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and utilize in its evaluation any relevant facts obtained by such investigation. The OHA may solicit and accept submissions from third persons relevant to any petition provided that the petitioner is afforded an opportunity to respond to all third person submissions. In evaluating a petition, the OHA may consider any other source of information. The OHA on its own initiative may convene a conference, if, in its discretion, it considers that such will advance its evaluation of the petition.

(2) If the OHA determines that there is insufficient information upon which to base a decision and if, upon request, the necessary additional information is not submitted, the OHA may dismiss the petition without prejudice. If the failure to supply additional information is repeated or willful, the OHA may dismiss the petition with prejudice. If the petitioner fails to provide the notice required by §1003.74, the OHA may dismiss the petition without prejudice.

(b)(1) The OHA will dismiss without prejudice a "Petition for Special Redress or Other Relief" if it determines that another more appropriate proceeding is provided by this part.

(2) The OHA will dismiss with prejudice a "Petition for Special Redress or Other Relief" filed by a person who has exhausted his administrative remedies with respect to any proceeding provided by this part, and received a final order therefrom that addresses the same issue or transaction.

### § 1003.77 Decision and Order.

(a) Upon consideration of the petition and other relevant information received or obtained during the proceeding, the OHA will issue a Decision and Order granting or denying the petition.

(b) The Decision and Order denying or granting the petition shall include a written statement setting forth the relevant facts and legal basis for the Decision and Order. Such Decision and Order shall state that it is a final order of the DOE of which the petitioner may seek judicial review.

## 10 CFR Ch. X (1–1–18 Edition)

### PART 1004—FREEDOM OF INFORMATION ACT (FOIA)

#### Sec.

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AUTHORITY: 5 U.S.C. 552.

SOURCE: 53 FR 15661, May 3, 1988, unless otherwise noted.

#### § 1004.1 Purpose and scope.

This part contains the regulations of the Department of Energy (DOE) that implement Freedom of Information (FOIA) 5 U.S.C. 552, Public Law 89-487, as amended by Public Law 93-502, 88 Stat. 1561, by Public Law 94-409, 90 Stat. 1241, by Public Law 99-570, 100 Stat. 3207-49, by Public Law 104-231, 110 Stat. 3048, by Public Law 110-175, 121 Stat. 2524, Public Law 111-83 §564, 123 Stat. 2142, 2184, and by Public Law 114-185, 130 Stat. 538. The regulations of this part provide information concerning the procedures by which records may be requested from all DOE offices, excluding the Federal Energy Regulatory Commission (FERC). Records of DOE made available pursuant to the requirements of 5 U.S.C. 552 shall be furnished to members of the public as prescribed by this part. Persons seeking information or records of DOE may find it helpful to consult with a DOE FOIA Officer before invoking the formal procedures set out below. To the extent permitted by other laws, DOE will make records available which it is authorized to withhold under 5 U.S.C. 552 whenever it determines that such disclosure is in the public interest.

[81 FR 94918, Dec. 27, 2016]

#### § 1004.2 Definitions.

As used in this part:

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(a) *Appeal Authority* means the Office of Hearings and Appeals.

(b) *Authorizing or Denying Official* means that DOE officer having custody of or responsibility for records requested under 5 U.S.C. 552. In DOE Headquarters, the term refers to The Freedom of Information Act Officer and officials who report directly to either the Office of the Secretary or a Secretarial Officer as defined. In the field offices, the term refers to the head of a field location identified in paragraph (h) of this section and the heads of field offices to which they provide administrative support and have delegated this authority. In the National Nuclear Security Administration (NNSA), the term refers to the official appointed at such location as identified in paragraph (h)(8) of this section.

(c) *'Commercial use' request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, agencies must determine how the requester will use the documents requested. Moreover, where DOE has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not evident from the request itself, the DOE will seek additional clarification before assigning the request to a specific category.

(d) *Department or Department of Energy (DOE)* means all organizational entities which are a part of the executive department created by Title II of the DOE Organization Act, Pub L. 95-91. This specifically excludes the FERC.

(e) *Direct costs* means those expenditures which the DOE actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are

overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(f) *Duplication* refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of, but are not limited to, paper copy, microform, audiovisual materials, or machine readable documentation (e.g., magnetic tape or disk). The copy provided must be in a form that can be reasonably used by requesters.

(g) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(h) *Freedom of Information Act (FOIA) Officer* means the person designated to administer the Freedom of Information Act at the following DOE offices:

(1) Bonneville Power Administration, P.O. Box 3621CHI-7, Portland, OR 97208-3621.

(2) Carlsbad Field Office, P.O. Box 3090, Carlsbad, NM 88221.

(3) Chicago Office, 9800 S. Cass Avenue, Argonne, IL 60439.

(4) Environmental Management Consolidated Business Center, 250 East 5th Street, Suite 500, Cincinnati, OH 45202.

