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PRIVACY ACT RULES

ENERGY DEPARTMENT

Title 10-Energy

Chapter X-Department of Energy

PART 1008--RECORDS MAINTAINED ON INDIVIDUALS (PRIVACY ACT)

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Authority: Department of Energy Organization Act, Pub. L. 95-91,

Executive Order 12091, 42 FR 46267, Privacy Act of 1974, Pub. L. 93-579

(5 U.S.C. 552a).

Source: 45 FR 61577, Sept. 16, 1980, unless otherwise noted.

Subpart A--General Provisions

Sec. 1008.1 Purpose and scope.

(a) This part establishes the procedures to implement the Privacy Act of 1974 (Pub. L. 93-579, 5 U.S.C. 552a) within the Department of Energy.

(b) This part applies to all systems of records, as defined in Sec. 1008.2(m), maintained by DOE.

(c) This part applies to all divisions within the DOE, and to the

personnel records of the Federal Energy Regulatory Commission (FERC), which are maintained by DOE on behalf of FERC. These regulations do not apply to other systems of records maintained by FERC. These regulations also apply to DOE contractors and their employees to the extent required by 5 U.S.C. 552a(m).

Sec. 1008.2 Definitions.

(a) ``Department'' or ``Department of Energy (DOE)'' means all organizational entities which are a part of the executive department created by Title II of the Department of Energy Organization Act, Pub. L. 95-91, except the Federal Energy Regulatory Commission (FERC).

(b) ``Director, Office of Hearings and Appeals'' means the Director or his delegate.

(c) ``DOE locations'' means each of the following DOE components:

- (1) Alaska Power Administration, PO Box 50, Juneau, AK 88801.
- (2) Albuquerque Operations Office, PO Box 5400, Albuquerque, NM 87115.

Note.--This office has cognizance over the following area offices:

Amarillo, Dayton, Kansas City, Los Alamos, Pinellas, Rocky Flats and Sandia.

(3) Bartlesville Energy Technology Center, PO Box 1398, Bartlesville, OK 74003.

(4) Bonneville Power Administration, PO Box 3621, Portland, OR 97268.

(5) Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439.

Note.--This office has cognizance over the Batavia and Brookhaven area offices and the New Brunswick laboratory.

(6) Grand Forks Energy Technology Center, PO Box 8213, University

Station, Grand Forks, ND 58201.

(7) Grand Junction Office, PO Box 2567, Grand Junction, CO 81502.

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

(9) Idaho Operations Office, 550 Second Street, Idaho Falls, ID 83401.

(10) Laramie Energy Technology Center, PO Box 3395, University
Station, Laramie, WY 82070.

(11) Morgantown Energy Technology Center, PO Box 880, Morgantown, WV
26505.

(12) Nevada Operations Office, PO Box 14100, Las Vegas, NV 89114.

(13) Oak Ridge Operations Office, PO Box E, Oak Ridge, TN 37830.

(14) Oak Ridge Technical Information Center, PO Box 62, Oak Ridge, TN
37830.

(15) Pittsburgh Energy Technology Center, 4800 Forbes Avenue,
Pittsburgh, PA 15213.

(16) Region I, Analex Building, Room 700, 150 Causeway Street, Boston,
MA 02114.

(17) Region II, 26 Federal Plaza, Room 3206, New York, NY 10007.

(18) Region III, 1421 Cherry Street, 10th Floor, Philadelphia, PA
19102.

(19) Region IV, 1655 Peachtree Street, NE., 8th Floor, Atlanta, GA
30309.

(20) Region V, 175 West Jackson Boulevard, Room A-333, Chicago, IL
60604.

(21) Region VI, PO Box 35228, 2626 West Mockingbird Lane, Dallas, TX
75235.

(22) Region VII, Twelve Grand Building, 1150 Grand Avenue, Kansas City, MO 64106.

(23) Region VIII, PO Box 26247--Belmar Branch, 1075 South Yukon Street, Lakewood, CO 80226.

(24) Region IX, 111 Pine Street, Third Floor, San Francisco, CA 94111.

(25) Region X, 1992 Federal Building, 915 Second Avenue, Seattle, WA 98174.

(26) Richland Operations Office, PO Box 550, Richland, WA 99352.

(27) San Francisco Operations Office, 1333 Broadway, Wells Fargo Building, Oakland, CA 94612.

(28) Savannah River Operations Office, PO Box ``A,' Aiken, SC 29801.

(29) Southeastern Power Administration, Elberton, GA 30635.

(30) Southwestern Power Administration, PO Drawer 619, Tulsa, OK 74101.

(31) Western Area Power Administration, PO Box 3402, Golden, CO 80401.

(d) ``General Counsel'' means the General Counsel provided for in section 202(b) of the Department of Energy Organization Act, or any DOE attorney designated by the General Counsel.

(e) ``Headquarters'' means all DOE facilities functioning within the Washington, DC metropolitan area.

(f) ``Individual'' means a citizen of the United States or an alien lawfully admitted for permanent residence, but does not include proprietorships, businesses, or corporations. Where appropriate, the term ``individual'' also includes a duly authorized representative of an individual.

(g) ``Maintain'' means maintain, collect, use, or disseminate.

(h) ``Privacy Act Officer'' means the person designated by the Director, Office of Administration, as responsible for administering the DOE's program for implementing the requirements of the Privacy Act of 1974 at the DOE locations listed at Sec. 1008.2(c).

(i) ``Record'' means any item, collection, or grouping of information about an individual that is maintained by or for the DOE including, but not limited, to education, financial transactions, medical history, and criminal or employment history, and that contains that individual's name, or other identifying number, symbol, or other identifying particulars assigned to the individual, such as a finger or voice print or photograph. See subsection (a)(4) of the Act.

(j) ``Routine use'' means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected. See subsection (a)(7) of the Act.

(k) ``Statistical record'' means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. section 8. See subsection (a)(6) of the Act.

(l) ``System Manager'' means the DOE official who is responsible for a system of records as designated in the system notice of that system of records published by DOE.

(m) ``System of records'' means a group of any records under DOE control from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particulars assigned to the individual. See subsection (a)(5) of the

Act.

(n) ``Act'' means the Privacy Act of 1974, Pub. L. 93-579; references to subsections of the Act mean subsections of section 3 of the Act.

Sec. 1008.3 Employee standards of conduct with regard to privacy.

(a) The Headquarters DOE Privacy Act Officer shall assure that DOE personnel are advised of the provisions of the Privacy Act, including the criminal penalties and civil liabilities provided therein, (subsections (g) and (i) of the Act), and that DOE personnel are made aware of their responsibilities: To protect the security of personal information to assure its accuracy, relevance, timeliness and completeness; to avoid unauthorized disclosure; and to insure that no system of records concerning individuals, no matter how insignificant or specialized, is maintained without public notice.

(b) DOE personnel shall:

(1) Collect or maintain no information of a personal nature about individuals unless relevant and necessary to achieve a purpose or carry out a responsibility of the DOE as required by statute or by Executive Order. See subsection (e)(1) of the Act and Sec. 1008.18(a).

(2) Collect information, wherever possible, directly from the individual to whom it pertains. See subsection (e)(2) of the Act and Sec. 1009.19(a).

(3) Inform individuals from whom information is collected of the authority for collection, the principal purposes for which the information will be used, the routine uses that will be made of the information, and the effects of not furnishing the information. See subsection (e)(3) of the Act and Sec. 1008.19.

(4) Collect, maintain, use or disseminate no information concerning an individual's rights guaranteed by the First Amendment, unless (i) the individual has volunteered such; or (ii) the information is expressly authorized by statute to be collected, maintained, used or disseminated; or (iii) the activities involved are pertinent to and within the scope of an authorized law enforcement activity. See subsection (e)(7) of the Act and Sec. 1008.18(b).

(5) Advise their supervisors of the existence or proposal of any system of records which retrieves information about individuals by the individual's name or other identifying number, symbol, or identifying particulars assigned to the individual.

(6) Maintain an accounting, in the prescribed form, of all disclosures of information other than those to officers or employees who have a need for the record in the performance of their duties and those required under the Freedom of Information Act. See subsection (c) of the Act.

(7) Disclose no records other than to DOE personnel without the advance written consent of the individual, except as authorized by 5 U.S.C. 552a(b) including routine uses published in the Federal Register.

(8) Maintain and process information concerning individuals with care to insure that no inadvertent disclosure of the information is made. See subsection (e)(10) of the Act.

(9) Inform the proper DOE authorities of any information maintained in a DOE system of records which is not authorized by the Privacy Act of 1974.

(c) Heads of Headquarters Divisions and Offices and heads of the other DOE locations shall review annually the systems of records subject to

their responsibility to insure compliance with the requirements of the Privacy Act of 1974.

Sec. 1008.4 Procedures for identifying the individual making a request for access to or amendment of records.

(a) When a request for information about or for access to or correction of a record pertaining to an individual and contained in a system of records has been made pursuant to Sec. 1008.6, valid identification of the individual making the request shall be required before information will be given, access granted or a correction considered, to insure that information is given, corrected, or records disclosed or corrected only at the request of the proper person.

(b) Subject to paragraphs (c) and (d) of this section, an individual making a request may establish his identity by:

(1) Including with his request, if submitted by mail, a photocopy of two identifying documents bearing his name and signature, one of which shall bear his current home or business address and date of birth; or

(2) Appearing at the appropriate DOE location during the regular business hours and presenting either of the following:

(i) One identifying document bearing the individual's photograph and signature, such as a driver's license or passport; or

(ii) Two identifying documents bearing the individual's name and signature, one of which shall bear the individual's current home or business address and date of birth; or

(3) Providing such other proof of identity as the Privacy Act Officer deems satisfactory in the circumstances of a particular request.

(c) If the Privacy Act Officer or the appropriate System Manager

determines that the information in a record is so sensitive that unauthorized access could cause harm or embarrassment to the individual whose record is involved, or if the individual making the request is unable to produce satisfactory evidence of identity under paragraph (b) or (d) of this section, the individual making the request may be required to submit a notarized statement attesting to his identity and his understanding of the criminal penalties provided under section 1001 of Title 18 of the United States Code for making false statements to a Government agency and under subsection (i)(3) of the Act for obtaining records under false pretenses. Copies of these statutory provisions and forms of such notarized statements may be obtained upon request from the Privacy Act Officer, Headquarters, Department of Energy, Washington, DC.

(d) When an individual acting as the parent of a minor or the legal guardian of the person to whom a record pertains makes a request pursuant to Sec. 1008.6 of this part--

(1) Such an individual shall establish his personal identity in the same manner required in either paragraph (b) or (c) of this section.

(2) In addition, such an individual shall establish his identity in the representative capacity of parent or legal guardian. In the case of the parent of a minor, the proof of identity shall be a certified or authenticated copy of the minor's birth certificate. In the case of the legal guardian of a person who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, the proof of identity shall be a certified or authenticated copy of the order from a court of competent jurisdiction.

(3) A parent or legal guardian may act only for a living individual,

not for a decedent. Requests for the records of decedents will be handled under the Freedom of Information Act (5 U.S.C. 552).

Sec. 1008.5 Effect of the Freedom of Information Act (FOIA).

(a) DOE shall not rely on any exemption contained in the Freedom of Information Act (5 U.S.C. 552) to withhold from the individual to whom it pertains, any record which is otherwise accessible to such individual under this part.

(b) DOE shall rely on subsection (b) of the Privacy Act to withhold information from a person other than the person to whom the record pertains only when the information is also exempt from disclosure under the FOIA.

(c) Where a request for access to records is submitted pursuant to both the FOIA and the Privacy Act, the DOE shall, to the maximum extent possible, process the request under the provisions of this part, including the time limits of this part.

Subpart B--Requests for Access or Amendment

Sec. 1008.6 Procedures for Privacy Act requests.

(a) Any individual may--

(1) Ask the DOE whether a system of records maintained by the DOE contains records about him or her;

(2) Request access to information pertaining to him or her that is maintained in a DOE system of records;

(3) Request that information about him or her in a DOE system of records be amended or corrected. Requests for correction or amendment may include inquiries concerning--

(i) whether such information is relevant or necessary to accomplish a

purpose that DOE is required to accomplish by statute or Executive Order; or

(ii) if the information is to be used by the DOE in making a determination about the individual, whether the information is as accurate, relevant, timely, or complete as is reasonably necessary to assure fairness in the determination.

(b) Requests submitted pursuant to this section shall--

(1) Be in writing and signed by the individual making the request;

(2) State that the request is a ``Privacy Act Access'' or ``Privacy Act Amendment'' request;

(3) Include the identification information required by Sec. 1008.4;

(4) Specify, if possible, the title and identifying number of the system of records as listed in DOE's published notices of system of records;

(5) Provide if possible any additional information to aid DOE in responding to the request, for example, a description of the records sought;

(6) Indicate, as appropriate, the time, place, and form of access sought.

(c) Any request not addressed and marked as specified in paragraph (a) of this section shall be forwarded immediately to the appropriate Privacy Act Officer. An improperly addressed request will not be deemed to have been received for purposes of measuring time periods pursuant to Sec. Sec. 1008.7 and 1008.10 until actual receipt by the appropriate Privacy Act Officer. The individual making the request shall be notified that the request was improperly addressed and the date when the request

was received by the Privacy Act Officer.

(d) Assistance in preparing an access request pursuant to this section may be obtained from any DOE Privacy Act Officer at the locations listed at Sec. 1008.2(e).

(e) An individual shall not be required to state a reason or otherwise justify his request for information or access to a record pertaining to him/her that is contained in a system of records.

Sec. 1008.7 Processing of requests.

(a) Receipt of a request made in accordance with Sec. 1008.6 shall be promptly acknowledged by the Privacy Act Officer.

(b) Each request shall be acted upon promptly. Every effort will be made to respond within ten working days of the date of receipt by the System Manager or designee. If a response cannot be made within ten working days, the appropriate Privacy Act Officer shall send an interim response providing information on the status of the request, including an estimate of the time within which action is expected to be taken on the request and asking for any further information as may be necessary to respond to the request. Action will be completed as soon as possible, but not later than 20 working days after receipt of the original specific inquiry. In unusual circumstances and for good cause, the appropriate Privacy Act Officer may decide that action cannot be completed within the initial 20 working days. In such case, the appropriate Privacy Act Officer will advise the individual of the reason for the delay and the date (not to exceed an additional 20 working days) by which action can be expected to be completed.

(c) The term ``unusual circumstances'' as used in this section

includes situations where a search for requested records from inactive storage is necessary; cases where a voluminous amount of data is involved; instances where information on other individuals must be separated or expunged from the particular record; and cases where consultation with other agencies which have substantial interest in the response to the request is necessary.

(d) Upon receiving a request, the Privacy Act Officer shall ascertain which System Manager or Managers of the DOE have primary responsibility for, custody of, or concern with the system or systems of records subject to the request and shall forward the request to such System Manager or Managers. The System Manager or Managers shall promptly identify and, in consultation with the General Counsel, review the records encompassed by the request.

(e) Where the request is for access to or information about records, after reviewing the material the System Manager or Managers concerned shall transmit to the Privacy Act Officer the requested material. The transmission to the Privacy Act Officer shall include any recommendation that the request be granted or wholly or partially denied and shall set forth any exemption categories supporting denials. Any denial recommendation must be concurred in by the appropriate General Counsel.

(f) Where the request is for correction or amendment of records, after reviewing the material the System Manager or Managers shall transmit a recommended decision to the Privacy Act Officer. Any recommendation that the request be granted or wholly or partially denied shall cite the exemption relied on and set forth the policy considerations supporting a denial. Any recommendation of denial must be concurred in by General

Counsel.

Sec. 1008.8 Action in response to a request for access: Disclosure of requested information to subject individuals.

(a) Consistent with the recommendation of the System Manager and the concurrence of the appropriate General Counsel, the Privacy Act Officer shall provide to the requesting individual the information about or access to a record or information pertaining to the individual contained in a system of records, unless the request is being denied in accordance with Sec. 1008.9 of this part. The Privacy Act Officer shall notify the individual of such determination and provide the following information:

(1) Whether there is information or a record pertaining to him that is contained in a system of records;

(2) The methods of access as set forth in paragraph (b) of this section;

(3) The place at which the record or information may be inspected;

(4) The earliest date on which the record or information may be inspected and the period of time that the record or information will remain available for inspection. In no event shall the earliest date be later than thirty calendar days from the date of notification.

(5) An indication that copies of the records are enclosed, or the estimated date by which a copy of the record could be mailed and the estimate of fees that would be charged to provide other than the first copy of the record, pursuant to Sec. 1008.13.

(6) The fact that the individual, if he wishes, may be accompanied by another person during the in-person review of the record or information, provided that the individual shall first furnish to the Privacy Act

Officer a written statement authorizing disclosure of that individual's record in the accompanying person's presence; and

(7) Any additional requirements that must be satisfied in order to provide information about or to grant access to the requested record or information.

(b) The following methods of access to records or information pertaining to an individual and contained in a system of records may be available to that individual depending on the circumstances of a particular request:

(1) A copy of the record may be enclosed with the initial response in accordance with paragraph (a) of this section;

(2) Inspection in person may be arranged during the regular business hours of the DOE in the office specified by the Privacy Act Officer;

(3) Transfer of records to a Federal facility more convenient to the individual may be arranged, but only if the Privacy Act Officer determines that a suitable facility is available, that the individual's access can be properly supervised at that facility, and that transmittal of the records or information to that facility will not unduly interfere with operations of the DOE or involve unreasonable costs, in terms of money or manpower; and

(4) The requested number of copies in addition to the initial copy may be mailed at the request of the individual, subject to payment of the fees prescribed in Sec. 1008.13.

(c) If the Privacy Act Officer believes, based upon a recommendation of the System Manager and the agency's medical officer, that disclosure of medical and/or psychological information directly to an individual

could have an adverse effect upon that individual, the individual may be asked:

(1) To designate in writing a physician or mental health professional to whom he would like the records to be disclosed; or

(2) To submit a signed statement by his physician or a mental health professional indicating that, in his view, disclosure of the requested records or information directly to the individual will not have an adverse effect upon the individual. If the individual refuses to designate a physician or mental health professional, or to submit a signed statement from his physician or mental health professional as provided in paragraph (c) (1) and (2) of this section, the request will be considered denied, and the appeal rights provided in Sec. 1008.11 will be available to the individual.

(d) The Privacy Act Officer shall supply such other information and assistance at the time of an individual's review of his record as is necessary to make the record intelligible to the individual.

(e) The DOE will, as required by subsection (d)(1), assure an individual's right ``to review his or her record and have a copy made of all or any portion thereof in a form comprehensible to him.'' However, original records will be made available to individuals only under the supervision of the Privacy Act Officer or his designee. Individuals will be provided at their request with a copy, but not the original, of records pertaining to them.

Sec. 1008.9 Action in response to a request for access: initial denial of access.

(a) A request by an individual for information about or access to a

record or information pertaining to that individual that is contained in a system of records may be denied only upon a determination by the appropriate System Manager, with the concurrence of the appropriate General Counsel, that:

- (1) The record is subject to an exemption under Sec. 1008.12;
- (2) The record is information compiled in reasonable anticipation of a civil action or proceeding; or
- (3) The individual has unreasonably failed to comply with the procedural requirements of this part.

(b) The Privacy Act Officer shall give written notice of the denial of a request of information about or access to records or information pertaining to the individual and contained in a system of records. Such written notice shall be sent by certified or registered mail, return receipt requested and shall include the following information:

- (1) The System Manager's name and title;
- (2) The reasons for the denial, including citation to the appropriate sections of the Privacy Act and this part; and
- (3) Notification of the individual's right to appeal the denial pursuant to Sec. 1008.11 and to administrative and judicial review under 5 U.S.C. 552a(g)(1)(B), as limited by 552a(g)(5).

