that exceptional circumstances exist and that it is exercising due diligence in responding to the request. For purposes of this paragraph, “exceptional circumstances” do not include a delay that results from a predictable workload of requests, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests. Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing the request (or a modified request) under paragraph (c) of this section shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this paragraph.

(e) Expedited processing of request. (1) A person requesting records from the Commission pursuant to this section may request expedited processing of his request in cases in which he can demonstrate a compelling need for the records requested. For purposes of this paragraph a compelling need means:

(i) That a failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) The information is urgently needed by a person primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.

(2) A demonstration of compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of his knowledge and belief. Notice of the determination whether to grant expedited processing in response to a requester’s claim of compelling need shall be provided to the person making the request within 10 calendar days after receipt of the request. The Commission will provide expeditious consideration of administrative appeals of determinations whether to provide expedited processing. Once a determination has been made to grant expedited processing, the Commission will process the request as soon as practicable.

(f) Denial of request. In denying a request for records, in whole or in part, the Commission shall state the reason for the denial; set forth the name and title or position of the person responsible for the denial of the request; make a reasonable effort to estimate the volume of the records denied; and provide this estimate to the person making the request, unless providing such an estimate would harm an interest protected by the exemption pursuant to which the request is denied. If an appeal is denied, the Commission’s notice of denial shall inform the requester of the right to obtain judicial review of the Commission’s action under 5 U.S.C. 552(a)(4)(B)-(G).

(g) Partial response to request. Any reasonably segregable portion of a record shall be provided to the person requesting it after the deletion of any exempt portions of the record. The amount of information deleted shall be indicated on the released portion of the record, at the place in the record the deletion is made if technically feasible, unless indicating the extent of the deletion would harm an interest protected by the exemption pursuant to which the deletion is made.

(5) A general index of records referred to under this paragraph (a).

(b) E-FOIA Reading Room. Materials created on or after November 1, 1996, under paragraphs (a)(1) through (5) of this section may also be accessed electronically through the Commission’s Web site at http://www.fmshrc.gov.

§ 2702.5 Fees applicable—categories of requesters.

(a) When documents are requested for commercial use, requesters will be assessed the full direct costs of searching for, reviewing for release, and duplicating the records sought.

(b) When records are being requested by educational or noncommercial scientific institutions whose purpose is scholarly or scientific research, and not for commercial use, the requester will be assessed only for the cost of duplicating the records sought, but no charge will be made for the first 100 paper pages reproduced.

(c) When records are being requested by representatives of the news media, the requester will be assessed only for the cost of duplicating the records sought, but no charge will be made for the first 100 paper pages reproduced.

(d) For any other request not described in paragraphs (a) through (c) of this section, the requester will be assessed the full direct costs of searching for and duplicating the records sought, except that the first two hours of manual search time and the first 100 paper pages of reproduction shall be furnished without charge.

(e) For purposes of paragraphs (b) through (d) of this section, whenever it reasonably appears that a requester, or a group of requesters acting in concert, is attempting to break down a single request into a series of requests relating to the same subject matter for the purpose of evading the assessment of fees, such requests will be aggregated and fees assessed accordingly.

§ 2702.6 Fee schedule.

(a) Search fee. The fee for searching for information and records shall be the salary rate (that is, basic pay plus 16%) of the employee making the search. This hourly rate is listed on the Commission’s Web site at http://www.fmshrc.gov. Fees for searches of computerized records shall be the actual cost to the Commission, but shall not exceed $300 per hour. This fee includes machine time and that of the operator and clerical personnel. If search charges are likely to exceed $50, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Fees may be charged even if the documents are not located or if they are located but withheld on the basis of an exemption.

(b) Review fee. The review fee shall be charged for the Chief FOIA Officer’s initial examination of documents located in response to a request in order to determine if they may be withheld from disclosure, and for the deletion of portions that are exempt from disclosure, but shall not be charged for review by the Chairman or the Commissioners. See §2702.3. The review fee is the salary rate (that is, basic pay plus 16%) of the Chief FOIA Officer or the employee designated to perform the review. This hourly rate is listed on the Commission’s Web site at http://www.fmshrc.gov.

(c) Duplicating fee. The copy fee for each page of paper up to 8½” x 14” shall be $.15 per copy per page. Any private sector services required, including the fee for copying photographs and non-standard documents, will be the actual direct cost incurred by the Commission. For copies prepared by computer, such as tapes or printouts, the Commission shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, the Commission will charge the actual direct costs of producing the document(s). If duplication charges are likely to exceed $50, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated.


§ 2702.6 [72 FR 71791, Dec. 19, 2007]