

Comments of the Attorneys General of Massachusetts, California, Colorado, Connecticut, Illinois, Maryland, Minnesota, New Mexico, New York, and Oregon

February 26, 2026

Via electronic submission to www.regulations.gov

Re: Docket ID No. OGC-2022-0885; Multistate Comments in Response to the U.S. Environmental Protection Agency’s Proposed Freedom of Information Act Regulations Update

The Attorneys General of Massachusetts, California, Colorado, Connecticut, Illinois, Maryland, Minnesota, New Mexico, New York, and Oregon (together, States) submit these comments in strong opposition to the Environmental Protection Agency’s (EPA) Proposed Freedom of Information Act Regulations Update, 91 Fed. Reg. 3407 (Jan. 27, 2026) (Proposal). EPA’s proposed rescission of its environmental justice expedited processing criteria (EJ Criteria) flies in the face of EPA’s mission to “protect human health and the environment.”¹ EPA’s Proposal would unnecessarily hinder already overburdened communities from accessing essential information and data regarding the health and safety of their communities. EPA’s Proposal to rescind EJ Criteria from its Freedom of Information Act (FOIA) regulations should be withdrawn.

In 1966, Congress granted EPA the authority to add expedited processing criteria in cases determined by the agency.² Recognizing that timely information is a critical need for disproportionately burdened and under-resourced communities with environmental justice concerns, which EPA defines as those communities that are “potentially experiencing disproportionate and adverse human health or environmental effects,”³ EPA added EJ Criteria in 2023. Adding EJ Criteria prioritized public records requests for communities with environmental justice concerns and reduced the total time from submission of request to receipt of documents. Now, less than three years later, EPA proposes to rescind the criteria, with little explanation other than a mirage of claimed but unsubstantiated cost-reduction benefits.

Section I of these comments explains the legal background of FOIA and the EJ Criteria that EPA proposes to rescind, FOIA’s success in advancing transparency and reducing corruption, and the legal landscape of FOIA prior to the release of EPA’s proposal. Section II describes the harms that communities with environmental justice concerns and States will face as a result of this Proposal, and States’ interests in robust access to information under FOIA, and States’ commitment to the use of FOIA to advance the important work of protecting communities with

¹ U.S. Env’t Prot. Agency, *Our Mission and What We Do*, EPA (Oct. 20, 2025), <https://www.epa.gov/aboutepa/our-mission-and-what-we-do>.

² Pub. L. No. 89-487, 80 Stat. 250 (1966) (codified as amended at 5 U.S.C. § 552); Pub. L. No. 90-23, 81 Stat. 54 (1967) (codified as amended at 5 U.S.C. § 552).

³ 40 C.F.R. § 2.104(g)(ii) (2023).

environmental justice concerns. Section III explains that the proposal is arbitrary and capricious because EPA has failed to provide a reasoned explanation for rescinding EJ Criteria; EPA has failed to reconcile the Proposal with its past findings; and EPA failed to account for the serious reliance interests engendered by its EJ Criteria, namely, use of the EJ Criteria by communities with environmental justice concerns to obtain information critical to their health and welfare.

For each of these reasons, as further described below, EPA should abandon its unlawful and unsupported Proposal.

I. LEGAL BACKGROUND

In 1966 and 1967, Congress passed Public Laws 89-487 and 90-23, commonly referred to as the Freedom of Information Act, or FOIA.⁴ Congress created FOIA to “pierce the paper curtain of bureaucracy” that shields federal government operations from public view.⁵ Prior to FOIA, “only persons ‘properly and directly concerned’ could obtain access to agency records.”⁶ Agencies could withhold documents “‘in the public interest,’ or whenever ‘good cause [for confidentiality]’ was shown.”⁷ FOIA remedied that problem, requiring that agencies, “upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.”⁸

As the Supreme Court explained in *N.L.R.B. v. Robbins Tire & Rubber Co.*, “the basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” 437 U.S. 214, 242 (1978). After a half-century of operation, until the recent backlog, FOIA has largely achieved its intended effect, with researchers determining that FOIA increases conviction rates for corrupt officials and ultimately reduces rates of corruption.⁹

Recognizing that certain requestors would be best served by expedited processing of requests for records, Congress also provided for two categories in which agencies must promulgate regulations for expedited processing of requests for records: “(I) in cases in which the person requesting the records demonstrates a compelling need; and (II) in other cases determined by the agency.”¹⁰ Congress defined “compelling need” to mean either “that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be

⁴ 80 Stat. at 250; 81 Stat. at 54.

