

# Rules and Regulations

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## DEPARTMENT OF ENERGY

### 10 CFR Part 1004

RIN 1901-AA32

### Revision of Department of Energy's Freedom of Information Act (FOIA) Regulations

**AGENCY:** FOIA Program, Office of Information Resources, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) publishes a final rule to amend the existing regulations that establish procedures by which records may be requested from all DOE offices pursuant to the Freedom of Information Act (FOIA). Today's final rule increases the per page rate for paper copy reproductions. This final rule also makes changes to bring the regulations into compliance with the 1996, 2007, and 2009 statutory amendments to the FOIA, and to reflect minor changes in the DOE's internal organizational structure.

**DATES:** This rule is effective May 27, 2014.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alexander Morris, FOIA Officer, Department of Energy, Office of Information Resources, Mail Stop MA-90, Room 1G-051, 1000 Independence Avenue SW., Washington, DC 20585; *Alexander.Morris@hq.doe.gov*, (202) 586-5955.

#### SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Discussion of Public Comments and Final Rule
- III. Regulatory Review
- IV. Approval of the Office of the Secretary

#### I. Introduction

Part 1004 contains the regulations of the DOE that implement FOIA, 5 U.S.C. 552. This Part provides information concerning the procedures by which the

public may request records from DOE offices, and the policies under which records shall be furnished to members of the public.

The DOE published a Notice of Proposed Rulemaking (NPR) and Opportunity for Comment in the **Federal Register** on December 9, 2008, at 73 FR 74658. The NPR proposed to streamline the DOE's procedures for determining the releasability of information and update the fee requirements for the reproduction of documents.

The NPR proposed the removal of the "extra balancing test" requirement in section 1004.1 which requires the DOE to reconsider a determination to legally withhold information in accordance with 5 U.S.C. 552, and to release such information if disclosure would be in the public interest. The DOE stated that this requirement went beyond the requirements of the FOIA and imposed unnecessary administrative requirements on the DOE. This NPR also proposed to amend section 1004.9(a)(4) to raise the per page rate for paper copy reproductions and microform to paper copies to the rate of 20 cents per page.

The DOE received 14 public comments on the two proposed amendments. A discussion of the comments is provided in this final rule.

The NPR also stated that additional administrative changes that did not require notice and comment would be promulgated in the final rule to bring DOE's regulations into compliance with the 1996 amendments to FOIA and to reflect minor alterations in the DOE's internal organizational structure.

This final rule amends the regulations to add requirements from the 1996, 2007, and 2009 statutory amendments to the FOIA, and to reflect changes in the DOE's internal organizational structure. This final rule also amends the regulations to increase the per page rate for paper copy reproductions to the rate of ten cents per page.

#### II. Discussion of Public Comments and Final Rule

The DOE received 14 public comments. All commenters opposed the proposed removal of the "extra balancing test" requirement. After careful consideration of the public comments, the DOE has determined that keeping this requirement is more aligned with the spirit of openness and

transparency and therefore, decided not to adopt this proposed change.

Five commenters opposed the proposed per page fee increase to 20 cents for document reproduction. Commenters stated that the proposed fee increase exceeded charges at commercial establishments, exceeded the actual cost of reproduction to the DOE, and was at the highest end of copying fees for comparable cabinet-level agencies. Several commenters stated that ten cents per page was a common fee among cabinet-level agencies and commercial photocopying services. One commenter suggested the rate should not be increased to more than ten cents per page.

After careful consideration of the public comments, the DOE has determined to increase the per page rate for paper copy reproductions to the rate of ten cents per page. In making this determination, the DOE balanced the interests of the public for a rate that is not prohibitive with the interests of the agency for a rate that is more reflective of its estimated reproduction costs. On this basis, rather than adopting the proposed rate of 20 cents per page, the DOE has determined to increase the rate to ten cents per page.

With respect to the final rule's ministerial changes, except for activities at the Office of Naval Reactors at Headquarters, the National Nuclear Security Administration has consolidated the management of its FOIA activities at the Albuquerque Complex in New Mexico. The Pittsburgh Naval Reactors Office and the Schenectady Naval Reactors Office have been merged to form the Naval Reactors Laboratory Field Office. The Oak Ridge Office processes requests for records under the jurisdiction of the Pacific Northwest Site Office. The DOE, therefore, is deleting the Nevada Site Office, the Pittsburgh Naval Reactors Office, the Schenectady Naval Reactors Office, and the Pacific Northwest Site Office, as offices where a Freedom of Information Act Officer is designated in section 1004.2(h). The Naval Reactors Laboratory Field Office and the Office of Naval Reactors at Headquarters are added as offices where a Freedom of Information Act Officer is designated in section 1004.2(h).

In section 1004.2(p), the DOE has added the Heads of current Secretarial Offices which were created since the

last publication of this rule and deleted positions that no longer exist.

Statutory changes regarding time limits, tolling, expedited processing, marking released records, restrictions on fees, and FOIA Exemption 3 (5 U.S.C. 552(b)(3)) have been added to sections 1004.4(a), 1004.5(d), 1004.7(b), 1004.9(a), and 1004.10(b). The 1996 amendments to the FOIA increase the general time for processing requests from 10 to 20 working days, and require agencies to expedite processing when requesters demonstrate a compelling need. The 2007 amendments to the FOIA: Clarify that the 20-day statutory time period for processing FOIA requests starts on the date the request is received by the appropriate component, and not later than 10 days after receipt by any component designated in an agency's regulations to receive requests; provide criteria for when the 20-day period may be suspended or tolled; require agencies to indicate the exemption for deletions made in released records; and preclude agencies from accessing search fees or duplication fees, except for commercial use requesters, when the FOIA time limits are not met and no unusual or exceptional circumstances apply. The 2009 amendment to the FOIA requires that statutes enacted after the enactment of the OPEN FOIA Act on October 28, 2009, must specifically cite Exemption 3 of the FOIA to qualify as an Exemption 3 withholding statute.

#### IV. Regulatory Review

##### A. Executive Order 12866

Today's rule has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

##### B. Administrative Procedure Act

In accordance with 5 U.S.C. 553(b)(B), the DOE finds that providing an opportunity for public comment on changes that incorporate the 1996, 2007, and 2009 statutory amendments to the FOIA prior to publication of this rule is not necessary and contrary to the public interest because the DOE is carrying out a ministerial, non-discretionary duty specified in an Act of Congress. Prior notice and opportunity to comment on these changes are therefore unnecessary because they are not subject to the exercise of discretion by the DOE. Today's rule also incorporates changes

that reflect the DOE's current internal organizational structure. Prior notice and opportunity to comment on these changes are also unnecessary because they are minor technical changes.

##### C. National Environmental Policy Act

The DOE has reviewed this final rule under 10 CFR part 1021, DOE's National Environmental Policy Act Implementing Procedures. The DOE has determined that the final rule fits within categorical exclusion A.5 listed in Appendix A to 10 CFR part 1021, Subpart D: Rulemaking that interprets or amends an existing rule or regulation and that does not change the environmental effect of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

##### D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), the DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). The DOE has made its procedures and policies available on the Office of the General Counsel's Web site: <http://www.energy.gov/gc/office-general-counsel>.

In the NOPR, the DOE certified that this rule would not have a significant economic impact on a substantial number of small entities and did not prepare a regulatory flexibility analysis for this rulemaking. The DOE received no comments on the certification, and has responded to comments related to the economic impacts of the rule elsewhere in this preamble; no changes to the certification were made based on comments received. As a result, the DOE certifies that today's final rule will not have a significant impact on a substantial number of small entities. The DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

##### E. Paperwork Reduction Act

This rulemaking would impose no new information or recordkeeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

