archivist or Deputy Archivist is the final action by NARA.

(c) An appeal ordinarily will not be acted on if it becomes a matter of FOIA litigation.

(d) If you wish to seek review by a court of any adverse determination, you must first appeal it under this section.

20. Revise § 1250.80 to read as follows:

**§ 1250.80 How does a submitter identify records containing confidential commercial information?**

A submitter of confidential commercial information must 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 (b)(4) of the FOIA. These designations will expire 10 years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

21. Amend § 1250.82 by revising the introductory paragraph and paragraphs (a) and (b); redesignating paragraphs (c) through (e) as paragraphs (e) through (g) respectively; and adding new paragraphs (c) and (d) to read as follows:

**§ 1250.82 How will NARA handle a FOIA request for confidential commercial information?**

If NARA receives a FOIA request for records containing confidential commercial information or for records that we believe may contain confidential commercial information, we will follow these procedures:

(a) If, after reviewing the records in response to a FOIA request, we believe that the records may be released, we will make reasonable efforts to inform the original submitter of the confidential commercial information of our decision. The notice to the submitter will describe the confidential commercial information requested or include copies of the requested records.

(b) When the request is for information from a single or small number of submitters, NARA will send a notice via registered mail to the submitter's last known address. Our notice to the submitter will include a copy of the FOIA request and will tell the submitter the time limits and procedures for objecting to the release of the requested material.

(c) When the request is for information from multiple submitters,

notification may be made by posting on our Web site or publishing the notice in a place reasonably likely to inform the submitters of the proposed disclosure.

(d) Submitters have 10 working days from the receipt of our notice or the date of posting or publishing the notice to object to the release and to explain the basis for the objection. The NARA FOIA Officer may extend this period as appropriate.

\* \* \* \* \*

22. Amend § 1250.84 by revising the section heading and revising paragraph (c) to read as follows:

**§ 1250.84 How do you serve a subpoena or other legal demand for NARA operational records?**

\* \* \* \* \*

(c) Regulations concerning service of a subpoena duces tecum or other legal demand for archival records accessioned into the National Archives of the United States, records of other agencies in the custody of the Federal records centers, and donated historical materials are located at 36 CFR 1256.4.

Dated: September 4, 2007.

**Allen Weinstein,**

*Archivist of the United States.*

[FR Doc. E7-17913 Filed 9-10-07; 8:45 am]

BILLING CODE 7515-01-P

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R05-OAR-2006-1023; FRL-8464-9]

**Approval and Promulgation of Air Quality Implementation Plans; Minnesota**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a site specific revision to the Minnesota State Implementation Plan (SIP) for particulate matter less than 10 microns (PM-10) for Lafarge North America Corporation (Lafarge), Childs Road Terminal located in Saint Paul, Ramsey County, Minnesota. In its December 18, 2006, submittal, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve Lafarge's federally enforceable state operating permit into the Minnesota PM SIP, and to revoke the previously approved Administrative Order for Lafarge from the PM-10 SIP.

**DATES:** Comments must be received on or before October 11, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2006-1023, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

- *E-mail:* mooney.john@epa.gov.
- *Fax:* (312) 886-5824.
- *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, (AR-18J), Air Programs Branch, Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

- *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, (AR-18J), Air Programs Branch, Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:**

Christos Panos, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8328, *panos.christos@epa.gov*.

**SUPPLEMENTARY INFORMATION:** In the Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that

are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: August 29, 2007.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E7-17715 Filed 9-10-07; 8:45 am]

BILLING CODE 6560-50-P

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[EPA-R03-OAR-2007-0533; FRL-8465-8]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Centre County 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan and 2002 Base Year Inventory**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a redesignation request and State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the Centre County ozone nonattainment area (State College Area) be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). EPA is proposing to approve the ozone redesignation request for State College Area. In conjunction with its redesignation request, PADEP submitted a SIP revision consisting of a maintenance plan for State College Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is proposing to make a determination that the State College Area has attained the 8-hour ozone NAAQS, based upon three years of complete, quality-assured ambient air quality ozone monitoring data for 2004-2006. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that the State College Area has met the criteria for redesignation to attainment specified in the Clean Air Act. In addition, PADEP submitted a 2002 base year inventory for the State College Area which EPA is proposing to approve as a SIP revision. EPA is also providing information on the status of its adequacy determination for the motor vehicle emission budgets