

## § 1601.30

## 40 CFR Ch. VI (7-1-02 Edition)

as business information deemed protected from disclosure under 5 U.S.C. 552(b)(4); or

(2) The CSB has reason to believe that the request seeks business information the disclosure of which may result in substantial commercial or financial injury to the business submitter.

(e) *Opportunity to object to disclosure.* Through the notice described in paragraph (c) of this section, the CSB shall, to the extent permitted by law, afford a business submitter at least 10 working days within which it can provide the CSB with a detailed written statement of any objection to disclosure. Such statement shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential and why disclosure would cause competitive harm. Whenever possible, the business submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the business submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(f) *Notice of intent to disclose.* (1) The FOIA Officer shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose confidential commercial business information. Whenever the FOIA Officer decides to disclose such information over the objection of a business submitter, the FOIA Officer shall forward to the business submitter a written notice at least 10 working days before the date of disclosure containing:

(i) A statement of the reasons for which the business submitter's disclosure objections were not sustained,

(ii) A description of the confidential commercial information to be disclosed, and

(iii) A specified disclosure date.

(2) Such notice of intent to disclose likewise shall be forwarded to the requester at least 10 working days prior to the specified disclosure date.

(g) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of confidential business information, the FOIA Officer shall

promptly notify the business submitter of such action.

(h) *Exceptions to predisclosure notification.* The requirements of this section shall not apply if:

(1) The FOIA Officer determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The designation made by the submitter in accordance with paragraph (b) of this section appears obviously frivolous; except that, in such a case, the FOIA Officer will provide the submitter with written notice of any final decision to disclose confidential business information within a reasonable number of days prior to a specified disclosure date.

### Subpart D—Fees

#### § 1601.30 Fees to be charged—general.

(a) *Policy.* Generally, the fees charged for requests for records pursuant to 5 U.S.C. 552 shall cover the full allowable direct costs of searching for, reproducing, and reviewing records that are responsive to a request for information. Fees shall be assessed according to the schedule contained in paragraph (b) of this section and the category of requesters described in § 1601.31 for services rendered by the CSB staff in responding to, and processing requests for, records under this part. Fees assessed will be paid by check or money order payable to the United States Treasury.

(b) *Types of charges.* The types of charges that may be assessed in connection with the production of records in response to a FOIA request are as follows:

(1) *Searches.*

(i) *Manual searches for records.* For each quarter hour spent in searching for and/or reviewing a requested record, the fees will be: \$4.00 for clerical personnel; \$8.00 for professional personnel; and \$11.00 for managerial personnel.

(ii) *Computer searches for records.* Requesters will be charged at the actual direct costs of conducting a search

using existing programming. These direct costs will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records and the operator/programmer salary, *i.e.*, basic pay plus 16 percent, apportionable to the search. A charge shall also be made for any substantial amounts of special supplies or materials used to contain, present, or make available the output of computers, based upon the prevailing levels of costs to the CSB for the type and amount of such supplies or materials that are used. Nothing in this paragraph shall be construed to entitle any person or entity, as of right, to any services in connection with computerized records, other than services to which such person or entity may be entitled under the provisions of this section or §1601.32. The CSB will not alter or develop programming to conduct a search.

(iii) *Unproductive searches.* The CSB will charge search fees even if no records are found which are responsive to the request or if the records found are exempt from disclosure.

(2) *Duplication.* Records will be reproduced at a rate of \$0.25 per page. For copies prepared by computer, such as tapes or printouts, the requester shall be charged the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction, the actual direct costs of reproducing the record(s) shall be charged.

(3) *Review.* Only commercial-use requesters may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for initial review, *i.e.*, the review undertaken the first time the CSB analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review are properly assessable.

(4) *Other services and materials.* Where the CSB elects, as a matter of adminis-

trative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending records by special methods, the actual direct costs of providing the service or materials will be charged.

**§ 1601.31 Fees to be charged—categories of requesters.**

(a) *Fees for various requester categories.* Paragraphs (b) through (e) of this section state, for each category of requester, the types of fees generally charged by the CSB. However, for each of these categories, the fees may be limited, waived or reduced in accordance with the provisions set forth in §1601.32(c). If the CSB has reasonable cause to doubt the purpose specified in the request for which a requester will use the records sought, or where the purpose is not clear from the request itself, the CSB will seek clarification before assigning the request a specific category.

(b) *Commercial use requester.* The CSB shall charge fees for records requested by persons or entities making a commercial use request in an amount that equals the full direct costs for searching for, reviewing for release, and reproducing the records sought. Commercial use requesters are not entitled to 2 hours of free search time nor 100 free pages of reproduction of records. In accordance with §1601.30, commercial use requesters may be charged the costs of searching for and reviewing records even if there is ultimately no disclosure of records.

(c) *Educational and noncommercial scientific institutions.* The CSB shall charge fees for records requested by, or on behalf of, educational institutions and noncommercial scientific institutions in an amount which equals the cost of reproducing the records responsive to the request, excluding the cost of reproducing the first 100 pages. No search fee shall be charged with respect to requests by educational and noncommercial scientific institutions. For a request to be included in this category, requesters must show that the request being made is authorized by and under the auspices of a qualifying institution, and that the records are not sought for commercial use but are