

## Department of Energy

## § 1004.2

AUTHORITY: 5 U.S.C. 552; 16 U.S.C. 824o-1.

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:

(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 Administra-

tion (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