(c) Nothing in this section shall:

- (1) Require the furnishing of information or records that are not retrieved by the name or by some other identifying number, symbol or identifying particular of the individual making the request;
- (2) Prevent a System Manager from waiving any exemption authorizing the denial of records, in accordance with Sec. 1008.12.

Sec. 1008.10 Action in response to a request for correction or amendment of records.

(a) The Privacy Act Officer must respond in writing to the requester for amendment of a record within 10 working days of receipt. This response shall inform the requester of the decision whenever possible.

(b) If the decision cannot be reached within 10 working days, the requester shall be informed of the reason for delay and the date (within 20 working days) it is expected that the decision will be made.

(c) The Privacy Act Officer, consistent with the recommendation of the System Manager or Managers, as concurred in by the appropriate General Counsel, if appropriate, shall do one of the following:

(1) Instruct the System Manager to make the requested correction or amendment; and advise the individual in writing of such action, providing either a copy of the corrected or amended record, or a statement as to the means whereby the correction or amendment was accomplished in cases where a copy cannot be provided (for example, erasure of information from a record maintained only in an electronic data bank); or

(2) Inform the individual in writing that his request is denied in whole or in part. Such denial shall be sent by certified or registered mail, return receipt requested, and shall provide the following information:

(i) The System Manager's name and title;

(ii) The reasons for the denial; including citation to the appropriate sections of the Act and this part; and

(iii) Notification of the individual's right to appeal the denial

pursuant to Sec. 1008.11 and to administrative and judicial review under 5 U.S.C. 552a(g)(1)(B), as limited by 5 U.S.C. 552a(g)(5).

(iv) Notification of the right of the individual to submit a statement of disagreement consistent with Sec. 1008.11(g).

(d) Whenever an individual's record is amended pursuant to a request by that individual, the Privacy Act Officer or the System Manager, as appropriate, shall notify all persons and agencies to which the amended portion of the record had been disclosed prior to its amendment, if an accounting of such disclosure was required by the Act. The notification shall request a recipient agency maintaining the record to acknowledge receipt of the notification, to correct or amend the record and to apprise an agency or person to which it had disclosed the record of the substance of the amendment.

(e) The following criteria will be taken into account by the DOE in reviewing a request for amendment:

- (1) The sufficiency of the evidence submitted by the individual;
- (2) The factual accuracy of the information;
- (3) The relevance and necessity of the information in relation to the purpose for which it was collected;
- (4) If such information is used in making any determination about the individual, whether the information is as accurate, relevant, timely, and complete as is reasonably necessary to assure fairness to the individual in such determination;
- (5) The degree of possibility that denial of the request could unfairly result in a determination adverse to the individual;
- (6) The nature of the record sought to be corrected or amended; and

(7) The propriety and feasibility of complying with the specific means of amendment requested by the individual.

(f) The DOE will not undertake to gather evidence for the individual, but does reserve the right to verify the evidence that the individual submits.

(g) Amendment of a record requested by an individual may be denied upon a determination that:

(1) The individual has failed to establish, by a preponderance of the evidence, the propriety of the amendment in relation to the criteria stated in paragraph (e) of this section;

(2) The record sought to be amended was compiled in a terminated judicial, quasi-judicial or quasi-legislative proceeding to which the individual was a party or participant;

(3) The record sought to be amended is the subject of a pending judicial, quasi-judicial or quasi-legislative proceeding to which the individual is a party or participant;

(4) The amendment would violate a duly enacted statute or promulgated regulation;

(5) The individual has unreasonably failed to comply with the procedural requirements of this part; or

(6) The record has been properly exempted from the provisions of subsection (d) of the Act.

(h) Nothing in this section shall restrict the DOE from granting in part or denying in part a request for amendment of records.

[45 FR 61577, Sept.16, 1980, as amended at 46 FR 31637, June 17, 1981]
Sec. 1008.11 Appeals of denials of requests pursuant to Sec. 1008.6.

(a) Any individual may appeal the denial of a request made by him for information about or for access to or correction or amendment of records. An appeal shall be filed within 30 calendar days after receipt of the denial. When an appeal is filed by mail, the postmark is conclusive as to timeliness. The appeal shall be in writing and must be signed by the individual. The words ``PRIVACY ACT APPEAL'' should appear in capital letters on the envelope and the letter. Appeals of denials relating to records maintained in government-wide systems of records reported by the OPM, shall be filed, as appropriate, with the Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management (OPM), 1900 E Street, NW, Washington, DC 20415. All other appeals relating to DOE records shall be directed to the Director, Office of Hearings and Appeals (OHA), Department of Energy, Headquarters, Washington, DC.

(b) An appeal not addressed and marked as specified in paragraph (a) of this section shall be forwarded immediately to the Assistant Director for Agency Compliance and Evaluation, OPM, or the Director, OHA, as appropriate. An appeal that is not properly addressed by an individual shall not be deemed to have been received for purposes of time periods in this section until actual receipt of the appeal by the Assistant Director, OPM, or the Director, OHA. In each instance when an appeal so forwarded is received, the individual filing the appeal shall be notified that the appeal was improperly addressed and the date when the appeal was received by the Assistant Director, OPM, or the Director, OHA.

(c) The appeal shall include the following:

- (1) A copy of the original request for access or for amendment;
- (2) A copy of the initial denial; and
- (3) A statement of the reasons why the initial denial is believed to be in error.
- (d) The records or record to which the individual was denied access, or which was requested to be corrected or amended, will be supplied to the appropriate appeal authority by the Privacy Act Officer who issued the initial denial. While such records normally will comprise the entire record on appeal, the appeal authority may seek such additional information as is necessary to assure that the final determination is fair and equitable.
- (e) No personal appearance or hearing on appeal will be allowed.
- (f) The appropriate appeal authority for DOE records shall act upon the appeal and issue a final determination in writing no later than 20 working days from the date on which the appeal is received. However, the appeal authority may extend the ten-day period upon a determination that a fair and equitable review cannot be made within that period. In such cases the individual shall be advised in writing of the reason for the extension and of the estimated date by which a final determination will be issued. The final determination shall be issued not later than the 30th working day after receipt of the appeal unless unusual circumstances, as defined in Sec. 1008.7, are present, whereupon an additional 30 days may be extended.
- (g) If an appeal of a denial of access is granted, a copy of the determination shall be transmitted promptly to the individual, the Privacy Act Officer and the appropriate System Manager. Upon receipt of

the determination, the Privacy Act Officer promptly shall take action consistent with Sec. 1008.8.

(h) If an appeal of a denial of correction or amendment is granted, the final determination shall identify the specific corrections or amendments to be made. A copy of the determination shall be transmitted promptly to the individual, the Privacy Act Officer and the appropriate System Manager. Upon receipt of the determination, the Privacy Act Officer promptly shall take steps to insure that the actions set forth in Sec. 1008.10 (a) and (b) are taken.

(i) If the appeal of a denial of access is denied, the final determination shall state the reasons for the denial and shall be transmitted promptly to the individual, the Privacy Act Officer and the appropriate System Manager. The determination shall also include a statement identifying the right of the individual to administrative and judicial review pursuant to 5 U.S.C. 552a(g)(1)(B) as limited by 5 U.S.C. 552a(g)(5).

(j) If the appeal of a denial of correction or amendment is denied, the final determination shall state the reasons for the denial and shall be transmitted promptly to the individual, the Privacy Act Officer and the appropriate System Manager.

(1) The determination also shall include the following:

(i) Notice of the right of the individual to file with the Privacy Act Officer a concise, signed statement of reasons for disagreeing with the final determination, receipt of which statement will be acknowledged by the Privacy Act Officer.

(ii) An indication that any disagreement statement filed by the

individual will be noted and appended to the disputed record and that a copy of the statement will be provided by the Privacy Act Officer or the System Manager, as appropriate, to persons and agencies to which the record is disclosed subsequent to the date of receipt of such statement;

(iii) An indication that the DOE shall append to any disagreement statement filed by the individual a copy of the final determination or a summary thereof, which determination or summary also will be provided to persons and agencies to which the disagreement statement is disclosed; and,

(iv) A statement of the right of the individual to administrative and judicial review under 5 U.S.C. 552a(g)(1)(B), as limited by 5 U.S.C. 552a(g)(5).

(2) Although a copy of the final determination or a summary thereof will be treated as part of the individual's record for purposes of disclosure in instances where the individual has filed a disagreement statement, it will not be subject to correction or amendment by the individual.

(3) Where an individual files a statement of disagreement consistent with paragraph (j)(1) of this section, the Privacy Act Officer shall take steps to insure that the actions provided in paragraph (j)(1)(i), (ii) and (iii) of this section are taken.

Sec. 1008.12 Exemptions.

(a) General exemptions-(1) Generally. 5 U.S.C. 552a(j)(2) allows the exemption of any system of records within the DOE from any part of section 552a except subsections (b), (c)(1) and (2), (e)(4)(A) through (F) (e)(6), (7), (9), (10), and (11), and (i) of the Act if the system

of records is maintained by a DOE component which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and which consists of (i) information compiled for the purpose of identifying individual criminal offenders and alleged offenders; (ii) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (iii) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

(2) Applicability of general exemptions to DOE systems of records.-

(i) Investigative Files of the Inspector General (DOE-54). This system of records is being exempted pursuant to subsection (j)(2) of the Act in order to aid the Office of the Inspector General in the performance of its law enforcement function. The system is exempted from subsections (c)(3) and (4); (d)(1)-(4); (e)(1)-(3); (4)(G), (H), and (I); (5) and (8); and (g) of the Act. The system is exempt from these provisions for the following reasons: Notifying an individual at the individual's request of the existence of records in an investigative file pertaining to such individual, or granting access to an investigative file could (A) interfere with investigative and enforcement proceedings and with co-defendants' right to a fair trial; (B) disclose the identity of confidential sources and reveal confidential information supplied by these sources; and (C) disclose investigative techniques and procedures.

