

§ 1401.35

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Agency having substantial subject matter interest therein.

(b) If any request for records is denied in whole or in part, the response required by paragraph (b) of this section shall notify the requester of the denial. Such denial shall specify the reason therefor and also advise that the denial may be appealed to the Office of Deputy Director of the Agency as specified in § 1401.35.

§ 1401.35 Appeals from denials of request.

(a) Whenever any request for records is denied, a written appeal may be filed with the Deputy Director, FMCS, 2100 K Street, NW., Washington, DC 20427, within 30 days after requester receives notification that the request has been denied or after the requester receives any records being made available, in the event of partial denial. The appeal shall state the grounds for appeal, including any supporting statements or arguments.

(b) Final action on the appeal shall be taken within 20 working days from the time of receipt of the appeal. Where novel and complicated questions have been raised or unusual difficulties have been encountered, the Deputy Director may extend the time for final action up to an additional 10 days, depending upon whether there had been an extension pursuant to § 1401.34(c) at the initial stage. In such cases, the applicant shall be notified in writing of the reasons for the extension of time and the approximate date on which a final response will be forthcoming.

(c) If on appeal the denial of the request for records is upheld in whole or in part, the Deputy Director shall notify the applicant of the reasons therefor, and shall advise the requester of the provisions for judicial review under 5 U.S.C. 552(a) (4) and (6).

29 CFR Ch. XII (7-1-04 Edition)

§ 1401.36 Freedom of Information Act fee schedules.

(a) *Definitions.* For purposes of § 1401.36, the following definitions apply:

(1) *Direct costs* means those expenditures which are actually incurred in searching for and duplicating and, in the case of commercial use requesters, reviewing to respond to a FOIA request.

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

(3) *Duplication* refers to the process of making a copy of a document necessary to respond to a FOIA request. Copies may be in various forms including machine readable documentation (e.g. magnetic tape or disk) among others. The copy provided shall be in a form that is reasonably usable by the requester.

(4) *Review* refers to the process of examining documents located in response to a request that is for commercial use, to determine whether a document or any portion of any document located is permitted to be withheld. It includes processing any documents for disclosure to the requester, e.g., doing all that is necessary to excise them or otherwise prepare them for release.

(5) *Commercial use 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 interest of the requester or the person on whose behalf the request is made.

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

(7) *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