

By the Commission.

Erica A. Barker,  
Secretary.

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## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### 45 CFR Part 2507

RIN 3045–AA59

### Procedures for Disclosure of Records Under the Freedom of Information Act

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Corporation for National and Community Service (operating as AmeriCorps) is updating its regulations for processing requests for records under the Freedom of Information Act (FOIA) to reflect changes made in the FOIA Improvement Act of 2016 and to make the regulations more user friendly through plain language.

**DATES:** Written comments must be submitted by July 1, 2022.

**ADDRESSES:** You may send your comments electronically through the Federal government's one-stop rulemaking website at [www.regulations.gov](http://www.regulations.gov). You may also

send your comments to Stephanie Soper at [ssoper@cns.gov](mailto:ssoper@cns.gov) or by mail to AmeriCorps, 250 E Street SW, Washington DC 20525.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Soper, AmeriCorps FOIA Officer, at 202–606–6747 or [ssoper@cns.gov](mailto:ssoper@cns.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. Background

On June 30, 2016, President Obama signed into law the FOIA Improvement Act of 2016 (Pub. L. 114–185). The Act addresses a range of procedural issues that affect agency FOIA regulations, including requirements that agencies proactively make certain records available on their websites, establish a minimum of 90 days for requesters to file an administrative appeal, and provide dispute resolution services at various times throughout the FOIA process. With regard to exemptions from disclosure, the Act provides that the deliberative process protection for a record sunsets after 25 years, codifies the Department of Justice's "foreseeable harm" standard, and amends FOIA Exemption 5. The Act also creates a new "Chief FOIA Officer Council" and adds two new elements to agency Annual FOIA Reports.

#### II. Overview of Proposed Rule

The rule being proposed today would incorporate the FOIA Improvement Act of 2016 changes into AmeriCorps' FOIA regulations. The rule would incorporate FOIA Improvement Act of 2016 changes by, among other things:

- Providing that the deliberative process protection for a record exempt from disclosure sunsets after 25 years;
- Incorporating the "foreseeable harm" standard by providing that when a FOIA exemption gives Federal agencies the discretion to either withhold or release records, the agency will release the records or information whenever it determines that disclosure would not foreseeably harm an interest that the exemption protects; and
- Providing that the deliberative process privilege of Exemption 5 of the FOIA will not apply to records created 25 years or more before the date when the records were requested.

The rule would also update AmeriCorps' processing fees to align with current agency salary ranges and make several non-substantive changes to make the regulation more user-friendly, including breaking the regulation into different subparts and shortening section headings.

The following table provides a comparison of the current AmeriCorps FOIA regulations and the proposed changes.

Current 45 CFR section	Proposed 45 CFR section	Description of changes
2507.1 Definitions .....	Subpart A—General Provisions ..... 2507.3 Definitions .....	New subpart designation. Replaces definition of "Act" with "Freedom of Information Act (FOIA)" for clarity. Replaces definition of "Corporation" with definition of "AmeriCorps." Moves definition of "Freedom of Information Act Officer (FOIA Officer)" to a new section § 2507.4 describing AmeriCorps' FOIA officials and their responsibilities. Deletes definition for "electronic data" because these terms are not used. Deletes definition for "public interest" because the meaning of the term is explained in the one section where it appears at proposed § 2507.24. Adds definitions for "complex request," "consultation," "exemptions," "expedited processing," "frequently requested records," "multitrack processing," "Office of Government Information Services (OGIS)," "proactive disclosures," and "referral." Moves and revises definitions for "commercial use request," "educational institution," "non-commercial scientific institution," "representative of the news media," "review" (changed to "review fees"), and "search" (changed to "search fees") to subpart G where they are exclusively used. Revises the definition of "FOIA request" to move the sentence about how written requests may be received to § 2507.6(b). Revises the definition of "record" for simplification.
2507.2 What is the purpose of this part.	2507.1 Scope .....	Deletes sentence about information customarily furnished to the public because such information does not require FOIA requests. Adds that the rules should be read in conjunction with the FOIA statute and OMB guidelines and cross references Privacy Act regulations.
	2507.2 Policy .....	New section. Addresses how AmeriCorps approaches its duties and responsibilities under FOIA.
	2507.4 Agency FOIA Officials .....	New section. Lists AmeriCorps' authorized FOIA officials' positions and their roles.

Current 45 CFR section	Proposed 45 CFR section	Description of changes
	Subpart B—Proactive Disclosure of Agency Records.	New subpart designation.
2507.3 What types of records are available for disclosure to the public.	2507.5 Records Available on Agency Website.	Replaces section on what records AmeriCorps will provide when asked with a section on what information AmeriCorps proactively makes available to the public by posting on its website. Moves information on duplication to relevant sections and information on creation of new records to § 2507.8.
2507.4 How are requests for records made.	Subpart C—Filing a FOIA Request	New subpart designation.
	2507.6 Requirements for FOIA Requests.	See breakdown by paragraph below.
(a) How made and addressed .....	(a) General information .....	New paragraph. Clarifies that AmeriCorps has a centralized system for processing FOIA requests but that State service commissions are not subject to FOIA.
(b) Request must adequately describe the records sought.	(b) Directions for making requests	Allows for email submissions and online submissions of FOIA requests, in addition to hard copy requests. (Provision regarding the electronic reading room is at proposed § 2507.5).
	(c) Description of records sought ..	Deletes specific required information for FOIA requests, as long as the requester provides enough detail for personnel to find responsive records with a reasonable amount of effort. Incorporates description of what happens if the records are not sufficiently described that is in current § 2507.5(b).
	(d) Third party requests .....	Specifies what happens if the records pertain to a third party and additional information that may be required.
(c) Agreement to pay fees .....	(e) Date range for requested records.	Clarifies that the request may seek records in a specific date range.
	2507.7 Requests for Archived Records.	Deleted because the proposed rule would not charge for fees totaling \$25.00 or less. See proposed § 2507.19(d).
2507.5 How does the Corporation process requests for records.	Subpart D—Agency Processing and Response to FOIA Requests.	New section to clarify to whom requesters should direct requests for records that have been archived.
(a) Initial processing .....	2507.8 Processing of Requests ..	New subpart designation.
(b) Insufficiently identified records ..	(a) Authority to grant or deny requests.	(See breakdown by paragraph below.).
(c) Furnishing records .....	[See 2507.6(c)] .....	Clarifies that the FOIA Officer grants or denies the initial request.
(d) Format of the disclosure of a record.	(b) Providing records .....	Moves provision on how FOIA Officer addresses requests for records that are insufficiently described to § 2507.6(c), and time period for response to § 2507.10(f).
	(c) Records previously released ....	Simplifies current provisions to state that AmeriCorps will ordinarily provide the record in electronic form or in other forms upon request if readily reproducible in that form.
(e) Release of record .....	(d) Consultation, referral, and coordination.	New paragraph. Establishes that AmeriCorps will ordinarily release a record if it has released it in the past.
(f) Form and content of notice granting request.	2507.10 Timing of Responses to Requests.	New paragraph. Establishes steps AmeriCorps will take when it determines another Federal agency is better able to determine whether a record is exempt from disclosure.
(g) Form and content of notice denying the request.	2507.11 Responses to Requests	Consolidates all information on timing for responses to FOIA requests and adds a new multi-track processing system based on the complexity of the requests.
2507.6 Under what circumstances may the Corporation extend the time limits for an initial response.	(c)(3) Adverse determinations on requests.	Adds that AmeriCorps will first acknowledge the FOIA request and provide the requester with a tracking number.
	2507.10 Timing of Responses to Requests.	Clarifies what qualifies as an adverse determination or denial of a request.
	Subpart F—Appeals and Alternative Dispute Resolution.	Consolidates all information on timing for responses to FOIA requests and adds a new multi-track processing system based on the complexity of the requests.
2507.7 How does one appeal the Corporations denial of access to records.	2507.14 Administrative Appeals	New subpart designation.
	2507.15 Mediation and Dispute Resolution Services.	Increases time limit for submitting an appeal to 90 days after the date of the adverse determination. Identifies where to send an appeal. Refers to the FOIA Appeals Officer rather than the Chief Operating Officer as the position designated to act on appeals.
2507.8 How are fees determined	Subpart G—Fees .....	New section. Establishes requesters' right to seek dispute resolution services from FOIA Public Liaison or mediation services from OGIS.
(a) Policy .....	2507.17 Fees Overview .....	New subpart designation. See breakdown by paragraphs and proposed sections below.
(b) Types of request .....	2507.18 Requester Categories and Fees Charged.	Consolidates provisions regarding how AmeriCorps will charge fees.
		Consolidates information to provide a table for types of categories and fees.

