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Administrator of a power administration, or (4) the head of a Field Organization.

(c) *DOE* or *Department* means the Department of Energy established by the Department of Energy Organization Act, section 201, Pub. L. 95-91 (42 U.S.C. 7131).

(d) *Employee* means—

(1) An employee as defined by 5 U.S.C. 2105;

(2) A special Government employee as defined in 18 U.S.C. 202(a);

(3) A member of a Uniformed Service.

(e) *Handicapped individual* means a person who has a physical or mental disability or health impairment, and includes an individual who is temporarily incapacitated because of illness or injury.

(f) *Principal departmental officer* means the Secretary, Deputy Sec-

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retary, or Under Secretary, or, in the case of the Federal Energy Regulatory Commission, the Chairman or Executive Director of the Commission.

(g) *Relative* means, with respect to a DOE employee, an individual who is related to the employee, by blood, marriage, or operation of law, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandchild, grandparent, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister, and shall also include the grandparent of an employee's spouse, an employee's fiancée or fiancée, or any person residing in the employee's household.

## CHAPTER XIII—NUCLEAR WASTE TECHNICAL REVIEW BOARD

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## PART 1303—PUBLIC INFORMATION AND REQUESTS

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AUTHORITY: 5 U.S.C. 301, 5 U.S.C. 552 as amended, Executive Order 12600 (3 CFR 1988 Comp., p. 235)

SOURCE: 70 FR 47080, Aug. 12, 2005, unless otherwise noted.

### § 1303.101 Scope

This part sets forth the policies and procedures of the U.S. Nuclear Waste Technical Review Board (Board) regarding public access to documents under the Freedom of Information Act (FOIA), 5 U.S.C. 552. The provisions in the Act shall take precedence over any part of the Board's regulations in conflict with the Act. This part gives the procedures the public may use to inspect and obtain copies of Board records under the FOIA, including administrative procedures which must be exhausted before a request invokes the jurisdiction of an appropriate United States District Court for the Board's failure to respond to a proper request within the statutory time limits, for a denial of Board records or challenges to the adequacy of a search, or for denial of fee waiver.

### § 1303.102 Definitions.

For words used in this part, unless the context varies otherwise, singular includes the plural, plural includes the singular, present tense includes the future tense, and words of one gender include the other gender.

(a)(1) Agency records—include materials that are in the control of the

Board and associated with Board business, as follows:

- (i) Materials produced by the Board.
  - (ii) Materials produced a consultant for the Board.
  - (iii) Materials distributed by presenters at a Board meeting.
- (2) All references to records, include both the entire record, or any part of the record.
- (b) Board—The U.S. Nuclear Waste Technical Review Board.
  - (c) Chairman—The Chairman of the Board as designated by the President.
  - (d) Designated FOIA Officer—The person named by the Board to administer the Board's activities in regard to the regulations in this part. The FOIA Officer also shall be:

(1) The Board officer having custody of, or responsibility for, agency records in the possession of the Board.

(2) The Board officer having responsibility for authorizing or denying production of records from requests filed under the Freedom of Information Act.

(e) Executive Director—The chief operating officer of the Board.

(f) Member—An individual appointed to serve on the Board by the President of the United States.

(g) Days—Standard working days, excluding weekends and federal holidays.

### § 1303.103 Public reading area.

(a) A public reading area is available at the Board office located at 2300 Clarendon Blvd., Suite 1300, Arlington, Virginia 22201. To use the reading area, contact the Director of Administration by:

(1) Letter to the address in this paragraph (a):

(2) Telephone: 703-235-4473;

(3) A request to the Board's Web site at <http://www.nwtrb.gov>; or

(4) Fax: 703-532-4495.

(b) Documents also may be requested through the Board's Web site or by letter or fax. Please ensure that the records sought are clearly described. Materials produced by the Board are in the public domain unless otherwise noted.

(c) Many Board records are available electronically at the Board's Web site (<http://www.nwtrb.gov>).

(d) Records of the Board available for inspection and copying include:

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- (1) The rules and regulations of the Board.
- (2) Statements of policy adopted by the Board.
- (3) Board reports to the U.S. Congress and the U.S. Secretary of Energy.
- (4) Board correspondence with Congress and the Department of Energy (DOE).
- (5) Transcripts of Board meetings.
- (6) Biographical information about current Board members.
- (7) Copies of records released in response to FOIA requests.
- (e) The cost of copying information available in the Board office shall be imposed in accordance with the provisions of § 1303.108.

**§ 1303.104 Board records exempt from public disclosure.**

5 U.S.C. 552 provides that the requirements of the FOIA do not apply to matters that are:

- (a) Specifically authorized under the criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and in fact are properly classified pursuant to such an executive order.
- (b) Related solely to the internal personnel rules and practices of the Board.
- (c) Specifically exempted from disclosure by another federal statute, provided that such statute:
  - (1) Requires that records be withheld from the public in such a manner that leaves no discretion on the issue; or
  - (2) Establishes criteria for withholding or refers to particular types of matters to be withheld.
- (d) Trade secrets, and commercial or financial information obtained from a person and privileged or confidential.
- (e) Interagency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the Board.
- (f) Personnel, medical, or similar files that disclosing would constitute a clearly unwarranted invasion of personal privacy.
- (g) Records or information compiled for law enforcement purposes. Buy only to the extent that the production of such law enforcement records or information:

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- (1) Could reasonably be expected to interfere with enforcement proceedings;
- (2) Would deprive a person of a right to a fair trial or an impartial adjudication;
- (3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;
- (4) Could reasonably be expected to disclose the identity of any confidential source, including a State, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, and in the case of a record or information compiled by a criminal law enforcement agency in the course of a criminal investigation or by an agency conducting a lawful security intelligence investigation, information furnished by a confidential source;
- (5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or
- (6) Could reasonably be expected to endanger the life or physical safety of any individual.
- (h) Contained in or related to examination, operating, or condition reports, prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.
  - (i) Geological and geophysical information and data, including maps, concerning wells.