⁵ Joan M. Katz, *The Games Bureaucrats Play: Hide and Seek Under the Freedom of Information Act*, 48 Tex. L. Rev. 1261, 1261 (1970) (quoting 112 CONG. REC. 13,647 (1966) (remarks of Congressman Laird)) (quotations omitted).

⁶ *Id.*

⁷ *Id.*

⁸ 5 U.S.C. § 552(a)(3)(A).

⁹ Adriana Cordis & Patrick Warren, *Sunshine as disinfectant: The effect of state Freedom of Information Act laws on public corruption*, 115 J. PUB. ECON. 18 (2014).

¹⁰ 5 U.S.C. § 552(a)(6)(E)(i).

expected to pose an imminent threat to the life or physical safety of an individual” or “with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.”¹¹

In its 2022 NPRM, EPA found that “timely access to information contained in EPA records may play in the opportunity [sic] for meaningful involvement by communities that potentially experience disproportionately high and adverse human health or environmental effects.”¹² Furthermore, EPA asserted that FOIA defines what constitutes a “compelling need,” but does not limit the “other cases” that an agency may determine merit expedited processing.¹³

EPA finalized its rule adding “environmental justice-related need” to complement the Congressionally mandated “compelling need” requirement for expedited processing of requests for records under FOIA, on November 13, 2023. Now, in addition to the narrow requirements for receiving expedited processing under “compelling need,” requestors could also receive expedited processing, as well as a fee waiver, for demonstrating a “pressing need to inform a community that is potentially experiencing disproportionate and adverse human health or environmental effects.”¹⁴

II. STATE INTERESTS

a. **Communities with environmental justice concerns in our States suffer disproportionate burdens from environmental hazards that information access can help mitigate.**

Communities with environmental justice concerns, which include communities of color,¹⁵ low-income communities,¹⁶ and Indigenous Peoples and Tribal Nations,¹⁷ rural¹⁸ and

¹¹ *Id.* § 552(a)(6)(E)(v).

¹² Freedom of Information Act Regulations Update; Phase II, 87 Fed. Reg. 68,946, 68,949 (Nov. 17, 2022).

¹³ *Id.*

¹⁴ 40 C.F.R. § 2.104(g)(1) (2023).

¹⁵ Christopher W. Tessum et al., *PM2.5 Polluters Disproportionately and Systemically Affect People of Color in the United States*, 7 SCI. ADVANCES 1 (2021); see also United Church of Christ Comm’n For Racial Just., *Toxic Wastes and Race in the United States: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites* (1987), <https://perma.cc/6L8E-E4GW>; United Church of Christ Just. & Witness Ministries, *Toxic Wastes and Race at Twenty, 1987–2007* (2007), <https://perma.cc/SM6W-A7DD>.

¹⁶ Ihab Mikati et al., *Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status*, 108 AM. J. PUB. HEALTH 480 (2018), <https://perma.cc/Z9CZ-UXLE>; Qian Di et al., *Air Pollution and Mortality in the Medicare Population*, 376 NEW ENG. J. MED. 2513 (2017), <https://pmc.ncbi.nlm.nih.gov/articles/PMC5766848/>.

¹⁷ U.N. Special Rapporteur, *End of Mission Statement by the United Nations Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpus of Her Visit to the United States of America*, United Nations Humans Rights Office of the High Commissioner (Mar. 3, 2017), <https://perma.cc/UQ6P-CSFK>.

