

§ 1.7

should be placed in capital letters on the front of the envelope.

(f) Requests that are not addressed to a specific agency in USDA, or which pertain to more than one USDA agency, or which are sent to the wrong agency of USDA, should be forwarded to the Department's central processing unit for FOIA in the Office of Communications, U.S. Department of Agriculture, Washington, DC 20250.

(g) The central processing unit will determine which agency or agencies should process the request, and, where necessary, refer the request to the appropriate agency or agencies. The central processing unit in the Office of Communications will also, where necessary, notify the requester of the referral and of the name of each agency to which the request has been referred.

(h) Each agency shall develop and maintain a record of all written and oral requests and appeals received in that agency. The record shall include the name of the requester; a brief summary of the information requested; whether the request or appeal was granted, denied, or partially denied; the exemption from mandatory disclosure under 5 U.S.C. 552(b) upon which any denial was based; and the amount of any fees associated with the request or appeal.

[52 FR 49386, Dec. 31, 1987, as amended at 62 FR 33978, June 24, 1997]

§ 1.7 Aggregating requests.

When an agency 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 agency may aggregate any such requests and charge accordingly. One element which may be considered in determining whether such a belief would be reasonable is the time period in which the requests have occurred.

§ 1.8 Agency response to requests for records.

(a) 5 U.S.C. 552(a)(6)(A)(i) provides that each agency of the Department to which a request for records or a fee waiver is submitted in accordance with § 1.6(a) shall inform the requester of its determination concerning that request

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within 10 days of its date of receipt (excepting Saturdays, Sundays, and legal public holidays), plus any extension authorized under § 1.14. If the agency determines to grant the request, it shall inform the requester of any conditions surrounding the granting of the request (e.g., payment of fees) and the approximate date upon which compliance will be effected. If the agency grants only a portion of the request, it shall treat the portion not granted as a denial. If the agency determines to deny the request in part or in whole, it shall immediately inform the requester of that decision and of the following:

(1) The reasons for the denial;

(2) The name and title or position of each person responsible for denial of the request;

(3) The requester's right to appeal such denial and the title and address of the official to whom such appeal is to be addressed; and

(4) The requirement that such appeal be made within 45 days of the date of the denial.

(b) In the event the records requested contain some portions which are exempt from mandatory disclosure and others which are not, the official responding to the request shall ensure that all reasonably segregable non-exempt portions are disclosed, and that all exempt portions are identified according to the specific exemption or exemptions which are applicable.

(c) If the reason for not fulfilling a request is that the records requested are in the custody of another agency outside USDA, the agency shall inform the requester of this fact and shall forward the request to that agency or Department for processing in accordance with its regulations. If the agency has no knowledge of requested records or if no records exist, the agency shall notify the requester of that fact.

(d) 5 U.S.C. 552(a)(6)(A)(ii) provides that each agency in the Department to which an appeal of a denial is submitted in accordance with § 1.6(e) shall inform the requester of its determination concerning that appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays), plus any extension authorized by § 1.14, of its date of receipt. If the agency determines to

grant the appeal, it shall inform the requester of any conditions surrounding the granting of the request (e.g., payment of fees) and the approximate date upon which compliance will be effected. If the agency grants only a portion of the appeal, it shall treat the portion not granted as a denial. If it determines to deny the appeal either in part or in whole, it shall inform the requester of that decision and of the following:

(1) The reasons for denial;

(2) The name and title or position of each person responsible for denial of the appeal; and

(3) The right to judicial review of the denial in accordance with 5 U.S.C. 552(a)(4).

(e) If, in compliance with the request, a charge is to be made in accordance with section 8 of appendix A of this subpart, agencies shall inform the requester of the fee amount and of the basis for the charge. Each agency may, in accordance with section 8 of appendix A of this subpart, require payment of the entire fee, or a portion of the fee, or full payment of a delinquent fee plus any applicable interest, before it provides the requested records. If a requester refuses to remit payment in advance, an agency may refuse to process the request with written notice to that effect forwarded to the requester. The "date of receipt" of a request for which advance payment has been required shall be the date that payment is received.

(f) In the event compliance with the request involves inspection of records by the requester rather than providing copies of the records, the agency response shall include the name, mailing address, and telephone number of the person to be contacted to arrange a mutually convenient time for such inspection.

(g) Whenever duplication fees, or search fees for unsuccessful searches (see section 4(f) of appendix A of this subpart), are anticipated to exceed \$25.00, and the requester has not indicated, in advance, a willingness to pay fees as high as those anticipated, agencies shall notify the requester of the amount of the anticipated fee. If an extensive and therefore costly successful search is anticipated, agencies also

should notify requesters of the anticipated fees. The notification shall offer the requester the opportunity to confer with agency personnel to reform the request to meet the requester's needs at a lower fee. In appropriate cases, an advance deposit in accordance with section 8 of appendix A of this subpart may be required.

[52 FR 49386, Dec. 31, 1987, as amended at 62 FR 33979, June 24, 1997]

§ 1.9 Search services.

(a) Search services are services of agency personnel—clerical or supervisory/professional salary level—used in trying to find the records sought by the requester. Search services include time spent examining records for the purpose of finding information which is within the scope of the request. Search services also include services to transport personnel to places of record storage, or records to the location of personnel for the purpose of the search, if such services are reasonably necessary.

(b) Search services do not include the time spent locating a record if the record is in its normal location in a file or other facility or the review of records to determine whether the records are exempt.

[52 FR 49386, Dec. 31, 1987, as amended at 62 FR 33979, June 24, 1997]

§ 1.10 Review services.

(a) Review services are services by agency personnel—clerical or supervisory/professional—in examining records located in response to a request that is for a commercial use (as specified in section 6 of appendix A of this subpart) to determine whether any portion of any record located is permitted to be withheld.

(b) Review services include processing any records for disclosure, e.g., doing all that is necessary to excise exempt portions and otherwise prepare records for release.

(c) Review services do not include the time spent resolving general legal or policy issues regarding the application of exemptions.

[52 FR 49386, Dec. 31, 1987, as amended at 62 FR 33979, June 24, 1997]