**§ 1303.105 Requests for Board records.**

- (a) A written FOIA request must be submitted. You may:
  - (1) Write: NWTRB Designated FOIA Officer, 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201;
  - (2) Send an e-mail request to [foia@nwtrb.gov](mailto:foia@nwtrb.gov) and specify that this is a FOIA request in the subject line; or
  - (3) Fax: 703-235-4495.
- (b) When making a request for records about a person, Privacy Act regulations also may apply. Please check the regulations for additional requirements before submitting a request. When making a request for

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records about someone other than yourself, you must include either:

(1) Written authorization signed by the person permitting you to see the records; or

(2) Proof that the individual is deceased (e.g., a death certificate or an obituary).

(c) A request will be considered received for purposes of §1303.107 on the date that it is received by the Board's FOIA office. For prompt handling, write "Freedom of Information Act Request" on the letter and envelope or in the subject line of the Web request or fax.

(d) Each request must clearly describe the desired records in sufficient detail to enable Board personnel to locate them with reasonable effort. Response to requests may be delayed if the records are not clearly described.

(e) Whenever possible, requests should include specific information about each record sought, such as date, title or name, author, recipient, and subject.

(f) If the FOIA Officer determines that the request does not clearly describe the records sought, he or she will either advise you of the additional needed to locate the record or otherwise state why the request is insufficient. The requestor will then be given the opportunity to provide additional information or to modify their request.

(g) Submitting a FOIA request shall be considered a commitment by the requestor to pay all applicable fees required under §1303.108 unless the requestor seeks a waiver of fees. When making a request, you may specify a willingness to pay fees up to a specific amount.

(h) The FOIA does not require the Board to:

(1) Compile or create records solely for the purpose of satisfying a request for records.

(2) Provide records not yet in existence, even if such records may be expected to come into existence at some time in the future.

(3) Restore records destroyed or otherwise disposed of, except that the FOIA Officer must notify the requestor that the records have been destroyed or otherwise disposed of.

### §1303.106 Responsibility, form, and content of responses.

The Board's Executive Director or his/her designated FOIA Officer is authorized to grant or deny any request for a record and determine appropriate fees. When determining which records are responsive to a request, the Board will include only records in its possession as of the date of the search.

(a) If no records are responsive to the request, the FOIA Officer will notify the requestor in writing.

(b) When a FOIA Officer denies a request in whole or in part he/she will notify the requestor in writing. The response will be signed by the FOIA Officer and will include:

(1) The name and title or position of the person making the denial;

(2) A brief statement of the reasons for the denial, including the FOIA exemption(s) that the FOIA Officer has relied on the denying the request; and

(3) A statement that the denial may be appealed under §1303.114 and a description of the requirements of that section.

(c) *Consultations and referrals.* When a request for a record not produced by the Board is received, the Board shall refer the requestor to the issuing agency in writing. The Board may hold records that contain or refer to non-public information obtained from other federal agencies (co-mingled records). If those co-mingled records are requested, the Board shall determine whether the portion of those records produced by the Board can be released. Before any portion of a co-mingled record is released, the Board shall redact the non-public information obtained from other federal agencies. The Board shall inform the requestor of the reason for the redaction and shall refer the requestor to the issuing agency in writing.

(d) *Notice of referral.* When the Board refers all or part of a request to another agency, it shall give the requestor the address of the agency contact and the section(s) referred.

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(e) *Timing of responses to requests sent to other agencies.* The Board shall provide, within the FOIA deadline, responses only to those parts of the request not referred. Requests will be referred to other agencies and the requestor notified as soon as it is determined that a referral is appropriate.

(f) *Agreements on consultations and referrals.* The Board may make agreements with other agencies to eliminate the need for consultations or referrals for particular types of records.

#### **§ 1303.107 Timing of responses to requests.**

(a) *General.* The Board shall normally respond to requests in the order of their receipt.

(b) *Acknowledgement of requests.* On receipt of a request, the Board shall send an acknowledgment letter or an e-mail confirming the requestor's agreement to pay fees under § 1303.108 and providing a request number for further reference.

(c) *Granting requests.* The Board shall have 20 business days from when a request is received to determine whether to grant or deny it. Once the Board determines whether it can grant a request entirely or in part, it shall notify the requestor in writing. The Board shall advise the requestor of any fees to be charged under § 1303.108 and shall disclose records promptly on payment of the fees. Records disclosed in part shall be marked or annotated to show the amount of information deleted unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted also shall be indicated on the record when technically feasible.

#### *(d) Unusual circumstances:*

(1) If the statutory time limits for processing a request cannot be met because of "usual circumstances" as defined in the FOIA, the Board shall promptly notify the requestor in writing, explaining the circumstances and giving the date by which the request can be completed or if the Board cannot complete the request. If the extension is for more than 10 working days, the Board shall provide the requestor with an opportunity either to:

(i) Modify the request so that it can be processed within the time limits; or

(ii) Arrange an alternative time period for processing the original request.

(2) If the Board believes that multiple requests submitted by a requestor or by requestors acting in concert constitute a single request that would otherwise involve unusual circumstances, and if the requests involve clearly related matters, they may be aggregated. Multiple requests involving unrelated matters will not be aggregated.

#### *(e) Expedited processing:*

(1) Requests and appeals shall be taken out of order and given expedited processing whenever it is determined that they involve:

(i) Circumstances that could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged activity if made by a person primarily engaged in disseminating information.

(2) Requests for expedited processing may be made either at the time of the initial request or at a later time.

(3) Requests for expedited processing must include a statement explaining in detail the basis for requesting expedited processing. For example, a requestor under § 1303.108 must demonstrate that their professional activity involves news reporting or otherwise disseminating information to the public, although this need not be their sole occupation. A requestor also must establish a particular urgency to inform the public about government activity involved in the request, beyond the public's right to know about government activity generally.

(4) Within 10 calendar days of receipt of a request for expedited processing, the Board shall decide whether to grant the request and notify the requestor of its decision. If a request for expedited treatment is granted, the request shall be processed as soon as practicable. If a request for expedited processing is denied, an appeal of that decision shall be acted on expeditiously.

#### **§ 1303.108 Fees.**

(a) *General.* The Board shall charge for processing requests the FOIA in accordance with paragraph (c) of this section, except where fees are limited

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under § 1303.109 or where a waiver or reduction of fees is granted under § 1303.111. Fees must be paid before the copies of records are sent. Fees may be paid by check or money order payable to the Treasury of the United States.

(b) Definitions for this section:

(1) Commercial use request—A request from, or on behalf of, a person who seeks information for a purpose that furthers their commercial, trade, or profit interests including furthering those interests through litigation. The Board shall try to determine the use to which a record will be put. When the Board believes that a request is for commercial use either because of the nature of the request or because the Board has cause to doubt the stated use, the Board shall ask the requestor for clarification.

(2) Direct costs—Expenses that the Board incurs in searching for, duplicating, and, for some requests, reviewing records in response to a FOIA. Direct costs include the full salary of the employee performing the work and the cost of duplication of the records. Overhead expenses, such as the costs of space, heating, and lighting, are not included.

(3) Duplication—Making a copy of a record or the information in the record, to respond to a FOIA. Copies can be in paper, microform, electronic, or other format. The Board shall honor a requestor's preference for format if the record is readily reproducible in that format at a reasonable cost.

(4) Educational institution—A public or private school, an undergraduate, graduate, professional or vocational school, that has a program of scholarly research. For a request to be in this category, a requestor must show that the request is authorized by and made under the auspices of the qualifying institution and that the records will be used for scholarly research.

(5) Noncommercial scientific institution—An institution that is not operated on a commercial basis, as defined in paragraph (b)(1) of this section and is operated solely for conducting scientific research that does not promote any particular product or industry. For a request to be in this category, the requestor must show that the request is authorized by and made under the aus-

pices of the qualifying institution and that the records will be used to further scientific research.

(6) Representative of the news media—Any person actively reporting for an entity that provides news to the public. The term "news" means information about current events or of current interest to the public. Examples include: Television and radio stations broadcasting to the public; and publishers of periodicals who make their news products available to the general public. For freelance journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. The Board may use a publication contract or past publication records to make their determination. The requestor must not be seeking records for a commercial use; however, a request solely supporting the news-dissemination function is not considered a commercial use.

(7) Review—Examining a record to determine whether any part of it is exempt from disclosure, and processing a record for disclosure. Review costs are recoverable even if a record is to disclosed. Review time includes time spent considering any formal objection to disclosure made by a business submitter under paragraph (c)(3) of this section but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) Search—The process of looking for and retrieving records, including page-by-page or line-by-line identification of information within records and reasonable efforts to locate and retrieve information from records maintained in electronic form. The Board shall ensure that searches are done in the most efficient and least expensive way that is reasonably possible.

(c) Fees. In responding to FOIA requests, the Board shall charge the following fees unless a waiver or a reduction of fees has been granted under § 1303.111:

(1) Search (i) Search fees shall be charged for all requests subject to the limitations of § 1303.109. The Board may charge for time spent searching even if no responsive record is located, or if



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the record(s) located are withheld as exempt from disclosure.

(ii) For each quarter hour spent by clerical personnel in searching for and retrieving a requested record, the fee will be \$5. If a search and retrieval requires the use of professional personnel the fee will be \$8 for each quarter hour. If the time of managerial personnel is required, the fee will be \$10 for each quarter hour.

(iii) For computer searches of records, requestors will be charged the direct costs of conducting the search, although certain requestors (see §1303.109(a)) will be charged no search fee and certain other requestors (see §1303.109(b)) will be entitled to two hours of manual search time without charge. Direct costs include the cost of operating a computer for the search time for requested records and the operator salary for the search.

(2) *Duplication.* Duplication fees for paper copies of a record will be 10 cents per page for black and white and 20 cents per page for color. For all other forms of duplication, the Board shall charge the direct costs of producing the copy. All charges are subject to the limitations of §1303.109 and §1303.111.

(3) *Review.* When a commercial use request is made, review fees shall be charged as stated in paragraph (c)(1) of this section. These fees apply only to the initial record review, when the Board determines whether an exemption applies to a particular record. Charges shall not be imposed for review at the administrative appeal level if an exemption is applied. However, records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies. The cost of that review shall be charged. All review fees shall be charged at the same rates as those charged in paragraph (c)(1) of this section.

**§1303.109 Restrictions on charging fees.**

(a) When determining search or review fees:

(1) No search or review fee shall be charged for requests by educational institutions, noncommercial scientific

institutions, and representatives of the news media.

(2) The Board shall provide without charge, to all but commercial users.

(i) The first 100 pages of black and white duplication (or the cost equivalent); and

(ii) The first two hours of search by a clerical staff member (or the cost equivalent).

(3) When the total fee for a request will be \$14.00 or less for any request, no fee shall be charged.

(b) The Provisions of paragraphs (a)(2) and (a)(3) of this section work together. All requestors seeking records for a non-commercial use shall not be charged unless the total cost for the request exceeds by more than \$14.00, the cost of a two hour clerical search, plus the cost of duplication over the 100 page exemption.

**§ 1303.110 Notice of anticipated fees.**

(a) *General.* The Board shall advise the requestor in writing of any applicable fees. If only a part of the fee can be estimated readily, the Board shall advise the requestor that this may be only a part of the total fee. After the requestor has been sent a fee estimate, the request shall not be considered received until the requestor makes a firm commitment to pay the anticipated total fee. Any such agreement must be made by the requestor in writing and must be received within 60 days of the Board's notice. If the requestor does not provide a firm commitment to pay the anticipated fee within 60 days of the notice, the request shall be closed. The requestor may be given an opportunity to work with the Board to change the requests and lower the cost.

(b) *Charges for other services.* When the Board chooses as a matter of administrative discretion to provide a special service, such as certifying that records are true copies or sending them by other than ordinary mail, the Board shall pay the costs of providing the service unless previous arrangements have been made with the requestor.

(c) *Charging interest.* The Board may charge interest on any unpaid bill starting on the 31st day following the date of billing. Interest charges shall be assessed at the rate provided in 31 U.S.C. 3717 and shall accrue from the

date of the billing until payment is received by the Board. The Board shall follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended.

(d) *Aggregating requests.* If the Board reasonably believes that a requestor or a group of requestors acting together is trying to divide a request into a series of smaller requests for the purpose of avoiding fees, the Board may aggregate the requests and charge accordingly. The Board shall assume that multiple requests of the same type made within a 30-day period have been made in order to avoid fees. If requests are separated by a longer period, the Board shall aggregate them only if there is a solid basis for determining that aggregation is warranted. Multiple requests involving unrelated matters shall not be aggregated.

(e) *Advance payments.* Where a requestor has previously failed to pay promptly a properly charged FOIA fee to the Board or another agency, the Board shall require proof that full payment has been made to that agency before it begins to process that requestor's FOIA. The Board shall also require advance payment of the full amount of the anticipated fee. When advance payment is required, the request is not considered received until payment has been made.

**§ 1303.111 Requirements for waiver or reduction of fees.**

(a) Records shall be furnished without charge or at a reduced charge if the Board determined that:

(1) Disclosure is in the public interest and the information is likely to contribute significantly to public understanding of the activities of the government; and

(2) Disclosure is not primarily in the commercial interest of the requestor.

(b) In determining whether the first requirement is met, the Board shall consider:

(1) Subject: Do the requested records concern identifiable activities of the federal government?

(2) Informative value: Will the disclosure contribute to an understanding of government activities? Do records contain information on activities "likely to contribute" to an increased public

understanding? If the information or similar information is already in the public domain, the record(s) would not increase the public's understanding.

(3) Would the disclosure contribute to the understanding of a reasonably broad audience, as opposed to the individual understanding of the requestor? A requestor's expertise in the subject and intention to convey information to the public shall be considered. Being a valid representative of the news media shall satisfy this consideration.

(4) Is the disclosure likely to contribute significantly to public understanding of government activities? The level of understanding after the disclosure versus that before the disclosure must be enhanced to a significant extent. However, the Board shall not make value judgments about whether information contributing to public understanding of government activities is important enough to release.

(c) In determining whether the second requirement is met, the Board shall consider:

(1) The existence and extent of the commercial interest: Would a commercial interest be substantially furthered by the disclosure? The Board shall consider the commercial interest (see paragraph (a)(2) of this section) of either the requestor or of any person on whose behalf they may be acting that would be furthered by the disclosure. During the administrative process, requestors shall be given an opportunity to provide additional information about this concern.

(2) The primary interest for disclosure: Whether the commercial interest of the requestor is sufficiently large in comparison to the public interest, that disclosure is "primarily in the commercial interest of the requestor." A fee waiver is justified if the public interest standard under paragraph (b) of this section is satisfied and if that public interest is greater than any commercial interest. The Board shall presume that when news media requestors satisfy this standard, primarily the public interest is served.

(d) If only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted only for those records.

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(e) Requests for a waiver or a reduction of fees must address the factors listed in paragraphs (a) and (b) of this section only as they apply to each request. The Board also shall consider their administrative resources when responding to requests and may negotiate with the requestor to find the best way to optimize their resources in responding to the request when deciding whether to grant waivers or reductions of fees.

§ 1303.112 Denials.

(a) When denying a request in any respect, the Board shall notify the requestor of that determination in writing. The types of denials include:

(1) Denials of requests, consisting of a determination:

(i) To withhold any requested record in whole or in part;

(ii) That a requested record does not exist or cannot be located;

(iii) That a record is not readily reproducible in the form or format sought;

(iv) That what has been requested is not a record subject to the FOIA; and

(v) That the material requested is not a Board record (e.g., material produced by another agency or organization).

(2) A determination on any disputed fee matter, including a denial of a request for a fee waiver.

(3) A denial of a request for expedited processing.

(b) The denial letter shall be signed by the Director of Administration, the Deputy Director, or their designee, and shall include all of the following:

(1) The name and title of the person responsible for the denial.

(2) A brief statement of the reason(s) for the denial, including any FOIA exemptions applied in denying the request.

(3) An estimate of the volume of records withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if it would harm an interest protected by an applicable exemption.

(4) A statement that the denial may be appealed under §1303.114 and a description of the requirements of §1303.114.

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§ 1303.113 Business information.

(a) *In general.* Business information obtained by the Board from a submitter shall be disclosed under the FOIA only under this section.

(b) *Definitions.* For purposes of this section:

(1) Business information—commercial or financial records obtained by the Board that may be protected from disclosure under Exemption 4 of the Freedom of Information Act (FOIA).

(2) Submitter—any person or entity from which the Board obtains business records, either directly or indirectly. The term includes, but is not limited to, corporations, and state, local, tribal, and foreign governments.

(c) *Designation of business information.* Submitters of business information shall designate any part of the record considered to be protected from disclosure under Exemption 4 of the FOIA by appropriately marking the material. This may be done either at the time the record is submitted or at a reasonable time thereafter. This designation lasts for 10 years after submittal unless the submitter requests and provides justification for a longer period.

(d) *Notice to submitters.* The Board shall provide a business submitter with prompt written notice of any FOIA request or appeal that seeks its business information under paragraph (e) of this section, except as provided in paragraph (h) of this section, to give the submitter an opportunity to object to that disclosure under paragraph (f) of this section. The notice shall either describe the records requested or include copies of the records.

(e) *Required notice.* Notice shall be given to a submitter when:

(1) The submitter has designated that the information is considered protected from disclosure under Exemption 4 of the FOIA; or

(2) The Board has reason to believe that the information may be protected from disclosure under Exemption 4 of the FOIA.

(f)(1) *Objecting to disclosure.* A submitter shall have 30 days to respond to the notice described in paragraph (d) of this section. If a submitter has an objection to disclosure, they are required to submit a detailed written statement including:

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(i) All grounds for withholding any of the information under any exemption of the FOIA, and

(ii) In the case of Exemption 4, the reason why the information is a trade secret, commercial, or financial information that is privileged or confidential.

(2) If a submitter fails to respond to the notice in paragraph (d) of the section within 30 days, the Board shall assume that the submitter has no objection to disclosure. The Board shall not consider information not received by the Board until after a disclosure decision has been made. Information provided by a submitter under this paragraph might itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* The Board shall consider a submitter's objections and specific grounds for non-disclosure in deciding whether to disclose the business records. Whenever the Board decides to disclose business records over the objection of a submitter, it shall give the submitter written notice, that will include:

(1) A statement of the reason(s) the submitter's objections were not sustained;

(2) A description of the business records to be disclosed; and

(3) A specified disclosure date at a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements in paragraphs (d) and (g) of this section shall not apply if:

(1) The Board determines that the information should not be disclosed;

(2) The information has been published legally or has been officially made available to the public;

(3) Disclosure of the information is required by another statute or by a regulation issued in accordance with Executive Order 12600 (3 CFR, 1988 Comp., p. 235); or

(4) The objection made by the submitter under paragraph (f) of this section appears frivolous. In such a case, the Board shall promptly notify the submitter of its decision using the guidelines in paragraph (g) of this section.

(i) *Notice of FOIA lawsuit.* When a requestor files a lawsuit seeking to com-

pel the disclosure of business information, the Board shall promptly notify the submitter.

(j) *Corresponding notice to requestors.* When the Board provides a submitter with either notice and an opportunity to object to disclosure under paragraph (d) of this section or with its intent to disclose requested information under paragraph (g) of this section, the Board also shall notify the requestor(s). When a submitter files a lawsuit seeking to prevent the disclosure of business information, the Board shall notify the requestor(s).

### § 1303.114 Appeals.

(a)(1) *Appeals of adverse determinations.* If you are dissatisfied with the Board's response to your request, you may appeal to the Board's Executive Director:

(i) By mail to: U.S. Nuclear Waste Technical Review Board, 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201;

(ii) By e-mail to: [foia@nwturb.gov](mailto:foia@nwturb.gov) specifying that this is a FOIA request in the subject line; or

(iii) By fax to: 703-235-4495.

(2) The appeal must be in writing and must be received within 30 days of the date of the Board's response. The appeal letter, e-mail, or fax may include as much or as little related information as you wish, as long as it clearly identifies the Board determination that you are appealing, including the assigned request number, if known. For prompt handling, please mark your appeal "Freedom of Information Act Appeal."

(b) *Responses to appeals.* Requestors shall be notified in writing of the decision on the appeal. A decision affirming an adverse determination shall include a statement of the reason(s) for the affirmation, including any FOIA exemption(s) applied, and shall include the FOIA provisions for court review of the decision. If the adverse determination is reversed or modified on appeal, the request shall be reprocessed in accordance with that appeal decision.

(c) *When appeal is required.* If a review by a court or any adverse determination is desired, the determination must first be appealed under this section.

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(d) *Denial of appeal.* An adverse determination by the Executive Director shall be the final action of the Board.

(e) *Unacceptable appeals.* An appeal will not be acted on if the request becomes a matter of FOIA litigation.

**§ 1303.115 Preservation of records.**

The Board shall preserve all correspondence pertaining to the requests that it receives under this part, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit.

**§ 1303.116 Other rights and services.**

Nothing in this part shall be construed to entitle any person, as a right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

**PART 1304—PRIVACY ACT OF 1974**

- Sec.
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- 1304.116 Mailing lists.

AUTHORITY: 5 U.S.C. 552a(f).

SOURCE: 72 FR 8879, Feb. 28, 2007, unless otherwise noted.

**§ 1304.101 Purpose and scope.**

This part sets forth the policies and procedures of the U.S. Nuclear Waste Technical Review Board (Board) regarding access to systems of records maintained by the Board under the Pri-

vacancy Act of 1974, Public Law 93–579, 5 U.S.C. 552a. The provisions in the Act shall take precedence over any part of the Board's regulations in conflict with the Act. These regulations establish procedures by which an individual may exercise the rights granted by the Privacy Act to determine whether a Board system contains a record pertaining to him or her; to gain access to such records; and to request correction or amendment of such records. These regulations also set identification requirements and prescribe fees to be charged for copying records.

**§ 1304.102 Definitions.**

The terms used in these regulations are defined in the Privacy Act of 1974, 5 U.S.C. 552a. In addition, as used in this part:

(a) *Agency* means any executive department, military department, government corporation, or other establishment in this executive branch of the Federal Government, including the Executive Office of the President or any independent regulatory agency;

(b) *Individual* means any citizen of the United States or an alien lawfully admitted for permanent residence;

(c) *Maintain* means to collect, use, store, or disseminate records as well as any combination of these record-keeping functions. The term also includes exercise of control over, and therefore responsibility and accountability for, systems of records;

(d) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Board and contains the individual's name or other identifying information, such as a number or symbol assigned to the individual or his or her fingerprint, voice print, or photograph. The term includes, but is not limited to, information regarding an individual's education, financial transactions, medical history, and criminal or employment history;

(e) *System of records* means a group of records under the control of the Board from which information is retrievable by use of the name of the individual or by some number, symbol, or other identifying particular assigned to the individual;

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(f) *Routine use* means, with respect to the disclosure of a record, the use of a record for a purpose that is compatible with the purpose for which it was collected;

(g) *Designated Privacy Act Officer* means the person named by the board to administer the Board's activities in regard to the regulations in this part. The Privacy Act Officer also shall be the following:

(1) The Board officer having custody of, or responsibility for, agency records in the possession of the Board.

(2) The Board officer having responsibility for authorizing or denying production of records from requests filed under the Privacy Act.

(h) *Executive Director* means the chief operating officer of the Board;

(i) *Member* means an individual appointed to serve on the Board by the President of the United States;

(j) *Days* means standard working days, excluding weekends and federal holidays; and

(k) *Act* refers to the Privacy Act of 1974.

### § 1304.103 Privacy Act inquiries.

(a) *Requests regarding the contents of record systems.* Any person wanting to know whether the Board's systems of records contains a record pertaining to him or her may file a request in person or in writing, via the internet, or by telephone.

(b) *Requests in persons* may be submitted at the Board's headquarters located at 2300 Clarendon Blvd., Suite 1300; Arlington, VA. Requests should be marked "Privacy Act Request" on each page of the request and on the front of the envelope and directed to the Privacy Act Officer.

(c) *Requests in writing* may be sent to: Privacy Act Officer, U.S. Nuclear Waste Technical Review Board, 2300 Clarendon Blvd., Suite 1300, Arlington, VA 22201. "Privacy Act Request" should be written on the envelope and each page of the request.

(d) *Requests via the internet* may be made on the Board's Web site at [www.nwtrb.gov](http://www.nwtrb.gov), using the "Contact NWTRB" icon on the bottom of the Home page. The words "Privacy Act" should appear on the subject line.

(e) *Telephone requests* may be made by calling the Board's Privacy Act Officer at 703-235-4473.

### § 1304.104 Privacy Act records maintained by the Board.

(a) The Board shall maintain only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by Executive Order of the President. In addition, the Board shall maintain all records that are used in making determinations about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to that individual in the making of any determination about him or her. However, the Board shall not be required to update retired records.

(b) The Board shall not maintain any record about any individual with respect to or describing how such individual exercises rights guaranteed by the First Amendment of the Constitution of the United States, unless expressly authorized by statute or by the subject individual, or unless pertinent to and within the scope of an authorized law enforcement activity.

### § 1304.105 Requests for access to records.

(a) All requests for records should include the following information:

(1) Full name, address, and telephone number of requester.

(2) The system of records containing the desired information.

(3) Any other information that the requester believes would help locate the record.

(b) *Requests in writing.* A person may request access to his or her own records in writing by addressing a letter to: Privacy Act Officer; U.S. Nuclear Waste Technical Review Board; 2300 Clarendon Blvd., Suite 1300; Arlington, VA 22201.

(c) *Requests via the internet.* Internet requests should be transmitted through the Board's Web site at [www.nwtrb.gov](http://www.nwtrb.gov), using the "Contact NWTRB" icon on the bottom of the main page. The words "Privacy Act" should appear on the subject line.

(d) *Requests in person.* Any person may examine and request copies of his

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or her own records on the Board's premises. The requester should contact the Board's offices at least one week before the desired appointment date. This request may be made to the Privacy Act Officer in writing, via the Internet, or by calling 703-235-4473.

(e) Before viewing the records, proof of identification, must be provided. The identification should be a valid copy of one of the following:

A government ID,

A driver's license,

A passport, or

Other current identification that contains both an address and a picture of the requester.

### § 1304.106 Processing of requests.

Upon receipt of a request for information, the Privacy Act Officer will ascertain:

Whether the records identified by the requester exist, and

Whether they are subject to any exemption under §1304.115. If the records exist and are not subject to exemption, the Privacy Officer will provide the information.

(a) *Requests in writing, including those sent by e-mail, via the Web site, or by Fax.* Within five working days of receiving the requests the Privacy Act Officer will acknowledge its receipt and will advise the requester of any additional information that may be needed. Within 15 working days of receiving the request, the Privacy Act Officer will send the requested information or will explain to the requester why additional time is needed for a response.

(b) *Requests in person or by telephone.* Within 15 days of the initial request, the Privacy Act Officer will contact the requestor and arrange an appointment at a mutually agreeable time when the records can be examined. The requester may be accompanied by one person. The requestor should inform the Privacy Act Officer that a second individual will be present and must sign a statement authorizing disclosure of the records to that person. The statement will be kept with the requester's records. At the appointment, the requester will be asked to present identification as stated in § 1304.105.

(c) *Excluded information.* If a request is received for information compiled in

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reasonable anticipation of litigation, the Privacy Officer will inform the requester that the information is not subject to release under the Privacy Act (*see* 5 U.S.C. 552a(d)(5)).

### § 1304.107 Fees.

A fee will not be charged for searching, reviewing, or making corrections to records. A fee for copying will be assessed at the same rate established for Freedom of Information Act requests. Duplication fees for paper copies of a record will be 10 cents per page for black and white and 20 cents per page for color. For all other forms of duplication, the Board will charge the direct costs of producing the copy. However, the first 100 pages of black-and-white copying or its equivalent will be free of charge.

### § 1304.108 Appealing denials of access.

If access to records is denied by the Privacy Act Officer, the requester may file an appeal in writing. The appeal should be directed to Executive Director; U.S. Technical Review Board; 2300 Clarendon Blvd., Suite 1300; Arlington, VA 22201. The appeal letter must:

Specify the denied records that are still sought; and

State why denial by the Privacy Act Officer is erroneous.

The Executive Director or his or her designee will respond to such appeals within 20 working days of the receipt of the appeal letter in the Board offices. The appeal determination will explain the basis of the decision to deny or grant the appeal.

### § 1304.109 Requests for correction of records.

(a) *Correction requests.* Any person is entitled to request correction of his or her record(s) covered under the Act. The request must be made in writing and should be addressed to Privacy Act Officer; U.S. Nuclear Waste Technical Review Board; 2300 Clarendon Blvd., Suite 1300; Arlington, VA 22201. The letter should clearly identify the corrections desired. In most circumstances, an edited copy of the record will be acceptable for this purpose.

(b) *Initial response.* Receipt of a correction request will be acknowledged

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by the Privacy Act Officer in writing within 5 working days. The Privacy Act Officer will endeavor to provide a letter to the requester within 20 working days stating whether the request for correction has been granted or denied. If the Privacy Act Officer denies any part of the correction request, the reasons for the denial will be provided to the requester.

### § 1304.110 Disclosure of records to third parties.

(a) The Board will not disclose any record that is contained in a system of records to any person or agency, except with a written request by or with the prior written consent of the individual whose record is requested, unless disclosure of the record is:

(1) Required by an employee or agent of the Board in the performance of his/her official duties.

(2) Required under the provisions of the Freedom of Information Act (5 U.S.C. 552). Records required to be made available by the Freedom of Information Act will be released in response to a request in accordance with the Board's regulations published at 10 CFR part 1303.

(3) For a routine use as published in the annual notice in the FEDERAL REGISTER.

(4) To the Census Bureau for planning or carrying out a census, survey, or related activities pursuant to the provisions of Title 13 of the United States Code.

(5) To a recipient who has provided the Board with adequate advance written assurance that the record will be used solely as a statistical research or reporting record and that the record is to be transferred in a form that is not individually identifiable.

(6) To the National Archives and Records Administration as a record that has sufficient historical or other value to warrant its continued preservation by the United States government, or for evaluation by the Archivist of the United States, or his or her 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 crimi-

nal 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 Board for such records specifying the particular part desired and the law enforcement activity for which the record is sought. The Board also may disclose such a record to a law enforcement agency on its own initiative in situations in which criminal conduct is suspected, provided that such disclosure has been established as a routine use, or in situations in which the misconduct is directly related to the purpose for which the record is maintained.

(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 the extent of matters within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or subcommittee of any such joint committee.

(10) To the Comptroller General, or any of his or her authorized representatives, in the course of the performance of official duties of the Government Accountability Office.

(11) Pursuant to an order of a court of competent jurisdiction. In the event that any record is disclosed under such compulsory legal process, the Board shall make reasonable efforts to notify the subject individual after the process becomes a matter of public record.

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

(b) Before disseminating any record about any individual to any person other than a Board employee, the Board shall make reasonable efforts to ensure that the records are, or at the time they were collected were, accurate, complete, timely, and relevant. This paragraph (b) does not apply to disseminations made pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552) and paragraph (a)(2) of this section.



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**§ 1304.111 Maintaining records of disclosures.**

(a) The Board shall maintain a log containing the date, nature, and purpose of each disclosure of a record to any person or agency. Such accounting also shall contain the name and address of the person or agency to whom or to which each disclosure was made. This log will not include disclosures made to Board employees or agents in the course of their official duties or pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552).

(b) The Board shall retain the accounting of each disclosure for at least five years after the accounting is made or for the life of the record that was disclosed, whichever is longer.

(c) The Board shall make the accounting of disclosures of a record pertaining to an individual available to that individual at his or her request. Such a request should be made in accordance with the procedures set forth in § 1304.105. This paragraph (c) does not apply to disclosures made for law enforcement purposes under 5 U.S.C. 552a(b)(7) and § 1304.110(a)(7).

**§ 1304.112 Notification of systems of Privacy Act records.**

(a) *Public notice.* On November 22, 1996, the Board published a notice of its systems of records in the FEDERAL REGISTER (Vol. 61, Number 227, pages 59472-69473). It is updating and republishing the notice in this issue of the FEDERAL REGISTER. The Board periodically reviews its systems of records and will publish information about any significant additions or changes to those systems. Information about systems of records maintained by other agencies that are in the temporary custody of the Board will not be published. In addition, the Office of the Federal Register biennially compiles and publishes all systems of records maintained by all federal agencies, including the Board.

(b) At least 30 days before publishing additions or changes to the Board's systems of records, the Board will publish a notice of intent to amend, providing the public with an opportunity to comment on the proposed amendments to its systems of records.

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**§ 1304.113 Privacy Act training.**

(a) The Board shall ensure that all persons involved in the design, development, operation, or maintenance of any Board systems are informed of all requirements necessary to protect the privacy of individuals. The Board shall ensure that all employees having access to records receive adequate training in their protection and that records have adequate and proper storage with sufficient security to ensure their privacy.

(b) All employees shall be informed of the civil remedies provided under 5 U.S.C. 552a(g)(1) and other implications of the Privacy Act and of the fact that the Board may be subject to civil remedies for failure to comply with the provisions of the Privacy Act and the regulations in this part.

**§ 1304.114 Responsibility for maintaining adequate safeguards.**

The Board has the responsibility for maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems. These security safeguards shall apply to all systems in which identified personal data are processed or maintained, including all reports and output from such systems that contain identifiable personal information. Such safeguards must be sufficient to prevent negligent, accidental, or unintentional disclosure, modification, or destruction of any personal records or data; must minimize; to the extent practicable, the risk that skilled technicians or knowledgeable persons could improperly obtain access to modify or destroy such records or data; and shall further ensure against such casual entry by unskilled persons without official reasons for access to such records or data.

(a) *Manual systems.* (1) Records contained in a system of records as defined in this part may be used, held, or stored only where facilities are adequate to prevent unauthorized access by persons within or outside the Board.

(2) Access to and use of a system of records shall be permitted only to persons whose duties require such access to the information for routine uses or for such other uses as may be provided in this part.

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(3) Other than for access by employees or agents of the Board, access to records within a system of records shall be permitted only to the individual to whom the record pertains or upon his or her written request.

(4) The Board shall ensure that all persons whose duties require access to and use of records contained in a system of records are adequately trained to protect the security and privacy of such records.

(5) The disposal and destruction of identifiable personal data records shall be done by shredding and in accordance with rules promulgated by the Archivist of the United States.

(b) *Automated systems.* (1) Identifiable personal information may be processed, stored, or maintained by automated data systems only where facilities or conditions are adequate to prevent unauthorized access to such systems in any form.

(2) Access to and use of identifiable personal data associated with automated data systems shall be limited to those persons whose duties require such access. Proper control of personal data in any form associated with automated data systems shall be maintained at all times, including maintenance

of accountability records showing disposition of input and output documents.

(3) All persons whose duties require access to processing and maintenance of identifiable personal data and automated systems shall be adequately trained in the security and privacy of personal data.

(4) The disposal and disposition of identifiable personal data and automated systems shall be done by shredding, burning, or, in the case of electronic records, by degaussing or by overwriting with the appropriate security software, in accordance with regulations of the Archivist of the United States or other appropriate authority.

### **§ 1304.115 Systems of records covered by exemptions.**

The Board currently has no exempt systems of records.

### **§ 1304.116 Mailing lists.**

The Board shall not sell or rent an individual's name and/or address unless such action is specifically authorized by law. This section shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.