¹⁸ Monica Sanders, *Understanding Environmental Justice in Rural Communities*, FORBES (Aug. 26, 2024, 9:30 AM ET), <https://perma.cc/9EKS-564U>; Patrick Boyle, *Rural Americans Find Little Escape from Climate Change*, ASS’N OF AM. MED. COLLS. (July 13, 2023), <https://www.aamc.org/news/rural-americans-find-little-escape-climate-change>; Janet L. Gamble et al., *The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment*, Ch. 9: *Populations of Concern*, U.S. GLOB. CHANGE RSCH. PROGRAM 248, 249–250 (2016), <https://perma.cc/3E2S-ZRFA> (“For example, people with limited economic resources living in areas with

unincorporated communities,¹⁹ communities in which a high proportion of residents speak a language other than English,²⁰ and people with disabilities²¹ have historically borne a disproportionately high burden of environmental and public health harms. Historic and ongoing disproportionate location of pollution sources,²² toxic sites,²³ transportation infrastructure,²⁴ and underinvestment,²⁵ all contribute to legacy and current exposures that lead to negative health outcomes for these communities. EPA’s own research has concluded that “communities nationwide that are located near facilities using extremely hazardous substances are indeed disproportionately populated with Black, Asian, Hispanic, and low-income residents; and that even greater proportions of these historically underserved populations are located near facilities

deteriorating infrastructure are more likely to experience disproportionate impacts and are less able to recover following extreme events, increasing their vulnerability to climate-related health effects[.]”).

¹⁹ Cristina Gomez-Vidal & Anu Manchikanti Gomez, *Invisible and Unequal: Unincorporated Community Status as a Structural Determinant of Health*, 285 SOC. SCI. & MED. 1 (2021), <https://perma.cc/2UVF-SQA5>.

²⁰ Kelvin C. Fong et al., *The Intersection of Immigrant and Environmental Health: A Scoping Review of Observational Population Exposure and Epidemiologic Studies*, 130 ENV’T HEALTH PERSPS. 1 (2022), <https://perma.cc/X36G-VTSX>; Yoshira Ornelas Van Horne et al., *Toward Language Justice in Environmental Health Sciences in the United States: A Case for Spanish as a Language of Science*, 131 ENV’T HEALTH PERSPS. 1 (2023), <https://perma.cc/3XNF-E8ZM>.

²¹ Jayajit Chakraborty, *Disparities in Exposure to Fine Particulate Air Pollution for People with Disabilities in the US*, 842 SCI. OF THE TOTAL ENV’T 1 (2022); Nat’l Academies of Sciences, Eng’g, and Med., *Constructing Valid Geospatial Tools for Environmental Justice*, NAT’L ACADEMIES PRESS 38–39 (2024); Cadeyrn J. Gaskin et al., *Factors Associated with the Climate Change Vulnerability and the Adaptive Capacity of People with Disability: A Systematic Review*, 9 WEATHER, CLIMATE & SOC’Y 801 (2017), <https://perma.cc/GN46-3H49>; Ash Reynolds, *Disability Amid Disaster: People with Disabilities Are Disproportionately Impacted by Natural Disasters*, NBC NEWS (Feb. 23, 2025, 7:00 AM EST, updated Feb. 23, 2025, 3:10 PM EST) <https://www.nbcnews.com/data-graphics/people-disabilities-are-disproportionately-impacted-natural-disasters-rcna192577>.

²² Landfills and incinerators, industrial facilities, concentrated agricultural operations, and other pollution sources have been and continue to be concentrated in communities of color, low-income communities, and Indigenous communities. See Ana Isabel Baptista et al., *U.S. Municipal Solid Waste Incinerators: An Industry in Decline*, TISHMAN ENV’T & DESIGN CTR. AT THE NEW SCH. 13–16 (May 2019); Robert D. Bullard et al., *Toxic Wastes and Race at Twenty: Why Race Still Matters After All of These Years*, 38 ENV’T L. 371 (2008); Jill Johnson & Lara Cushing, *Chemical Exposures, Health, and Environmental Justice in Communities Living on the Fenceline of Industry*, 7 CURRENT ENV’T HEALTH REP. 48 (2020). The impacts of such facilities are exacerbated by extreme weather. See H. Orru, K.L. Ebi & B. Forsberg, *The Interplay of Climate Change and Air Pollution on Health*, 4 CURRENT ENV’T HEALTH REP. 504 (2017), <https://perma.cc/GY2P-M4DW>.

