set the level of fees for particular types of records, in order to:

(1) Serve both the general public and private sector organizations by conveniently making available government information;

(2) Ensure that groups and individuals pay the cost of publications and other services which are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on a self-sustaining basis to the maximum extent possible; or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

§ 1004.3 Public reading facilities and policy on contractor records.

(a) The DOE Headquarters will maintain, in the public reading facilities, the materials which are required by 5 U.S.C. 552(a)(2) to be made available for public inspection and copying. The principal public reading facility will be located at the Freedom of Information Office, 1000 Independence Avenue, SW, Washington, DC. A complete listing of other facilities is available from the Freedom of Information Officer at DOE Headquarters.

(b) Each of the designated field offices will maintain in public reading facilities certain materials maintained in the Headquarters facility and other materials associated with the particular field offices.

(c) Each of these public reading facilities will maintain and make available for public inspection and copying current indices of the materials at that facility which are required to be indexed by 5 U.S.C. 552(a)(2) or other applicable statutes.

(d) [Reserved]

(e) Contractor Records. (1) When a contract with DOE provides that any records acquired or generated by the contractor in its performance of the contract shall be the property of the Government, DOE will make available to the public such records that are in the possession of the Government or the contractor, unless the records are exempt from public disclosure under 5 U.S.C. 552(b)(2).

(2) Notwithstanding paragraph (e)(1) of this section, records owned by the Government under contract that contain information or technical data having commercial value as defined in § 1004.3(e)(4) or information for which the contractor claims a privilege recognized under Federal or State law shall be made available only when they are in the possession of the Government and not otherwise exempt under 5 U.S.C. 552(b).

(3) The policies stated in this paragraph:

(i) Do not affect or alter contractors' obligations to provide to DOE upon request any records that DOE owns under contract, or DOE's rights under contract to obtain any contractor records and to determine their disposition, including public dissemination; and

(ii) Will be applied by DOE to maximize public disclosure of records that pertain to concerns about the environment, public health or safety, or employee grievances.

(4) For purposes of § 1004.3(e)(2), ''technical data and information having commercial value'' means technical data and related commercial or financial information which is generated or acquired by a contractor and possessed by that contractor, and whose disclosure the contractor certifies to DOE would cause competitive harm to the commercial value or use of the information or data.

[53 FR 15661, May 3, 1988, as amended at 59 FR 63884, Dec. 12, 1994]

§ 1004.4 Elements of a request.

(a) *Addressed to the Freedom of Information Officer.* A request for a record of the DOE which is not available in a public reading facility, as described in § 1004.3, shall be addressed to the appropriate Headquarters or field Freedom of Information Officer, Department of Energy, at a location listed in § 1004.2(h) of this part, and both the envelope and the letter shall be clearly marked ''Freedom of Information Request.'' Except as provided in § 1004.4(e), a request will be considered to be received by the DOE for purposes of 5 U.S.C. 552(a)(6) upon actual receipt by the Freedom of Information Officer.

Requests delivered after regular business hours of the Freedom of Information Office are considered received on the next regular business day.

(b) *Request must be in writing and for reasonably described records.* A request for access to records must be submitted in writing and must reasonably describe the records requested to enable DOE personnel to locate them with a reasonable amount of effort. Where possible, specific information regarding dates, titles, file designations, and other information which may help identify the records should be supplied by the requester, including the names and titles of any DOE officers or employees who have been contacted regarding the request prior to the submission of a written request. If the request relates to a matter in pending litigation, the court and its location should be identified to aid in locating the documents. If the records are known to be in a particular office of the DOE, the request should identify that office.

(c) *Categorical requests.* (1) Must meet reasonably described records requirement. A request for all records falling within a reasonably specific and well-defined category shall be regarded as conforming to the statutory requirement that records be reasonably described if DOE personnel can reasonably determine which particular records are sought in the request. The request must enable the DOE to identify an locate the records sought by a process that is not unreasonably burdensome or disruptive of DOE operations. The Freedom of Information Officer may take into consideration problems of search which are associated with the files of an individual office within the Department and determine that a request is not one for reasonably described documents as it pertains to that office.