Current 45 CFR section	Proposed 45 CFR section	Description of changes
(c) Direct costs .....	2507.16 Definitions for this Subpart.	New section. Consolidates definitions for requester categories and types of fees into one section. Provisions regarding direct costs are contained within definitions for “duplication fees,” “review fees,” and “search fees.”
(d) Charging of fees .....	2507.18 Requester Categories and fees charged.	Consolidates fees into a table. Increases fees for photocopies from 10¢ to 20¢ per page. Increases search fee to \$70 per hour (in place of \$12, \$28, or \$41 per hour depending on who conducts the search).
	2507.19 Circumstances in Which Fees May Not Be Charged.	New section. Establishes when AmeriCorps may not charge fees and establishes 1,000 pages as the threshold for what is considered a voluminous request.
(e) Consent to pay fees .....	2507.20 Notice of Anticipated Fees in Excess of \$25.00.	Clarifies steps AmeriCorps will take if it estimates fees to be assessed will exceed \$25.00, based on the category of the requester.
(f) Advance payment .....	2507.23 Collection and Payment of Fees.	Provides additional information on AmeriCorps’ ability to require an advance payment.
(g) Interest on non-payment .....	2507.21 Other Charges .....	Adds provision for special services, such as certifying records are true copies.
(h) Aggregating requests .....	2507.22 Aggregating Requests to Ensure Payment of Fees.	Replaces “solid basis” with “reasonable basis.”
(i) Making payment .....	2507.23 Collection and Payment of Fees.	Adds that AmeriCorps is not required to accept payments in installments.
(j) Fee processing .....	.....	Deleted. Proposed rule does not provide for charging fees that total \$25.00 or less.
(k) Waiver or reduction of fees .....	2507.24 Fee Waivers or Fee Reductions.	Specifies factors AmeriCorps will consider in determining whether disclosure of the information is in the public interest and whether the disclosure is primarily in the commercial interest of the requester.
2507.9 What records will be denied disclosure under this part.	2507.9 Reasons for Withholding Some Records.	Adds steps AmeriCorps will take in documenting the reason for withholding. Adds expiration to deliberative process of Exemption 5.
2507.10 What records are specifically exempt from disclosure.	2507.11 Responses to Requests.	Deleted. Instead refers to exemptions set out in Act. See proposed definition of “exemptions.”
2507.11 What are the procedures for the release of commercial business information.	Subpart E—Confidential Commercial Information.	Replaces “business submitter” with “submitter” to include all submitters of confidential commercial information, rather than just business submitters. Adds that the notification to the submitter will include notice of what information AmeriCorps proposes to disclose and withhold.
	2507.12 Definitions for this Subpart.	Establishes that AmeriCorps will consider the specific grounds the submitter asserts for non-disclosure rather than the general criteria listed in the current regulation.
	2507.13 Procedures for Release of Commercial Information.	Changes the advance notice of the time period for disclosure from six working days to five working days.
2507.12 Authority .....	.....	Deleted because authority is stated after the table of contents.
	Subpart H—Miscellaneous .....	New subpart designation.
	2507.25 Preservation of Records	New section. Clarifies how AmeriCorps preserves records.
	2507.26 Annual Reporting Requirements.	New section. Identifies what reports AmeriCorps will submit to the Attorney General.
	2507.27 Rights and Services Qualified by the FOIA Statute.	New section. States that the CFR part should not be interpreted to entitle persons to rights or services for which they are not entitled under FOIA.
Appendix A—FOIA Request Letter (Sample).	.....	Deleted. To be made available on website instead of CFR to allow for modifications to keep current.
Appendix B—FOIA Appeal for Release of Information.	.....	Deleted. To be made available on website instead of CFR to allow for modifications to keep current.

### III. Regulatory Analyses

#### A. Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of

harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs in the Office of Management and Budget does not anticipate that this will be a significant regulatory action.

#### B. Congressional Review Act (Small Business Regulatory Enforcement Fairness Act of 1996, Title II, Subtitle E)

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, AmeriCorps will submit for an interim or final rule a report to each House of

the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs in the Office of Management and Budget anticipates that this will not be a major rule under 5 U.S.C. 804 because this rule will not result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3)

significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

#### C. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), AmeriCorps certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Therefore, AmeriCorps has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for rules that are expected to have such results.

#### D. Unfunded Mandates Reform Act of 1995

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, State, local, or Tribal governments in the aggregate, or impose an annual burden exceeding \$100 million on the private sector.

#### E. Paperwork Reduction Act

Under the PRA, an agency may not conduct or sponsor a collection of information unless the collections of information display valid control numbers. This proposed rule does not contain information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

#### F. Executive Order 13132, Federalism

Executive Order 13132, Federalism, prohibits an agency from publishing any rule that has Federalism implications if the rule imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have any Federalism implications, as described above.

#### G. Takings (E.O. 12630)

This proposed rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630 because this proposed rule does not affect individual property rights protected by the Fifth Amendment or involve a compensable

“taking.” A takings implication assessment is not required.

#### H. Civil Justice Reform (E.O. 12988)

This proposed rule complies with the requirements of Executive Order 12988. Specifically, this rule: (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

#### I. Consultation With Indian Tribes (E.O. 13175)

AmeriCorps recognizes the inherent sovereignty of Indian Tribes and their right to self-governance. We have evaluated this rule under our consultation policy and the criteria in E.O. 13175 and determined that this rule does not impose substantial direct effects on federally recognized Tribes.

#### J. Clarity of This Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each proposed rule we publish must: (a) Be logically organized; (b) use the active voice to address readers directly; (c) use clear language rather than jargon; (d) be divided into short sections and sentences; and (e) use lists and tables wherever possible. If you feel that we have not met these requirements, please send us comments by one of the methods listed in the ADDRESSES section. To help us revise the rule, your comments should be as specific as possible.

#### List of Subjects in 45 CFR Part 2507

Freedom of information.