²³ Allison R. Crimmins et al., *Fifth National Climate Assessment, Ch. 9: Coastal Effects*, U.S. GLOB. CHANGE RSCH. PROGRAM 9-15 (2023) [hereinafter NCA5], <https://tinyurl.com/4j7a8j9v>. (“[C]ontaminated sites, such as Superfund sites, face increasing exposure to rising groundwater and flood damages, which could lead to future public health and environmental concerns if buried contaminants are mobilized and enter groundwater or river systems[.]”); *Id.* at Ch. 15: *Human Health*, 15-13 (“[A]bout 70% of Superfund sites . . . are located within one mile of federally assisted housing, which disproportionately houses people of color, individuals with low wealth, and those with disabilities.” (citations omitted)); U.S. GOV’T ACCOUNTABILITY OFF., GAO-21-555T, SUPERFUND: EPA SHOULD TAKE ADDITIONAL ACTIONS TO MANAGE RISKS FROM CLIMATE CHANGE EFFECTS (May 13, 2021) (Statement of J. Alfredo Gómez, Dir., Natural Res. and Env’t), <https://perma.cc/7UEX-A3R4>.

²⁴ Deborah N. Archer, *Transportation Policy and the Underdevelopment of Black Communities*, 106 IOWA L. REV. 2125, 2131–48 (2021), <https://perma.cc/C85R-9984>.

²⁵ See Haley M. Lane et al., *Historical Redlining Is Associated with Present-Day Air Pollution Disparities in U.S. Cities*, 9 ENV’T SCI. TECH. LETTERS 345 (2022); Cesar O. Estien et al., *Historical Redlining Is Associated with Disparities in Environmental Quality Across California*, 11 ENV’T SCI. TECH. LETTERS 54 (2024); Bev Wilson, *Urban Heat Management and the Legacy of Redlining*, 86 J. AM. PLANNING ASS’N 443 (2020), <https://perma.cc/9NMY-EQQB>.

with histories of chemical accidents involving fires, explosions, and/or toxic vapors.”²⁶ Low-income communities and communities of color also “experience unusually high [toxic] exposures in home and neighborhood [and] . . . are also disproportionately affected by hazardous occupational exposures.”²⁷ Indigenous Peoples and members of Tribal Nations also suffer heightened exposure to environmental contaminants on or near tribal lands, which present a disproportionate risk of adverse health impacts, including reproductive health impacts.²⁸ Moreover, Tribal Nations face numerous toxic hazards, with 141 Superfund sites on or within 10 miles of Tribal land in 2023²⁹ the remediation of which has significantly lagged behind that of sites in non-Indigenous communities.³⁰

These communities are often burdened by multiple sources of pollution and environmental stressors like climate change,³¹ which disproportionately harm communities of color, communities with higher concentrations of low-income residents, and Indigenous Peoples and members of Tribal Nations. As a result of cumulative and varied exposures—including from oil and gas extraction, concentrated animal agriculture, industrial pollution, and releases of hazardous materials from disasters—communities of color and low-income communities are especially vulnerable to toxic substances.³²

Given the disproportionate burdens borne by communities with environmental justice concerns, the existence of the expedited processing provision is especially important for those communities. This is especially true given the historical exclusion of these communities from

²⁶ Dennis Guignet et al., EPA NAT'L CTR. FOR ENV'T ECON., DISPROPORTIONATE ENVIRONMENTAL RISKS: AN ANALYSIS OF CHEMICAL FACILITIES AND ACCIDENTS IN THE U.S. 20 (Oct. 2024), https://www.epa.gov/system/files/documents/2024-10/2024-08_0.pdf.

²⁷ Michael Gochfeld & Joanna Burger, *Disproportionate Exposures in Environmental Justice and Other Populations: The Importance of Outliers*, 101 AM. J. OF PUB. HEALTH S53 (2011), <https://pmc.ncbi.nlm.nih.gov/articles/PMC3222496/pdf/S53.pdf>.

²⁸ Elizabeth Hoover et al., *Indigenous Peoples of North America: Environmental Exposures and Reproductive Justice*, 120 ENV'T HEALTH PERSPECTIVES 1645, 1647 (Dec. 2012). For an example of disproportionate risk of adverse health impacts, see Raoul S. Liévanos, *Air-Toxic Clusters Revisited: Intersectional Environmental Inequalities and Indigenous Deprivation in the U.S. Environmental Protection Agency Regions*, 11 RACE & SOC. PROBS. 161 (2019) (finding that spatial concentrations of multiply marginalized Indigenous peoples in the U.S. were a significant predictor of area exposure to airborne carcinogenic pollution in the Mid-Atlantic EPA region).

