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by the submitter as confidential commercial information. Whenever a component decides to disclose such information over the objection of a business submitter or designee, the component shall notify the business submitter in writing. Such notice shall include:

- (1) A description of the information to be disclosed;
- (2) A specified disclosure date;
- (3) A statement of why the submitter's objections were not sustained.

Such notice of intent to disclose shall to the extent permitted by law be forwarded a reasonable number of days prior to the specified date upon which disclosure is intended. The requester shall be provided with a copy of the notice of intent to disclose.

(g) *Exceptions to notice requirements.* The notice requirements of this section shall not apply if:

(1) The component determines that the information should not be disclosed;

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

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

(4) The disclosure is required by a rule that

(i) Was adopted pursuant to notice and public comment;

(ii) Specifies narrow classes of records submitted to the agency that are to be released under the Freedom of Information Act; and

(iii) Provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(5) The information requested has not been designated by the submitter as in accordance with paragraph (b) of this Section, and the submitter had an opportunity to do so at the time of submission of the information or a reasonable time thereafter, unless the component has reason to believe that disclosure of the information would result in substantial competitive harm; or

(6) The designation made by the submitter in accordance with these regula-

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tions appears obviously frivolous; except that in such case, the component must provide the submitter with written notice of any final administrative disclosure determination within a reasonable number of days prior to the specified disclosure date.

(h) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of confidential commercial information covered by paragraph (b) of this section, the component shall promptly notify the business submitter.

(i) *Notice requirements.* The component shall fulfill the notice requirements of this section by addressing the notice to the business submitter or its legal successor at the address indicated on the records, or the last known address. If the notice is returned, the component shall make a reasonable effort to locate the business submitter or its legal successor. Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting and publishing the notice in a place reasonably calculated to accomplish notification.

§ 70.27 Preservation of records.

Each component shall preserve all correspondence relating to the requests it receives under this part, 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. Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under the Act.

Subpart C—Costs for Production of Documents

§ 70.38 Definitions.

The following definitions apply to the terms of this subpart.

(a) The term a *statute specifically providing for setting the level of fees for particular types of records* (See 5 U.S.C. 552(a)(4)(A)(vi)), means any statute other than FOIA that specifically requires a Government agency to establish a fee schedule for particular types

of records. An example of such a statute is section 205(c) of the Labor-Management Reporting and Disclosure Act, as amended, 29 U.S.C. 435(c). Statutes such as the User Fee Statute which only provide a general discussion of fees without explicitly requiring that an agency set and collect fees for particular documents are not within the meaning of this term.

(b) The term *direct costs* means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of a commercial requester, reviewing) documents to respond to an FOIA request. Direct costs includes the salary of the employee performing the work and the cost of operating duplicating machinery, and when appropriate the cost of the medium in which the information is made available.

(c) The term *duplication* means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials or machine-readable documentation (e.g., magnetic tape or disk), among others.

(d) The term *search* means the process of looking for material that is responsive to a FOIA request; including page-by-page or line-by-line identification of materials within documents or, when available, use of an existing computer program. Searches do not include the review of material, as defined in § 70.38(e), which is performed to determine whether material is exempt from disclosure.

(e) The term *review* means the process of examining documents located in response to a request that is for a commercial use, as defined in § 70.38 (f), to determine whether any portion of the document located is exempt from disclosure, and accordingly may be withheld. It also includes the act of preparing materials for disclosure, *i.e.* doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(f) The term *commercial use request* means a request from one who seeks information for a use or purpose that fur-

thers the commercial, trade or profit interests of the requester or the person or entity on whose behalf the request was submitted. When a request is submitted by a commercial entity or its representative and from the nature of the information sought it appears the request is to further the objective of that entity, the request will be treated as a commercial use request unless the requester indicates that the information is being sought for a non-commercial purpose. Where a requester indicates that the information is being sought for a non-commercial purpose, the disclosure officer will evaluate the requester's submission and determine how the request is to be treated. While requests by non-profit organizations would normally fall outside the commercial use category, when the disclosure officer determines that a request by such an entity or one acting on its behalf does further the entity's commercial interests, he or she may treat the request as a commercial use request.