For the reasons stated in the preamble, AmeriCorps proposes to revise 45 CFR part 2507 to read as follows:

#### ■ 1. Revise Part 2507 to read as follows:

### PART 2507—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

#### Subpart A—General Provisions

Sec.

- 2507.1 Scope.
- 2507.2 Policy.
- 2507.3 Definitions.
- 2507.4 Agency FOIA Officials.

#### Subpart B—Proactive Disclosures of Agency Records

- 2507.5 Records Available on Agency Website.

#### Subpart C—Filing a FOIA Request

- 2507.6 Requirements for FOIA Requests.
- 2507.7 Requests for Archived Records.

#### Subpart D—Agency Processing and Responses to FOIA Requests

- 2507.8 Processing of Requests.
- 2507.9 Reasons for Withholding Some Records.
- 2507.10 Timing of Responses to Requests.
- 2507.11 Responses to Requests.

#### Subpart E—Confidential Commercial Information

- 2507.12 Definitions for this Subpart.
- 2507.13 Procedures for Release of Commercial Information.

#### Subpart F—Appeals and Alternative Dispute Resolution

- 2507.14 Administrative Appeals.
- 2507.15 Mediation and Dispute Resolution Services.

#### Subpart G—Fees

- 2507.16 Definitions for This Subpart.
- 2507.17 Fees Overview.
- 2507.18 Requester Categories and Fees Charged.
- 2507.19 Circumstances in Which Fees May Not Be Charged.
- 2507.20 Notice of Anticipated Fees in Excess of \$25.00.
- 2507.21 Other Charges.
- 2507.22 Aggregating Requests to Ensure Payment of Fees.
- 2507.23 Collection and Payment of Fees.
- 2507.24 Fee Waivers or Fee Reductions.

#### Subpart H—Miscellaneous

- 2507.25 Preservation of Records.
- 2507.26 Annual Reporting Requirements.
- 2507.27 Rights and Services Qualified by the FOIA Statute.

**Authority:** 5 U.S.C. 552, 42 U.S.C. 12501 *et seq.*

#### Subpart A—General Provisions

##### § 2507.1 Scope.

This part contains the rules that the Corporation for National and Community Service, operating as AmeriCorps (“the Agency” or “AmeriCorps”), follows in processing requests for records under the Freedom of Information Act (“FOIA”), 5 U.S.C. 552. These rules should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (“OMB Guidelines”). Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed in accordance with AmeriCorps’ Privacy

Act regulations, 45 CFR part 2508, as well as under this part.

#### § 2507.2 Policy.

(a) AmeriCorps follows a balanced approach in administering the FOIA. The Agency recognizes the right of the public to seek access to information in its possession. It also recognizes the legitimate interests of organizations or persons who have submitted records to AmeriCorps or who would otherwise be affected by release of records. AmeriCorps has no discretion to release certain records, such as trade secrets and confidential commercial information, prohibited from release by law. The Agency provides the fullest responsible disclosure that is consistent with the requirements of the FOIA.

(b) When a FOIA exemption gives Federal agencies the discretion to either withhold or release records, AmeriCorps releases the records or information whenever it determines that disclosure would not foreseeably harm an interest that the exemption protects. However, this practice does not create any right enforceable in court.

#### § 2507.3 Definitions.

As used in this part:

*Agency* is any executive agency, military agency, government corporation, government-controlled corporation, or other establishment in the Executive Branch of the Federal Government, or any independent regulatory agency. AmeriCorps is an agency.

*AmeriCorps or the Agency* means the Corporation for National and Community Service, which operates as AmeriCorps.

*Complex request* is a request that typically seeks a high volume of material or requires additional steps to process, such as the need to search for records in multiple locations.

*Consultation* is when AmeriCorps locates a record that contains information of interest to another agency, and, before any final determination is made, AmeriCorps asks that other agency for its views on whether or not the records can be released to the requester.

*Exemptions* are the nine categories of information that are not required to be released in response to a FOIA request because release would be harmful to a government or private interest. These categories are called “exemptions” from disclosure.

*Expedited processing* is the FOIA response track granted in certain limited situations to process FOIA requests ahead of other pending requests.

*FOIA request* is a written request for Agency records, made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business—but not including a Federal agency, an agent of a foreign government, an order from a court, or a fugitive from the law—that either explicitly or implicitly involves the FOIA, or this part.

*Freedom of Information Act (FOIA)* is a United States Federal law that grants the public access to records possessed by government agencies. Upon written request, U.S. Government agencies are required to release records, except to the extent the records fall under one of the nine exemptions listed in the Act.

*Frequently requested records* are records that have been requested three or more times from AmeriCorps and released either in full or with the same information withheld.

*Multitrack processing* is a system that divides incoming FOIA requests into processing tracks according to their complexity.

*Office of Government Information Services (OGIS)* is an office within the National Archives and Records Administration that offers mediation services to resolve disputes between FOIA requesters and agencies, as a non-exclusive alternative to litigation. OGIS also reviews agency FOIA compliance, policies, and procedures and makes recommendations for improvement.

*Proactive disclosures* are records that agencies make publicly available without waiting for a specific FOIA request.

*Record* means information, regardless of the form in which it is stored or its characteristics, which is created or obtained by an agency and is under the control of the agency at the time of the request. It includes information maintained for the agency by an entity under government contract for records management purposes. It does not include records that do not already exist and that would have to be created specifically to respond to a request.

*Referral* occurs when an agency locates a record that originated with, or is of otherwise primary interest to, another agency. The receiving agency will forward that record to the other agency to process the record and to provide the final determination directly to the requester.

*Search* is the process of looking for and retrieving records or information responsive to a request.

*Simple request* is a FOIA request that an agency anticipates will involve a small volume of material or which the agency will be able to process relatively quickly.

*Tolling* means temporarily stopping the running of a time limit.

#### § 2507.4 Agency FOIA Officials.

The following are AmeriCorps’ authorized FOIA officials, each of whom will be identified on *americorps.gov*, and their roles.

(a) *The Chief FOIA Officer:*

(1) Has overall responsibility for AmeriCorps’ compliance with the FOIA;

(2) Provides high-level oversight and support to AmeriCorps’ FOIA program;

(3) Recommends adjustments to AmeriCorps’ practices, personnel, and funding, as needed, to improve FOIA administration, including through the Chief FOIA Officer Report submitted annually to the U.S. Department of Justice;

(4) Tells the FOIA Office of all significant developments with respect to the FOIA;

(5) Is responsible for offering training to agency staff regarding their FOIA responsibilities;

(6) Serves as the primary liaison with the Office of Government Information Services and the U.S. Department of Justice’s Office of Information Policy; and

(7) Reviews, at least annually, all aspects of AmeriCorps’ administration of the FOIA to ensure compliance with the FOIA’s requirements.

(b) *The FOIA Officer* receives, tracks, and processes the Agency’s FOIA requests, including making final release determinations. The FOIA Officer is responsible for program direction, original denials, and policy decisions required for effective implementation of the Agency’s FOIA program.

(c) *The FOIA Appeals Officer* receives and act upon appeals from requesters whose initial requests for the Agency’s records have been denied, in whole or in part.

(d) *The FOIA Public Liaison* serves as the official to whom a FOIA requester can raise concerns about the services received, following an initial response from the FOIA Officer. In addition, the FOIA Public Liaison assists, as appropriate, in reducing delays, increasing transparency, answering requesters’ questions about the status of their requests, and resolving disputes.