##### F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by States, tribal, or local governments, in the aggregate, or by the private sector, of \$100 million in any one year. The Act also requires Federal agencies to develop an effective process to permit timely input by elected officials of State, tribal, or local governments on a proposed significant intergovernmental mandate, and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. The DOE has determined that the final rule published today does not contain any Federal mandates affecting States, tribal, or local governments, or the private sector, and, thus, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

##### G. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; (4) and promote simplification and burden reduction. With regard to the review required by section 3(a) and section 3(b), Executive Order 12988 specifically requires that Federal agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues

affecting clarity and general draftsmanship under guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

#### H. Executive Order 13132

Executive Order 13132, “Federalism,” 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The DOE has examined this final rule and has determined that it would not preempt State law and would not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

#### I. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. This final rule would have no impact on the autonomy or integrity of the family as an institution. Accordingly, the DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

#### J. Executive Order 13211

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2)

is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today’s regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, the DOE has not prepared a Statement of Energy Effects.

#### K. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by the OMB. The OMB’s guidelines were published at 67 FR 8452 (February 22, 2002), and the DOE’s guidelines were published at 67 FR 62446 (October 7, 2002). The DOE has reviewed today’s final rule under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

#### L. Congressional Notification

As required by 5 U.S.C. 801, the DOE will submit to Congress a report regarding the issuance of today’s final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a “major rule” as defined by 5 U.S.C. 801(2).

#### V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

#### List of Subjects in 10 CFR Part 1004

Freedom of Information Act.

Issued in Washington, DC, on March 27, 2014.

Ingrid Kolb,

Director, Office of Management.

For the reasons set forth in the preamble, the Department of Energy amends Part 1004 of Title 10 of the Code of Federal Regulations as set forth below.

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

■ 1. The authority citation for part 1004 continues to read as follows:

**Authority:** 5 U.S.C. 552.

■ 2. The heading for part 1004 is revised to read as set forth above.

##### § 1004.1 [Amended]

■ 3. Section 1004.1 is amended by:

■ a. Adding “Freedom of Information (FOIA)” before “5 U.S.C. 552” in the first sentence.

■ b. Removing, in the first sentence, the period after “3207–49” and adding in its place, “, by Pub. L. 104–231, 110 Stat. 3048, by Pub. L. 110–175, 121 Stat. 2524, and by Pub. L. 111–83 564, 123 Stat. 2142, 2184.”

##### § 1004.2 [Amended]

■ 4. Section 1004.2 is amended:

■ a. In paragraph (h) by adding “Act (FOIA)” after “Information” and before “Officer

■ b. In § 1004.2(h)(1) by removing “–KDP–7”.

■ c. In § 1004.2(h)(8) by removing “Service Center” and adding, in its place, “Albuquerque Complex”.

■ d. By removing paragraph (h)(9) and redesignating (h)(10) as (h)(9).

■ e. By adding paragraph (h)(10).

■ f. By removing paragraphs (h)(13), (h)(14), and (h)(17).

■ g. By redesignating (h)(12) as (h)(13).

■ h. By adding a new paragraph (h)(12).

■ i. By redesignating (h)(15) as (h)(14), (h)(16) as (h)(15), (h)(18) as (h)(16), (h)(19) as (h)(17), (h)(20) as (h)(18), and (h)(21) as (h)(19).

■ j. By adding at the end of the sentence in paragraph (j), “except the Office of Naval Reactors.”

■ k. In paragraph (p), by removing “Director, Office of Civilian Radioactive Waste Management” and, adding in its place, “Director, Advanced Research Projects Agency—Energy”, “Director, Office of Indian Energy Policy and Programs”, and “Director, Loan Programs Office”.

The additions read as follows:

##### § 1004.2 Definitions.

\* \* \* \* \*

(h) \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

**§ 1004.3 [Amended]**

- 5. Section 1004.3 is amended:
  - a. In paragraph (a) by removing “Freedom of Information” and adding, in its place, “Office of Information Resources”.
  - b. By adding a new sentence before the last sentence to read as set forth below.
  - c. By removing, in the last sentence, “the” before “DOE Headquarters.”
- The addition reads as follows:

**§ 1004.3 Public reading facilities and policy on contractor records.**

(a) \* \* \* The DOE Headquarters will maintain an electronic public reading room that can be accessed at <http://energy.gov/management/office-management/operational-management/freedom-information-act/reading-room> \* \* \*

\* \* \* \* \*

**§§ 1004.1, 1004.3, 1004.4, 1004.5, 1004.6, 1004.9, and 1004.11 [Amended]**

- 6. Sections 1004.1, 1004.3(a), 1004.4(a), 1004.4(c), 1004.5(a), 1004.5(c), 1004.6(b), 1004.6(c), 1004.9(a), 1004.9(b), 1004.11(b), 1004.11(c), and 1004.11(d) are amended by removing “Freedom of Information” wherever it occurs and, adding in its place, “FOIA”.
- 7. Section 1004.4(a) is revised to read as follows:

**§ 1004.4 Elements of a request.**

(a) *Addressed to the FOIA 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 Headquarters or appropriate field FOIA Officer at the DOE 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 Act Request;” or submitted electronically on the Headquarters or appropriate field FOIA Web sites. 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) and the 20-day response period will start upon actual receipt by the appropriate FOIA Officer, or not later than 10 days after receipt by a designated FOIA Officer at any location in § 1004.2(h). Requests delivered after regular business hours of the FOIA Officer are considered received on the next regular business day.

\* \* \* \* \*

**§ 1004.5 [Amended]**

- 8. Section 1004.5 is amended:

- a. In paragraph (b) by adding “or FOIA Officer” after “Authorizing Official” in the second sentence.
- b. In paragraph (c) by adding “or FOIA Officer” after “Authorizing Official, and by removing “any other” and adding “all” before “Authorizing Officials”.
- c. In paragraphs (d)(1) and (d)(4) by removing “10” and adding “20” in its place.
- d. In paragraphs (d)(4) and (d)(5), by adding “or FOIA Officer” after “Authorizing Official” wherever it appears.
- e. In paragraph (d)(1) by adding paragraph designation “(iii)” after “except that,”; the redesignated (d)(1)(iii) is further amended by removing “if” and adding in its place “If” and by adding “or FOIA Officer” after “Authorizing Official”.
- f. Adding paragraphs (d)(1)(i) and (ii), (d)(6) and (d)(7).

The additions read as follows:

**§ 1004.5 Processing requests for records.**

\* \* \* \* \*

- (d) \* \* \*
- (1) \* \* \*
- (i) One request can be made to the requester for information and the DOE can toll the 20-day response period while it waits for the requester’s response;
- (ii) If necessary to clarify with the requester issues regarding fee assessment and the DOE can toll the 20-day response period; or

\* \* \* \* \*

(6) Expedited processing. Generally, the DOE will respond to requests in the order of receipt. Requests will be processed out of order and processed as soon as practicable when it is determined, based upon information supplied by the requester or otherwise known to the DOE, that a compelling need exists to provide the records in an expeditious manner. The FOIA states that a compelling need exists when failure to obtain records expeditiously could reasonably be expected to pose a threat to the life or physical safety of an individual or, when a request is submitted by a person primarily engaged in disseminating information and there is an urgency to inform the public about actual or alleged Federal Government activity.

(7) A determination to grant or deny a request for expedited processing will be made by the appropriate FOIA Officer within 10 days after receipt of the request. The requester will be notified of the determination and informed that any denial may be appealed within 30 calendar days to the Office of Hearings and Appeals.”

**§ 1004.6 [Amended]**

- 9. Section 1004.6 is amended:
- a. In paragraph (a) by removing “and Unclassified Controlled Nuclear Information”.
- b. In paragraph (b) by removing “12356” and adding “13526 and § 1045” after “Executive Order”.
- c. In paragraph (c) by removing “requests for classified records” and adding in its place, “the denial of classified information”.