²⁹ National Indian Health Board, *Superfund Sites & Tribal Land* (Sept. 6, 2023), <https://storymaps.arcgis.com/stories/6dd33a110f354f61bd920fef6722eda5>.

³⁰ U.S. ENV'T PROT. AGENCY, TRIBAL SUPERFUND PROGRAM NEEDS CLEAR DIRECTION AND ACTIONS TO IMPROVE EFFECTIVENESS, Report no. 2004-P00035 (2004), <https://www.epa.gov/sites/default/files/2015-12/documents/20040930-2004-p-00035.pdf>.

³¹ See U.S. ENV'T PROT. AGENCY, INTERIM FRAMEWORK FOR ADVANCING CONSIDERATION OF CUMULATIVE IMPACTS 4 (Nov. 2024), <https://perma.cc/JP4K-CGE9> (“Environmental public health research has shown that the cumulative impacts of longstanding place-based inequalities in exposures to environmental hazards are significant, with health disparities linked to these inequalities” (citations omitted)); see also Rachel Morello-Frosch et al., *Understanding the Cumulative Impacts of Inequalities in Environmental Health: Implications for Policy*, 30 HEALTH AFFS. 879 (2011).

³² See Jill Johnston & Lara Cushing, *Chemical Exposures, Health and Environmental Justice in Communities Living on the Fenceline of Industry*, 7 CURRENT ENV'T HEALTH REPS. 48–57 (2021), <https://pmc.ncbi.nlm.nih.gov/articles/PMC7035204/#ABS1>.

decision-making processes and from access to information that impacts their communities.³³ Indeed, in promulgating its existing regulations, EPA recognized the distinct importance of timely access to information that impacts the health and wellbeing of communities with environmental justice concerns.³⁴ Even limited exposure to certain pollutants can have drastic effects on the health of people, meaning that situations that may not meet the “compelling need” exception but which nonetheless threaten the health of communities with environmental justice concerns are not uncommon. Because such communities are more likely to face environmental exposures and hazards, those communities will be burdened more significantly by the delays and increased cost of FOIA requests as a result of the Proposal.

b. States, and the communities with environmental justice concerns within them, have a strong interest in accessing information that impacts their health and wellbeing.

States, and the communities with environmental justice concerns within them, have a strong interest in accessing information that impacts their health and wellbeing. EPA’s extended timeline for non-expedited public records requests precludes communities from understanding safety and health risks. And expedited processing for requests demonstrating a “compelling need” is no substitute for the EJ Criteria. For example, there is no safe level of lead exposure for children.³⁵ Exposure to polluted air can cause lifelong health effects.³⁶

EPA correctly recognized in its 2022 Notice of Proposed Rulemaking (NPRM) that communities with environmental justice concerns have “an understood need for timely access... which may not be met by the statutorily provided ‘compelling need’ categories.”³⁷ Communities with environmental justice concerns may face hardships meeting the rigorous “compelling need” standard for expedited processing, which requires either an imminent threat to life or physical safety, or an urgency to inform the public by a person primarily engaged in disseminating.³⁸ Yet an inability to meet the “compelling need” standard should not subject communities facing hardship to the same backlogged FOIA queue as every other requestor. Removing the EJ Criteria serves only to harm the most marginalized, most environmentally burdened, least financially affluent communities in America—communities who need government fighting for, not against, them.

As noted above, communities with environmental justice concerns tend to be low-income communities, communities of color, Indigenous Peoples and Tribal Nations, rural and

³³ See generally Jonathan Skinner-Thompson, *Procedural Environmental Justice*, 97 WASH. L. REV. 399 (2022), <https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=2553&context=faculty-articles>.

³⁴ See Freedom of Information Act Regulations Update; Phase II, 87 Fed. Reg. at 68,949.

³⁵ U.S. Env’t Prot. Agency, *EPA Lead (Pb) Research* (Feb. 12, 2026), <https://www.epa.gov/land-research/epa-lead-pb-research>.

