

§ 1.15

the initial and appellate reviews, but in no event shall the total extension exceed 10 working days.

(d) Nothing in this section shall preclude the agency and the requester from agreeing to an extension of time. Any such agreement should be confirmed in writing and should specify clearly the total time agreed upon.

§ 1.15 Failure to meet administrative deadlines.

In the event an agency fails to meet either of the administrative deadlines set forth in § 1.8, plus any extension authorized by § 1.14, it shall notify the requester, state the reasons for the delay, and the date by which it expects to dispatch a determination. Although the requester may be deemed to have exhausted his or her administrative remedies under 5 U.S.C. 552(a)(6)(C), the agency shall continue processing the request as expeditiously as possible and dispatch the determination when it is reached in the same manner and form as if it had been reached within the applicable deadline.

§ 1.16 Fee schedule.

Pursuant to § 2.75 of this title, the Director, Office of Finance and Management, is delegated authority to promulgate regulations providing a uniform schedule of fees applicable to all agencies of the Department regarding requests for records under this subpart, following public notice and comment. (See appendix A of this subpart.) Any amendments thereto will be made pursuant to notice and opportunity for comment. Said regulations provide for recovery of direct costs for document search, duplication, and review. The regulations provide that documents may be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest based upon criteria set forth in section 6 of appendix A.

§ 1.17 Exemptions and discretionary release.

(a) All agency records, except those specifically exempted from mandatory disclosure by one or more provisions of 5 U.S.C. 552(b), shall be made promptly

available to any person submitting a request under this subpart.

(b) Except where disclosure is specifically prohibited by Executive Order, statute, or applicable regulations, an agency may release records exempt from mandatory disclosure under 5 U.S.C. 552(b) whenever it determines that such disclosure would be in the public interest. Such a record is considered to be in the public interest if the benefit to the public in releasing the document outweighs any harm likely to result from disclosure.

§ 1.18 Annual report.

(a) Each agency of the Department shall compile the following information for each calendar year:

(1) The number of determinations made by such agency not to comply with initial requests for records made to it under § 1.6(a), and the reasons for each such determination;

(2) The number of appeals made by persons under § 1.8(d), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) The name and title or position of each person responsible for the denial of records requested under this subpart and the number of instances of participation for each;

(4) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) A copy of every rule made by the agency regarding this subpart;

(6) The total amount of fees collected by the agency for making records available under this subpart; and

(7) Such other information as indicates efforts to administer fully this subpart.

(b) Each agency shall compile the information required by paragraph (a) of this section for the preceding calendar year into a report and submit this report to the Director of Information, Office of Governmental and Public Affairs, by February 1 of each year.

(c) The Director of Information shall combine the reports from the various

agencies within USDA into a Departmental report, and shall arrange for submission of this report to the President of the Senate and the Speaker of the House of Representatives by March 1 of each year in accordance with 5 U.S.C. 552(d).

§ 1.19 Compilation of new records.

Nothing in 5 U.S.C. 552 or this subpart requires that any agency compile a new record in order to fulfill a request for records. Such compilation may be undertaken voluntarily if the agency determines this action to be in the public interest or the interest of USDA.

§ 1.20 Authentication.

When a request is received for an authenticated copy of a document which the agency determines to make available to the requesting party, the agency shall cause a correct copy to be prepared and sent to the Office of the General Counsel which shall certify the same and cause the seal of the Department to be affixed, except that the Hearing Clerk in the Office of Administrative Law Judges may authenticate copies of documents in the records of the Hearing Clerk and that the Director of the National Appeals Division may authenticate copies of documents in the records of the National Appeals Division.

[60 FR 67308, Dec. 29, 1995]

§ 1.22 Records in formal adjudication proceedings.

Records in formal adjudication proceedings are on file in the Hearing Clerk's office, Office of Administrative Law Judges, U.S. Department of Agriculture, Washington, DC 20250, and shall be made available to the public.

§ 1.23 Preservation of records.

Agencies shall preserve all correspondence relating to the requests it receives under this subpart, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to title 44 of the United States Code, and to the General Records Schedule. Under no circumstances shall records be de-

stroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

APPENDIX A—FEE SCHEDULE

Section 1. General.

This schedule sets forth fees to be charged for providing copies of documents—including photographic reproductions, microfilm, maps and mosaics, and related services—under the Freedom of Information Act (FOIA). Records and related services are available at the locations specified by agencies in their FOIA implementing regulations. The fees set forth in this schedule are applicable to all agencies of the Department of Agriculture, and are based upon guidelines prescribed by the Office of Management and Budget (OMB) issued at 52 FR 10012 (March 27, 1987). No higher fees or charges in addition to those provided for in this schedule may be charged a party requesting services under the Freedom of Information Act.

Section 2. Types of services for which fees may be charged.

Subject to the criteria set forth in section 5, fees may be assessed under the Freedom of Information Act on all requests involving such services as document search, duplication, and review. Fees may also be charged in situations involving special service to a request, such as in certifying that records requested are true copies, or in sending records by special methods mail such as express mail, etc. For services not covered by the FOIA or by this schedule, agencies may set their own fees in accordance with applicable law, or costs incurred will be assessed the requester at the actual cost to the Government. For example, where records are required to be shipped from one office to another by commercial carrier in order to timely answer a request, the actual freight charge will be assessed the requester.

Section 3. Instances in which fees will not be charged.

(a) Except for requests seeking documents for a commercial use (as specified below in section 5), no charge shall be made for either: (1) The first 100 pages of duplicated information (8½" x 14" or smaller-size paper); or (2) The first two hours of manual search time, or the equivalent value of computer search time as defined in section 4(e).

(b) Also, no charge shall be made—even to commercial use requesters—if the cost of collecting a fee would be equal to or greater than the fee itself. For USDA, this figure has been calculated to be \$25.00.

(c) In addition, fees may not be charged for time spent by an agency employee in resolving legal or policy issues, or in monitoring a requester's inspection of agency records. No