

## § 5.41

reproduction services are not readily obtainable from private commercial sources.

### § 5.41 FEMA publications.

Anyone may obtain FEMA publications without charge from the FEMA Headquarters, Regional Offices and from FEMA, P.O. Box 8181, Washington, DC 20024 in accordance with standard operating procedures, including limitation on numbers of specific individual publications. FEMA Films may be obtained on loan or certain of these films may be purchased, in which case fees will be charged as set out in a FEMA catalogue. Non-exempt FEMA research reports are available from the National Technical Information Service, United States Department of Commerce, which establishes its own fee schedule. Charges, if any, for these items and similar user charges are established in accordance with other provisions of law as, for example, 31 U.S.C. 9701 and are not deemed search and duplication charges hereunder.

[44 FR 50287, Aug. 27, 1979, as amended at 48 FR 44542, Sept. 29, 1983; 50 FR 40006, Oct. 1, 1985]

### § 5.42 Fees to be charged—categories of requesters.

(a) There are four categories of FOIA requesters: Commercial use requesters; representatives of news media; educational and noncommercial scientific institutions; and all other requesters. The time limits for processing requests shall only begin upon receipt of a proper request which reasonably identifies records being sought. The Freedom of Information Reform Act of 1986 prescribes specific levels of fees for each of these categories:

(1) When records are being requested for commercial use, the fee policy of FEMA is to levy full allowable direct cost of searching for, reviewing for release, and duplicating the records sought. Commercial users are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. The full allowable direct cost of searching for and reviewing records will be charged even if there is ultimately no disclosure of records. Commercial use is defined as a use that furthers the commercial, trade or prof-

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it interests of the requester or person on whose behalf the request is made. In determining whether a requester falls within the commercial use category, FEMA will look to the use to which a requester will put the documents requested. Where a requester does not explain his/her use, or where his/her explanation is insufficient to permit a determination of the nature of the use, FEMA shall require the requester to provide information regarding the use to be made of the information and if the request does not include an agreement to pay all appropriate fees, FEMA will process such request only up to the \$30.00 threshold which is the estimated cost to FEMA to collect fees which we are prohibited from charging by law. Requesters must reasonably describe the records sought.

(2) When records are being requested by representatives of the news media, the fee policy of FEMA is to levy reproduction charges only, excluding charges for the first 100 pages. Representatives 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 where 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 (i.e., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they 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. For example, a publication contract would be the clearest proof, but FEMA may also look to the past publication record, press accreditation, guild membership,

business registration, Federal Communications Commission licensing, or similar credentials of a requester in making this determination. To be eligible for inclusion in this category, requesters must meet the criteria specified in this section and his or her request must not be made for a commercial use basis as that term is defined under paragraph (a)(1) of this section. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought.

(3) When records are being requested by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, the fee policy of FEMA is to levy reproduction charges only, excluding charges for the first 100 pages. 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. Noncommercial scientific institution refers to an institution that is not operated on a commercial basis as that term is defined under paragraph (a)(1) 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. To be eligible for inclusion in this category, requesters must show that the request is being made 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 noncommercial scientific institution) research. Requesters must reasonably describe the records sought.

(4) For any other request which does not meet the criteria contained in paragraphs (a)(1) through (3) of this section, the fee policy of FEMA is to levy full reasonable direct cost of searching for and duplicating the records sought, except that the first 100

pages of reproduction and the first two hours of search time shall be furnished without charge. The first two hours of computer search time is based on the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the computer search, including the operator time and the cost of operating the computer to process the request, equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, FEMA shall begin assessing charges for computer search. Requests from individuals requesting records about themselves filed in FEMA's systems of records shall continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

(b) Except for requests that are for a commercial use, FEMA may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When FEMA believes that a requester or, on rare occasions, 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, FEMA may aggregate any such requests and charge accordingly. For example, it would be reasonable to presume that multiple requests of this type made within a 30-day period had been made to avoid fees. For requests made over a longer period, however, FEMA must have a solid basis for determining that aggregation is warranted in such cases. Before aggregating requests from more than one requester, FEMA must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may FEMA aggregate multiple requests on unrelated subjects from one requester.

(c) In accordance with the prohibition of section (4)(A)(iv) of the Freedom of Information Act, as amended,

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FEMA shall not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(1) For commercial use requesters, if the direct cost of searching for, reviewing for release, and duplicating the records sought would not exceed \$30.00, FEMA shall not charge the requester any costs.

(2) For requests from representatives of news media or educational and non-commercial scientific institutions, excluding the first 100 pages which are provided at no charge, if the duplication cost would not exceed \$30.00, FEMA shall not charge the requester any costs.

(3) For all other requests not falling within the category of commercial use requests, representatives of news media, or educational and noncommercial scientific institutions, if the direct cost of searching for and duplicating the records sought, excluding the first two hours of search time and first 100 pages which are free of charge, would not exceed \$30.00, FEMA shall not charge the requester any costs.

[52 FR 13677, Apr. 24, 1987]

### § 5.43 Waiver or reduction of fees.

(a) FEMA may waive all fees or levy a reduced fee when disclosure of the information requested is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester.

(b) A fee waiver request shall indicate how the information will be used, to whom it will be provided, whether the requester intends to use the information for resale at a fee above actual cost, any personal or commercial benefits that the requester reasonably expects to receive by the disclosure, provide justification to support how release would benefit the general public, the requester's and/or intended user's identity and qualifications, expertise in the subject area and ability and intention to disseminate the information to the public.

[52 FR 13678, Apr. 24, 1987]

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### § 5.44 Prepayment of fees.

(a) When FEMA estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250.00, FEMA may require a requester to make an advance payment of the entire fee before continuing to process the request.

(b) When 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), FEMA may require the requester to pay the full amount owed plus any applicable interest as provided in § 5.46(d), and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(c) When FEMA acts under paragraphs (a) or (b) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from the 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 FEMA has received fee payments described under paragraphs (a) or (b) of this section.

[52 FR 13678, Apr. 24, 1987]

### § 5.45 Form of payment.

Payment shall be by check or money order payable to the Federal Emergency Management Agency and shall be addressed to the official designated by FEMA in correspondence with the requestor or to the Headquarters FOIA Officer or Regional FOIA Officer, as appropriate.

[44 FR 50287, Aug. 27, 1979, as amended at 48 FR 44542, Sept. 29, 1983]

### § 5.46 Fee schedule.

(a) *Manual searches for records.* FEMA will charge at the salary rate(s), (i.e., basic hourly pay rate plus 16 percent) of the employee(s) conducting the search. FEMA may assess charges for time spent searching, even if the agency fails to locate the records or if records located are determined to be exempt from disclosure. FEMA may assess charges for time spent searching, even if FEMA fails to locate the