

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Parts 101 and 170

[Docket No. 2002P-0122] (formerly 02P-0122)

#### Conventional Foods Being Marketed as "Functional Foods"; Extension of Comment Period

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public hearing; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is extending to March 5, 2007, the comment period for the notice of public hearing that appeared in the *Federal Register* of October 25, 2006 (71 FR 62400). In the notice of public hearing, FDA requested comments on how the agency should regulate conventional foods marketed as "functional foods" under its existing legal authority. The agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

**DATES:** Submit written and electronic comments by March 5, 2007.

**ADDRESSES:** You may submit comments, identified by Docket No. 2002P-0122, by any of the following methods:

##### *Electronic Submissions*

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Agency Web site: <http://www.fda.gov/dockets/ecomments>. Follow the instructions for submitting comments on the agency Web site.

##### *Written Submissions*

Submit written submissions in the following ways:

- FAX: 301-827-6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

**Instructions:** All submissions received must include the agency name and docket number for this rulemaking. All

comments received may be posted without change to <http://www.fda.gov/ohrms/dockets/default.htm>, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.fda.gov/ohrms/dockets/default.htm> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Juanita Yates, Center for Food Safety and Applied Nutrition (HFS-555), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-1731.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

In the *Federal Register* of October 25, 2006, FDA published a notice of public hearing with a 72-day comment period to request comments on the regulation of conventional foods marketed as "functional foods," specifically the issues and questions presented in section III of the notice (see 71 FR 62400 at 62403). Comments will inform FDA's approaches to the regulation of conventional foods marketed as "functional foods."

The agency has received requests for a 60-day extension of the comment period for the notice of public hearing. Each request conveyed concern that the current 72-day comment period, which closes 30 days subsequent to the public hearing held December 5, 2006, does not allow sufficient time to develop a meaningful or thoughtful response to the request for comments on the issues and questions presented in section III of the notice.

FDA has considered the requests and is extending the comment period for the notice of public hearing for 60 days, until March 5, 2007. The agency believes that a 60-day extension allows adequate time for interested persons to submit comments on the issues and questions presented in section III of the notice without significantly delaying the agency's consideration of how FDA should regulate conventional foods marketed as "functional foods" under its existing legal authority.

##### **II. Request for Comments**

Interested persons may submit to the Division of Dockets Management (see

**ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 29, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E7-47 Filed 1-5-07; 8:45 am]

**BILLING CODE 4160-01-S**

## CENTRAL INTELLIGENCE AGENCY

### 32 CFR Part 1900

#### FOIA Processing Fees

**AGENCY:** Central Intelligence Agency.

**ACTION:** Proposed rule.

**SUMMARY:** Consistent with the Freedom of Information Act (FOIA) and Executive Order 13392, the Central Intelligence Agency (CIA) has undertaken and completed a zero-based review of its public FOIA regulations governing fees associated with the processing of FOIA requests. As a result of this review, the Agency proposes to revise its fee-related regulations to eliminate unnecessary restrictions on FOIA requesters and to consolidate all regulatory requirements regarding FOIA fees in one subsection of the Code of Federal Regulations. As required by the FOIA, the Agency is providing an opportunity for interested persons to submit comments on these proposed regulations.

**DATES:** Submit comments on or before February 7, 2007.

**ADDRESSES:** Submit comments in writing to the Chief of Information Management Services, Central Intelligence Agency, Washington, DC 20505, or by fax to 703-613-3007.

**FOR FURTHER INFORMATION CONTACT:** Scott A. Koch, Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505 or by telephone, 703-613-1287.

**SUPPLEMENTARY INFORMATION:** Consistent with the FOIA and Executive Order 13392, the CIA has undertaken and completed a zero-based review of its public FOIA regulations governing fees associated with the processing of FOIA requests. As a result of this review, the Agency proposes to revise its fee-related regulations to eliminate unnecessary

restrictions on FOIA requesters and to simplify its fee schedule. The proposed regulations remove the unnecessary restrictions on the categories of FOIA requesters that are included in the CIA's current regulations. Under the proposed regulations, the CIA would not charge any FOIA requester, regardless of fee category, for a review fee in connection with the processing of a FOIA request.

The proposed regulations would not affect any requester submitting a request from a federal, state, or local penitentiary or correctional facility. Under both current CIA regulations and the proposed CIA regulations, the CIA will continue to place any requester submitting a request from a federal, state, or local penitentiary or correctional facility in the "All Other" fee category and will bill them for search fees and for duplication fees (with the first two hours of search and the first one hundred pages free of charge), unless the CIA grants a fee waiver.

