

(3) The anticipated disclosure date, which is not less than 10 business days after the OCC mails the written notice required under this paragraph (e); and

(4) A statement that the submitter must notify the OCC immediately if the submitter intends to seek injunctive relief.

(f) *Notice of requester's lawsuit.* Whenever the OCC receives service of process indicating that a requester has brought suit seeking to compel the OCC to disclose information covered by paragraph (b)(1) of this section, the OCC promptly notifies the submitter.

#### § 4.17 Fees for services.

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Actual costs* means those expenditures that the OCC incurs in providing services (including searching for, reviewing, and duplicating records) in response to a request for records under § 4.15.

(2) *Search* means the process of locating a record in response to a request, including page-by-page or line-by-line identification of material within a record. The OCC may perform a search manually or by electronic means.

(3) *Review* means the process of examining a record located in response to a request to determine which portions of that record should be released. It also includes processing a record for disclosure.

(4) *Duplication* means the process of copying a record in response to a request. A copy may take the form of a paper copy, microform, audiovisual materials, or machine readable material (e.g., magnetic tape or disk), among others.

(5) *Commercial use requester* means a person who seeks records for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(6) *Educational institution requester* means a person who seeks records on behalf of a public or private educational institution, including a preschool, an elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an

institution of vocational education that operates a program of scholarly research.

(7) *Noncommercial scientific institution requester* means a person who is not a "commercial use requester," as that term is defined in paragraph (a)(5) of this section, and who seeks records on behalf of an institution operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(8) *Requester who is a representative of the news media* means a person who seeks records for the purpose of gathering news (i.e., information about current events or of current interest to the public) on behalf of, or a free-lance journalist who reasonably expects to have his or her work product published or broadcast by, an entity organized and operated to publish or broadcast news to the public.

(b) *Fees*—(1) *General.* The hourly and per page rate that the OCC generally charges requesters is set forth in the "Notice of Comptroller of the Currency Fees" (Notice) described in 12 CFR 8.8. Any interested person may request a copy of the Notice from the OCC by mail or may obtain a copy at the location described in § 4.14(c). The OCC may contract with a commercial service to search for, duplicate, or disseminate records, provided that the OCC determines that the fee assessed upon a requester is no greater than if the OCC performed the tasks itself. The OCC does not contract out responsibilities that the FOIA provides that the OCC alone may discharge, such as determining the applicability of an exemption or whether to waive or reduce a fee.

(2) *Fee categories.* The OCC assesses a fee based on the fee category in which the OCC places the requester. If the request states how the requester intends to use the requested records (see § 4.15(c)(1)(iv)), the OCC may place the requester in a lower fee category; otherwise, the OCC categorizes the requester as a "commercial use requester." If the OCC reasonably doubts the requester's stated intended use, or if that use is not clear from the request, the OCC may place the requester in the "commercial use" category or

may seek additional clarification. The fee categories are as follows:

(i) *Commercial use requesters.* The OCC assesses a fee for a requester in this category for the actual cost of search, review, and duplication. A requester in this category does not receive any free search, review, or duplication services.

(ii) *Educational institution requesters, noncommercial scientific institution requesters, and requesters who are representatives of the news media.* The OCC assesses a fee for a requester in this category for the actual cost of duplication. A requester in this category receives 100 free pages.

(iii) *All other requesters.* The OCC assesses a fee for a requester who does not fit into either of the above categories for the actual cost of search and duplication. A requester in this category receives 100 free pages and two hours of free search time.

(3) *Special services.* The OCC may, in its discretion, accommodate a request for special services. The OCC may recover the actual cost of providing any special services.

(4) *Waiving or reducing a fee.* The OCC may waive or reduce a fee under this section whenever, in its opinion, disclosure of records is in the public interest because the disclosure:

(i) Is likely to contribute significantly to public understanding of the operations or activities of the government; and

(ii) Is not primarily in the commercial interest of the requester.

(5) *Fee for unsuccessful search.* The OCC may assess a fee for time spent searching for records, even if the OCC does not locate the records requested.

(c) *Payment of fees—(1) General.* The OCC generally assesses a fee when it delivers the records in response to the request, if any. A requester must send payment within 30 calendar days of the billing date to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

(2) *Fee likely to exceed \$25.* If the OCC estimates that a fee is likely to exceed \$25, the OCC notifies the requester of the estimated fee, unless the requester has indicated in advance a willingness to pay a fee as high as the estimated fee. If so notified by the OCC, the re-

quester may confer with OCC employees to revise the request to reflect a lower fee.

(3) *Fee likely to exceed \$250.* If the OCC estimates that a fee is likely to exceed \$250, the OCC notifies the requester of the estimated fee. In this circumstance, the OCC may require, as a condition to processing the request, that the requester:

(i) Provide satisfactory assurance of full payment, if the requester has a history of prompt payment; or

(ii) Pay the estimated fee in full, if the requester does not have a history of prompt payment.

(4) *Failure to pay a fee.* If the requester fails to pay a fee within 30 days of the date of the billing, the OCC may require, as a condition to processing any further request, that the requester pay any unpaid fee, plus interest (as provided in paragraph (c)(5) of this section), and any estimated fee in full for that further request.

(5) *Interest on unpaid fee.* The OCC may assess interest charges on an unpaid fee beginning on the 31st day following the billing date. The OCC charges interest at the rate prescribed in 31 U.S.C. 3717.

(d) *Tolling of time limits.* Under the circumstances described in paragraphs (c) (2), (3), and (4) of this section, the time limits set forth in §4.15(f) (*i.e.*, 10 business days from the receipt of a request for records and 20 business days from the receipt of an administrative appeal, plus any permissible extension) begin only after the OCC receives a revised request under paragraph (c)(2) of this section, an assurance of payment under paragraph (c)(3)(i) of this section, or the required payments under paragraph (c)(3)(i) or (c)(4) of this section.

(e) *Aggregating requests.* When the OCC reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of a fee, the OCC may aggregate the requests and assess a fee accordingly.