



DEPARTMENT OF DEFENSE
DIRECTORATE FOR FREEDOM OF INFORMATION AND SECURITY REVIEW
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

04 FEB 2000

Ref: 99-CORR-150

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: DoD Policy Regarding Freedom of Information Act (FOIA) requests for Information Associated With Federal Grants and Other Financial Assistance

The Office of Management and Budget (OMB) has revised OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations." The changes were required by a provision of OMB's appropriation for fiscal year 1999, contained in Public Law 105-277. Public Law 105-277 mandates that "Federal awarding agencies ensure that all data produced under an award will be made available to the public through procedures established under the Freedom of Information Act."

The revision to the OMB circular, as published in the Federal Register / Vol.64, No. 195 (attached), sets forth the policies associated with the new law. As stated in paragraph (d)(1) of section __.36 in the attachment to the revised Circular, the following now applies:

- "In response to a FOIA request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA."
- "If the Federal awarding agency obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA."
- The terms *research data*, *published*, and *Used by the Federal Government in developing an agency action that has the force and effect of law* have been defined in this revision to the OMB Circular. Use these definitions to determine what specific information associated with award data must now be obtained from the research facility in order to respond to a FOIA request.

Department of Justice guidance (FOIA Update, Vol.XIX, No. 4), states that implementation of the provision applies only to data created under grants and agreements issued after the effective date of November 8, 1999, of the OMB Circular. The changes to




OMB Circular A-110 are not applicable to requests for data from grants and agreements awarded before the effective date of November 8, 1999. Requests for data from grants and agreements awarded before the effective date of the circular will not be processed in accordance with the changes to the revised OMB Circular. Requests for grants and agreements made between the date of November 8, 1999, and the date of Department of Defense implementation will be processed.

In order to implement the changes to the OMB Circular within the Department of Defense, part 32 of DoD 3210.6-R, "Department of Defense Grant and Agreement Regulations" must be amended to reflect the statutory provision. The action to update DoD 3210.6-R is ongoing by the OSD Office of the Director of Defense Research and Engineering, and is scheduled to be completed by February 2000. Once the changes to DoD 3210.6-R have been finalized, the DoD will have implemented the changes to OMB Circular A-110. Awards issued after the DoD has implemented the OMB Circular will reflect that recipients must respond to requests for data in accordance with 32 CFR Part 32, which is the Code of Federal Regulations publication of part 32 of DoD 3210.6-R.

The following applies for DoD FOIA requests for data created under grants and agreements issued **after** November 8, 1999.

- DoD Components will acknowledge FOIA requests in accordance with standard FOIA procedures, but will notify requesters that it may become necessary to charge additional fees incurred as a result of obtaining the research data. As reflected in the revision to OMB Circular A-110, "this fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients."
- Components will forward the request to the recipient who is responsible for the search and review of the data in accordance with the provisions of 32 CFR Part 32 and the Freedom of Information Act. The recipients will determine their costs in accordance with the guidance set forth in the attached, "Determination of Fees for Requests of Department of Defense Recipient Data." The recipient will forward responsive records, a release determination, and a determination of expenses incurred to the DoD component.


H. J. McIntyre
Director

Attachments:
As stated

Determination of Fees for Requests of Department of Defense Recipient Data

The following guidance is issued for Department of Defense (DoD) components for their use in determining fees associated with requests for recipient data information.

- **TYPES OF FEES**

Upon receiving Freedom of Information Act (FOIA) requests for recipient data, DoD components will assign a fee category to requesters of the information. The fee category is for use only in computing applicable fees associated with the component processing of the request under the FOIA. The fee category will **not** be forwarded to the recipient. The component will be responsible for the assessment of **three types of fees** associated with requests for recipient data:

1. *Standard FOIA fees* incurred by the **component** associated with the processing of the **FOIA** request. The requester's **fee category will be observed** when computing these fees. *Any standard FOIA fees* collected will be reported by the components on the FOIA Annual Report.
2. *Component special processing fees* incurred by the **component** associated with **obtaining** their requested information from the recipient. **No fee category applies.** *Component special processing fees* will not be reported on the FOIA Annual Report.
3. *Recipient processing fees* incurred by the **recipient** associated with processing the request, which includes searching, reviewing, and providing the data to the component. **No fee category applies.** Should the recipient desire to present an estimate prior to commencing work, or should the estimated charges incurred by the recipient exceed \$250.00, the component shall contact the requester to determine satisfactory assurance of full payment in accordance with paragraph C6.1.5.2.6 of DoD 5400.7-R. *Recipient processing fees* will not be reported on the FOIA Annual Report.

Standard FOIA fees will be computed in accordance with FOIA procedures set for the in DoD 5400.7-R, "DoD Freedom of Information Act Program," available at 32 CFR 286, and on the Internet at <http://web7.whs.osd.mil/html/54007r.htm>. *Component special processing fees* and *recipient processing fees* incurred will reflect the actual costs associated with obtaining and processing the recipient data as outlined below.

