

Department of Energy

§ 1004.10

to exceed \$25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice will offer the requester the opportunity to confer with agency personnel in order to reformulate the request to reduce the cost of the request.

(7) *Aggregating requests.* A requester may not file multiple requests each seeking portions of a document or documents, solely to avoid payment of fees. When the DOE reasonably believes that a requester or, 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, the DOE will aggregate any such requests and charge the appropriate fees. The DOE may consider the time period in which the requests have been made in its determination to aggregate the related requests. In no case will DOE aggregate multiple requests on unrelated subjects from one requester.

(8) *Advance payments.* Requesters are not required to make an advance payment (i.e., payment before action is commenced or continued on a request) unless:

(i) The DOE estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250.00. In such cases, the DOE will notify the requester of the likely cost and obtain a satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(ii) A requester has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of the billing). The DOE will require the requester to pay the full amount delinquent plus any applicable interest as provided in paragraph (b)(5) of this section, or demonstrate that he has, in fact, paid the delinquent fee; and to make an advance payment of the full amount of the estimated current fee before we begin to process a new request or a pending request from that requester.

When the DOE acts under paragraphs (b)(8) (i) or (ii) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denials, plus permissible extensions of these time limits) will begin only after the DOE has received fee payments described above.

(c) *Effect of the Debt Collection Act of 1982 (Pub. L. 97-365).* The DOE will use the authorities of the Debt Collection Act, including disclosure to consumer reporting agencies and the use of collection agencies, where appropriate, to encourage payment of fees.

§ 1004.10 Exemptions.

(a) 5 U.S.C. 552 exempts from all of its publication and disclosure requirements nine categories of records which are described in paragraph (b) of that section. These categories include such matters as national defense and foreign policy information; investigatory records; internal procedures and communications; materials exempted from disclosure by other statutes; confidential, commercial, and financial information; and matters involving personal privacy.

(b) Specifically, the exemptions in 5 U.S.C. 552(b) will be applied consistent with §1004.1 of these regulations to matters that are:

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of the national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; for example Restricted Data and Formerly Restricted Data under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*) are covered by this exemption;

§ 1004.11

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (i) could reasonably be expected to interfere with enforcement proceedings, (ii) would deprive a person of a right to a fair trial or an impartial adjudication, (iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (iv) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (v) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (vi) could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(c) Any reasonably segregated non-exempt portion of a record will be provided to a requester. The DOE will de-

10 CFR Ch. X (1-1-01 Edition)

lete portions which are withholdable under the exemptions listed above.

§ 1004.11 Handling information of a private business, foreign government, or an international organization.

(a) Whenever a document submitted to the DOE contains information which may be exempt from public disclosure, it will be handled in accordance with the procedures in this section. While the DOE is responsible for making the final determination with regard to the disclosure or nondisclosure of information contained in requested documents, the DOE will consider the submitter's views (as that term is defined in this section) in making its determination. Nothing in this section will preclude the submission of a submitter's views at the time of the submission of the document to which the views relate, or at any other time.

(b) When the DOE may determine, in the course of responding to a Freedom of Information request, not to release information submitted to the DOE (as described in paragraph (a) of this section, and contained in a requested document) without seeking any or further submitter's views, no notice will be given the submitter.

(c) When the DOE, in the course of responding to a Freedom of Information request, cannot make the determination described in paragraph (b) of this section without having for consideration the submitter's views, the submitter shall be promptly notified and provided an opportunity to submit his views on whether information contained in the requested document (1) is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, (2) contains information referred to in 18 U.S.C. 1905, or (3) is otherwise exempt by law from public disclosure. The DOE will make its own determinations as to whether any information is exempt from disclosure. Notice of a determination by the DOE that a claim of exemption made pursuant to this paragraph is being denied will be given to a person making such a claim no less than seven (7) calendar days prior to intended public disclosure of the information in question. For purposes of this section, notice is