³⁶ Nat’l Inst. Env’t Health Sci., *Air Pollution and Your Health*, NIH (Dec. 22, 2025), <https://www.niehs.nih.gov/health/topics/agents/air-pollution>.

³⁷ Freedom of Information Act Regulations Update; Phase II, 87 Fed. Reg. at 68,949.

³⁸ 40 C.F.R. § 2.104(g)(1).

unincorporated communities, communities in which a high proportion of residents speak a language other than English, and people with disabilities, and are disproportionately impacted by toxic pollution, industrial burdens, lack of open space, natural resources, and other resources, such as fresh and healthy foods and accessible public transit.³⁹ Such disproportionate impacts on communities with environmental justice concerns have been linked to serious health consequences, such as, “increased cancer and respiratory illness and a decreased overall sense of well-being, as well as exacerbation of comorbid conditions such as diabetes, obesity, cardiovascular disease, neurological and psychiatric disorders, and impaired maternal and child health.”⁴⁰ These risks are especially pronounced in infants and children.⁴¹ Communities with environmental justice concerns disproportionately face contamination from lead, air pollution, hazardous waste, chemical and petrochemical facilities, uranium mine tailings, and dumping.⁴²

All these contaminants are regulated by EPA, and communities with environmental justice concerns have a strong interest in accessing records from EPA related to these contaminants and the threats they pose to their wellbeing. Not only are all of the individual contaminants regulated by EPA, but in its role as regulator, EPA sets standards for safe limits on contaminants that have impacts on public health. When EPA does not set sufficiently protective standards, communities with environmental justice concerns are often the most harmed (see e.g., lead). Furthermore, EPA also plays a role in compliance and enforcement relating to facilities located in and adjacent to communities. Residents have a vested interest in understanding how EPA is protecting them in its enforcement role.

But obtaining information via FOIA requests can be difficult, because the FOIA process can be opaque, slow, and challenging to navigate. In fiscal year 2023, for example, a record 1.2 million records requests were submitted across the federal government, at least 15% of which were backlogged.⁴³ A request is reported as “backlogged” when it has been pending at an agency longer than the statutory time period of twenty working-days or, if unusual circumstances are present, up to thirty working-days.⁴⁴ As an ever-increasing number of records requests strains agency staff, and agency staff shrink, processing times and backlogs are only going to keep increasing. Indeed, in its 2025 Chief FOIA Officer Report, EPA reported that its backlog of public records requests increased from FY 2023 to FY 2024.⁴⁵ Over 20% of public records requests to EPA were backlogged as of FY 2024.⁴⁶ Today, that number is likely much higher, and

³⁹ GreenRoots, *What is Environmental Justice?*, <https://greenrootsej.org/about-us/environmental-justice> (last visited Feb. 11, 2026).

⁴⁰ American Public Health Association, *Addressing Environmental Justice to Achieve Health Equity*, APHA (Nov. 4, 2019), <https://www.apha.org/policy-and-advocacy/public-health-policy-briefs/policy-database/2020/01/14/addressing-environmental-justice-to-achieve-health-equity>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ U.S. DEP’T OF JUST., SUMMARY OF ANNUAL FOIA REPORTS FOR FISCAL YEAR 2023 4–12 (2023), <https://www.justice.gov/oip/media/1354721/dl?inline>.

⁴⁴ *Id.*

⁴⁵ JAMES PAYNE, 2025 CHIEF FOIA OFFICER REPORT 21 (U.S. Env’t Prot. Agency, 2025).

⁴⁶ *Id.* at 22.

likely to continue to grow, as EPA faces a near-25% workforce reduction.⁴⁷ And EPA's timeframe for document production has slipped precipitously over the last year, even more so than the federal government as a whole. Indeed, Massachusetts has submitted four non-expedited public records requests to EPA in 2025, as early as February 27, 2025, and has received *zero* document productions to date for requests 2025-EPA-04182, 2025-EPA-05523, 2025-EPA-05627, and 2025-EPA-06058. Massachusetts's experience, rather than being an outlier, is emblematic of an agency overwhelmed, unable, or unwilling to complete public records requests in a timely manner. Such processing delays may be further compounded for communities with environmental justice concerns, which often lack the financial resources and expertise to craft successful records requests.