#### Subpart B—Proactive Disclosures of Agency Records

##### § 2507.5 Records Available on Agency Website.

(a) AmeriCorps regularly updates and posts the following on its public website, *americorps.gov*:

(1) Information that is required to be published in the **Federal Register** under 5 U.S.C. 552(a)(1) and:

(2) Administrative staff manuals and instructions to staff that affect any member of the public.

(3) Statements of policy and interpretation adopted by AmeriCorps and not published in the **Federal Register**.

(4) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of administrative cases.

(b) AmeriCorps makes available on its FOIA web page, <https://americorps.gov/about/agency-overview/foia-privacy-act>:

(1) Records that are required by the FOIA to be made available for public inspection and copying under 5 U.S.C 552(a)(2); and

(2) Records that, because of their subject matter, have become or are likely to become frequently requested records or the subject of subsequent requests for substantially the same records. AmeriCorps will decide on a case-by-case basis whether records fall into this category, based on the following factors:

(i) Previous experience with similar records;

(ii) The characteristics of the records, including their nature and the type of information contained in them; and

(iii) The identity and number of requesters and whether there is widespread media, historical, academic, or commercial interest in the records.

(c) For help from the FOIA Officer or the FOIA Public Liaison in finding proactively disclosed records, members of the public may contact AmeriCorps at [foia@cns.gov](mailto:foia@cns.gov) or at: AmeriCorps, Office of the General Counsel, 250 E Street SW, Washington, DC 20525.

### Subpart C—Filing a FOIA Request

#### § 2507.6 Requirements for FOIA Requests.

(a) *General information.* AmeriCorps has a centralized system for responding to FOIA requests. AmeriCorps headquarters is the central processing point for all requests for Agency records, regardless of where they are stored. State service commissions are not part of AmeriCorps and are not Federal agencies, and thus are not subject to the FOIA.

(b) *Directions for making requests.* All FOIA requests must be submitted in writing to the FOIA Officer at AmeriCorps headquarters in one of the following ways:

(1) *By email:* [foia@cns.gov](mailto:foia@cns.gov). Including a phone number with a request will help with processing.

(2) *By online submission:* via the National FOIA Portal at [www.FOIA.gov](http://www.FOIA.gov).

(3) *By mail:* AmeriCorps, Attn.: FOIA Officer, Office of General Counsel, 250 E Street SW, Washington, DC 20525.

(4) *By fax:* (202) 606–3467.

(c) *Description of records sought.*

Requesters must provide enough detail about the Agency's records they seek that AmeriCorps personnel can find responsive records, if they exist, with a reasonable amount of effort. To the extent possible, requesters should include information that helps identify the records, such as dates, titles or names, authors, recipients, subject matter of the records, or assigned reference numbers.

(1) If a request does not reasonably describe the records sought, AmeriCorps' response to the request may be delayed or denied. Requesters may provide a telephone number or email address in their request that AmeriCorps can use to contact them for clarification or to help them narrow down a request that would otherwise be unduly burdensome. Requesters may adjust their request or ask for advice on writing a request by sending a note to [foia@cns.gov](mailto:foia@cns.gov).

(2) When AmeriCorps determines that a request does not sufficiently describe the records sought, it will ask the requester for further information. If the requester does not respond to a request for additional information within thirty (30) working days, the request may be administratively closed at AmeriCorps' discretion. This administrative closure does not prejudice the requester's ability to submit a new request for further consideration with additional information.

(d) *Third party requests.* When a request for records pertains to a third party (that is, a person other than the requester), the requester may receive greater access by submitting a notarized authorization signed by the third party or a declaration, made in compliance with the requirements set forth in the FOIA, that the third party authorizes disclosure of the records to the requester, or proof that the third party is deceased (for example, a copy of a death certificate or a published obituary). If necessary, AmeriCorps may require additional information from a requester to verify that the third-party consents to disclosure. Alternatively, requesters may demonstrate an overriding public interest in the disclosure of information pertaining to a third party (for example, by producing evidence that alleged Government impropriety occurred, necessitating a disclosure of information related to official misconduct).

(e) *Date range for requested records.* Requesters may ask for a specific date range for a search, but requests may not ask for records that are anticipated for the future, but do not yet exist. As it

determines which records are responsive to a request, AmeriCorps ordinarily will include only records in its possession as of the date it begins its search.

#### § 2507.7 Requests for Archived Records.

In accordance with agency records schedules and General Records Schedules, AmeriCorps transfers permanent records to the National Archives and Records Administration ("National Archives"). Once these records are transferred, they are in the physical and legal custody of the National Archives. Accordingly, requests for retired AmeriCorps records should be submitted to the National Archives by mail addressed to: Special Access and FOIA Staff (NWCTF), 8601 Adelphi Road, Room 5500, College Park, MD 20740; by fax to (301) 837–1864; or by email to [specialaccess\\_foia@nara.gov](mailto:specialaccess_foia@nara.gov).

### Subpart D—Agency Processing and Response to FOIA Requests

#### § 2507.8 Processing of Requests.

(a) *Authority to grant or deny requests.* The FOIA Officer is authorized to grant or deny any requests for records maintained by AmeriCorps. If the request is for records under the control and jurisdiction of the Office of the Inspector General, the FOIA Officer will forward the request to the Inspector General for the initial determination and the reply to the requester.

(b) *Providing records.* AmeriCorps will provide copies only of records it has in its possession. AmeriCorps is not compelled to create new records to respond to a FOIA request, answer questions posed as FOIA requests, perform research for a requester, compile lists of selected items from its files, or provide a requester with statistical or other data, unless such data has been compiled previously and is available in the form of a record.

(1) AmeriCorps is required to provide only one copy of a record.

(2) AmeriCorps will ordinarily provide the record in electronic form. Requesters may specify the preferred form or format for the records they seek, and AmeriCorps will provide releasable records in that form or format if they are readily reproducible in that way and the format allows for any necessary redactions.

(3) If AmeriCorps cannot make a legible copy of a record to be released, it is not required to reconstruct the record. Instead, AmeriCorps will furnish the best copy possible and note the record's poor quality in its reply.

(c) *Records previously released.* If AmeriCorps has released a record, or a part of a record, to a requester in the past, it will ordinarily release it to a new requester. However, this principle does not apply if the previous release was unauthorized and AmeriCorps will not release it to the new requester if a statute forbids this disclosure, or if an exemption applies that did not apply earlier. If an exemption is the reason for denial, AmeriCorps will specify the exemption under which information is withheld.

(d) *Consultation, referral, and coordination.* When AmeriCorps reviews records in response to a request and determines that another agency of the Federal Government is better able to determine whether a record is exempt from disclosure under the FOIA and, if so, whether it should be released as a matter of discretion, AmeriCorps will proceed in one of the following ways:

(1) *Consultation.* When records originated with AmeriCorps but contain within them information of interest to another agency, or other Federal Government office, AmeriCorps consults with that other agency before making a release determination.

