

February 21, 2013

MEMORANDUM TO: Reginald Mitchell, Controller
Division of the Controller
Office of the Chief Financial Officer

FROM: Cynthia Rheaume, Director */RA/*
Information and Records Services Division
Office of Information Services

SUBJECT: BIENNIAL REVIEW OF FEES FOR FREEDOM OF
INFORMATION ACT

Under the Freedom of Information Reform Act of 1986, agencies may establish fees for the search, review, and/or duplication of records to respond to Freedom of Information Act (FOIA) and Privacy Act (PA) requests. Individuals making requests under the PA are charged fees only for duplication. FOIA requesters are charged fees based on the category to which they belong: commercial; educational, non-commercial scientific, news media; and non-excepted. Commercial requesters are charged fees for search and review time, as well as duplication. News media, educational and non-commercial scientific institutions may be charged fees only for duplication. Non-excepted requesters, all other FOIA requesters who do not fall into any of the foregoing categories, may be charged fees for search and duplication.

Following guidance from the Office of Management and Budget, the U.S. Nuclear Regulatory Commission (NRC) established fees for duplication and for search and review time under 10 CFR Part 9 Public Records. Based on the Biennial Review of Fees conducted by Office of Information Services in April 2009, the agency published a revision to 10 CFR Part 9 in the *Federal Register* on July 16, 2010, (75 FR 41368), and the rule became effective on August 16, 2010. The current fees for search and review time under § 9.37 are charged at the following three levels:

| | |
|--------------------------------|--|
| Senior Executive/Commissioner: | ES-Maximum, plus 16 percent fringe benefits |
| Professional/Managerial: | GG-13, Step 6, plus 16 percent fringe benefits |
| Clerical: | GG-7, Step 6, plus 16 percent fringe benefits |

Because NRC regulations establish FOIA fee charges by grade and step levels rather than by a specific dollar amount, NRC adjusts fees each year based on the across-the-board annual pay increase for those grades (when applicable) without publishing a new *Federal Register* notice to change the rates. This enables the agency to keep pace with increased costs automatically by adjusting our fee charges in accordance with annual cost of living increases for the current pay rates.

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301-415-7169

To conduct the current biennial review, the FOIA/PA Section consulted with the Office of Chief Human Capital Officer (OCHCO) to determine the current average grade of NRC employees in each of the three fee levels for search and review time. The current actual grade and step for each of the levels are Senior Executive/Commissioner: ES-Maximum without a Certified Performance Appraisal System; Professional/Managerial GG-13, Step 6; and Clerical GG-8, Step 6.

There is a difference between the published pay level and the current actual average pay level of the staff as the actual grade for Clerical staff is one higher than the published grade. Therefore, the staff recommends changing the fee schedule for search and review time accordingly.

After reviewing the cost for the Office of the Chief Financial Officer (OCFO) to process a payment under FOIA, the staff also recommends raising the minimum fee charge from \$25.00 to \$28.00. In addition, after consulting with the Office of Administration, the staff recommends keeping the duplication fee for FOIA and PA requests at \$0.20 per page.

The chart below compares fee rates at the grades and steps published in the existing rule versus the current average grades and steps provided by OCHCO. The FOIA/Privacy section will not amend the rule in the *Federal Register* until we receive the approval from OCFO.

| Fee Rate Category | Published Rates | | Actual Rates | | Increase/Decrease |
|-------------------------------|------------------------------|--|--------------------|--|-------------------|
| | Grade/Step Used as Fee Basis | Rate per Hour Plus 16% Fringe Benefits | Average Grade/Step | Rate per Hour Plus 16% Fringe Benefits | |
| Senior Executive/Commissioner | ES-Maximum | \$90.53 | ES-Maximum | \$91.87 | +\$1.34 |
| Professional/Manager | GG-13/6 | \$56.36 | GG-13/6 | \$57.73 | +\$1.37 |
| Clerical | GG-7/6 | \$25.16 | GG-8/6 | \$30.31 | +\$5.15 |

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*E-mail concurrence

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