States understand the value of FOIA requests and indeed use them to protect communities with environmental justice concerns, but the timelines for those requests are often inadequate. Massachusetts, for example, enforces federal and state environmental laws within its borders, and is actively involved in policy development with, and litigation against, the federal government, decisions made by which have cascading, real world impacts on the most vulnerable residents of our States. As noted above, in the past year alone, Massachusetts has submitted four public records requests with EPA on topics ranging from nonenforcement of existing environmental laws to discussions regarding the future of the Endangerment Finding. Communities with environmental justice concerns face disproportionate harms from pollution and face increased risk of harm from backlogged public records requests. Those communities cannot wait.

III. EPA'S PROPOSED RULE IS ARBITRARY AND CAPRICIOUS

An agency action is arbitrary or capricious where it is not "reasonable and reasonably explained." *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016); *Amerijet Int'l, Inc. v. Pistole*, 753 F.3d 1343, 1350 (D.C. Cir. 2014). When rescinding a policy, an agency acts arbitrarily and capriciously where it "entirely fail[s] to consider an important aspect of the problem." *State Farm*, 463 U.S. at 29. "[W]here the agency has failed to provide even that minimal level of analysis, its action is arbitrary and capricious and so cannot carry the force of law." *Encino Motorcars*, 579 U.S. at 221.

Agencies also must provide a reasoned explanation for changes in existing policies. *See Encino Motorcars*, 579 U.S. at 221. Under the change-in-position doctrine, "[a]gencies are free to change their existing policies," but only if "they provide a reasoned explanation for the change," "display awareness that [they are] changing position," and consider "serious reliance interests." *Food & Drug Admin. v. Wages & White Lion Invs., L.L.C.*, 604 U.S. 542, 568 (2025)

⁴⁷ U.S. Env't Prot. Agency, *EPA Announces Reduction in Force, Reorganization Efforts to Save Taxpayers Nearly Three-Quarters of a Billion Dollars*, EPA (Jul. 18, 2025), <https://www.epa.gov/newsreleases/epa-announces-reduction-force-reorganization-efforts-save-taxpayers-nearly-three>.

(citing *Encino Motorcars*, 579 U.S. at 221–22). Further, where a new policy rests on determinations that contradict those underlying the agency’s prior policy, the agency must provide a more detailed explanation. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009). “Unexplained inconsistency” in agency policy is “a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.” *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005); see also *Encino Motorcars*, 579 U.S. at 222. And where an agency changes course, its reasoned analysis must consider any “serious reliance interests” engendered by the existing policy and “alternatives that are within the ambit of the existing policy.” *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020) (citation modified). An arbitrary and capricious regulation of this sort is itself unlawful. *Encino Motorcars*, 579 U.S. at 222. Here, the Proposal flouts all of these fundamental requirements of APA rulemaking.

a. EPA fails to provide a reasoned explanation for the Proposal.

The Proposal does not adequately explain the basis for the removal of expedited processing and fee waiver for information relating to communities with environmental justice concerns. In explaining its proposed rescission, EPA entirely fails to consider relevant factors—i.e., the effects of the rule on the communities with environmental justice concerns that currently benefit from the existing policy, cites only factors entirely within the agency’s control as the basis for rescission, and generally fails to provide any explanation beyond policy preferences for its change in policy.

The primary purported basis for EPA’s decision to remove the EJ Criteria is the agency’s claim that “staff and management time spent on review and analysis of these requests and any subsequent appeals, particularly without the use of EJScreen, outweighs the benefit to the public, as less than 2.7% of EJ [expedited processing] requests were granted from November 13, 2023, to August 31, 2025.”⁴⁸ That rationale entirely fails to consider the actual impact of the expedited processing provision on communities, and instead simply conflates the low rate of approval with a purported lack of benefit to communities. This line of reasoning does not account for the very real benefits of the expedited processing provision realized by communities with environmental justice concerns, discussed *supra* Section II—benefits that EPA wholly ignores in its Proposal. Indeed, EPA fails even to identify how many requestors, in numeric terms, received expedited processing and fails to explain how the review of requests for expedited processing is actually burdensome for the agency. In failing to properly consider the concrete benefits to communities with environmental justice concerns from this provision—the relevant statutory factor—and instead relying on supposed but unsubstantiated burdens on the agency, EPA has failed to provide a reasoned explanation and “entirely failed to consider an important aspect of the problem.” Therefore, the proposal is arbitrary and capricious. *State Farm*, 463 U.S. at 43.