(ii) Law Enforcement Investigative Records (DOE-84). This system of

records is being exempt pursuant to subsection (j)(2) of the Act to enable the Office of Counterintelligence to carry out its duties and responsibilities as they pertain to its law enforcement function. The system is exempted from these provisions for the following reasons:

Notifying an individual at the individual's request of the existence of records in an investigative file pertaining to such individual, or granting access to an investigative file could interfere with investigative and enforcement proceedings and with co-defendant's right to a fair trial; disclose the identity of confidential information supplied by these sources; and disclose investigative techniques and procedures.

(b) Specific exemptions. Subsection (k) of the Privacy Act establishes seven categories of systems of records which may be exempted from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (7) of the Act. The Department has exempted systems of records under four of these provisions, as follows: (1) Classified material. (i) Subsection (k)(1) permits exemption of systems of records that are specifically authorized under criteria established under statute or Executive Order to be kept secret in the interest of national defense or foreign policy, and are in fact properly classified pursuant to such statute or Executive Order. Restricted Data and Formerly Restricted Data under the Atomic Energy Act of 1954, as amended, are included in this exemption.

(ii) The DOE systems of records listed below have been exempted under subsection (k)(1) to the extent they contain classified information, in order to prevent serious damage to the national defense or foreign policy that could arise from providing individuals access to classified

information. Systems exempted under subsection (k)(1) are--

- (A) Alien Visits and Participation (DOE-52).
- (B) Clearance Board Cases (DOE-46).
- (C) Security Correspondence Files (DOE-49).
- (D) Foreign Travel Records (DOE-27)
- (E) Legal Files (Claims, Litigations, Criminal Violation, Patents, and other Legal Files) (DOE-41).
- (F) Personnel Security Clearance Files (DOE-43).
- (G) Personnel Security Clearance Index (Automated) (DOE-42).
- (H) Special Access Authorization for Categories of Classified Information (DOE-44).
- (I) Administrative and Analytical Records and Reports (DOE-81).
- (J) Law Enforcement Investigative Records (DOE-84).

(2) Investigatory material compiled for law enforcement purposes. (i) Subsection (k)(2) permits the exemption of investigatory material compiled for law enforcement purposes, provided, however, that if any individual is denied any right, privilege, or benefit to which he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(ii) The DOE systems of records listed below have been exempted under

subsection (k)(2) in order to prevent subjects of investigation from frustrating the investigatory process through access to records about themselves or as a result of learning the identities of confidential informants; to prevent disclosure of investigative techniques; to maintain the ability to obtain necessary information; and thereby to insure the proper functioning and integrity of law enforcement activities. Systems of records exempted under subsection (k)(2) are--

- (A) Alien Visits and Participation (DOE-52).
- (B) Clearance Board Cases (DOE-46).
- (C) Security Correspondence Files (DOE-49).
- (D) Foreign Travel Records (DOE-27).
- (E) Legal Files (Claims, Litigation, Criminal Violations, Patents, and other Legal Files) (DOE-41).
- (F) Personnel Security Clearance Files (DOE-43).
- (G) Personnel Security Clearance Index (Automated) (DOE-42).
- (H) Special Access Authorization for Categories of Classified Information (DOE-44).
- (I) DOE Personnel and General Employment Records (DOE-1) (only personnel investigative records concerning current and former DOE employees and applicants for employment by DOE).
- (J) Investigative Files of the Inspector General (DOE-54) (only investigative records concerning past and present DOE employees).
- (K) Administrative and Analytical Records and Reports (DOE-81).
- (L) Law Enforcement Investigative Records (DOE-84).

(3) Investigatory material compiled for determining suitability for Federal employment. (i) Subsection (k)(5) permits exemption of systems

of records that contain investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualification for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(ii) The DOE systems of records listed below have been exempted under subsection (k)(5) to the extent they contain the kinds of records described in subsection (k)(5) in order to maintain DOE's ability to obtain candid information on candidates for employment, contracts, or access to classified information and to fulfill commitments made to sources to protect the confidentiality of information, and thereby to facilitate proper selection or continuation of the best applicants or persons for a given position or contract. Systems exempted under subsection (k)(5) are--

- (A) DOE Personnel and General Employment Records (DOE-1);
- (B) Personnel Security Clearance Files (DOE-43);
- (C) Investigative Files of the Inspector General (DOE-54);
- (D) Alien Visits and Participation (DOE-52);
- (E) Clearance Board Cases (DOE-46);
- (F) Security Correspondence Files (DOE-49);
- (G) Foreign Travel Records (DOE-27);
- (H) Legal Files (Claims, Litigation, Criminal Violations, Patents, and

other Legal Files) (DOE-41);

(I) Personnel Security Clearance Index (Automated) (DOE-42);

(J) Special Access Authorization for Categories of Classified Information (DOE-44);

(K) DOE Personnel: Supervisor-Maintained Personnel Records (DOE-2);

(L) Applications for DOE Employment (DOE-4).

(M) Administrative and Analytical Records and Reports (DOE-81).

(N) Law Enforcement Investigative Records (DOE-84).

(4) Testing or examination material. (i) Subsection (k)(6) permits exemption of systems of records that include testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing of examination process.

(ii) The DOE systems of records listed below have been exempted to the extent they contain testing or examination material in order to protect the integrity of the personnel testing and evaluation process and to avoid providing individuals with unfair advantage, by premature or unfair disclosure of testing or rating information. Systems exempted under Subsection (k)(6) are--

(A) (DOE-2) DOE Personnel: Supervisor-Maintained Personnel Records.

(B) (DOE-4) Applications for DOE Employment.

(C) (DOE-1) DOE Personnel and General Employment Records.

(c) Application of exemptions to particular requests. (1) The Privacy Act Officer, consistent with the recommendation of the System Manager and with concurrence of the appropriate General Counsel, may make

available records which the DOE is authorized to withhold under this section.

(2) With respect to records containing material or information that would reveal the identity of a source who was given an assurance of confidentiality, a determination to make records available pursuant to paragraph (c)(1) of this section shall be made only if the source consents to the release of such information to the individual, or if it is determined that the material or information is not adverse or detrimental to the individual, or for good cause shown. The exercise of discretion with respect to waiver of the exemption shall be final.

(3) Prior to making a determination to deny access to a record in a system of records covered by exemption (k)(1) for classified material (see paragraph (b)(1) of this section), the System Manager shall consult with the Director, Division of Classification, to verify the current classification status of the information in the requested record.

[45 FR 61577, Sept. 16, 1980, as amended at 60 FR 35836, Jul. 12, 1995]n
Sec. 1008.13 Fees.

(a) The only fees to be charged to or collected from an individual under the provisions of this part are for copying records at the request of the individual. The fee charged shall be consistent with the fee schedule set forth in paragraph (b) of this section.

(1) No fees shall be charged or collected for the following: Search for and retrieval of records; review of records; copying by the DOE incident to granting access; copying at the initiative of the DOE without a request from the individual; copying when the aggregate of fees for copying is \$25 or less; time spent providing copies;

transportation of records and personnel; and first class postage.

(2) It is the policy of the DOE to provide an individual with one copy of each record corrected or amended pursuant to request without charge.

(3) As required by the Office of Personnel Management in its published regulations implementing the Act, the DOE will charge no fee for a single copy of a personnel record covered by that Commission's Government-wide published notice of systems of records.

(b) The schedule of fees is as follows:

(1) \$.10 per copy of each page.

(2) For other forms of copying and other forms of materials (e.g., cassettes, computer materials), the direct cost of the materials, personnel, and equipment shall be charged, but only with prior specific approval of the person making the request, when such charges would be in excess of \$25.

(c) The Privacy Act Officer may, upon application by an individual, furnish any records without charge or at a reduced rate, if the Privacy Act Officer determines that such waiver or reduction of fees is in the public interest.

(d) Payment shall be made by check or money order payable to the United States Department of Energy.

(e) Advance payment of all or part of the fees may be required at the discretion of the Privacy Act Officer. Unless the individual requesting the copies specifically states that he is willing to pay whatever fees are assessed for meeting the request or, alternatively, specifies an amount in excess of \$25 that he is willing to pay and which in fact covers the anticipated fees for meeting the request, a request that is

expected to involve assessed fees in excess of \$25 shall not be deemed to have been received, for purposes of the time periods specified in Sec. 1008.7 and Sec. 1008.10 until the individual making the request is notified of the anticipated cost, agrees to bear it, and makes any advance deposit required. Such notification shall be made by the Privacy Act Officer as promptly as possible after receipt of the request.

Sec. 1008.14 Requests under false pretenses.

Subsection (i)(3) of the Act provides that any person who knowingly and willingly requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

Sec. 1008.15 Civil remedies.

Subsection (g) of the Act provides that an individual may bring suit against the DOE for a violation of the Privacy Act, as follows:

(a) If the DOE refuses to grant a request for access to an individual's records, the court may order the DOE to provide the individual with access to his or her records and award reasonable litigation costs and attorney's fees.

(b) If the DOE refuses to amend a record or fails to review an amendment request as required by subsection (d)(3) of the Act, the court may order the DOE to make the amendment and award reasonable litigation costs and attorney's fees.

(c) If the DOE makes an adverse determination based on a record which is not maintained in an accurate, timely, relevant, and complete manner, the individual may be awarded actual damages of at least \$1,000. In order to prevail, the individual must show that--

- (1) The DOE's action was willful and intentional; and
 - (2) The adverse determination was based on the faulty record.
- (d) If the DOE fails to comply with any other provision of the Privacy Act or agency rule promulgated under the Act, in such a way as to have an adverse effect on the individual, the court may award actual damages of at least \$1,000. In order to prevail, the individual must show that--

- (1) The DOE's action was willful and intentional; and
- (2) The agency's action had an adverse effect on the individual; and
- (3) The adverse effect was causally related to the DOE's action.

Subpart C--Disclosure to Third Parties

Sec. 1008.16 Prohibition against disclosure.

Except as provided in Sec. 1008.17, the DOE shall not disclose any record which is contained in a system of records, by any means of communication, to any agency or to any person other than the individual who is the subject of the record.

Sec. 1008.17 Conditions of disclosure.

(a) Notwithstanding the prohibition contained in Sec. 1008.16, the DOE may disclose records covered by this part (1) to the individual to whom the record pertains or to an agency or (2) to a person other than the individual where he has given his prior written consent to the disclosure or has made a written request for such disclosure.

(b) Notwithstanding the prohibition contained in Sec. 1008.16 the DOE may also disclose records covered by this part whenever the disclosure is:

- (1) To officers and employees of the DOE who have a need for the record in the performance of their duties;

- (2) Required under the Freedom of Information Act (5 U.S.C. 552);
- (3) For a routine use (as defined in Sec. 1008.2) which is described in the Federal Register notice for the system of records which the disclosure is to be made;
- (4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 of the United States Code;
- (5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;
- (6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;
- (7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law and if the head of the agency or instrumentality has made a written request to the DOE specifying the particular portion desired and the law enforcement activity for which the record is sought;
- (8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or to any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee, to the extent of matter within its jurisdiction;

(10) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction.

(c) Notwithstanding the prohibition contained in section Sec. 1008.16 of this part, the DOE may also disclose records covered by this part when disseminating a corrected or amended record or notation of a disagreement statement as required by subsection (c)(4) of the Act.

Sec. 1008.18 Accounting for disclosures.

(a) For each disclosure of information contained in a system of records under his control, except disclosures to authorized officers and employees of DOE and disclosures required by the Freedom of Information Act, the appropriate System Manager shall keep an accurate accounting of:

(1) The date, nature, and purposes of each disclosure of a record made to any person or to another agency; and

(2) The name and address of the person or agency to which the disclosure was made.

(b) The accounting shall be retained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(c) The accounting described in paragraph (a) of this section shall be made available to the individual named in the record upon written

request to the Privacy Act Officer at the appropriate DOE location listed at Sec. 1008.2(c) of this part. However, the accounting shall not be revealed with respect to disclosures made under Sec. 1008.17(b)(7) of this part, pertaining to law enforcement activity; or with respect to disclosures involving system of records for which DOE had claimed an exemption from certain requirements of the Act, as provided in Sec. 1008.12 of this part.

(d) Whenever an amendment or correction of a record or a notation of dispute concerning the accuracy of records is made by the DOE in accordance with Sec. 1008.10(a)(2)(iv) and Sec. 1008.11(g) of this part, DOE shall inform any person or other agency to whom the record was previously disclosed if an accounting of the disclosure was made pursuant to the requirements of paragraph (a) of this section, unless the disclosure was made pursuant to section Sec. 1008.17(b)(7) of this part; or the disclosure involved a system of records of which DOE has claimed an exemption from certain requirements of the Act, as provided in Sec. 1008.12 of this part.

(e) The System Manager shall make reasonable efforts to serve notice on an individual when any record containing information about such individual in a DOE system of records is disclosed to any person under compulsory legal process when such process becomes a matter of public record.

(f) Prior to disclosing any record about an individual to any person other than an agency, unless the disclosure is pursuant to the Freedom of Information Act, the System Manager shall make reasonable efforts to assure that each record is accurate, complete, timely, and relevant for

DOE's purposes.

Sec. 1008.19 Criminal penalties--improper disclosure.

Subsection (i)(1) of the Act provides that a Federal employee who willfully discloses information subject to the Privacy Act in violation of the Act or rules promulgated under it shall be guilty of a misdemeanor and fined up to \$5,000.

Subpart D--Maintenance and Establishment of Systems of Records

Sec. 1008.20 Content of systems of records.

(a) The DOE will maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose DOE is required to accomplish by statute or by Executive Order of the President, unless an exemption to this requirement has been claimed by DOE, as provided in Sec. 1008.12 of this part.

(b) The DOE will maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless it is pertinent to and within the scope of an authorized law enforcement activity.

(c) The DOE will maintain all records that are used by it to make any determination about any individual with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual in such determination.

Sec. 1008.21 Collection of information by DOE about an individual for a system of records.

(a) The DOE will collect information, to the greatest extent practicable, directly from the subject individual when the use of the

information may result in adverse determinations about an individual's rights, benefits and privileges under Federal programs, unless an exemption from the Act to this requirement has been claimed by DOE as provided in Sec. 1008.12

(b) Unless an exemption from the Act has been claimed by DOE under subsection (j)(2), as provided in Sec. 1008.12, DOE shall inform each individual whom it asks to supply information, on the form or other means by which it uses to collect the information, or on a separate form that can be retained by the individual, of the following:

(1) The authority (whether granted by statute or by Executive Order of the President) that authorizes the solicitation of the information and whether the provision of such information is mandatory or voluntary;

(2) The principal purpose or purposes for which the information is intended to be used;

(3) The routine uses that may be made of the information, as published in the Federal Register pursuant to the requirements of the Act; and

(4) The effect on the individual, if any, of not providing all or any part of the requested information.

Sec. 1008.22 Use and collection of social security numbers.

(a) The System Manager of each system of records which utilizes social security numbers as a method of identification without statutory authorization or authorization by regulation adopted prior to January 1, 1975, shall revise the system to avoid future collection and use of the social security numbers.

(b) Heads of Headquarters Divisions and Offices and heads of the other DOE locations shall insure that employees authorized to collect

information from individuals are advised that individuals may not be required to furnish social security numbers without statutory authorization, and that individuals who are requested to provide social security numbers voluntarily must be advised that furnishing the number is not required and that no penalty or denial of benefits will flow from the refusal to provide it.

Sec. 1008.23 Public notice of systems of records.

(a) The DOE shall publish in the Federal Register at least annually a notice of the existence and character of each of its systems of records, which notice shall include:

- (1) The name and location of the system;
- (2) The categories of individuals on whom records are maintained in the system;
- (3) The categories of records maintained in the system;
- (4) Each routine use of the records contained in the system, including the categories of users and the purpose of such use, subject to paragraph (d) of this section;
- (5) The policies and practices of the DOE regarding storage, retrievability, access controls, retention, and disposal of the records;
- (6) The title and business address of the DOE official who is responsible for the system of records;
- (7) The DOE procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;
- (8) The DOE procedures whereby an individual can be notified at his request about how he can gain access to any record pertaining to him contained in the system or records, and how he can contest its content;

and

(9) the categories of source of records in the systems.

(b) Notwithstanding the requirements of paragraph (a) of this section, the notice of systems of records shall not necessarily include the information in paragraphs (a) (7)-(9) of this section if DOE has claimed a general or specific exemption from the requirements of the Act, as provided in Sec. 1008.12.

(c) Copies of the notices as printed in the Federal Register shall be available at the DOE locations listed at Sec. 1008.2(c). Requests by mail for copies of such notices should be sent to Privacy Act Officer, Headquarters, U.S. Department of Energy, Washington, DC 20585. The first copy will be furnished free of charge. For each additional copy, the costs of printing and handling may be charged.

(d) DOE shall publish in the Federal Register notice of any new routine use or intended routine use of a record in the system of records, at least 30 calendar days prior to the implementation of any new routine use of a record in a system of records, or at least 30 calendar days prior to publication of the annual notice of such routine uses, as provided in paragraph (a) of this section, an opportunity for interested persons to submit written comments consisting of data, views, or arguments regarding such use to DOE, shall be provided.

Sec. 1008.24 Criminal penalties--failure to publish a system notice.

Subsection (i)(2) of the Act provides that an agency officer or employee who willfully maintains a system of records without publishing a system notice as required by subsection (e)(4) of the Act shall be guilty of a misdemeanor and fined up to \$5,000.

Title 18-Conservation of Power, Water Resources

Chapter I-Federal Energy Regulatory Commission, Department of Energy

PART 3b--COLLECTION, MAINTENANCE, USE, AND DISSEMINATION OF RECORDS OF

IDENTIFIABLE PERSONAL INFORMATION

Subpart A--General

Sec.

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Subpart D--Rules for Exemptions

3b.250 Specific exemptions.

Authority: Federal Power Act, as amended, section 309, 49 Stat. 858-859 (16 U.S.C. 825h); Natural Gas Act, as amended, Section 16, 52 Stat. 830 (15 U.S.C. 717o); and Pub. L. No. 93-579 (88 Stat. 1896).

Source: Order No. 536, 40 FR 44288, Sept. 25, 1975, unless otherwise noted.

Subpart A--General

Sec. 3b.1 Purpose.

Part 3b describes the Federal Power Commission's program to implement the provisions of the Privacy Act of 1974 (Pub. L. No. 93-579, 88 Stat. 1896) to allow individuals to have a say in the collection and use of information which may be used in determinations affecting them. The program is structured to permit an individual to determine what records pertaining to him and filed under his individual name, or some other identifying particular, are collected, maintained, used or disseminated by the Commission, to permit him access to such records, and to correct or amend them, and to provide that the Commission collect, use, maintain and disseminate such information in a lawful manner for a necessary purpose.

Sec. 3b.2 Definitions.

In this part:

(a) ``Agency'', as defined in 5 U.S.C. 551(1) as ``* * * each authority of the Government of the United States, whether or not it is within or subject to review by another agency, * * *'', includes any executive department, military department, Government corporation,

Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency (5 U.S.C. 552(e));

(b) ``Individual'' means a citizen of the United States or an alien lawfully admitted for permanent residence;

(c) ``Maintain'' includes, maintain, collect, use, or disseminate;

(d) ``Record'' means any item, collection or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(e) ``System of records'' means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(f) ``Statistical record'' means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13 of the United States Code;

(g) ``Routine use'' means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected; and

(h) ``Disclosure'' means either the transmittal of a copy of a record or the granting of access to a record, by oral, written, electronic or

mechanical communication.

Sec. 3b.3 Notice requirements.

(a) The Commission will publish at least annually in the Federal Register a notice identifying the systems of records currently maintained by the Commission. For each system of records, the notice will include the following information:

- (1) The name and location of the system;
 - (2) The categories of individuals on whom records are maintained in the system;
 - (3) The categories of records maintained in the system;
 - (4) The specific statutory provision or executive order, or rule or regulation issued pursuant thereto, authorizing the maintenance of the information contained in the system;
 - (5) Each routine use of the records contained in the system, including the categories of users and the purposes of such use;
 - (6) The policies and practices regarding the storage, retrievability, access controls, and retention and disposal of the records;
 - (7) The title and business address of the Commission official who is responsible for the system of records;
 - (8) The procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;
 - (9) The procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its contents; and
 - (10) The categories of sources of records in the system.
- (b) At least thirty days prior to its operation, the Commission will

publish in the Federal Register a notice of its intention to establish a new system of records reciting the information required pursuant to paragraphs (a) (1)-(10) of this section and notice of any major change to an existing system.

(c) The Commission will publish in the Federal Register a notice of its intention to establish any new or intended routine use of the information in an existing system of records at least thirty days prior to the disclosure of the record for that routine use. A new routine use is one which involves disclosure of records for a new purpose compatible with the purpose for which the record is maintained or which involves disclosure to a new recipient or category of recipients. At a minimum, the notice will contain the following information:

- (1) The name of the system of records for which the routine use is to be established;
- (2) The authority authorizing the maintenance of the information contained in the system;
- (3) The categories of records maintained in the system;
- (4) The proposed routine use(s);
- (5) The categories of recipients for each proposed routine use; and
- (6) Reference to the public notice in the Federal Register under which the existing system had already been published.

Sec. 3b.4 Government contractors.

Systems of records operated by a contractor, pursuant to a ``contract,' ' on behalf of the Commission, which are designed to accomplish a Commission function, are considered, for the purposes of this part, to be maintained by the Commission. A ``contract' ' covers any

contract, written or oral, subject to the Federal Procurement Regulations. The contractual instrument will specify, to the extent consistent with the Commission's authority to require it, that the systems of records be maintained in accordance with the requirements of this part.

Sec. 3b.5 Legal guardians.

For the purposes of this part, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

Subpart B--Standards for Maintenance and Collection of Records

Sec. 3b.201 Content of records.

(a) All records which are maintained by the Commission in a system of records will contain only such information about an individual that is relevant and necessary to accomplish a purpose of the Commission as required to be accomplished by statute or by executive order of the President. Pursuant to Sec. 3b.3(a)(4) of this part, the Commission will identify in the Federal Register the specific provisions in law which authorize it to maintain information in a system of records. In determining the ``relevance'' and ``necessity'' of records, the following considerations will govern:

- (1) Whether each item of information relates to the purposes, in law, for which the system is maintained;
- (2) The adverse consequences, if any, of not collecting the information;
- (3) Whether the need for the information could be met through the

maintenance of the information in a non-individually identifiable form;

(4) Whether the information in the record is required to be collected on every individual who is the subject of a record in the system or

whether a sampling procedure would suffice;

(5) The length of time it is necessary to retain the information;

(6) The financial cost of maintaining the record as compared to the adverse consequences of not maintaining it; and

(7) Whether the information, while generally relevant and necessary to accomplish a statutory purpose, is specifically relevant and necessary only in certain cases.

(b) All records which the Commission maintains in a system of records and which are used to make a determination about an individual will be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. Where practicable, in questionable instances, reverification of pertinent information with the individual to whom the record pertains may be appropriate. In pursuit of ``completeness'' in the collection of information, the Commission will limit its records to those elements of information which clearly bear on the determination for which the records are intended to be used, assuring that all elements necessary to the determination are present before the determination is made.

(c) Prior to disseminating any records in a system of records, the Commission will make reasonable efforts to assure that such records are as accurate, relevant, timely, and complete as appropriate for the purposes for which they are collected and/or maintained, except when

they are disclosed to a member of the public under the Freedom of Information Act, 5 U.S.C. 552, as amended, or to another agency.

(d) No records of the Commission in a system of records shall describe how any individual exercises his First Amendment rights unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity. The exercise of these rights includes, but is not limited to, religious and political beliefs, freedom of speech and of the press, and freedom of assembly and petition. In determining whether or not a particular activity constitutes the exercise of a right guaranteed by the First Amendment, the Commission will apply the broadest reasonable interpretation.

Sec. 3b.202 Collection of information from individuals concerned.

(a) Any information collected by the Commission for inclusion in a system of records which may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs, will, to the greatest extent practicable, be collected directly from the subject individual (see paragraph (d) of this section).

(b) The Commission will inform each individual whom it asks to supply information about himself, on the form which it uses to collect the information, or on a separate sheet that can be easily retained by the individual, in language which is explicit, informative, and easily understood, and not so lengthy as to deter an individual from reading it, of:

(1) The specific provision of the statute or executive order of the President, including the brief title or subject of that statute or order

which authorizes the solicitation of the information; whether disclosure of such information is mandatory or voluntary; and whether the Commission is authorized or required to impose penalties for failing to respond;

(2) The principal purpose or purposes for which the information is intended to be used;

(3) The routine uses which may be made of the information, as described in the Federal Register in the notice of the system of records in which the information is maintained, and which are relatable and necessary to a purpose described pursuant to paragraph (b)(2) of this section; and

(4) The effects (beneficial and adverse) on the individual if any, of not providing all or any part of the requested information.

(c) Social security numbers will not be required from individuals whom the Commission asks to supply information unless the disclosure of the number is required by Federal statute or unless disclosure is to the Commission maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required pursuant to a statute or regulation adopted prior to such date to verify the identity of an individual. When an individual is requested to disclose his social security number to the Commission, he will be informed under what statutory or other authority such number is solicited, what uses will be made of it, whether disclosure is mandatory or voluntary, and if it is mandatory, under what provisions of law or regulation.

(d) The use of third-party sources to collect information about an individual may be appropriate in certain circumstances. In determining

when the use of third-party sources would be appropriate, the following considerations will govern:

(1) When the information needed can only be obtained from a third party;

(2) When the cost of collecting the information directly from the individual concerned far exceeds the cost of collecting it from a third party;

(3) When there is little risk that the information proposed to be collected from the third party, if inaccurate, could result in an adverse determination about the individual concerned.

(4) When there is a need to insure the accuracy of information supplied by an individual by verifying it with a third party, or there is a need to obtain a qualitative assessment of the individual's capabilities or character; or

(5) When there are provisions for verifying any third-party information with the individual concerned before making a determination based on that information.

Third party sources, where feasible, will be informed of the purposes for which information which they are asked to provide will be used. In appropriate circumstances, pursuant to 5 U.S.C. 552a(k) (2), (5), and (7), the Commission may assure a third party that his identity will not be revealed to the subject of the collected information.

Sec. 3b.203 Rules of conduct.

(a) The Executive Director of the Commission has the overall administrative responsibility for implementing the provisions of the Privacy Act of 1974 and overseeing the conduct of all Commission

employees with respect to the act.

(b) It is the responsibility of the Comptroller of the Commission, under the guidance of the Executive Director, to prepare the appropriate internal administrative procedures to assure that all persons involved in the design, development, or operation of any system of records, or in collecting, using, or disseminating any individual record, and who have access to any system of records, are informed of all rules and requirements of the Commission to protect the privacy of the individuals who are the subjects of the records, including the applicable provisions of the FPC Standards of Conduct for Employees, Special Government Employees and Commissioners, specifically 18 CFR 3.207(e) and 3.228(d).

(c) The Director, Office of Personnel Programs, is responsible for establishing and conducting an adequate training program for such persons whose official duties require access to and collection, maintenance, use, and dissemination of such records.

(d) The General Counsel of the Commission is responsible for providing legal interpretation of the Privacy Act of 1974, and for preparing all agency rules and notices for official publication in compliance with the act.

(e) Commission employees will be informed of all the implications of their actions in this area, including especially:

(1) That there are criminal penalties for knowing and willful unauthorized disclosure of material within a system of records; for willful failure to publish a public notice of the existence of a system of records; and for knowingly and willfully requesting or obtaining records under false pretenses;

(2) That the Commission may be subject to civil suit due to failure to amend an individual's record in accordance with his request or failure to review his request in conformity with Sec. 3b.224; refusal to comply with an individual's request of access to a record under Sec. 3b.221; willful or intentional failure to maintain a record accurately pursuant to Sec. 3b.201(b) and consequently a determination is made which is adverse to the individual; or willful or intentional failure to comply with any other provision of the Privacy Act of 1974, or any rule promulgated thereunder, in such a way as to have an adverse effect upon an individual.

Sec. 3b.204 Safeguarding information in manual and computer-based record systems.

(a) The administrative and physical controls to protect the information in the manual and computer-based record systems from unauthorized access or disclosure will be specified for each system in the Federal Register. The system managers, who are responsible for providing protection and accountability of such records at all times and for insuring that the records are secured in proper containers whenever they are not in use or under direct control of authorized persons, will be identified for each system of records in the Federal Register.

(b) Whenever records in the manual or computer-based record systems, including input and output documents, punched cards, and magnetic tapes or disks, are not under the personal control of an authorized person, they will be stored in lockable containers and/or in a secured room, or in alternative storage systems which furnish an equivalent or greater degree of physical security. In this regard, the Commission may refer to

security guidelines prepared by the General Services Administration, the Department of Commerce (National Bureau of Standards), or other agencies with appropriate knowledge and expertise.

(c) Access to and use of records will only be permitted to persons pursuant to Sec. Sec. 3b.221, 3b.224, and 3b.225. Access to areas where records are stored will be limited to those persons whose official duties require work in such areas. Proper control of data, in any form, associated with the manual and computer-based record systems will be maintained at all times, including maintenance of an accounting of removal of the records from the storage area.

Subpart C--Rules for Disclosure of Records

Sec. 3b.220 Notification of maintenance of records to individuals concerned.

(a) Upon written request, either in person or by mail, to the appropriate system manager specified for each system of records, an individual will be notified whether a system of records maintained by the Commission and named by the individual contains a record or records pertaining to him and filed under his individual name, or some other identifying particular.

(b) The system manager may require appropriate identification pursuant to Sec. 3b.222, and if necessary, may request from the individual additional information needed to locate the record which the individual should reasonably be expected to know, such as, but not limited to, date of birth, place of birth, and a parent's first name.