(5) Golden Field Office, 15013 Denver West Parkway, Mail Stop RSF DOE Golden, CO 80401.

(6) Headquarters, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

(7) Idaho Operations Office, 1955 Fremont Avenue, MS 1203, Idaho Falls, ID 83401.

(8) National Nuclear Security Administration Albuquerque Complex, P.O. Box 5400, Albuquerque, NM 87185.

(9) National Energy Technology Laboratory, 626 Cochrans Mill Road, P.O. Box 10940, Pittsburgh, PA 15236-0940.

(10) Naval Reactors Laboratory Field Office, P.O. Box 109, West Mifflin, PA 15122-0109.

(11) Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

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(12) Office of Naval Reactors, Headquarters, 1240 Isaac Hull Avenue SE., Washington Navy Yard, DC 20376–0822.

(13) Office of Scientific and Technical Information, P.O. Box 62, Oak Ridge, TN 37830.

(14) Richland Operations Office, P.O. Box 550, Mail Stop A7–75, Richland, WA 99352.

(15) Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

(16) Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

(17) Southwestern Power Administration, One West Third, S1200, Tulsa, OK 74103.

(18) Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East–MS FE–455, New Orleans, LA 70123.

(19) Western Area Power Administration, 12155 W. Alameda Parkway, P.O. Box 281213, Lakewood, CO 80228–8213.

(i) *General Counsel* means the General Counsel provided for in section 202(e) of the DOE Organization Act, or any DOE attorney designated by the General Counsel as having responsibility for counseling the Department on Freedom of Information Act matters. In the NNSA, the term refers to the NNSA General Counsel, or any attorney designated by the NNSA General Counsel for counseling the NNSA on Freedom of Information Act matters, as provided for in section 3217 of the National Nuclear Security Administration Act, 50 U.S.C. 2407, Pub. L. 106–65. The NNSA General Counsel is not a Secretarial Officer.

(j) *Headquarters* means all DOE facilities functioning within the Washington metropolitan area except the Office of Naval Reactors.

(k) *Non-commercial scientific institution* refers to an institution that is not operated on a “commercial” basis as that term is referenced in §1004.2(c), and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(l) *Office* means any administrative or operating unit of the DOE, including those in field offices.

(m) *Representative of the news media* refers to any person or entity that

gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of “news”) who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; DOE may also consider the past publication record of the requester in making such a determination.

(n) *Review* refers to the process of examining documents located in response to a commercial use request (see paragraph (c) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(o) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The DOE will search for material in the most efficient and least expensive manner in order to minimize cost for both DOE and the requester. For example, DOE will not engage in line-by-line search when merely duplicating an entire document

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would prove the less expensive and quicker method of complying with a request. “Search” will be distinguished, moreover, from “review” of material in order to determine whether the material is exempt from disclosure. Searches may be done manually or by computer using existing programming.

(p) *Secretarial Officer* means the Under Secretary; Under Secretary for Science; Administrator, Energy Information Administration; Administrator, National Nuclear Security Administration; Assistant Secretary for Congressional and Intergovernmental Affairs; Assistant Secretary for Energy Efficiency and Renewable Energy; Assistant Secretary for Environmental Management; Assistant Secretary for Fossil Energy; Assistant Secretary for Policy and International Affairs; Assistant Secretary for Nuclear Energy; Chief Financial Officer; Chief Health, Safety and Security Officer; Chief Human Capital Officer; Chief Information Officer; Director, Advanced Research Projects Agency—Energy; Director, Office of Indian Energy Policy and Programs, and Director, Loan Programs Office, Director, Office of Economic Impact and Diversity; Director, Office of Electricity Delivery and Energy Reliability; Director, Office of Hearings and Appeals; Director, Office of Legacy Management; Director, Office of Management; Director, Office of Public Affairs; Director, Office of Science; General Counsel; Inspector General; and Senior Intelligence Officer.

(q) *Statute specifically providing for setting the level of fees for particular types of records*, at 5 U.S.C. 552(a)(4)(A)(vi), means any statute that specifically requires a government agency, such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to 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.

[53 FR 15661, May 3, 1988, as amended at 71 FR 68734, Nov. 28, 2006; 79 FR 22857, Apr. 25, 2014; 81 FR 94919, Dec. 27, 2016]

### § 1004.3 Public inspection in an electronic format and policy on contractor records.

(a) DOE will maintain, for public inspection in an electronic format, the materials which are required by 5 U.S.C. 552(a)(2) to be made available for public inspection and copying. An electronic public reading room can be accessed via [www.energy.gov](http://www.energy.gov) and [nnsa.energy.gov](http://nnsa.energy.gov).

(b) *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) Notwithstanding paragraph (b)(1) of this section, records owned by the Government under contract that contain information or technical data having commercial value as defined in paragraph (b)(4) of this section 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