⁴⁸ Freedom of Information Act Regulations Update, 91 Fed. Reg. 3407, 3408 (Jan. 27, 2026).

Moreover, by citing the unavailability of EJScreen as a basis for rescinding the rule, EPA characterizes self-imposed limitations as burdensome. EPA voluntarily removed the EJScreen tool from its website in April 2025 and now claims that its absence burdens staff enough to justify rescinding its existing regulations.⁴⁹ EPA advances that rationale despite the existence of publicly available versions of EJScreen maintained by third parties⁵⁰ and the agency’s undisputed ability to make EJScreen available. Continuing its pattern of reducing transparency and accountability, EPA now arbitrarily purports to rely on its past action to remove a publicly available tool to delay access to information and increase costs for communities with environmental justice concerns in our states. For that reason, too, EPA’s proposal is unreasoned and arbitrary and capricious.

b. EPA fails to reconcile the Proposal with its past findings.

EPA’s unexplained inconsistency and failure to engage with the factual basis for its 2023 FOIA regulations further render the Proposal arbitrary and capricious. In its 2022 proposed rule, EPA found that the EJ Criteria “would target an understood need for timely access for communities with environmental justice concerns to information, which may not be met by the statutorily provided ‘compelling need’ categories.”⁵¹ In its new Proposal, however, EPA altogether fails to address that earlier finding, and instead merely states that “[r]equesters will still be able to request expedited processing under the EPA FOIA Regulations under the compelling need standard.” With that conclusory statement, EPA does not engage with its prior determination that the “compelling need” categories are inadequate to provide “timely access to information contained in EPA records . . . for meaningful involvement by communities that potentially experience disproportionately high and adverse human health or environmental effects,” 87 Fed. Reg. 68,946, 68,949, circumstances that have only become worse in the current FOIA landscape. EPA’s 2023 Rule, therefore, rested on a determination that the particular harms borne by communities with environmental justice concerns warranted a new expedited processing and fee waiver provision—a determination that EPA now neither acknowledges nor rejects. That unexplained inconsistency with the agency’s prior position and underlying factual determinations renders the Proposal arbitrary and capricious. *See FCC v. Fox*, 556 U.S. at 515–16; *see also Brand X*, 545 U.S. at 981.

c. EPA fails to account for reliance interests.

EPA’s Proposal is also arbitrary and capricious because it did not consider the serious reliance interests engendered by its existing regulations. EPA’s complete failure to analyze whether its existing regulations have engendered reliance interests in communities with environmental justice concerns and the organizations that use the environmental justice

⁴⁹ 91 Fed. Reg. 3407, 3408.

⁵⁰ *See* EJScreen: Environmental Justice Screening and Mapping Tool (Version 2.3), <https://pedp-ejscreen.azurewebsites.net/> (last accessed Feb. 10, 2026).

⁵¹ ⁵¹ Freedom of Information Act Regulations Update; Phase II, 87 Fed. Reg. at 68,949.

expedited processing provision is impermissible. Although EPA need not necessarily determine that strong reliance interests exist, its failure to consider and discuss those interests contravenes the change-in-position doctrine and likewise renders the Proposal arbitrary and capricious. *See Food & Drug Admin. v. Wages & White Lion Invs., L.L.C.*, 604 U.S. at 568.

IV. CONCLUSION

EPA's Proposal continues the agency's attacks on transparency, accountability, and environmental justice. EPA proposes to increase delay and costs for the communities most in need of information to advocate for themselves by participating in public processes, pursuing enforcement against violators of environmental regulations, and publicizing the environmental hazards that they face. The States strongly urge EPA to withdraw its Proposal and, in furtherance of FOIA's key objectives, continue to reduce barriers for our communities to access the information they require to protect themselves against environmental and health hazards.

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