(g) The term *educational institution* means:

(1) An institution which is a pre-school, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, and

(2) Operates a program or programs of scholarly research. To qualify under this definition, the program of scholarly research in connection with which the information is sought must be carried out under the auspices of the academic institution itself as opposed to the individual scholarly pursuits of persons affiliated with an institution. For example, a request from a professor to assist him or her in writing a book independent of his or her institutional responsibilities would not qualify under this definition, whereas a request predicated upon research funding granted to the institution would meet its requirements. Likewise, a request from a student enrolled in an individual course of study at an educational institution would not qualify as a request from the institution.

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(h) The term *non-commercial scientific institute* means an institution that is not operated on a *commercial* basis as that term is defined in § 70.38(f), 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.

(i) The term *representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. Factors indicating such representation status include press accreditation, guild membership, a history of continuing publication, business registration, and/or Federal Communication Commission licensing, among others. For purpose of this definition the term *news* contemplates information that is about current events or that would be of current interest to the public. A freelance journalist shall be treated as a representative of the news media if the person can demonstrate a solid basis for expecting publication of matters related to the requested information through a qualifying news media entity. A publication contract with a qualifying news media entity satisfies this requirement. An individual's past publication record with organizations of the foregoing nature is also relevant to this determination. Examples of news media entities include:

(1) Television or radio stations broadcasting to the public at large, and

(2) Publishers of periodicals including newsletters (but only in those instances where they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public.

[54 FR 23144, May 30, 1989; 54 FR 25204, June 13, 1989]

§ 70.39 Statutes specifically providing for setting of fees.

Nothing in this subpart shall supersede fees chargeable under a statute other than the Freedom of Information Act which specifically provides for setting the level of fees for particular types of records.

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§ 70.40 Charges assessed for the production of records.

(a) There are three types of charges assessed in connection with the production of agency records in response to a Freedom of Information Act request: costs associated with

(1) Searching for or locating responsive records (search costs),

(2) Reproducing such records (reproduction costs), and

(3) Reviewing records to determine whether any materials are exempt (review costs).

(b) There are four types of FOIA requesters:

(1) Commercial use requesters,

(2) Educational and non-commercial scientific institutions,

(3) Representatives of the news media, and

(4) All other requesters.

Depending upon the nature of the requester, one or all of the foregoing costs may be assessed. Paragraph (c) of this section sets forth the extent to which the foregoing costs may be assessed against each type of requester. Paragraph (d) of this section establishes the actual rate to be charged in connection with each of the foregoing types of costs. Paragraph (e) delineates the manner in which costs are to be assessed against an individual seeking access to records about himself or herself which are covered by the Privacy Act.

(c) (1) *Commercial use requester*. When a commercial use requester as defined in § 70.38(f) makes a request for documents, search costs, reproduction costs and review costs may be assessed in their entirety.

(2) *Educational or non-commercial, scientific institution requester*. When an educational or non-commercial scientific institution requester, as defined in §§ 70.38 (g) and (h), makes a request, only reproduction costs may be assessed, excluding charges for the first 100 pages.

(3) *Request by representative of news media*. When a representative of the news media as defined in § 70.38(i) makes a request, only reproduction costs may be assessed, excluding charges for the first 100 pages.

(4) *All other requesters*. Requesters who do not fall within paragraphs

(c)(1), (2), and (3) of this section may be charged search costs and reproduction costs, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Where computer searches are involved, i.e., executing an existing program, however, the monetary equivalent of two hours of search time by a professional employee shall be deducted from the total costs of computer processing time.

(d)(1) *Search costs.* When a search for records is performed by a clerical employee, a rate of \$2.50 per quarter hour will be applicable. When a search is performed by professional or supervisory personnel, a rate of \$5.00 per quarter hour will be applicable. If the search for requested records requires transportation of the searcher to the location of the records or transportation of the records to the searcher, all transportation costs in excess of \$5.00 may be added to the search cost. When an existing computer program is employed to locate records responsive to a request, the disclosure officer may charge the actual cost of providing the service.

(2) *Reproduction costs.* The standard copying charge for documents in paper copy is \$.15 per page. When responsive information is provided in a format other than paper copy, such as in the form of computer tapes and discs, the requester may be charged the direct costs of the tape, disc or whatever medium is used to produce the information, as well as any related reproduction costs.

