

of determining whether to disclose commercial information. Whenever the Agency decides to disclose commercial information over the objection of a submitter, the Agency shall forward to the submitter a written statement which shall include the following:

(1) A brief explanation as to why the Agency did not agree with any objections;

(2) A description of the commercial information to be disclosed, sufficient to identify the information to the submitter; and

(3) A date after which disclosure is expected. Such notice of intent to disclose shall be forwarded to the submitter in a reasonable number of working days prior to the expected disclosure date.

(f) Notice of FOIA lawsuit. Whenever a requester brings suit seeking to compel disclosure of commercial information covered by paragraph (c) of this section, the Agency shall promptly notify the submitter. Whenever a submitter brings suit against the Agency in order to prevent disclosure of commercial information, the Agency shall promptly notify the requester.

(g) Exceptions to notice requirements. The notice requirements of this section do not apply if—

(1) The information has been published or otherwise made available to the public.

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

(3) The submitter has received notice of a previous FOIA request which encompassed information requested in the later request, and the Agency intends to withhold and/or release information in the same manner as in the previous FOIA request;

(4) Upon submitting the information or within a reasonable period thereafter,

(i) The submitter reviewed its information in anticipation of future requests pursuant to the FOIA,

(ii) Provided the Agency a statement of its objections to disclosure consistent with that described in paragraph (e) of this section, and

(iii) The Agency intends to release information consistent with the submitter's objections;

(5) Notice to the submitter may disclose information exempt from disclosure pursuant to 5 U.S.C. 552(b)(7).

(h)(1) An additional limited exception to the notice requirements of this section, to be used only when all of the following exceptional circumstances are found to be present, authorizes the Agency to withhold information which is the subject of a FOIA request, based on Exemption 4 (5 U.S.C. 552(b)(4)), without providing the submitter individual notice:

(i) The Agency would be required to provide notice to over 10 submitters, in which case, notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

(ii) Absent any response to the published notice, the Agency determines that if it provided notice as is otherwise required by paragraph (c) of this section, it is reasonable to assume that the submitter would object to disclosure of the information based on Exemption 4; and,

(iii) If the submitter expressed the anticipated objections, the Agency would uphold those objections.

(2) This exemption shall be used only with the approval of the Chief Counsel of the Center, the Attorney-Advisor to the Inspector General, or the Associate General Counsel responsible for providing advice on the request. This exception shall not be used for a class of documents or requests, but only as warranted by an individual FOIA request.

[64 FR 39404, July 22, 1999, as amended at 65 FR 19647, Apr. 12, 2000]

Subpart 7—Search, Review, and Duplication Fees

§ 1206.700 Schedule of fees.

The fees specified in this section shall be charged for searching for, reviewing, and/or duplicating Agency records made available in response to a request under this part.

(a) Copies. For copies of documents such as letters, memoranda, statements, reports, contracts, etc., \$0.10 per copy of each page. For copies of oversize documents, such as maps, charts, etc., \$0.15 for each reproduced

copy per square foot. These charges for copies include the time spent in duplicating the documents. For copies of computer disks, still photographs, blueprints, videotapes, engineering drawings, hard copies of aperture cards, etc., the fee charged will reflect the full direct cost to NASA of reproducing or copying the record.

(b) Clerical searches. For each one-quarter hour spent by clerical personnel in searching for an Agency record in response to a request under this part, \$3.75.

(c) Nonroutine, nonclerical searches. When a search cannot be performed by clerical personnel; for example, when the task of determining which records fall within a request and collecting them requires the time of professional or managerial personnel, and when the amount of time that must be expended in the search and collection of the requested records by such higher level personnel is substantial, charges for the search may be made at a rate in excess of the clerical rate, namely for each one-quarter hour spent by such higher level personnel in searching for a requested record, \$7.50.

(d) Review of records. For commercial use requests only, when time is spent reviewing to determine whether they are exempt from mandatory disclosure, a charge may be made at the rate for each one-quarter hour spent by an attorney, \$11.25. No charge shall be made for the time spent in resolving general legal or policy issues regarding the application of exemptions. This charge will only be assessed the first time NASA reviews a record and not at the administrative appeal level.