**§ 1004.7 [Amended]**

- 10. Section 1004.7 is amended:
- a. In paragraph (a) by removing “Freedom of Information Act” and adding in its place, “FOIA”.
- b. In paragraph (b) by adding “a FOIA Officer” after “signed by”.
- c. In paragraph (b)(1) by removing “Freedom of Information Act” and adding in its place, “FOIA”, and by adding a new sentence at the end of the last sentence to read as follows.

**§ 1004.7 Responses by authorizing officials: Form and content.**

\* \* \* \* \*

- (b) \* \* \*
- (1) \* \* \* The amount of information deleted and the applicable exemption will be indicated on the released portion of the record, unless the indication would harm an interest protected by the exemption.

\* \* \* \* \*

**§ 1004.8 [Amended]**

- 11. Section 1004.8 is amended:
  - a. In paragraph (a) by adding “or Denying Official or FOIA Officer” after “Authorizing”, and by adding “for expedited processing consistent with § 1004.5(d)” after “denied a request”.
  - b. In paragraph (b) by:
  - 1. Adding “-1615” after “DC 20585”;
  - 2. Adding “Act” after “Freedom of Information”; and
  - 3. Adding a new sentence after “Freedom of Information Act Appeal.”
  - 4. Adding a new sentence at the end of the paragraph.
  - c. In paragraphs (c), (d)(1), (d)(4), and (e) by removing “appeal authority” and adding “Appeal Authority”.
  - d. In paragraph (f) by adding “or her” after “his”.
  - e. By adding a new paragraph (g).
- The additions read as follows:

**§ 1004.8 Appeal of initial denials.**

\* \* \* \* \*

(b) \* \* \* The appeal may be delivered by U.S Mail or commercial delivery service, by electronic mail to [OHA.Filings@hq.doe.gov](mailto:OHA.Filings@hq.doe.gov), or by facsimile to (202) 287-1415. \* \* \* The appeal also should provide a telephone

number, electronic mail address, or other means for communicating with the requester during business hours.

\* \* \* \* \*

(g) *Appeal of the denial of expedited processing.* Any appeal of the determination to deny a request for expedited processing will be acted on expeditiously."

#### **§ 1004.9 [Amended]**

■ 12. Section 1004.9 is amended:

■ a. In paragraph (a) introductory text, by adding at the end of the fifth sentence: ", which are determinations by Authorizing Officials or FOIA Officers."

■ b. In paragraph (a)(4) by removing "five" and adding "ten" before "cents per page".

■ c. In paragraph (a)(6) by:

■ 1. Adding paragraph designation "(i)" before "With the exception of";

■ 2. Removing "81/2x11" and adding, in its place, "8-1/2x11"; and

■ 3. Adding a paragraph (a)(6)(ii).

■ d. In paragraph (a)(7), amend the last sentence by:

■ 1. Removing "him";

■ 2. Removing "his" before "request" and adding, in its place, "the"; and

■ 3. Adding "or her" before "needs at a lower cost."

■ e. In paragraph (a)(8) by adding "appropriate" before "FOIA Officer".

■ f. In paragraph (b) by removing "Freedom of Information Officer" and adding, in its place, "FOIA Officers".

■ g. In paragraph (b)(8)(ii) by adding "or she" after "he" and, by removing "10" and adding, in its place, "20" before "working days from receipt of initial requests".

The addition read as follows:

#### **§ 1004.9 Fees for providing records.**

(a) \* \* \*

(6) \* \* \*

(ii) When unusual or exceptional circumstances do not apply and time limits specified in the FOIA are not met, the DOE will not charge any search fees, or duplication fees for educational and non-commercial scientific institution requesters and requesters who are representatives of the news media.

\* \* \* \* \*

#### **§ 1004.10 [Amended]**

■ 13. Section 1004.10 is amended:

■ a. In paragraph (b)(3)(i) by removing "or" after "issue" and adding, in its place, ";;",

■ b. In paragraph (b)(3)(ii) by adding "or" after "exemption", and

■ c. By adding (b)(3)(iii) to read as follows:

#### **§ 1004.10 Exemptions.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(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).