Under the proposed regulations, the CIA would bill any requester not submitting a request from a federal, state, or local penitentiary or correctional facility, regardless of their fee category, only for the duplication costs (with the first one hundred pages free of charge) associated with the request, unless the CIA grants a fee waiver. The CIA would not bill these requesters for any search fee in connection with the processing of their request.

The proposed regulations would establish a maximum amount the CIA could bill for search fees and a maximum amount the CIA could bill for duplication fees.

The criteria the CIA would apply to fee waiver requests would remain unchanged.

#### List of Subjects in 32 CFR Part 1900

Classified information, Freedom of information.

As stated in the preamble, the CIA proposes to amend 32 CFR part 1900 as follows:

#### PART 1900—PUBLIC ACCESS TO CIA RECORDS UNDER THE FREEDOM OF INFORMATION ACT

1. The authority citation for part 1900 is revised to read as follows:

**Authority:** 5 U.S.C. 552.

##### § 1900.02 [Amended]

2. In § 1900.02, remove and reserve paragraphs (e) and (h).

##### § 1900.12 [Amended]

3. In § 1900.12, remove and reserve paragraph (b).

##### § 1900.13 [Removed]

4. Remove § 1900.13.

##### § 1900.14 [Removed]

5. Remove § 1900.14.

6. Add § 1900.20 to read as follows:

##### § 1900.20 Fees.

This section governs fees and fee waivers associated with Freedom of Information Act requests the CIA receives.

(a) *Categories of FOIA Requesters.*

(1) *Commercial Use Requester* means any requester who seeks information, on his or her own behalf or on the behalf of another, for a use or purpose that furthers his or her commercial, trade, or profit interests.

(2) *Non-Commercial Educational or Scientific Institution* means any requester that is professionally affiliated with either an accredited educational institution at any academic level or an institution engaged in research concerning the social, biological, or physical sciences.

(3) *Representative of the News Media* means any requester actively gathering information of current interest to the public, for an organization that is organized and operated to publish or broadcast news to the general public.

(4) *All Other Requesters* means any requester who does not fall within one of the other categories.

(b) *Required Fee Commitment.* The Agency will not accept any FOIA request unless the requester has agreed in writing to pay all applicable fees.

(1) Providing this written agreement shall not preclude a requester from seeking a fee waiver in accordance with this section.

(2) The Agency will promptly advise any requester who has purported to submit a FOIA request for information without the required written agreement of this requirement and hold the request in abeyance for thirty calendar days from the date of the Agency's notice to the requester. If the Agency has not received the required written agreement, upon expiration of the thirty calendar days, the Agency will close the case and take no further action on the FOIA request. This action does not prevent the requester from re-submitting the request with the required fee agreement at a subsequent date.

(c) *Outstanding Fees.* The Agency will not accept a FOIA request or administrative appeal from any requester who has outstanding fees for information services at any federal agency.

(d) *Requests Processed Under Both the FOIA and the Privacy Act.* The CIA will not bill for fees for any request for

information processed under the provisions of the Privacy Act of 1974.

(e) *Special Services.* The CIA will bill any FOIA requester for the actual costs associated the CIA's provision of special services requested by a requester, such as certification that records are true copies or use of other than ordinary mail. The CIA will notify the requester of those costs before providing any special services.

(f) *Review Fees.* The CIA will not bill any FOIA requester for a review fee in connection with the processing of a FOIA request.

(g) *Search Fees.* Except as provided in this subsection, the CIA will not bill a FOIA requester for a search fee in connection with the processing of a FOIA request.

(1) Unless otherwise waived by the CIA in accordance with paragraph O below, the CIA will bill any requester submitting a FOIA request from a federal, state, or local penitentiary or correctional facility for search fees.

(2) Search means the process of looking for and retrieving information and records in response to a FOIA request and determining whether such information and records are responsive to that request.

(3) Search rates reflect the costs incurred by the Agency in searching for records in connection with a FOIA request, including but not limited to, the salary of the individual performing the work and the cost of operating any machinery, such as a central processing unit, needed to conduct the search. The Agency will bill requesters subject to search fees at the following rates:

| Completed search time in minutes | Charge               |
|----------------------------------|----------------------|
| 1 through 120 .....              | Free.                |
| 121 through 150 .....            | Flat Rate: \$30.00.  |
| 151 through 180 .....            | Flat Rate: \$60.00.  |
| 181 through 210 .....            | Flat Rate: \$90.00.  |
| 211 through 240 .....            | Flat Rate: \$120.00. |
| 241 through 270 .....            | Flat Rate: \$150.00. |
| 271 through 300 .....            | Flat Rate: \$180.00. |
| 301 through 330 .....            | Flat Rate: \$210.00. |
| 331 through 360 .....            | Flat Rate: \$240.00. |
| Over 361 .....                   | Flat Rate: \$300.00. |

(4) The CIA will execute its searches in the most efficient and least expensive manner reasonably possible.