(c) When practicable, the system manager will provide a written acknowledgement of the inquiry within ten days of receipt of the inquiry

(excluding Saturdays, Sundays and legal public holidays) and notification of whether or not a system of records maintained by the Commission and named by the individual contains a record pertaining to him and filed under his individual name or some other identifying particular. If the system manager is unable to provide an answer within the ten-day period, he will so inform the individual in writing, stating the reasons therefor (for good cause shown), and when it is anticipated that notification will be made. Such an extension will not exceed fifteen days from receipt of the inquiry (excluding Saturdays, Sundays, and legal public holidays).

(d) ``For good cause shown'', as used in all sections of this part, includes circumstances such as the following: Where a search for and/or collection of requested records from inactive storage, field offices, or other establishments is required; where a voluminous amount of data is involved; where information on other individuals must be separated or expunged from the record; or where consultations are required with other agencies or with others having a substantial interest in the determination of the request.

Sec. 3b.221 Access of records to individuals concerned.

(a) Upon written request, either in person or by mail, to the appropriate system manager specified for each system of records, any individual may gain access to records or information in a system of records pertaining to him and filed under his individual name, or some other identifying particular, to review and to have a copy made of all or any portion thereof in a form comprehensible to him.

(b) A person of his own choosing may accompany the individual to whom

the record pertains when the record is disclosed [see Sec. 3b.222(e)].

(c) Before disclosure, the following procedure may apply:

Medical or psychological records will be disclosed directly to the individual to whom they pertain unless, in the judgment of the system manager, in consultation with a medical doctor or a psychologist, access to such records could have an adverse effect upon the individual. When the system manager and a doctor determine that the disclosure of such information could have an adverse effect upon the individual to whom it pertains, the system manager may transmit such information to a medical doctor named by the requesting individual.

(d) The system manager will provide a written acknowledgement of the receipt of a request for access within ten days of receipt (excluding Saturdays, Sundays, and legal public holidays). Such acknowledgement may, if necessary, request any additional information needed to locate the record which the individual may reasonably be expected to know, and may require appropriate identification pursuant to Sec. 3b.222 of this part. No acknowledgment is required if access can be granted within the ten-day period.

(1) If access can be granted, the system manager will notify the individual, in writing, as to when, and whether access will be granted in person or by mail, so that access will be provided within twenty days of the receipt of the request (excluding Saturdays, Sundays, and legal public holidays). If the system manager is unable to provide access within twenty days of receipt of the request, he will inform the individual in writing as to the reasons therefor (for good cause shown), and when it is anticipated that access will be granted. If the expected

date of access indicated in the written notification to the individual cannot be met, the system manager will advise the individual in writing of the delay, the reasons therefor (for good cause shown), and of a revised date when access will be granted. Such extensions will not exceed thirty days from receipt of the request (excluding Saturdays, Sundays, and legal public holidays).

(2) If access cannot be granted, the system manager will inform the individual, in writing, within twenty days of receipt of the request (excluding Saturdays, Sundays, and legal public holidays) of the refusal of his request; the reasons for the refusal; the right of the individual, within thirty days of receipt of the refusal, to request in writing a review of the refusal by the Chairman of the Federal Power Commission, 825 North Capitol Street, NE, Washington, DC 20426, or by an officer designated by the Chairman pursuant to Sec. 3b.224(f); and the right of the individual to seek advice or assistance from the system manager in obtaining such a review.

(e) The Chairman, or officer designated pursuant to Sec. 3b.224(f), not later than thirty days (excluding Saturdays, Sundays, and legal public holidays) from the date of receipt of the individual's request for review will complete such review, unless, for good cause shown, the Chairman, or designated officer, extends the thirty-day period in writing to the individual with reasons for the delay and the approximate date on which the review is expected to be completed. Such an extension will not exceed thirty-five days from receipt of the request for review (excluding Saturdays, Sundays and legal public holidays). The Chairman, or designated officer, will make one of the following determinations:

(1) Grant the individual access to the requested record and notify the individual, in writing, as to when, and whether access will be granted in person or by mail; or

(2) Inform the individual in writing of the refusal, the reasons therefor, and the right of the individual to seek judicial review of the refusal of his request for access.

(f)(1) The Commission will deny an individual access to the following records pertaining to him:

(i) Information compiled in reasonable anticipation of a civil action or proceeding;

(ii) Records listed in the Federal Register as exempt from certain provisions of the Privacy Act of 1974, pursuant to Subpart D of this Part; and

(iii) Records which may be required to be withheld under other statutory provisions.

(2) The Commission will not deny an individual access to a record pertaining to him because that record is permitted to be withheld from members of the public under the Freedom of Information Act, 5 U.S.C. 552, as amended.

(g) Disclosure of an original record will take place in the presence of the Commission representative having physical custody of the record. Sec. 3b.222 Identification requirements.

The appropriate system manager specified for each system of records will require reasonable identification from individuals to assure that records in a system of records are disclosed to the proper person.

Identification requirements will be consistent with the nature of the

records being disclosed.

(a) Disclosure of records to the individual to whom the record pertains, or under whose name or some other identifying particular the record is filed, in person, requires that the individual show an identification card. Employee identification, a Medicare card, or a driver's license are examples of acceptable identification. Documents incorporating a picture and signature of the individual are preferred.

(b) For records disclosed by mail, the system manager will require certain minimum identifying information: name, date of birth, or the system's personal identifier if known to the individual. A comparison of the signatures of the requester and those in the record will be used to determine identity.

(c) If the system manager determines that the data in the record is so sensitive that unauthorized access could cause harm or embarrassment to the individual involved, a signed notarized statement asserting identity or some other reasonable means to verify identity will be required.

(d) If an individual can provide no suitable information or documents for identification, the system manager will require a signed statement from the individual asserting his identity and stipulating that the individual understands that knowingly or willfully seeking or obtaining access to records about an individual under false pretenses is a misdemeanor punishable by a fine of up to \$5,000.

(e) The system manager will require an individual who wishes to be accompanied by another person when reviewing his records to furnish a signed written statement authorizing discussion of his records in the presence of the accompanying person.

(f) The appropriate identification requirements of this section may be required by a system manager from an individual to whom a record does not pertain who seeks access to the record pursuant to Sec. 3b.225.

(g) No individual will be denied notification of maintenance of a record pursuant to Sec. 3b.220 or access to a record pursuant to Sec. Sec. 3b.221 and 3b.224 for refusing to disclose a social security number.

(h) No verification of identity will be required of individuals seeking notification of or access to records which are otherwise available to a member of the public under the Freedom of Information Act, 5 U.S.C. 552, as amended.

Sec. 3b.223 Fees.

(a) Fees will be charged for the direct cost of duplication of records in a system of records when copies are requested by the individual seeking access to the records. Any person may obtain a copy of the Commission's schedule of fees by telephone, by mail or by coming in person to the office of the appropriate system manager who is responsible for the protection and accountability of the desired record. Requests for copies of requested records and payment therefor must be made to the system manager. Fees will only be charged for costs of \$2 or more.

(b) Where practicable, self-service duplication of requested documents may also be made on duplicating machines by the person requesting the records, on a reimbursable basis to the system manager, in the presence of the Commission representative having physical custody of the record. Where data has been extracted from one of the Commission's systems of

records on magnetic tape or disks, or computer files, copies of the records of these files may be secured on a reimbursable basis upon written request to the appropriate system manager. The fee will vary for each requirement, depending on size and complexity.

(c) No fee will be charged in the following instances:

(1) When the system manager determines that he can grant access to records only by providing a copy of the record through the mail because he cannot provide reasonable means for the individual to have access in person;

(2) For search and review of requested records to determine if they fall within the disclosure requirements of this part; and

(3) When the system manager makes a copy of the record as a necessary part of the process of making it available for review.

(d) Except for requests made by Government agencies, certification of copies of any official Commission record shall be accompanied by a fee of \$2 per document.

Sec. 3b.224 Requests to amend records and disputes thereon.

(a) Upon written request, either in person or by mail, to the appropriate system manager specified for each system of records, any individual may amend records in a system of records pertaining to him and filed under his individual name or some other identifying particular. Such requests should contain identifying information needed to locate the record, a brief description of the item or items of information to be amended, and information in support of the request for amendment. The individual may obtain assistance in preparing his request to amend a record from the appropriate system manager.

(b) The system manager will provide a written acknowledgement of the receipt of a request to amend within ten days of receipt (excluding Saturdays, Sundays, and legal public holidays). Such an acknowledgement may, if necessary, request any additional information needed to make a determination which the individual may reasonably be expected to know, and verification of identity consistent with Sec. 3b.222. The acknowledgement will clearly describe the request and advise the individual requesting the amendment when he may expect to be notified of action taken on the request. No acknowledgement is required if the request can be reviewed, processed, and the individual notified of compliance or denial within the ten-day period.

(c) The system manager will complete the review and advise the individual in writing of the results within twenty days of the receipt of the request (excluding Saturdays, Sundays, and legal public holidays). If the system manager is unable to complete the review within twenty days of the receipt of the request, he will inform the individual in writing as to the reasons therefor (for good cause shown) and when it is anticipated that the review will be completed. If the completion date for the review indicated in the acknowledgement cannot be met, the system manager will advise the individual in writing of the delay, the reasons therefor (for good cause shown), and of a revised date when the review may be expected to be completed. Such extensions will not exceed thirty days from receipt of the request (excluding Saturdays, Sundays, and legal public holidays). The system manager will take one of the following actions:

(1) Make the requested correction or amendment; so advise the

individual in writing; and, where an accounting of the disclosure of the record was made pursuant to Sec. 3b.226, advise all previous recipients of the record in writing of the fact that the amendment was made and the substance of the amendment [see Sec. 3b.225(d)]; or

(2) Inform the individual in writing of the refusal to amend the record in accordance with the request; the reasons for the refusal including any of the standards which were employed pursuant to paragraph (d) of this section in conducting the review; the right of the individual, within thirty days of receipt of the refusal, to request in writing a review of the refusal by the Chairman of the Federal Power Commission, 825 North Capitol Street, NE, Washington, DC 20426, or by an officer designated by the Chairman pursuant to paragraph (f) of this section; and the right of the individual to seek advice or assistance from the system manager in obtaining such a review.

