

## Department of Energy

## § 1004.10

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) A requester has previously failed to pay a fee in a timely fashion (*i.e.*, within 30 calendar days of the date of the billing). 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 or she 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.

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

(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.

[53 FR 15661, May 3, 1988, as amended at 79 FR 22858, 22859, Apr. 25, 2014; 81 FR 94921, Dec. 27, 2016]

### § 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;

(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; or

(iii) If enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to Exemption 3 of the FOIA, 5 U.S.C. 552(b)(3).

(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 that would not be available by law to a party other than an agency in litigation with the agency, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;

(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

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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) DOE shall withhold information under this section only if—

(1) The agency reasonably foresees that disclosure would harm an interest protected by an exemption described in paragraph (b) of this section; or

(2) Disclosure is prohibited by law. DOE shall consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible and take reasonable steps necessary to segregate and release non-exempt information. Nothing in this paragraph requires disclosure of information that is otherwise prohibited from disclosure by law, or otherwise exempted from disclosure by paragraph (b)(3) of this section.

[53 FR 15661, May 3, 1988, as amended at 79 FR 22859, Apr. 25, 2014; 81 FR 94922, Dec. 27, 2016]

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

(a) Whenever a document submitted to DOE contains information which may be exempt from public disclosure, it will be handled in accordance with the procedures in this section. While DOE is responsible for making the final determination with regard to the disclosure or nondisclosure of information contained in requested documents, 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 FOIA 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 FOIA 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 FOIA 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 deemed to be given when mailed to the submitter at the submitter's last known address.