(5) Unless otherwise waived by the CIA in accordance with paragraph O below, the CIA will bill requesters subject to search fees for the time spent searching even if it does not locate any responsive information, or even if any or all of the responsive information located is exempt from release.

(h) *Duplication Fees.* Unless otherwise waived by the CIA in

accordance with paragraph (o) of this section, the CIA shall bill all FOIA requesters for duplication fees.

(1) Duplication means the making of a copy of information responsive to a FOIA request and deemed releasable by the Agency. Copies may be in paper form, microform, audiovisual materials, or electronic form, among others.

(2) *Requested Form or Format of Disclosure.*

(i) The Agency will honor a requester's specified preference of form or format of disclosure only if—

(A) The Agency can readily reproduce the information in the requested form with a reasonable amount of effort; and

(B) Providing the information in the requested form is consistent with national security or other U.S. Government interests; and

(C) The requester prepays the fees billed by the Agency.

(ii) If the Agency determines that it cannot honor a requester's specified preference of form or format of disclosure, the Agency will notify the requester.

(3) Duplication rates reflect the costs incurred by the Agency in duplicating the nonexempt information responsive to a FOIA request, including the salary of the individual performing the duplication and the cost of operating duplication machinery.

(4) For the duplication in paper form, the Agency will bill at the following rates:

| Number of pages released to requester | Charge                |
|---------------------------------------|-----------------------|
| 1 through 100 .....                   | None.                 |
| 101 through 150 .....                 | Flat Rate: \$25.00.   |
| 151 through 200 .....                 | Flat Rate: \$50.00.   |
| 201 through 250 .....                 | Flat Rate: \$75.00.   |
| 251 through 300 .....                 | Flat Rate: \$100.00.  |
| 301 through 350 .....                 | Flat Rate: \$125.00.  |
| 351 through 400 .....                 | Flat Rate: \$150.00.  |
| 401 through 450 .....                 | Flat Rate: \$175.00.  |
| 451 through 500 .....                 | Flat Rate: \$200.00.  |
| 501 through 550 .....                 | Flat Rate: \$225.00.  |
| 551 through 600 .....                 | Flat Rate: \$250.00.  |
| 601 through 1000 ....                 | Flat Rate: \$450.00.  |
| Over 1000 .....                       | Flat Rate: \$1000.00. |

(5) For the duplication in electronic or other form, the Agency will bill at the rate of \$100.00 per compact disc.

(i) *No Fees Billed.* The CIA will not bill for fees when the cost of collecting the fee is equal to or greater than the fee itself. Therefore, the CIA will not bill for fees for any request for information when the total bill is twenty-five (25) dollars or less.

(j) *Interest.* The CIA may charge interest on any unpaid bill starting on the 31st day following the date of the bill, and will assess interest at the rate

provided in section 3717 of title 31 of the U.S. Code. Interest will accrue from the date of the bill until the Agency receives payment. The CIA 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.

(k) *Aggregation.* Where the CIA reasonably believes that a requester or group of requesters acting together is attempting to divide a request into a series of requests for a purpose of avoiding fees, the CIA may aggregate those requests and bill accordingly. This provision is not intended to limit the CIA's authority to aggregate the processing of multiple requests when necessary to protect national security or other U.S. Government interests.

(l) *Advance Payments.* An advance payment is a payment made before the CIA begins or continues work on a FOIA request. The CIA may require an advance payment only as specified in this section.

(1) The CIA may require a FOIA requester to make an advance payment of up to 100 percent of the total estimated fee only when—

(i) The CIA estimates, at any time before or during the processing of a FOIA request, that the total fee will exceed \$250.00; or

(ii) The requester has previously failed to pay a fee in a timely fashion and the Agency did or could have charged the requester for interest in accordance with this section.

(2) When the CIA requires an advance payment, the CIA will promptly notify the requester and hold the request in abeyance for thirty calendar days from the date of the Agency's notice to the requester. If the requester fails to remit the payment within the thirty days, the Agency will close the case and take no further action on the FOIA request. This action does not prevent the requester from re-submitting the request at a subsequent date.

(m) *Prepayments.* A prepayment is a payment made after the CIA has completed all the work on a FOIA request but has not forwarded the final response and the processed documents to the FOIA requester. The CIA may require any requester to pay up to the full amount of the billed fee before it provides the FOIA requester with the final response and the processed documents, particularly when the FOIA requester has no payment history or has previously failed to pay a fee within thirty calendar days of the bill.

(n) *Requests for Notification.* Upon request, the Agency may notify a

requester when the estimated costs of processing the FOIA request meet or exceed a certain threshold.