\* \* \* \* \*

#### **§ 1004.11 [Amended]**

■ 14. Section 1004.11(h) is amended by adding in the third sentence, "excluding paragraph (f)(5)" after "paragraph (f) of this section."

[FR Doc. 2014-07449 Filed 4-24-14; 8:45 am]

BILLING CODE 6450-01-P

## **SMALL BUSINESS ADMINISTRATION**

### **13 CFR Part 123**

RIN 3245-AG61

#### **Disaster Assistance Loan Program; Disaster Loan Credit and Collateral Requirements.**

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Interim Final Rule with request for comments.

**SUMMARY:** SBA is amending its disaster loan program regulations in response to Hurricane Sandy Rebuilding Task Force recommendations. One change allows SBA to rely on the disaster loan applicant's credit, including credit score, rather than personal or business cash flow in order to assess repayment ability for those applicants with strong credit.

Another change will increase the amount of disaster assistance funds that can be immediately disbursed to borrowers by raising the unsecured threshold for economic injury loans for all disasters and for physical damage loans for major disasters. Both of these changes will enable SBA to provide disaster assistance more quickly and efficiently.

**DATES:** *Effective date:* April 25, 2014.

*Applicability date:* This rule is applicable for disasters declared on or after April 25, 2014.

*Comment date:* Comments must be received on or before June 23, 2014.

**ADDRESSES:** You may submit comments, identified by RIN 3245-AG61, by any of the following methods: (1) Federal Rulemaking Portal: <http://www.regulations.gov>, following the specific instructions for submitting comments; (2) Fax: (202) 481-2336; or Email: [James.Rivera@sba.gov](mailto:James.Rivera@sba.gov); or (3) Mail/Hand Delivery/Courier: James E. Rivera, Associate Administrator for

Disaster Assistance, 409 3rd Street SW., Washington, DC 20416.

SBA will post all comments to this interim final rule on [www.regulations.gov](http://www.regulations.gov). If you wish to submit confidential business information (CBI) as defined in the User Notice at [www.regulations.gov](http://www.regulations.gov), you must submit such information to U.S. Small Business Administration, Bartie J. Larsen, Office of Disaster Assistance, 409 Third Street SW., Mail Code 6530, Washington, DC 20416, or send an email to [bartie.larsen@sba.gov](mailto:bartie.larsen@sba.gov). Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

#### **FOR FURTHER INFORMATION CONTACT:**

Bartie J. Larsen, Office of Disaster Assistance, 202-205-6734 or [Bartie.Larsen@sba.gov](mailto:Bartie.Larsen@sba.gov).

#### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

The Hurricane Sandy Rebuilding Task Force was established pursuant to an Executive Order issued on December 7, 2012, E.O. 13632, Establishing the Hurricane Sandy Task Force (December 7, 2012). This Task Force was established to ensure the recovery effort benefitted from cabinet-level focus and coordination, and was charged with establishing guidelines for the investment of Federal funds made available for the recovery.

With the Secretary of Housing and Urban Development as its Chair, the Task Force consisted of the heads of twenty-three executive department agencies and offices. As a member of this task force, SBA collaborated with these executive agencies and offices to identify and work to remove obstacles to resilient rebuilding while taking into account existing and future risks and promoting the long-term sustainability of communities and ecosystems in the Sandy-affected region. The resultant Rebuilding Strategy developed by the Task Force included recommendations across several policy areas. See <http://portal.hud.gov/hudportal/documents/huddoc?id=HSRebuildingStrategy.pdf>. The Task Force recommended that SBA, among other recommendations, (a) institute new and innovated process improvements to SBA's Disaster Loan program, and (b) increase SBA's unsecured disaster loan limits in order to expedite the disbursement of small dollar loans.

#### **II. Explanation of Changes**

SBA is incorporating the Task Force's recommendation to institute new and