(2) *Referral.*

(i) When AmeriCorps believes that a different agency or other Federal Government office that is subject to the FOIA is best able to determine whether to disclose the record, AmeriCorps refers the responsibility for responding to the request regarding that record. Ordinarily, the agency that originated a record will be presumed to be best able to make the disclosure determination. However, if AmeriCorps and the originating agency jointly agree that AmeriCorps is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever AmeriCorps refers any part of the responsibility for responding to a request to another agency, it will document the referral, maintain a copy of the record that it refers, notify the requester of the referral, and tell the requester the name(s) of the agency to which the record was referred and that agency's FOIA contact information.

#### **§ 2507.9 Reasons for Withholding Some Records.**

(a) AmeriCorps records will be made available to the public unless it determines that such records should be withheld from disclosure under subsection 552(b) of the Act and/or in accordance with this part. Section 552(b) of the FOIA contains nine exemptions to the mandatory disclosure of records.

(b) AmeriCorps will:

(1) Withhold information under the FOIA only if disclosure is prohibited by law or it reasonably foresees that disclosure would harm an interest protected by an exemption.

(2) Consider whether partial disclosure of information is possible whenever it determines that a full disclosure of a requested record is not possible.

(3) Take reasonable steps necessary to segregate and release nonexempt information.

(4) Note in the record and response letter the basis for a redaction when it withholds information in a record, or an entire record.

(c) To the extent it properly can under an exemption, AmeriCorps will withhold information it obtains from any submitter that gave it to the agency in reliance on a statutory or regulatory provision for confidentiality. This section does not authorize the giving of any pledge of confidentiality by any officer or employee of AmeriCorps.

(d) The deliberative process privilege of Exemption 5 of the FOIA will not apply to records created 25 years or more before the date when the records were requested.

#### **§ 2507.10 Timing of Responses to Requests.**

(a) *In General.* AmeriCorps ordinarily will respond to requests according to their order of receipt.

(b) *Multitrack processing.* AmeriCorps processes requests in a multitrack system based on the date of receipt, the amount of work and time involved in processing the request, and whether the request qualifies for expedited processing. This multitrack processing system does not lessen the Agency's responsibility to process requests as quickly as possible.

(1) AmeriCorps uses three tracks:

(i) A track for simple requests that can be processed in 20 working days;

(ii) A track for complex requests that require more than 20 working days; and

(iii) A track for expedited processing.

(2) Within each track, processing will ordinarily proceed on a "first-in, first-out" basis, and rank-ordered by the date of receipt of the request, unless there are unusual circumstances as set forth in paragraph (c) of this section, or the requester is entitled to expedited processing as set forth in paragraph (e) of this section.

(3) If a request does not qualify as simple, AmeriCorps may give the requester an opportunity to limit the scope of the request in order to qualify for faster processing.

(c) *Unusual circumstances.* Whenever the statutory time limit for processing a

request cannot be met because of "unusual circumstances," as defined in the FOIA, and AmeriCorps extends the time limit on that basis, AmeriCorps will:

(1) Before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances and when AmeriCorps expects to complete processing the request; and

(2) When the extension exceeds 10 working days, AmeriCorps will:

(i) Notify the requester in writing of the right to seek dispute resolution services from the Office of Government Information Services (OGIS);

(ii) Give the requester an opportunity to modify the request or arrange an alternative time period for processing; and

(iii) Provide contact information for the FOIA Public Liaison.

(d) *Aggregating Requests to Satisfy Unusual Circumstances.* For the purposes of satisfying unusual circumstances under the FOIA, AmeriCorps may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. AmeriCorps will not aggregate multiple requests that involve unrelated matters.

(e) *Expedited processing.*

(1) Requests and appeals will be processed on an expedited basis whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of a person;

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if the request is made by a person who is 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 exist possible questions about the Government's integrity that affect public confidence.

(2) A requester who seeks expedited processing must submit a statement, certified to be true and correct, that explains in detail the basis for requesting expedited processing.

(i) For example, under paragraph (e)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that their primary professional activity or occupation is information dissemination, though it need not be their sole occupation. They must also clearly describe why there is

a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally.

(ii) As a matter of administrative discretion, AmeriCorps may waive the formal certification requirement.

(3) Within 10 calendar days of receiving a request for expedited processing, AmeriCorps will notify the requester of its decision whether to grant or deny the request. If AmeriCorps grants expedited processing, the request will be placed in the expedited processing track and be processed as soon as practicable. If AmeriCorps denies a request for expedited processing, it will act expeditiously on any appeal of that decision.

(f) *Tolling.* The 20-day period under paragraph (b)(1) of this section commences on the date that the request is first received by the FOIA Officer. The 20-day period will not be tolled by AmeriCorps except under the following circumstances:

(1) The FOIA Officer may make one request to the requester for information and will toll the 20-day period while waiting for the information. The time from this request to the FOIA Officer's receipt of a response that addresses the questions will be tolled.

(2) If the requester has indicated that they are willing to pay fees up to a certain amount, but the estimated fee exceeds that amount, the FOIA Officer will notify them of the higher estimated fees and ask if they wish to revise the amount of fees they are willing to pay or modify the request. The time from this request to the FOIA Officer's receipt of a response that addresses the questions will be tolled.

#### **§ 2507.11 Responses to Requests.**

(a) *In general.* To the extent practicable, AmeriCorps will communicate with requesters using electronic means, such as email.

(b) *Acknowledgment of requests.* AmeriCorps will acknowledge the request and inform the requester of the tracking number assigned to the request.

(c) *Determinations on requests.* In all determinations on requests, AmeriCorps will notify the requester in writing of the right to seek assistance from AmeriCorps' FOIA Public Liaison.

(1) *Grants of requests for records.* When AmeriCorps grants a request in for records in full, it will notify the requester in writing and provide the records. If fees apply, AmeriCorps will inform the requester of those fees and send them the requested records

promptly upon their payment of those fees.

(2) *Grants for other matters.* When AmeriCorps grants a request for a fee waiver, modification of a request, or expedited processing, it will notify the requester promptly, in writing.

(3) *Adverse determinations on requests.* If AmeriCorps denies a request in any respect, it will notify the requester in writing of the determination and their right to seek dispute resolution services from AmeriCorps' FOIA Public Liaison or the Office of Government Information Services.

(i) Adverse determinations, or denials of requests for records, include decisions that a record, or portion of it, is exempt; that the request does not reasonably describe the records sought; that the record is not subject to the FOIA, is not an agency record, does not exist, cannot be located, or has been destroyed; or that the record is not readily reproducible in the format sought by the requester.

(ii) Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited proceeding.

(iii) *Information provided in the case of a denial.* Response letters that deny all or part of a request will be signed by the person making the decision and will provide:

(A) In the case of records withheld in whole or in part, a general description of what has been withheld and an estimate of the volume of material withheld;

(B) the reasons for the denial, including, as applicable, a reference to the specific FOIA exemption that authorizes the withholding;

(C) an explanation of the requester's appeal rights as described in Subpart F and the name and contact information of the Agency's FOIA Appeals Officer.

#### **Subpart E—Confidential Commercial Information**

##### **§ 2507.12 Definitions for this Subpart.**

In addition to the definitions in § 2507.3, the following definitions apply to this subpart:

*Submitter* means any person or entity, including a corporation, state, or foreign government, but not including another Federal Government entity, that provides information, either directly or indirectly, to the Federal Government.

