

Office of the Secretary, USDA

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Hearing Clerk in the Office of Administrative Law Judges may authenticate copies of documents in the records of the Hearing Clerk, the Director of the National Appeals Division may authenticate copies of documents in the records of the National Appeals Division, and the Inspector General may authenticate copies of documents in the records of the Office of Inspector General.

[72 FR 66042, Nov. 27, 2007]

§ 1.23 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.

[65 FR 46341, July 28, 2000]

§ 1.24 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 appropriate records disposition authority granted by NARA. Under no circumstances shall records be sent to a Federal Records Center, transferred to the permanent custody of NARA, or destroyed while they are the subject of a pending request, appeal, or civil action under the FOIA.

[65 FR 46341, July 28, 2000]

§ 1.25 Implementing regulations for the Office of the Secretary and the Office of Communications.

(a) For the Office of the Secretary and for the Office of Communications, the regulations required by § 1.3 are as follows:

(1) Records available for public inspection and copying may be obtained in Room 536-A, Jamie L. Whitten Federal Building, USDA, Washington, DC 20250 during the hours of 9 a.m. to 5 p.m. by prior appointment;

(2) Any indexes and supplements which are maintained in accordance with the requirements of 5 U.S.C.

552(a)(2) and § 1.5(b) will also be available in Room 536-A, Jamie L. Whitten Federal Building, USDA, Washington, DC 20250 during the hours of 9 a.m. to 5 p.m.;

(3) The person authorized to receive Freedom of Information Act requests and to determine whether to grant or deny such requests is the FOIA Officer, Office of Communications, USDA, Washington, DC 20250;

(4) The official authorized to receive appeals from denial of FOIA requests and to determine whether to grant or deny such appeals is the Director of Communications, Office of Communications, USDA, Washington, DC 20250.

(b) The organization and functions of the Office of the Secretary and the Office of Communications is as follows:

(1) The Office of the Secretary provides the overall policy guidance and direction of the activities of the Department of Agriculture. Department-wide policy statements and announcements are made from this office.

(2) The Office of the Secretary consists of the Secretary, Deputy Secretary, Under Secretaries, Assistant Secretaries, and other staff members.

(3) In the absence of the Secretary and the Deputy Secretary, responsibility for the operation of the Department of Agriculture is as delegated at part 2, subpart A, of this title.

(4) The Office of Communications provides policy direction, review, and coordination of public information programs of the Department of Agriculture. The Office of Communications has responsibility for maintaining the flow of information to the mass communications media, various constituency groups, and the general public.

(5) The Office of Communications is headed by the Director of Communications. In the Director's absence, the Office of Communications is headed by the Deputy Director.

[65 FR 46341, July 28, 2000]

APPENDIX A TO SUBPART A OF PART 1— FEE SCHEDULE

Section 1. General.

This schedule sets forth fees to be charged for providing copies of records—including photographic reproductions, microfilm, maps

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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 of this appendix, fees may be assessed under the Freedom of Information Act on all requests involving such services as record search, duplication, and review. Fees may also be charged in situations involving special service to a request, such as certifying that records requested are true copies, or sending records by special methods such as express mail, etc. For services not covered by the FOIA or by this appendix, 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 records for a commercial use (as specified in section 5 of this appendix), no charge shall be made for either: (1) The first 100 pages of duplicated records (8½"×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) of this appendix.

(b) 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) 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 charge shall be made for normal postage costs.

(d) Records shall also be furnished without charge under the following conditions:

(1) When filling requests from other Departments or Government agencies for official use, provided quantities requested are reasonable in number;

(2) When members of the public provide their own copying equipment, in which case

no copying fee will be charged (although search and review fees may still be assessed); or

(3) When any notices, decisions, orders, or other materials are required by law to be served on a party in any proceeding or matter before any Department agency.

Section 4. Fees for records and related services.

(a) The fee for photocopies of pages 8½"×14" or smaller shall be \$0.20 per page (per individual side of sheet).

(b) The fee for photocopies larger than 8½"×14" shall be \$0.50 per linear foot of the longest side of the copy.

(c) The fee for other forms of duplicated records, such as microform, audio-visual materials, or machine-readable documentation (i.e., magnetic tape or disk), shall be the actual direct cost of producing the records.

(d) Manual searches shall be charged for in one of the two following manners in the given order:

(1) When feasible, at the salary rate of the employee conducting the search, plus 16 percent of the employee's basic pay; or

(2) Where a homogeneous class of personnel is used exclusively, at the rate of \$10.00 per hour for clerical time, and \$20.00 per hour for supervisory or professional time. Charges should be computed to the nearest quarter hour required for the search. A homogeneous class of personnel, for purposes of conducting manual searches and where more than one individual is involved, is a group of employees of like rank, grade, pay or position. A heterogeneous class of personnel is a group of employees of unlike rank, grade, pay, or position. If a heterogeneous class of personnel is involved in a search then the search shall be charged for at the salary rate of the individuals.

(e) Mainframe computer searches and services shall be charged for at the rates established in the Users Manual or Handbook published by the computer center at which the work will be performed. Where the rate has not been established, the rate shall be \$27.00 per minute. Searches using computers other than mainframes shall be charged for at the manual search rate.

(1) Other rates are published and may be examined at the following places:

Fort Collins Computer Center Users Manual
Fort Collins Computer Center, U.S. Department of Agriculture, 3825 East Mulberry Street (P.O. Box 1206), Fort Collins, Colo. 80521.

National Finance Center, Cost, Productivity & Analysis Section, U.S. Department of Agriculture, 13800 Old Gentilly Road, New Orleans, La. 70129.

Kansas City Computer Center Users Manual
Kansas City Computer Center, U.S. Department of Agriculture, 8930 Ward Parkway (P.O. Box 205), Kansas City, MO. 64141.

Washington Computer Center Users Handbook: Washington Computer Center, U.S. Department of Agriculture, Room S-100, South Building, 12th Street and Independence Avenue, SW., Washington, DC 20250.

St. Louis Computer Center, U.S. Department of Agriculture, 1520 Market Street, St. Louis, MO. 63103.

(f) Charges for unsuccessful searches, or searches which fail to locate records or which locate records which are exempt from disclosure, shall be assessed at the same fee rate as searches which result in disclosure of records.

(g) The fee for providing review services shall be the hourly salary rate (i.e., basic pay plus 16 percent) of the employee conducting the review to determine whether any information is exempt from mandatory disclosure.

(h) The fee for Certifications shall be \$5.00 each; Authentications under Department Seal (including aerial photographs), \$10.00 each.

(i) All other costs incurred by USDA agencies will be assessed the requester at the actual cost to the Government.

(j) The fees specified in paragraphs (a) through (g) of this section apply to all requests for services under the FOIA, unless no fee is to be charged, or the agency has determined to waive or reduce those fees pursuant to section 6 of this appendix. No higher fees or charges in addition to those provided for in this appendix may be charged for services under the FOIA.

(k) The fees specified in paragraphs (h) and (i) of this section and in section 17 of this appendix apply to requests for services other than those subject to the FOIA. The authority for establishment of these fees is at 31 U.S.C. 9701 and other applicable laws.

(l) Except as provided in section 11 of this appendix, for services not subject to the FOIA, and not covered by paragraph (h) of this section, agencies may set their own fees in accordance with applicable law.

Section 5. Levels of fees for each category of requesters.

Under the FOIA, there are four categories of FOIA requesters: Commercial use requesters, educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. FOIA prescribes specific levels of fees for each category:

(a) Commercial use requesters—For commercial use requesters, agencies shall assess charges which recover the full direct costs of

searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are not entitled to the free search time or duplication referenced in section 3(a) of this appendix. Agencies may recover the cost of searching for and reviewing records for commercial use requesters even if there is ultimately no disclosure of records.

(1) A commercial use requester is defined as one who seeks information 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.

(2) In determining whether a requester properly belongs in this category, agencies must determine whether the requester will put the records to a commercial use. Where an agency has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the agency may seek additional clarification from the requester.

(b) Educational and non-commercial scientific institution requesters—Fees for this category of requesters shall be limited to the cost of providing duplication service alone, minus the charge for the first 100 reproduced pages. No charge shall be made for search or review services. To qualify for this category, requesters must show that the request is being made as authorized by and under the auspices of an eligible institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly research (if the request is from an educational institution) or scientific research (if the request is from a non-commercial scientific institution).

(1) The term *educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(2) The term *non-commercial scientific institution* refers to institution that is not operated on a "commercial" (see section 5(a)(1)) of this appendix basis, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(c) Requesters who are representatives of the news media—Fees for this category of requesters shall also be limited to the cost of providing duplication service alone, minus the charge for the first 100 reproduced pages. No charge shall be made for providing search or review services. Requests in this category must not be made for a commercial use.

(1) The term *representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

(2) The term *news* means information that is about current events or that would be of current interest to the public.

(3) Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals which disseminate news and who make their products available for purchase or subscription by the general public.

(4) *Freelance* journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(d) All other requesters—Fees for requesters who do not fit into the categories described in paragraphs (a), (b), or (c) of this section shall be assessed for the full reasonable direct cost of searching for and duplicating records that are responsive to a request. No charge, however, shall be made to requesters in this category for: (1) The first 100 duplicated pages; or (2) the first two hours of manual search time, or the equivalent value of computer search time as defined in section 4(e) of this appendix.

Section 6. Fee waivers and reductions.

(a) Agencies shall waive or reduce fees on request for records if disclosure of the information in the records is deemed to be in the public interest. A request is in the public interest if it is likely to contribute significantly to public understanding of the operations or activities of the government, and is not primarily in the commercial interest of the requester.

(1) In determining when fees shall be waived or reduced, agencies should consider the following six factors:

(i) The subject of the request, i.e., whether the subject of the requested records concerns “the operations or activities of the government”;

(ii) The informative value of the information to be disclosed, i.e., whether the disclosure is “likely to contribute” to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure, i.e., whether disclosure of the requested information will contribute to “public understanding”;

(iv) The significance of the contribution to public understanding, i.e., whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities;

(v) The existence and magnitude of a commercial interest, i.e., whether the requester has a commercial interest that would be furthered by the requested disclosure; and,

(vi) The primary interest in disclosure, i.e., whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public

interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.”

(2) An agency may, in its discretion, waive or reduce fees associated with a request for disclosure, regardless of whether a waiver or reduction has been requested, if the agency determines that disclosure will primarily benefit the general public.

(3) Agencies may also waive or reduce fees under the following conditions:

(i) Where the furnishings of records or a service without charge or at a reduced rate is an appropriate courtesy to a foreign country or international organization, or where comparable fees are set on a reciprocal basis with a foreign country or an international organization;

(ii) Where the requester is engaged in a nonprofit activity designed for the public safety, health, or welfare; or

(iii) Where it is determined that payment of the full fee by a State or local government or nonprofit group would not be in the interest of the program involved.

(4) Fees shall be waived, however, without discretion in all circumstances where the amount of the fee is \$25.00 or less.

Section 7. Restrictions regarding copies.

(a) Agencies may restrict numbers of photocopies and directives furnished the public to one copy of each page. Copies of forms provided the public shall also be held to the minimum practical. Persons requiring any large quantities should be encouraged to take single copies to commercial sources for further appropriate reproduction.

(b) Single or multiple copies of transcripts, provided to the Department under a reporting service contract, may be obtained by the public from the contractor at a cost not to exceed the cost per page charged to the Department for extra copies. The contractor may add a postage charge when mailing orders to the public, but no other charge may be added.

Section 8. Payments of fees and charges.

(a) Payments should be billed for to the fullest extent possible at the time the requested materials are furnished. Payments should be made by requesters within 30 days of the date of the billing.

(b) Payments shall be made by check, draft, or money order made payable to the Treasury of the United States, although payments may be made in cash, particularly where services are performed in response to a visit to a Department office. All payments should be sent to the address indicated by the agency responding to the request.

(c) Where the estimated fees to be charged exceed \$250.00, agencies may require an advance payment of an amount up to the full

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estimated charges (but not less than 50 percent) from the requester before any of the requested materials are reproduced.

(d) In instances where a requester has previously failed to pay a fee, an agency may require the requester to pay the full amount owed, plus any applicable interest as provided in section 9 of this appendix, as well as the full estimated fee associated with any new request before the agency begins to process that new or subsequent request.

Section 9. Interest charges.

On requests that result in fees being assessed, agencies may begin levying interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717, and will accrue from the date of the billing.

Section 10. Effect of the Debt Collection Act on fees.

In attempting to collect fees levied under the FOIA, agencies shall abide by the provisions of 31 U.S.C. 3701, 3711-3720A, in disclosing information to consumer reporting agencies and in the use of collection agencies, where appropriate, to encourage payment.

Section 11. Photographic and digital reproductions of microfilm, aerial imagery, and maps.

Microfilm, aerial imagery, and maps that have been obtained in connection with the authorized work of this Department may be sold at the estimated cost of furnishing reproductions of these records, using photographic, digital, or other methods of reproduction as prescribed in this appendix.

Section 12. Agencies which furnish photographic reproductions.

(a) *Aerial Photographic reproductions.* The following agency of the Department furnishes aerial photographic reproductions:

Farm Service Agency (FSA), Aerial Photography Field Office (APFO), USDA, 2222 West 2300 South, Salt Lake City, Utah 84119-2020.

(b) *Other photographic reproductions.* Other types of reproductions may be obtained from the following agency of the Department:

National Agricultural Library, Agricultural Research Service, USDA, Office of the Deputy Director, Technical Information Systems, Room 200, NAL Building, Beltsville, MD 20705.

Section 13. Circumstances under which reproductions may be provided free.

Reproductions may be furnished free at the discretion of the agency, if it determines that furnishing free reproductions is in the public interest, to:

(a) Representatives of the news media for dissemination to the general public.

(b) Agencies of State and local governments carrying on a function related to that of the Department when it will help to accomplish an objective of the Department.

(c) Cooperators and others furthering agricultural programs. Generally, only one print of each photograph should be provided free.

Section 14. Loans.

Aerial photographic film negatives or reproductions may not be loaned outside the Federal Government.

Section 15. Sales of positive prints under government contracts.

The annual contract for furnishing single and double frame slide film negatives and positive prints to agencies of the Department, County Extension Agents, and others cooperating with the Department, carries a stipulation that the successful bidder must agree to furnish slide film positive prints to such persons, organizations, and associations as may be authorized by the Department to purchase them.

Section 16. Procedure for handling orders.

In order to expedite handling, all orders should contain adequate identifying information. Agencies furnishing aerial photographic reproductions require that all such orders identify the photographs. Each agency has its own procedure and order forms.

Section 17. Reproduction prices.

The prices for reproductions listed in this section are for the most generally requested items.

(a) *National Agricultural Library.* The following prices are applicable to National Agricultural Library items only: Reproduction of electrostatic, microfilm, and microfiche copy—\$5.00 for the first 10 pages or fraction thereof, and \$3.00 for each additional 10 pages or fraction thereof. Duplication of NAL-owned microfilm—\$10.00 per reel. Duplication of NAL-owned microfiche—\$5.00 for the first fiche, and \$0.50 for each additional fiche. Charges for manual and automated data base searches for bibliographic or other research information will be made in accordance with section 4, paragraphs (c)-(e) of this appendix. The contract rate charged by the commercial source to the National Agricultural Library for computer services is available at the National Agricultural Library, Agricultural Research Service, USDA, Document Delivery Services Branch, 10301 Baltimore Boulevard, Beltsville, Maryland 20705-2351 (301-504-6503).

(b) *General photographic reproductions.* Minimum charge \$1 per order. An extra charge may be necessary for excessive laboratory

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time caused by any special instructions from the purchaser.

Class of work and unit	Price
1. Black and white line negatives:	
4 by 5 (each)	\$6.00
8 by 10 (each)	8.50
11 by 14 (each)	11.00
2. Black and white continuous tone negatives:	
4 by 5 (each)	8.50
8 by 10 (each)	11.00
3. Black and white enlargements: 8 by 10 and smaller (each)	6.50
11 by 14 (each)	11.00
Larger sizes and quantities	(¹)
4. Black and white slides:	
2x2 cardboard mounted (from copy negative) (each)	4.00
Blue ozalid slides (each)	5.00
5. Color slides: (2x2 cardboard mounted):	
Duplicate color slides:	
Display quality (each) (Display color slides are slides copied from 35mm color slides only)65
Repro quality (each)	(¹)
Original color slides (from flat copy) (each) ..	6.50
6. Color enlargements and transparencies: 4 by 5 and larger	(¹)
7. Slide sets:	
1 to 50 frames	14.50
51 to 60 frames	16.50
61 to 75 frames	18.50
76 to 95 frames	21.50
96 to 105 frames	23.00
106 to 130 frames (Prices include printed narrative guide)	26.50
8. Cassettes: (for the corresponding slide sets above)	3.00

¹By quotation.

(c) *General aerial photographic reproductions.* The prices for various types of aerial photographic reproductions are set forth in this paragraph. Size measurements refer to the approximate size in inches of the paper required to produce the reproduction.

Size	Price
Black and White Reproductions	
10x10 Paper	\$5.00
10x10 Film Positive	10.00
10x10 Film Positive AT	10.00
10x10 Film Positive Scan	15.00
10x10 Film Duplicate Negative	3.00
10x10 Film Internegative	4.50
12x12 Paper	12.00
17x17 Paper	13.00
17x17 Film Positive	25.00
24x24 Paper	16.00
24x24 Film Positive	40.00
38x38 Paper	50.00
38x38 Film Positive	55.00
20x24 Paper Photo Index	20.00
Paper Line Index	15.00
Mylar Line Index	35.00
Microfilm (Photo Indexes): Aperture Cards	10.00
Microfilm (Photo Indexes): Microfiche	10.00
Color Negative Reproductions	
10x10 Paper Quantities:	
1-50	\$7.00

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Size	Price
51-1000	5.00
1001 & Over	2.50
10x10 Film Positive	33.00
20x20 Paper	40.00
24x24 Paper	55.00
38x38 Paper	70.00
Color Infrared Positive Reproductions	
10x10 Paper	\$12.00
10x10 Film Positive	15.00
10x10 Film Positive AT	15.00
10x10 Film Positive Scan	20.00
20x20 Paper	32.00
24x24 Paper	40.00
38x38 Paper	70.00

(d) [Reserved]

(e) *Special needs.* For special needs not covered elsewhere in this section, persons desiring aerial photographic reproductions should contact the aerial photography coordinator, Farm Service Agency (FSA), Aerial Photography Field Office, USDA-FSA, 2222 West 2300 South, P.O. Box 30010, Salt Lake City, Utah 84125.

(f) *Audio and videotape reproductions.* For reproductions of audio-videotapes, requesters must supply their own recording tape, and will be assessed a fee of \$25.00 an hour for copying work requested. There is a one-hour minimum charge. Payment is required at the time video or audiotapes are accepted by the requester.

[52 FR 49386, Dec. 31, 1987, as amended at 62 FR 33980, June 24, 1997; 64 FR 3395, Jan. 22, 1999]

Subpart B—Departmental Proceedings

§ 1.26 Representation before the Department of Agriculture.

(a) *Applicability.* This section applies to all hearings and other proceedings before the Department of Agriculture, except to the extent that any other regulation of the Department may specifically make this section, or any part of this section, inapplicable as to particular hearings or other proceedings.

(b) *Administrative provisions.* (1) In any hearing or other proceeding before the Department of Agriculture, the parties may appear in person or by counsel or other representative. Persons who appear as counsel or in a representative capacity in any hearing or proceeding must conform to the standards of ethical conduct required of practitioners before the U.S. District Court for the