(o) *Fee Waivers.*

(1) In order to qualify for any fee waiver, a FOIA requester must first agree in writing to pay all applicable fees.

(2) *Requesters shall submit fee waiver requests in writing.* The Agency will not consider any fee waiver request received by the Agency later than thirty calendar days of the date of the requester's FOIA request.

(3) The CIA will furnish records to a FOIA requester at no charge, or at a reduced rate, whenever the CIA determines that, as a matter of administrative discretion, the interest of the U.S. Government would be served.

(4) *Public interest fee waivers.* The CIA will furnish records to a FOIA requester at no charge, or at a reduced rate, whenever the CIA determines, based on all available information, that 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 is not primarily in the commercial interests of the requester.

(i) In order to determine whether the first public interest fee waiver requirement has been met (i.e., that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of Government operations or activities), the Agency will consider the following four factors, in sequence:

(A) *Subject matter of the requested records.* The subject of the requested records must specifically concern identifiable operations or activities of the federal Government, with a connection that is direct and clear, not remote or attenuated.

(B) *Informative value of the information to be disclosed.* The disclosable portions of the requested information must be meaningfully informative about specific federal government activities or operations in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that is already in the public domain, in either a duplicative or substantially identical form, would not be likely to contribute to such understanding where nothing new would be added to the public's understanding.

(C) *Contribution to public understanding.* The disclosure must contribute to the understanding of the public at large, as opposed to the

individual understanding of the requester or a narrow segment of interested persons. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. The CIA may presume that requesters subject to search fees under these regulations do not have the ability to effectively convey information to the public.

(D) *Significance of the contribution to public understanding.* The disclosure must contribute "significantly" to public understanding of Government operations or activities. The public's understanding of the subject matter in question, as compared to the level of public understanding existing before the disclosure, must be enhanced by the disclosure to a significant extent.

(ii) In order to determine whether the second public interest fee waiver requirement is met (i.e., that the disclosure of the information "is not primarily in the commercial interest of the requester"), the Agency will consider the following three factors, in sequence:

(A) *Existence of commercial interest.* A "commercial interest" is one that furthers a commercial, trade, or profit interest. The Agency will consider any commercial interest of the requester or any person upon whose behalf the requester may be acting that would be furthered by the disclosure. Agency personnel may consider the requester's identity and the circumstances surrounding the request and draw reasonable inferences regarding the existence of a commercial interest.

(B) *Effects of disclosure on the commercial interest.* If the requester has a commercial interest, the CIA will determine whether and to what extent disclosure of the requested information would further that interest.

(C) *Primary interest in disclosure.* The Agency will determine whether the public interest in disclosure asserted by the requester is greater in magnitude than the requester's commercial interest.

(5) If the Agency denies a request for a public interest fee waiver, it shall provide the requester with written notice of his or her administrative appeal rights. Requesters shall have the right to file an administrative appeal of the denial of a request for a public interest fee waiver provided the appeal is submitted in writing and is received by the Agency within forty-five calendar days of the date of the denial decision.

(6) The Chair of the Agency Release Panel shall adjudicate all appeals of denials of requests for public interest fee waivers.

#### § 1900.23 [Amended]

7. Revise the heading of § 1900.23, to read "§ 1900.23 Notification of Decision and Right of Appeal."

8. In § 1900.23, remove and reserve paragraph (a).

9. Amend § 1900.42 by revising paragraph (a) to read as follows:

#### § 1900.42 Right of appeal and appeal procedures.

(a) *Right of Appeal.* A right of administrative appeal exists whenever access to any requested record or any portion thereof is denied or no records are located in response to a request. The Agency will apprise all requesters in writing of their right to appeal such decisions to the CIA Agency Release Panel through the Coordinator. Appeals of denials of requests for fee waivers shall be governed by 32 CFR 1900.20.

\* \* \* \* \*

Dated: December 28, 2006.

Edmund Cohen,

Chief of Information Management Services.

[FR Doc. E6-22574 Filed 1-5-07; 8:45 am]

BILLING CODE 6310-02-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2006-0648; FRL-8266-2]

#### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Identification of the Northern Virginia PM<sub>2.5</sub> Nonattainment Area

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. The revision consists of the addition of counties in the Northern Virginia which were designated as nonattainment for the PM<sub>2.5</sub> National Ambient Air Quality Standards (NAAQS). In the Final 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 action, 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.

**DATES:** Comments must be received in writing by February 7, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2006-0648 by one of the following methods:

A. [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.

B. E-mail: [miller.linda@epa.gov](mailto:miller.linda@epa.gov).

C. Mail: EPA-R03-OAR-2006-0648, Linda Miller, Acting Chief, Air Quality Planning and Analysis Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R03-OAR-2006-0648. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.