*Confidential commercial information* means commercial or financial information obtained by an agency from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

#### **§ 2507.13 Procedures for Release of Commercial Information.**

(a) *Notification to submitters of confidential commercial or financial information.* When AmeriCorps possesses confidential commercial or financial information, and receives a request for the records, the Agency will, before release of any information:

(1) Notify the submitter about the request and provide copies of the requested records;

(2) Tell the submitter what information it proposes to disclose and withhold in accordance with Exemption (b)(4) of the Act; and

(3) Require the submitter to inform the agency in writing, within 10 business days, if they object to any proposed disclosure of commercial or financial information in the records.

(b) *When notice to submitter is not required.* AmeriCorps will not give notice to a submitter of confidential commercial or financial information if:

(1) The Agency determines that the information shall not be disclosed;

(2) The information has previously been published or otherwise lawfully been made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(c) *Analysis of objection.* AmeriCorps will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(d) *Disclosure over the objection of a submitter.* Whenever AmeriCorps determines to disclose information over the objection of a submitter of commercial or financial information, it will send the submitter written notice that includes:

(1) A description of the commercial or financial information to be released to the requester;

(2) The reasons why the submitter's objection to release was not sustained;

(3) The date when the records will be disclosed, which shall be not less than 5 business days after the notice is sent.

(e) *Notice of suit for release.*

Whenever a requester brings suit to compel the disclosure of a submitter's commercial or financial information, AmeriCorps will promptly notify the submitter.

#### **Subpart F—Appeals and Alternative Dispute Resolution**

##### **§ 2507.14 Administrative Appeals.**

Whenever AmeriCorps denies a FOIA request, it will inform the requester of the reasons for the denial and of the requester's right to appeal the denial to the FOIA Appeals Officer.



(a) *What a requester may appeal.* A requester may appeal:

(1) The withholding of a document or part of a document;

(2) Denial of a fee waiver request;

(3) The type or amount of fees they were charged;

(4) Any other type of adverse determination under the FOIA; or

(5) A failure by AmeriCorps to conduct an adequate search for the requested records.

(b) *What a requester may not appeal.* A requester may not appeal the lack of a timely response.

(c) *When appeal is required.* A requester must generally submit a timely administrative appeal before they seek court review of the Agency's adverse determination.

(d) *Requirements for making an appeal.* A requester must:

(1) Make the appeal in writing;

(2) transmit or postmark the appeal within 90 calendar days after the date of adverse determination;

(3) clearly identify the assigned request number and the Agency determination they are appealing;

(4) mark the subject line of the appeal email, or letter and envelope, with "FOIA Appeal."

(e) *Where to file an appeal.* A requester may file an appeal by sending an email to [foia@cns.gov](mailto:foia@cns.gov) to the attention of the FOIA Appeals Officer, or a letter to: FOIA Appeals Officer, AmeriCorps, 250 E Street SW, Washington, DC 20525. There is no charge for filing an administrative appeal.

(f) *Adjudication of appeals.*

(1) The FOIA Appeals Officer will conduct *de novo* review and make the final determination on appeals.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(f) *Decisions on appeals.* The FOIA Appeals Officer will provide the decision on any appeal in writing within 20 days (excepting Saturdays, Sundays, and legal public holidays) from the date the FOIA Appeals Officer received the appeal. The FOIA Appeals Officer's determination of an appeal constitutes the Agency's final action.

(1) If the FOIA Appeals Officer's decision upholds the Agency's determination, the decision will:

(i) State the reasons for the affirmation, including any FOIA exemptions applied;

(ii) notify the requester of their statutory right to file a lawsuit; and

(iii) inform the requester of the mediation services offered by OGIS as a non-exclusive alternative to litigation.

(2) If the FOIA Appeals Officer's decision remands or modifies the

Agency determination, either in whole or in part, they will notify the requester of that determination in writing.

Thereafter, AmeriCorps will re-process the FOIA request in accordance with that determination and promptly send the records to the requester, unless a reasonable delay is justified.

#### **§ 2507.15 Mediation and Dispute Resolution Services.**

If a requester receives an adverse determination on a FOIA request, they have the right to seek dispute resolution services from the FOIA Public Liaison or mediation services from OGIS. Congress has charged OGIS with resolving FOIA disputes between Federal agencies and requesters. OGIS's mediation services are an alternative to litigation, but do not preclude it.

### **Subpart G—Fees**

#### **§ 2507.16 Definitions for this Subpart.**

In addition to the definitions in § 2507.3, the following definitions apply to this subpart:

*Commercial use request* is a FOIA request for a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. The Agency's decision to place a requester in the commercial use category will be made on a case-by-case basis, in consideration of the requester's intended use of the information.

*Direct costs* are the expenses AmeriCorps incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. Direct costs do not include overhead expenses such as the costs of space, or of heating or lighting a facility.

*Duplication fees* are the reasonable direct costs of making copies of records to respond to a FOIA request, including the cost of materials to produce paper copies and materials plus operator time to produce tapes, disks, or other media.

*Educational institution* is any school that operates a program of scholarly research. To qualify for this fee category, a requester must show that the request is authorized by, and made under the auspices of, an educational institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research. The request must serve the scholarly research goals of the institution rather than an individual research goal.

*Fee waiver* is a waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied, including that the information is in the public interest

and is not requested for a commercial interest.

*Noncommercial scientific institution* is an institution that is not operated on a "commercial" basis, as defined in paragraph (b)(1) of this section, 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. A requester in this category must show that the request is authorized by, and made under the auspices of, a qualifying institution and that the records are sought to further scientific research and are not for a commercial use.

*Representative of the news media* is 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. In this clause, the term "news" means information that is about current events or that would be of current interest to the public. A freelance journalist will be regarded as a representative of the news media if they demonstrate a solid basis for expecting publication through a news media entity.

*Review fees* are the direct costs incurred during the initial examination of a document to determine if it must be disclosed under the FOIA. This includes doing all that is necessary to prepare a record for disclosure, such as redacting the record and marking the appropriate exemptions. Review time also includes time spent obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter. It does not include time spent resolving general legal or policy issues regarding the application of exemptions. Review fees are properly charged even if a record ultimately is not disclosed.

*Search fees* are costs of all time spent looking for responsive material, including, if necessary, page-by-page or line-by-line identification of information within records.

#### **§ 2507.17 Fees Overview.**

(a) AmeriCorps will charge fees for processing FOIA requests in accordance with the provisions of this subpart and with the OMB Guidelines unless a waiver or reduction of fees has been granted under § 2507.24.

(b) AmeriCorps will search for, review, and duplicate records in the most efficient and the least expensive manner.

(c) AmeriCorps may properly charge for time spent searching even if it does not locate any responsive records or if

it determines that the records are entirely exempt from disclosure.

(d) Review fees will be assessed in connection with the Agency's initial review of the record to determine whether an exemption applies to a record or portion of a record.

(e) No charge will be made at the administrative review stage for review of exemptions that were applied at the initial review stage. However, if one or more exemptions are deemed to no longer apply, the costs associated with the Agency's re-review of the records to

consider the use of other exemptions may be assessed as review fees.

(f) Requesters may seek a fee waiver. AmeriCorps will consider requests for fee waiver in accordance with the requirements in § 2507.24.

(g) To resolve any fee issues that arise under this section, AmeriCorps may contact a requester for additional information.