(2) Assistance in reformulating a non-conforming request. If a request does not reasonably describe the records sought, as specified in paragraph (c)(1) of this section, the DOE response will specify the reasons why the request failed to meet the requiremnts of paragraph (c)(1) of this section and will invite the requester to confer with knowledgeable DOE personnel in an attempt to restate the request or reduce the request to managable proportions by reformulation or by agreeing on an orderly procedure for the production of the records. If DOE responds that additional information is needed from the requester to render records reasonably described, any reformulated request submitted by the requester will be treated as an initial request for purposes of calculating the time for DOE response.

(d) *Nonexistent records.* (1) 5 U.S.C. 552 does not require the compilation or creation of a record for the purpose of satisfying a request for records.

(2) 5 U.S.C. 552 does not require the DOE to honor a request for a record not yet in existence, even where such a document may be expected to come into existence at a later time.

(3) If a requested record is known to have been destroyed or otherwise disposed of, or if no such record is known to exist, the requester will be so notified.

(e) *Assurance of willingness to pay fees.* A request shall include (1) an assurance to pay whatever fees will be assessed in accordance with § 1004.9, (2) an assurance to pay those fees not exceeding some specified dollar amount, or (3) a request for a waiver or reduction of fees. No request will be deemed to have been received until the DOE has received some valid assurance of willingness to bear fees anticipated to be associated with the processing of the request or a specific request of a waiver or reduction of fees.

(f) *Requests for records or information of other agencies.* Some of the records in the files of the DOE have been obtained from other Federal agencies or contain information obtained from other Federal agencies.

(1) Where a document originated in another Federal agency, the Authorizing Official will refer the request to the originating agency and so inform the requester, unless the originator agrees to direct release by DOE.

(2) Requests for DOE records containing information received from another agency, or records prepared jointly by DOE and other agencies, will be treated as requests for DOE records except that the Authorizing Official

will coordinate with the appropriate official of the other agency. The notice of determinaton to the requester, in the event part or all of the record is recommended for denial by the other agency, will cite the other agency Denying Official as well as the appropriate DOE Denying Official if a denial by DOE is also involved.

§ 1004.5 Processing requests for records.

(a) Freedom of Information Officers will be responsible for processing requests for records submitted pursuant to this part. Upon receiving such a request, the Freedom of Information Officer will, except as provided in paragraph (c) of this section, ascertain which Authorizing Official has responsibility for, custody of, or concern with the records requested. The Freedom of Information Officer will review the request, consulting with the Authorizing Official where appropriate, to determine its compliance with § 1004.4. Where a request complies with § 1004.4, the Freedom of Information Officer will acknowledge receipt of the request to the requester and forward the request to the Authorizing Official for action.

(b) The Authorizing Official will promptly identify and review the records encompassed by the request. The Authorizing Official will prepare a written response (1) granting the request, (2) denying the request, (3) granting/denying it in part, (4) replying with a response stating that the request has been referred to another agency under § 1004.4(f) or § 1004.6(e), (5) informing the requester that responsive records cannot be located or do not exist.

(c) Where a request involves records which are in the custody of or are the concern of more than one Authorizing Official, the Freedom of Information Officer will identify all concerned Authorizing Officials, send copies of the request to them and forward the request for action to the Authorizing Official that can reasonably be expected to have custody of most of the requested records. This Authorizing Official will prepare a DOE response to the requester consistent with paragraph (b) of this section, which will identify any other Authorizing Official, having responsibility for the denial of records.

(d) Time for processing requests. (1) Action pursuant to paragraph (b) of this section will be taken within 10 working days of receipt of a request for DOE records (''receipt'' is defined in § 1004.4(a)), except that, if unusual circumstances require an extension of time before a decision on a request can be reached and the person requesting records is promptly informed in writing by the Authorizing Official of the reasons for such extension and the date on which a determination is expected to be dispatched, then the Authorizing Official may take an extension not to exceed 10 working days.

(2) For purposes of this section and § 1004.8(d), the term ''unusual circumstances'' may include but is not limited to the following:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the offices processing the request;

(ii) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are responsive to a single request; or

(iii) 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 Department having substantial subject matter interest therein.

(3) The requester must be promptly notified in writing of the extension, the reasons for the extension, and the date on which a determination is expected to be made.

(4) If no determination has been made at the end of the 10-day period, or the last extension thereof, the requester may deem his adminstrative remedies to have been exhausted, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be made within the applicable time limit, the responsible Authorizing Official will nevertheless continue to process the request. If the DOE is unable to provide a response within the statutory