- CALCULATION OF FEES BY RECIPIENTS

After initial processing of the request by the DoD component, the request shall be forwarded to the recipient. Instruct the recipient to search for responsive portions of the data in accordance with OMB Circular A-110, and DoD 3210.6-R. The recipient is responsible for the search and review of the material responsive to the request, and any information determined to be exempt from release under the provisions of the FOIA will be identified. *Recipient processing fees* will be determined as follows:

- a. The charge for time spent by recipient personnel for search and review will be the actual hourly rate (or applicable fractions thereof) of the individual doing the work.
- b. Fees charged for computer time will be as outlined in DoD 5400.7-R, which are essentially the direct cost of operating the Central Processing Unit, or if unknown, the hourly rate of the person doing the computer job.
- c. Duplication costs will be accordance with DoD 5400.7-R. Office copies will be billed at 15 cents per copy, and reproduction of pre-printed material will be 2 cents per copy. All other duplication will be the actual cost to duplicate.
- d. Recipients will use Section C6.3 of DoD 5400.7-R to determine fee rates for technical data as described in that section.

- PAYMENT OF FEES BY REQUESTER

The recipient will forward the release determination, a determination on *recipient processing fees* and the responsive records to the applicable component. The component will make the final determination of the amounts to be charged the requester. The component will instruct the requester to make one check out to the United States Treasurer for any fees associated with component FOIA costs (if applicable), **plus** component costs associated with **obtaining** the data from the recipient. The component will also instruct the requester to make out a **separate check payable to the recipient** for their costs to fulfill the request. Both checks shall be mailed to the component. Checks made out to recipients will be forwarded by the component to the recipients, and checks payable to the U.S. Treasurer will be deposited within normal FOIA channels. In accordance with Section C6.1.5.2.8 of DoD 5400.7-R, components may request payments, to include amounts owed to recipients, before forwarding responsive documents.

contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 28, 1999, as supplemented by letters dated August 30, 1999, and September 3, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Dated at Rockville, Maryland, this 4th day of October 1999.

For the Nuclear Regulatory Commission,
Helen N. Pastis,

Senior, Project Manager, Section 1, Project Directorate 1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99-26302 10-7-99; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF MANAGEMENT AND BUDGET

OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations"

AGENCY: Office of Management and Budget, Executive Office of the President

ACTION: Final Revision

SUMMARY: This notice finalizes the revision to OMB Circular A-110, required by a provision of OMB's appropriation for fiscal year (FY) 1999, contained in Public Law 105-277. The provision directs OMB to amend Section 36, Intangible property, of the Circular "to require Federal awarding agencies to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act" (FOIA). Pursuant to the direction of the provision contained in Public Law 105-277, OMB published a Notice of Proposed Revision on February 4, 1999 (64 FR 5684), and a request for comments on clarifying changes to the proposed revision on August 11, 1999 (64 FR 43786). We received over 9,000 comments on the proposed revision and over 3,000 comments on the clarifying changes.

After a review of the comments on the clarifying changes, as well as the comments on the proposed revision, OMB is issuing this final revision to the Circular, as required by the provision contained in Public Law 105-277.

DATES: The revised Circular is effective November 8, 1999.

ADDRESSES: You may obtain the full text of the Circular, the text of this notice, and the text of the February 4th and August 11th notices on OMB's home page (<http://www.whitehouse.gov/omb>), under the heading "Grants Management." You may obtain copies of Public Law 105-277 on the Library of Congress's home page (<http://thomas.loc.gov>).

FOR FURTHER INFORMATION CONTACT: F. James Charney, Policy Analyst, Office of

Management and Budget, at (202) 395-3993. Please direct press inquiries to OMB's Communications Office, at (202) 395-7254.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Statutory Direction to Amend Circular A-110

Congress included a two-sentence provision in OMB's appropriation for FY 1999, contained in Public Law 105-277, directing OMB to amend Section 36 of the Circular "to require Federal awarding agencies to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act." The provision also provides for a reasonable fee to cover the costs incurred in responding to a request. The Circular applies to grants and other financial assistance provided to institutions of higher education, hospitals, and non-profit institutions, from all Federal agencies.

In directing OMB to revise the Circular, Congress entrusted OMB with the authority to resolve statutory ambiguities, the obligation to address implementation issues the statute did not address, and the discretion to balance the need for public access to research data with protections of the research process. In developing this revision to the Circular, OMB seeks to implement the statutory language fairly, in the context of its legislative history. This requires a balanced approach that (1) furthers the interest of the public in obtaining the information needed to validate Federally-funded research findings, (2) ensures that research can continue to be conducted in accordance with the traditional scientific process, and (3) implements a public access process that will be workable in practice.

OMB recognizes the importance of ensuring that the revised Circular does not interfere with the traditional scientific process. Science and technology are the principal agents of change and progress, with over half of the Nation's labor productivity growth in the last 50 years attributable to technological innovation and the science that supports it. Although the private sector makes many investments in technology development, the Federal Government has an important role to play—particularly when risks appear too great or the return to companies too speculative. Its support of cutting-edge science contributes to new knowledge and greater understanding, ranging from the edge of the universe to the smallest