#### **§ 2507.18 Requester Categories and Fees Charged.**

(a) The FOIA establishes the following categories of requesters and, depending

on the category, these types of fees to be paid:

(1) Commercial use requesters: These pay search, review, and duplication fees.

(2) Non-commercial scientific institutions, educational institutions whose purpose is scholarly or scientific research, or news media requesters: These pay only duplication fees.

(3) All other requesters: These pay search and duplication fees.

(b) The fee schedule for search, review, and duplication is as follows:

Requester	Search fee	Review fee	Duplication fee
Commercial Use Requester .....	\$70.00 per hour .....	\$70.00 per hour	For photocopies, 20¢ per page.
Educational & Non-Commercial Scientific Institutions.	No fee .....	No fee .....	For photocopies, the first 100 pages are free; after that, 20¢ per page.
Representatives of the News Media .....	No fee .....	No fee .....	For photocopies, the first 100 pages are free; after that, 20¢ per page.
All Others .....	The first two hours are free; after that \$70.00 per hour.	No fee .....	For photocopies, the first 100 pages are free; after that, 20¢ per page.

#### **§ 2507.19 Circumstances in Which Fees May Not Be Charged.**

(a) If AmeriCorps fails to comply with the time limits for responding to a request, and if no unusual or exceptional circumstances, as defined by the FOIA, apply to processing the request, it may not charge search fees (or, for requesters with preferred fee status, may not charge duplication fees).

(b) If AmeriCorps fails to comply with the extended time limit for unusual circumstances under § 2705.10(c), it may not charge search fees (or, for requesters with preferred fee status, may not charge duplication fees), except as follows:

(1) If unusual circumstances apply and more than 1,000 pages are necessary to respond to the request, AmeriCorps may charge search fees (or, for requesters with preferred fee status, may charge duplication fees) so long as AmeriCorps has given the requester timely written notice and has discussed with the requester via email, telephone, or paper mail (or made at least three good-faith attempts to do so) how the requester could limit the scope of the request.

(2) If a court determines that exceptional circumstances exist, AmeriCorps' failure to comply with a time limit will be excused for the length of time provided by the court order.

(c) AmeriCorps will charge search or review fees for a quarter-hour period only when more than half of that period is required for search or review.

(d) AmeriCorps will not charge any fee if the total fee calculated according to § 2507.18 is \$25.00 or less for any request.

#### **§ 2507.20 Notice of Anticipated Fees in Excess of \$25.00.**

(a) When AmeriCorps estimates that fees will exceed \$25.00 and the requester has not stated in writing their willingness to pay fees as high as anticipated, it will inform the requester of the estimated fees, including a breakdown for search, review, or duplication.

(1) AmeriCorps will inform the requester if only a portion of the fee can be readily estimated.

(2) For users subject to search fees, the notice will tell them that they are entitled to two hours of search time at no charge. For all requesters who ask for non-electronic copies of the records, AmeriCorps will inform them that they are entitled to 100 pages of duplication at no charge. In both cases, AmeriCorps will tell the requester whether those entitlements are included in the estimate.

(b) When AmeriCorps notifies a requester that the actual or estimated total fee exceeds \$25.00, it will stop work on the request and the processing time will be tolled until the requester, in writing:

(1) Commits to paying the actual or estimated total fee; or

(2) designates a specific dollar amount of fees they are willing to pay; or

(3) in the case of a requester subject to search and duplication fees, tells AmeriCorps that they seek only that which can be provided with two free hours of search time and 100 free pages of duplication.

(c) If the requester has specified a fee amount they are willing to pay, but

AmeriCorps estimates that the total fee will be greater than that:

(1) It will notify the requester of the estimated excess and ask if they wish to either revise the amount of fees they are willing to pay or modify the request, and

(2) the Agency will stop work on the request and toll the processing time according to § 2507.10(f).

(d) The FOIA Officer or FOIA Public Liaison will be available to help any requester reformulate a request to meet the requester's needs at a lower cost.

#### **§ 2507.21 Other Charges.**

(a) *Charges for other services.* Although it is not required to provide special services, if AmeriCorps chooses as a matter of administrative discretion to do so, it will charge the direct costs of providing those services. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(b) *Charging interest.* AmeriCorps may charge interest on any unpaid bill starting on the 31st day following the billing date. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the agency. AmeriCorps 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.

**§ 2507.22 Aggregating Requests to Ensure Payment of Fees.**

(a) When AmeriCorps reasonably believes that a requester or a group of requesters acting together is attempting to divide a single request into multiple smaller requests so as to avoid fees, AmeriCorps may aggregate those requests and charge accordingly.

(1) AmeriCorps may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees.

(2) For requests separated by more than 30 days, AmeriCorps will aggregate them only where there is a reasonable basis for determining that aggregation is justified in view of all the circumstances involved.

(b) Multiple requests involving unrelated matters will not be aggregated.

**§ 2507.23 Collection and Payment of Fees.**

(a) AmeriCorps must ordinarily receive all applicable fees before it sends copies of records to a requester. This is payment for work already completed, not an advance payment.

(b) AmeriCorps may require an advance payment before work begins or is continued on a request when one of the following two circumstances exists. In these cases, AmeriCorps will not consider the FOIA request to have been received and will not conduct further work on the request until it receives the required payment. If the requester does not pay the advance payment within 30 calendar days after the date of AmeriCorps' fee determination, the request will be closed.

(1) If AmeriCorps determines or estimates that a total fee will be greater than \$250.00, it may require that the requester pay in advance, up to the amount of the entire anticipated fee, before starting to process the request. AmeriCorps may choose to process the request before it collects fees if it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) When a requester has previously failed to pay a properly charged FOIA fee to the agency within 30 calendar days of the billing date, AmeriCorps may require the requester to pay the full amount past due, plus any applicable interest on that prior request, and may also require the requester to pay in advance the full amount of any anticipated fee before it begins to process a new request or continues to process a pending request or any pending appeal. If AmeriCorps has a reasonable basis to believe that a requester has misrepresented their identity in order to avoid paying

outstanding fees, it may require the requester to provide proof of identity.

(c) Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(d) AmeriCorps is not required to accept payments in installments.

**§ 2507.24 Fee Waivers or Fee Reductions.**

(a) Requests for a waiver or reduction of fees should be made when the request is first submitted to AmeriCorps and should address in specific detail the factors below. However, a requester may request a fee waiver at a later time, if their request is still pending or is on administrative appeal.

(b) AmeriCorps will grant a waiver of fees, or a one-time reduction of the rate established under § 2507.18, when it determines that the requester has demonstrated that:

(1) 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

(2) disclosure of the information is not primarily in the commercial interest of the requester.

(c) To decide whether 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, AmeriCorps will consider all four of the following factors:

(1) The subject of the request must concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated.

(2) Disclosure of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. Disclosure of information that is already in the public domain, in either the same or a substantially identical form, would not contribute to such understanding.

(3) Disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area, as well as their ability and intention to effectively convey information to the public, will be considered. A representative of the news media making the request for professional purposes satisfies this consideration.

(4) The public's understanding of the subject in question must be enhanced by the disclosure to a significant extent.

However, AmeriCorps will not make value judgments about whether the information at issue is "important" enough to be made public.

(d) To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, AmeriCorps will consider the following factors:

(1) AmeriCorps will give requesters an opportunity to explain the purpose of their request.