(3) *Review costs.* Costs associated with the review of documents, as defined in § 70.38(c), will be applicable at a rate of \$5.00 per quarter hour. Except as noted below, charges may only be assessed for review at the initial level, i.e. the review undertaken the first time the documents are analyzed to determine the applicability of specific exemptions to the particular record or portion of the record. Thus a requester would not be charged for review at the administrative appeal level with regard to the applicability of an exemption already applied at the initial level. When, however, a record has been withheld pursuant to an exemption which is subsequently determined not to apply and is

reviewed again at the appellate level to determine the potential applicability of other exemptions, the costs attendant to such additional review may be assessed.

(4) *Mailing cost.* Where requests for copies are made by mail, no postage charge will be made for transmitting by regular mail a single copy of the requested record to the requester, or for mailing additional copies where the total postage cost does not exceed \$1. However, where the volume of page copy or method of transmittal requested is such that transmittal charges to the Department are in excess of \$1, the transmittal costs will be added, unless appropriate stamps or stamped envelopes are furnished with the request, or authorization is given for collection of shipping charges on delivery.

(e) *Privacy Act requesters.* Requests from individuals for records about themselves which are contained within agency systems of records shall be treated under the fee provisions of the Privacy Act of 1974 which permit the assessment of reproduction costs only, after providing the first copy of a file at no cost.

[54 FR 23144, May 30, 1989; 54 FR 30503, July 20, 1989]

§ 70.41 Reduction or waiver of fees.

This section sets forth conditions under which the applicable charges for records responsive to a request under 5 U.S.C. 552, as set forth in § 70.40, are subject to reduction or waiver by the disclosure officer.

(a) *Statutorily required waiver or reduction in fees.* Documents shall be furnished without charge or at a charge below the fees set forth in § 70.40 if all of the following conditions are satisfied:

(1) The subject of the requested records concerns the operations or activities of the United States Government;

(2) The disclosure of the requested records is likely to contribute to an understanding of Government operations or activities;

(3) The disclosure is likely to contribute to a public understanding of such operations or activities;

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(4) The contribution to public understanding of government operations and activities will be significant; and

(5) The public's interest in disclosure exceeds the requester's commercial interest in disclosure.

(b) *De minimis costs.* Where the cost of collecting a fee to be assessed to a requester exceeds the amount of the fee which would otherwise be assessed, no fee need be charged. Under normal circumstances, fees which do not exceed \$5.00 need not be collected.

(c) *Reformulating requests.* When the estimated reproduction costs are likely to exceed \$25.00, the requester may be notified of the estimated amount of fees, unless the requester has indicated in advance its willingness to pay fees as high as those anticipated. Such notice may invite the requester to reformulate the request to satisfy his or her needs at a lower cost.

§ 70.42 Ancillary considerations.

(a) *Costs assessed when no records are disclosed.* The costs of searching for and, in the case of a commercial use request, reviewing records may be assessed even where ultimately no documents are disclosed or located.

(b) *Aggregating requests.* A requester may not file multiple requests, each seeking portions of a document or documents in order to avoid the payment of fees. When there is reason to believe that a requester or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, any such requests may be aggregated and the requesters charged as if there were only a single request.

(c) *Advance payments.* An advance payment before work is commenced or continued on a request, may not be required unless:

(1) It is estimated or determined that the allowable charge that a requester may be required to pay are likely to exceed \$250. When a determination is made that the allowable charges are likely to exceed \$250, the requester shall be notified of the likely cost and be required to provide satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or be required to

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tender advance payment of at least 50% of the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing) in which case the requester may be required:

(i) To pay the full amount owed plus any applicable interest as provided in § 70.41(e), when an outstanding balance is due and owing, and

(ii) To make an advance payment of the full amount of the estimated fee before the component begins to process a new request.

(3) In any case, the payment of outstanding fees may be required before responsive materials are actually disclosed to a requester.

(d) *Time limits to respond extended when advance payments requested.* When an advance payment of fees in accordance with paragraph (c) of this section has been requested the administrative time limits prescribed in subsection (a)(6) of the FOIA, 5 U.S.C. 552(a)(6), will only begin to run after such advance payment has been received by the agency.