(d) In reviewing a record in response to a request to amend, the system manager and the Chairman, or the officer he designates pursuant to paragraph (f) of this section, shall assess the accuracy, relevance, timeliness and completeness of the record. They shall consider the record in terms of the criteria established in Sec. 3b.201.

(e) The Chairman, or officer designated pursuant to paragraph (f) of this section, not later than thirty days (excluding Saturdays, Sundays, and legal public holidays) from the date of receipt of the individual's request for review, will complete such review, unless, for good cause shown, the Chairman, or designated officer, extends the thirty-day period in a writing to the individual with reasons for the delay and the approximate date on which the review is expected to be completed. Such

an extension will not exceed thirty-five days from receipt of the request for review (excluding Saturdays, Sundays, and legal public holidays). The Chairman, or designated officer, will make one of the following determinations:

- (1) Make the correction in accordance with the individual's request and proceed as in paragraph (c)(1) of this section; or
- (2) Inform the individual in writing of:
 - (i) The refusal to amend the record in accordance with the request,
 - (ii) The reasons therefor, including any of the standards which were employed pursuant to paragraph (d) of this section in conducting the review;
 - (iii) The right of the individual to file with the Chairman, or designated officer, a concise written statement setting forth the reasons for his disagreement with the decision;
 - (iv) The fact that the statement of disagreement will be made available to anyone to whom the record is subsequently disclosed, together with the portion of the record which is disputed clearly noted, and, with, at the discretion of the Chairman, or designated officer, a brief statement by the Chairman, or designated officer, summarizing the reasons for refusing to amend the record;
 - (v) Where an accounting of the disclosure of the record was made pursuant to Sec. 3b.226, the fact that prior recipients of the disputed record will be provided a copy of the individual's statement of disagreement, with the portion of the record which is disputed clearly noted, and, at the Chairman's or designated officer's discretion, the statement summarizing the refusal to amend [see Sec. 3b.225(d)]; and

(vi) The individual's right to seek judicial review of the refusal to amend.

(f) The Chairman may designate, in writing, another officer of the Commission to act in his capacity for the purposes of this part. The officer will be organizationally independent of or senior to the system manager who made the initial determination and will conduct a review independent of the initial determination.

Sec. 3b.225 Written consent for disclosure.

(a) The Commission will not disclose any record which is contained in a system of records by any means of communication to any person, or to any other agency, unless it has the written request by, or the prior written consent of, the individual to whom the record pertains and under whose individual name, or some other identifying particular, the record is filed. The written request or consent should include, at a minimum, the general purposes for or the types of recipients to whom disclosure may be made. The fact that an individual is informed of the purposes for which information will be used when information is collected pursuant to Sec. 3b.202(b)(2) will not constitute consent.

(b) A written request or consent is not required if the disclosure is:

- (1) To those officers and employees of the Commission who have a need for the record in the performance of their duties;
- (2) Required under the provisions of the Freedom of Information Act, 5 U.S.C. 552, as amended;
- (3) For a routine use as defined in Sec. 3b.2(g) of this part and as described in the public notice for each system of records;
- (4) To the Bureau of the Census for purposes of planning or carrying

out a census or survey or related activity pursuant to the provisions of title 13 of the United States Code;

(5) To a recipient who has provided the appropriate system manager specified for each system of records with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable. The written statement of assurance should include at a minimum:

- (i) A statement of the purpose for requesting the record; and
- (ii) Certification that the record will only be used for statistical purposes.

In addition to stripping personally identifying information from records released for statistical purposes, the system manager will ensure that the identity of the individual cannot reasonably be deduced or determined by combining various statistical records, or by reference to public records or other available sources of information;

(6) To the National Archives of the United States, pursuant to 44 U.S.C. 2103, as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for the evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality, or his delegated official, has made a written request to the appropriate system

manager specifying the particular portion of the record desired and the law enforcement activity for which the record is being sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual (not necessarily the individual to whom the record pertains), if, upon disclosure, notification of such is sent to the last known address of the individual to whom the record pertains;

(9) To either House of Congress, or to any committee or subcommittee thereof, on a matter within its jurisdiction;

(10) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) Pursuant to the order of a court of competent jurisdiction.

(c) When a record is disclosed under compulsory legal process and such process becomes a matter of public record, the system manager will make reasonable efforts to notify the individual to whom the record pertains. A notice will be sent to the individual's last known address noted in the Commission's files.

(d) The appropriate system manager shall notify all prior recipients of records, disclosure to whom an accounting was made pursuant to Sec. 3b.226, of any amendments made to the records, including corrections, amendments and notations of dispute made pursuant to Sec. Sec. 3b.224(c)(1) and 3b.224(e)(1) and (2)(v), within ten days of receipt of the corrected information or notation of dispute (excluding Saturdays, Sundays, and legal public holidays), except under unusual circumstances (see circumstances described in Sec. 3b.220(d)).

(e) The content of the records disclosed under this section shall be maintained pursuant to the standards established in Sec. 3b.201(c).

Sec. 3b.226 Accounting of disclosures.

(a) The appropriate system manager specified for each system of records will keep an accurate written account of all disclosures of records made to any person or to any other agency with the written consent or at the written request of the individual to whom the record pertains and pursuant to Sec. 3b.225(b)(3)-(11). The account will include the following information:

- (1) The date, nature, and purpose of each disclosure;
- (2) The name and address of the person or agency to whom the disclosure is made; and
- (3) A reference to the justification or basis upon which the release was made, including reference to any written document required as when records are released for statistical or law enforcement purposes pursuant to Sec. 3b.225(b) (5) and (7).

(b) Each system manager will retain the accounting made under paragraph (a) of this section for at least five years from the date of disclosure for which the accounting is made, or the life of the record, which ever is longer.

(c) Except for disclosures made for law enforcement purposes pursuant to Sec. 3b.225(b)(7), and unless the system of records has been exempted from this provision pursuant to Subpart D of this part, each system manager will make the accounting made under paragraph (a) of this section available to the individual named in the record at his written request.

(d) The accounting of disclosures is not a system of records under the definition in Sec. 3b.2(e) and no accounting will be maintained for disclosure of the accounting of disclosures.

Sec. 3b.227 Mailing lists.

An individual's name and address maintained by the Commission will not be sold or rented for commercial or other solicitation purposes not related to the purposes for which the information was collected, unless such sale or rental is specifically authorized by law. This provision shall not be construed to require the withholding of names or addresses otherwise permitted to be made public, as pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended.

Subpart D--Rules for Exemptions

Sec. 3b.250 Specific exemptions.

Any system of records maintained by the Commission may be exempt from certain provisions of the Privacy Act of 1974, and the appropriate sections of this part promulgated pursuant thereto, if the following requirements are met:

(a) The system of records falls within one or more of the following categories:

(1) Records subject to the provisions of 5 U.S.C. 552(b)(1) as classified material;

(2) Investigatory material compiled for law enforcement purposes [except to the extent that the system is more broadly exempt under 5 U.S.C. 552a(j)(2) covering records maintained by an agency whose principal function pertains to the enforcement of criminal laws]

provided, however, that is such record is used as a basis for denying an

individual any right, privilege, or benefit to which the individual would be entitled in the absence of that record, the individual must be granted access to that record except to the extent that access would reveal the identity of a confidential source who furnished the information to the Government under an express promise that his identity would be held in confidence, or, prior to September 27, 1975, under an implied promise that his identity would be held in confidence;

(3) Records maintained to provide protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056;

(4) Records required by statute to be maintained and used solely as statistical records;

(5) Investigatory material compiled solely for determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that his identity would be held in confidence, or, prior to September 27, 1975, under an implied promise that his identity would be held in confidence;

(6) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) Material used to evaluate potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished the information to

the Government under an express promise that his identity would be held in confidence, or, prior to September 27, 1975, under an implied promise that his identity would be held in confidence;

(b) Publication in the Federal Register is made in accordance with the requirements (including general public notice) of the Administrative Procedure Act, 5 U.S.C. 553, to include, at a minimum:

(1) The name of the system of records;

(2) The specific provision or provisions of the Privacy Act of 1974, and the appropriate sections of this part promulgated pursuant thereto, from which the system is to be exempted; and

(3) The reasons for the exemption; and

(c) The system of records is exempted from one or more of the following provisions of the Privacy Act and the appropriate sections of this part promulgated pursuant thereto:

(1) 5 U.S.C. 552a(c)(3); 18 CFR 3b.226(c)--Making the accounting of disclosures available to the individual named in the record at his request;

(2) 5 U.S.C. 552a(d); 18 CFR 3b.221, 3b.224--Granting an individual the right of access to his records and permitting him to request amendment of such;

(3) 5 U.S.C. 552a(e)(1); 18 CFR 3b.201(a)--Requiring maintenance of relevant and necessary information in a system of records as required by statute or executive order of the President;

(4) 5 U.S.C. 552a(e)(4)(G); 18 CFR 3b.3(a)(8)--Requiring a description of procedures for determining if a system contains a record on an individual in the public notice of the system of records;

(5) 5 U.S.C. 552a(e)(4)(H); 18 CFR 3b.3(a)(9)--Requiring a description of procedures for gaining access to and contesting the contents of a record in the public notice of the system of records;

(6) 5 U.S.C. 552a(e)(4)(I); 18 CFR 3b.3(a)(10)--Requiring a description of the categories of the sources of records in the public notice of the system of records; and

(7) 5 U.S.C. 552a(f); 18 CFR 3b.220-3b.224--Requiring agency rules for determining if an individual is the subject of a record, for handling requests for access, for granting requests for access, for amending records, and for fees.

END

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For questions or comments, contact Amy L. Rothrock (423) 576-1216 rothrockal@oro.doe.gov

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