(2) If there is an identified commercial interest, AmeriCorps will determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified where the public interest is greater than any identified commercial interest in disclosure. AmeriCorps ordinarily will presume that when a news media requester has satisfied the public interest standard, it is a public interest that is 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.

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

(f) A requester may appeal the denial of a fee waiver.

**Subpart H—Miscellaneous****§ 2507.25 Preservation of Records.**

AmeriCorps will preserve all correspondence relating to FOIA requests it receives, and all records processed for those requests, until the destruction of the correspondence and records is authorized by Title 44 of the United States Code and the records disposition authority granted by NARA. The records will not be sent to a Federal Records Center, transferred to the permanent custody of NARA, or destroyed while they are the subject of a pending request, appeal, or civil action under the FOIA.

**§ 2507.26 Annual Reporting Requirements.**

(a) AmeriCorps will submit to the Attorney General each year an Annual Report that contains detailed statistics on the numbers of requests it received and processed, the time taken to respond, and the disposition of the requests.

(b) The Chief FOIA Officer will submit to the Attorney General each year a Chief FOIA Officer Report containing a detailed description of the steps taken by the agency to improve FOIA compliance and transparency,

details of FOIA administration, and the steps taken during that reporting year to implement the Attorney General's 2009 FOIA Guidelines, unless it received fewer requests in the previous fiscal year than a threshold established by the Attorney General.

#### **§ 2507.27 Rights and Services Qualified by the FOIA Statute.**

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

Dated: April 26, 2022.

**Fernando Laguarda,**  
General Counsel.

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BILLING CODE 6050-28-P

## **SURFACE TRANSPORTATION BOARD**

### **49 CFR Part 1146**

[Docket No. EP 762]

#### **Regulations for Expedited Relief for Service Emergencies**

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Surface Transportation Board (STB or Board) proposes to amend its emergency service regulations. Specifically, the Board proposes to: Amend procedures for parties seeking a Board order directing an incumbent carrier to take action to remedy a service emergency; indicate that the Board may act on its own initiative to direct emergency service; modify the informational requirements for parties in emergency service proceedings; shorten the filing deadlines in emergency service proceedings and establish a timeframe for Board decisions; and establish an accelerated process for certain acute service emergencies.

**DATES:** Comments are due by May 23, 2022. Reply comments are due by June 6, 2022.

**ADDRESSES:** Comments and replies should be filed with the Board either via e-filing on the Board's website at [www.stb.gov](http://www.stb.gov), or in writing addressed to: Surface Transportation Board, Attn: Docket No. EP 762, 395 E Street SW, Washington, DC 20423-0001. Filings will be posted to the Board's website.

#### **FOR FURTHER INFORMATION CONTACT:**

Jonathon Binet at (202) 245-0368. Assistance for the hearing impaired available through the Federal Relay Service at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:** Pursuant to its broad statutory mandate, the Surface Transportation Board closely monitors the rail industry's service performance. *See* 49 U.S.C. 1321, 11145; *see also* 49 U.S.C. 10101, 11323, 10907. Since late 2013, railroad service challenges impacting a wide range of geographic regions and commodities have occurred periodically. *See, e.g., U.S. Rail Serv. Issues—Performance Data Reporting*, EP 724 (Sub-No. 4) (STB served Dec. 30, 2014), 80 FR 473 (Jan. 6, 2015); *STB Letter to CSX Transp., Inc. Requesting Service Reporting* (July 27, 2017); *STB Letter to Union Pac. Corp. Requesting Service Outlook* (Mar. 16, 2018); *STB Letter to Union Pac. Corp. Regarding New Operating Plan* (Sept. 20, 2018); *Chairman Oberman Letter to NS Regarding Service Issues* (Nov. 23, 2021).

In response to service challenges in recent years, the Board has held a series of public hearings to permit interested persons to report on specific service problems, to hear from rail industry executives on plans to address rail service problems generally, and to explore additional options to improve service. One such hearing was held in October 2017 in Washington, DC, at which a number of shippers observed that the Board's regulations at 49 CFR part 1146 governing expedited relief for service emergencies are rarely invoked, even in times of serious rail service challenges. *See Pub. Listening Session Regarding CSX Transp., Inc.'s Rail Serv. Issues*, EP 742, Hr'g Tr. 89:13-22; 90:1; 150:3-14; 196:11-22; 197:1-16; 199:1-9 (Oct. 17, 2017).

Based on these concerns and to better understand the reasons for the lack of use of the Board's directed service regulations, the Board announced on March 15, 2018, that Board staff would hold informal meetings with interested persons to discuss and gather feedback on the adequacy of the Board's current regulations regarding emergency service and service inadequacies, and whether and how the current regulations should be modified to offer a more meaningful path to relief. *See* STB Press Release, No. 18-2 (Mar. 15, 2018).<sup>1</sup> As a result, Board staff met with representatives of a variety of entities representing carrier and shipper interests in the second quarter of 2018. A recurring concern expressed by shipper interests was the amount of time it takes to obtain relief for service failures under the existing

procedures and the difficulty of satisfying certain informational burdens. While carrier interests acknowledged that very few emergency-service petitions had been filed, they generally indicated a belief that the existing procedures were sufficient and that the Board's informal Rail Customer and Public Assistance program (RCPA) was helpful in resolving acute service issues.

More recently, the Board announced that it would hold a hearing on April 26 and 27, 2022, on recent rail service problems impacting the network and the recovery efforts involving several Class I carriers.<sup>2</sup> As the hearing notice explained, the Board has heard informally from a broad range of stakeholders about inconsistent and unreliable rail service throughout the network and across commodity groups. These challenges include tight car supply and unfilled car orders, delays in transportation for carload and bulk traffic, increased origin dwell time for released unit trains, missed switches, and ineffective customer assistance.<sup>3</sup> Such service issues, should they continue, could result in an increased need for emergency Board action to meet the needs of the public.

Based on additional review of the feedback received during hearings and the informal stakeholder communications, consideration of the current service problems, and further consideration of the current regulations, the Board proposes to modify and update its emergency service rules at 49 CFR part 1146.

#### **Background**

Emergency service orders are designed to preserve rail service where there has been a substantial rail service issue or failure that requires immediate relief. Under 49 U.S.C. 11123(a), the Board may issue an emergency service order where there exists "an emergency situation of such magnitude as to have substantial adverse effects on shippers, or on rail service in a region of the United States, or that a rail carrier . . . cannot transport the traffic offered to it in a manner that properly serves the public[.]"<sup>4</sup> When the Board determines

<sup>2</sup> Press Release, STB, STB Issues Hearing Notice for Urgent Issues in Freight Rail Service (Apr. 7, 2022).

<sup>3</sup> In light of the consistent and pervasive nature of these service issues, the Board is limiting the comment period to 30 days and the reply period to 15 days rather than the more customary 60-day comment period and 30-day reply period.

<sup>4</sup> Under the statute, an emergency situation can be created by "shortage of equipment, congestion of traffic, unauthorized cessation of operations, failure of existing commuter rail passenger transportation operations caused by a cessation of service by the

Continued

<sup>1</sup> While these meetings also included discussion of 49 CFR part 1147 (Temporary Relief Under 49 U.S.C. 10705 and 11102 for Service Inadequacies), this proposed rule only concerns part 1146 (Expedited Relief for Service Emergencies).