(e) *Interest charges.* Interest charges on an unpaid bill may be assessed starting on the 31st day following the day on which the billing was sent. Interest shall be at the rate prescribed in section 3717 of title 31 U.S.C. and shall accrue from the date of the billing.

(f) *Authentication of copies—(1) Fees.* The Freedom of Information Act does not require certification or attestation under seal of copies of records furnished in accordance with its provisions. Pursuant to provisions of the general user-charger statute, 31 U.S.C. 9701 and subchapter II of title 29 U.S.C., the following charges may be made where such services are requested:

(i) For certification of true copies, each \$1.

(ii) For attestation under the seal of the Department, each \$3.

(2) *Authority and form for attestation under seal.* Authority is hereby given to any officer or officers of the Department of Labor designated as authentication officer or officers of the Department to sign and issue attestations

under the seal of the Department of Labor.

(g) *Transcripts.* All transcripts shall be made available in accordance with the terms set forth in § 70.40.

Subpart D—Public Records

§ 70.53 Office of Labor-Management Standards.

(a) The following documents in the custody of the Office of Labor-Management Standards are public information available for inspection and/or purchase of copies in accordance with paragraphs (b) and (c) of this section.

(1) Data and information contained in any report or other document filed pursuant to sections 201, 202, 203, 211, and 301 of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 524–28, 530, 79 Stat. 888, 29 U.S.C. 431–433, 441, 461).

(2) Data and information contained in any report or other document filed pursuant to the reporting requirements of part 458 of this title, which are the regulations implementing the standards of conduct provisions of the Civil Service Reform Act of 1978, 5 U.S.C. 7120, and the Foreign Service Act of 1980, 22 U.S.C. 4117. The reporting requirements are found in 29 CFR 458.3.

(b) The above documents are available from: U.S. Department of Labor, Office of Labor-Management Standards, Public Documents Room, N-5616, 200 Constitution Avenue, NW., Washington, DC 20210. Documents are also available from the OLMS area or district office in whose geographic jurisdiction the reporting organization or individual is located. The addresses of these offices are listed in appendix A of this part.

(c) Pursuant to 29 U.S.C. 435(c) which provides that the Secretary shall by regulation provide for the furnishing of copies of the above documents, upon payment of a charge based upon the cost of the service, these documents are available at a cost of .15 per page of record copies furnished. Authentication of copies is available in accordance with the fee schedule established in section 70.42(f). In accordance with 5 U.S.C. 552(a)(4)(A)(vi), the provisions for fees, fee waivers and fee reductions

in subpart C do not supersede the above charges for these documents.

(d) Upon request of the Governor of a State for copies of any reports or documents filed pursuant to sections 201, 202, 203, or 211 of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 524–528, 79 Stat. 888; 29 U.S.C. 431–441), or for information contained therein, which have been filed by any person whose principal place of business or headquarters is in such State, the Office of Labor-Management Standards shall:

(1) Make available without payment of a charge to the State agency designated by law or by such Governor, such requested copies of information and data, or

(2) Require the person who filed such reports and documents to furnish such copies or information and data directly to the State agency thus designated.

§ 70.54 Pension and Welfare Benefits Administration.

The following documents are in the custody of the Pension and Welfare Benefits Administration at the address indicated below, and the right of inspection and copying provided in this part may be exercised at such offices: Copies of summary plan descriptions, and annual reports, statements and other documents filed pursuant to the Employee Retirement Income Security Act, title I, part I, except that information described in sections 105(a) and 105(c) with respect to a participant may be disclosed only to the extent that information respecting that participant's benefits under title II of the Social Security Act may be disclosed under such Act.

Address: U.S. Department of Labor, Pension and Welfare Benefits Administration, Public Documents Room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

APPENDIX A TO PART 70—DISCLOSURE OFFICERS

(a) Offices in Washington, DC, are maintained by the following agencies of the Department of Labor. Field offices are maintained by some of these, as listed in the United States Government Manual (see § 70.5(b)).

- (1) Office of the Secretary of Labor
- (2) Office of the Solicitor of Labor