(e) Computerized records. Because of the diversity in the types and configurations of computers which may be required in responding to requests for Agency records maintained in whole or in part in computerized form, it is not feasible to establish a uniform schedule of fees for search and printout of such records. In most instances, records maintained in computer data banks are available also in printed form and the standard fees specified in paragraph (a) of this section shall apply. If the request for an Agency record required to be made available under this part requires a computerized search or print-

out, the charge for the time of personnel involved shall be at the rates specified in paragraphs (b) and (c) of this section. The charge for the computer time involved and for any special supplies or materials used shall not exceed the direct cost to NASA. This charge may be as high as \$125.00 per quarter hour. Before any computer search or printout is undertaken in response to a request for an Agency record, the requester shall be notified of the applicable unit costs involved and the total estimated cost of the search and/or printout.

(f) Other search and duplication costs. Reasonable standard fees, other than as specified in paragraphs (a) through (e) of this section, may be charged for additional direct costs incurred in searching for or duplicating an Agency record in response to a request under this part. Charges which may be made under this paragraph include, but are not limited to, the transportation of NASA personnel to places of record storage for search purposes or freight charges for transporting records to the personnel searching for or duplicating a requested record.

(g) Charges for special services. Complying with requests for special services such as those listed in (g)(1), (2), and (3) of this section is entirely at the discretion of NASA. Neither the FOIA nor its fee structure cover these kinds of services. To the extent that NASA elects to provide the following services, it will levy a charge equivalent to the full cost of the service provided:

(1) Certifying that records are true copies.

(2) Sending records by special methods such as express mail.

(3) Packaging and mailing bulky records that will not fit into the largest envelope carried in the supply inventory.

(h) Unsuccessful or unproductive searches. Search charges, as set forth in paragraphs (b) and (c) of this section, may be made even when an Agency record which has been requested cannot be identified or located after a diligent search and consultation with a professional NASA employee familiar with the subject area of the request, or if located, cannot be made available

under Subpart 3 of this part. Ordinarily, however, fees will not be charged in such instances unless they are substantial (over \$50.00) and the requester has consented to the search after having been advised that it cannot be determined in advance whether any records exist which can be made available (see §1201206.704) and that search fees will be charged even if no record can be located and made available.

(i) Fees not chargeable.

(1) NASA will not charge for the first 100 pages of duplication and the first 2 hours of search time either manual or electronic except to requesters seeking documents for commercial use.

(2) If the cost to be billed to the requester is equal to or less than \$15.00, no charges will be billed.

(j) Records will be provided in a form or format specified by the requester if they are readily reproducible in such format with reasonable efforts. If the records are not readily reproducible in the requested form or format, the Agency will so inform the requester. The requester may specify an alternative form or format that is available. If the requester refuses to specify an alternative form or format, the Agency will not process the request further.

§ 1206.701 Categories of requesters.

There are four categories of FOIA requesters: Commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each of these categories:

(a) Commercial use requesters. When NASA receives a request for documents appearing to be for commercial use, it will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought. Moreover, in the case of such a request, NASA will not consider a request for waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. Commercial use requesters are not entitled to 2 hours of free search time or to 100 free pages of reproduction of documents.

(b) Education and noncommercial scientific institution requesters. NASA shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request being made is authorized by and under the auspices of a qualifying institution and that the records are not being sought for a commercial use, but are being sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(c) Requesters who are representatives of the news media. NASA shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must demonstrate that he/she meets the criteria in §1206.101(o) of this part, and his/her request must not be made for a commercial use. Requesters must reasonably describe the records sought.

(d) All other requesters. NASA shall charge requesters who do not fit into any of the categories mentioned in this section, fees which recover the full direct reasonable cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first 2 hours of search time shall be furnished without charge. Moreover, requests from individuals for records about themselves located in NASA's systems of records will continue to be processed under the fee provisions of the Privacy Act of 1974, which permits fees only for reproduction. Requesters must reasonably describe the records sought.

§ 1206.702 Waiver or reduction of fees.

The burden is always on the requester to provide the evidence to qualify him/her for a fee waiver or reduction.

(a) NASA shall furnish documents without charge or at reduced charges in accordance with 5 U.S.C. 552(a)(4)(A)(iii), provided that: