

notified in writing, which notice shall set forth the reasons for upholding the previous denial. The notification shall also refer to the provisions for judicial review of Eximbank's determination, 5 U.S.C. 552. If the President and Chairman or his designee acts favorably on the appeal, the information or records requested shall be made available promptly provided the requirements of § 404.4(c)(6) regarding payment of fees are satisfied.

[40 FR 7238, Feb. 19, 1975, as amended at 42 FR 56316, Oct. 25, 1977; 43 FR 14438 Apr. 6, 1978]

§ 404.6 Schedule of fees.

(a) *Definitions.* (1) The term *direct costs* means those expenditures which Eximbank actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery.

(2) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming.

(3) The term *duplication* refers to 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. The copy provided must be in a form that is usable by requesters.

(4) The term *review* refers to the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., 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.

(5) The term *commercial request* refers to a request from or on behalf of 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. In determining whether a requester belongs in this category, Eximbank must determine the use to which a requester will put the documents requested. Where Eximbank 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, Eximbank may seek additional clarification before assigning the request to a specific category.

(6) 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.

(7) The term *non-commercial scientific institution* refers to an institution that is not operated on a *commercial* basis as that term is referenced in paragraph (a)(5) of this section, 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.

(8) 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. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of *news*) who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative

media would be included in this category. *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. A publication contract would be the clearest proof, but Eximbank may also look to the past publication record of a requester in making this determination.

(b) *Fees to be charged—general.* Eximbank will charge fees that recoup the full allowable direct costs it incurs, and will use the most efficient and least costly methods to comply with requests for documents made under the FOIA. Eximbank may contract with private sector services to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method, and does not result in an ultimate cost to the requester greater than it would be if Eximbank had performed these tasks. Eximbank will not contract out responsibilities which the FOIA provides that it alone may discharge, such as determining applicability of an exemption, or determining whether to waive or reduce fees. When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as the Government Printing Office or the National Technical Information Service, Eximbank will inform requesters of the steps necessary to obtain records from those sources.

(1) *Manual searches for records.* Eximbank will charge for search and review work performed by its employees according to the following fee schedule:

Clerical, hourly rate—\$12.00
Professional, hourly rate—\$24.00

(2) *Computer searches for records.* Eximbank will charge the actual direct cost of providing the service. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search. Operator/programmer salary will be calculated at basic pay plus

16 percent. Average rates for CPU operating costs and operator-programmer salaries involved in FOIA searches will be established and periodically revised to reflect actual direct costs. These rates will be available upon request.

(3) *Review of records.* Only requesters who are seeking documents for commercial use will be charged for time Eximbank spends reviewing records to determine whether they are exempt from mandatory disclosure. Charges will be assessed only for the initial review, i.e., the review undertaken the first time Eximbank analyzes the applicability of a specific exemption to a particular record or portion of a record. Eximbank will not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review may be assessed. Eximbank will charge for employee time spent in review according to the rates set forth in paragraph (b)(1) of this section.

(4) *Duplication of records.* The per page charge for paper copy reproduction of documents is \$.25. For copies prepared by computer, such as tape or printouts, or for other methods of reproduction or duplication, Eximbank will charge according to their actual direct cost. If Eximbank estimates that duplication charges are likely to exceed \$25.00, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such notice will offer a requester the opportunity to confer with Eximbank personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(5) *Other charges.* Complying with requests for special services such as those listed below is entirely at the discretion of Eximbank. Eximbank will recover the full costs of providing services such as those enumerated below to the extent that it elects to provide them:

(i) Certifying that records are true copies;

(ii) Sending records by special methods such as express mail, etc. (Charges will not be made for ordinary packaging and mailing.)

(6) *Restrictions on assessing fees.* With the exception of requesters seeking documents for a commercial use, Eximbank will provide the first 100 pages of duplication and the first two hours of search time without charge. Except for commercial use requesters, Eximbank will not begin to assess fees until after it has provided the free search and reproduction, and will not charge a fee in any case of \$6.00 or less. For example, for a request that involved two hours and ten minutes of search time and resulted in 105 pages of documents, Eximbank would determine the cost of only 10 minutes of search time and only five pages of reproduction. If this cost was equal to or less than \$6.00, no charges would result. For searches made by computer, when the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, Eximbank will begin to assess charges for computer search.

(c) *Fees to be charged—categories of requesters.* There are four categories of FOIA requesters, with specific levels of fees for each category prescribed by law. Requesters in each category must reasonably describe the records sought.

(1) *Commercial use requesters.* When Eximbank receives a request for documents for commercial use, it will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Inclusion in this fee category is determined not by the identity of the requester, but by the use to which the information will be put. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. Eximbank will recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records.

(2) *Educational and non-commercial scientific institution requesters.* Eximbank

will 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 is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are 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. To be included in this category it must be apparent from the nature of the request that the request serves a scholarly research goal of the institution, rather than an individual goal.

(3) *Requesters who are representatives of the news media.* Eximbank will 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 meet the criteria in paragraph (a)(8) of this section, and his or her request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester will not be considered to be a request that is for a commercial use.

(4) *All other requesters.* Eximbank will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time will be furnished without charge. Requests from record subjects for records about themselves filed in Eximbank systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction.

(d) *Charging interest—notice and rate.* Eximbank will begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. Receipt of the fee at Eximbank will stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C. and will accrue from the date of the billing.

(e) *Charges for unsuccessful search.* Eximbank will assess charges for time spent searching, even if it fails to locate the records or if records located are determined to be exempt from disclosure. Prior to undertaking a search, if Eximbank estimates that search fees are likely to exceed \$25.00, it will notify the requester of the estimated amount of the fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. The notice will offer the requester the opportunity to consult with agency personnel with the object of reformulating the request to meet the requester's needs at lower cost.

(f) *Aggregating requests.* A requester may not file multiple requests at the same time each seeking a portion of a document or documents, solely in order to avoid payment of fees. When Eximbank reasonably believes 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, Eximbank may aggregate any such requests and charge accordingly. In no case will Eximbank aggregate multiple requests on unrelated subjects from one requester.

(g) *Method of payment and advance payments.* All payments to Eximbank shall be in the form of cash, check, or money order payable to the Export-Import Bank of the United States. Eximbank will not require a requester to make an advance payment—i.e., payment before work is commenced or continued on a request, unless:

(1) Eximbank estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250.00, in which case Eximbank will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up 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 Eximbank will require the requester to pay the full amount owed plus any applicable inter-

est or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before Eximbank begins to process a new request or a pending request from the requester. The administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after Eximbank has received fee payments described above.

(h) *Effect of the Debt Collection Act of 1982 (Pub. L. 97-365).* In accordance with the provisions and authorities of the Debt Collection Act of 1982, Eximbank reserves the right to disclose information to consumer reporting agencies and to use collection agencies, where appropriate, to encourage payment of fees.

(i) *Fee waivers and appeals.* (1) Eximbank will waive or reduce applicable fees upon request, only if it determines that in the particular instance, disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and the disclosure is not primarily in the commercial interest of the requester.

(i) In determining whether disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, Eximbank will consider the following factors:

(A) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(B) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(C) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding and;

(D) The significance of the contribution to public understanding: Whether

the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(ii) In determining whether disclosure of the information is not primarily in the commercial interest of the requester, Eximbank will consider the following factors:

(A) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(B) The primary interest in disclosure: 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) The requester in all cases has the burden of presenting sufficient evidence or information to justify the requested waiver or reduction. The requester may use the procedures set forth in §404.5 to appeal the denial of a waiver request under this section.

[52 FR 37438, Oct. 7, 1987]

§ 404.7 Annual Report to Congress.

On March 1 of each calendar year, Eximbank will report to Congress on the administration of the public requests for information and records during the prior calendar year.

§ 404.8 Appearances and testimony by Eximbank officers and employees.

Whenever an officer or employee of Eximbank is served with a subpoena demanding the disclosure of the information or the production of files, documents, and records described in this part, or is requested by court, committee or other body to disclose such information, the officer or employee shall promptly inform his superior of the requirements of the subpoena or request and shall ask for instructions from the General Counsel or his designee with respect thereto. Such officer or employee shall appear before the court, committee or body and, if the President and Chairman or his designee has not authorized disclosure, the employee shall respectfully decline to disclose the information or produce the files, documents, and records demanded

or requested, basing such refusal upon this part

[40 FR 7238, Feb. 19, 1975, as amended at 42 FR 56316, Oct. 25, 1977]

PART 405—PRIVACY ACT RULES

Sec.

405.1 Purpose and scope.

405.2 Procedures for notification of existence of records pertaining to individuals.

405.3 Procedures for requests for access to or disclosure of records pertaining to individuals.

405.4 Correction of records pertaining to individuals.

405.5 Disclosure of records pertaining to individuals to agencies or to individuals other than the individual to whom said records pertain.

AUTHORITY: 5 U.S.C. 552a(f).

SOURCE: 41 FR 19299, May 12, 1976, unless otherwise noted.

§ 405.1 Purpose and scope.

This part sets forth the Eximbank procedures under the Privacy Act of 1974, as required by 5 U.S.C. 552a(f), whereby individuals may safeguard their privacy by obtaining access to and requesting corrections of those records under the control of Eximbank which contain information about them.

§ 405.2 Procedures for notification of existence of records pertaining to individuals.

(a) The systems of records, as defined in the Privacy Act of 1974, maintained by Eximbank are listed annually in the FEDERAL REGISTER as required by that Act. Any individual who wishes to know whether any of these systems of records contains a record pertaining to him or her may either appear in person at Room 1031, 811 Vermont Avenue, NW., Washington, DC 20571, on work days between the hours of 8:45 a.m. and 5:00 p.m. or may write to the Vice President—Administration, Export-Import Bank of the United States, 811 Vermont Avenue, NW., Room 1031, Washington, DC 20571. It is recommended that requests be made in writing, as it will not always be possible to determine the existence of a