

the decision, as the Secretary in his or her discretion deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

**§ 1005.11 What are the Secretary's obligations in interstate situations?**

(a) The Secretary is responsible for:

(1) Identifying proposed federal financial assistance and direct federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activity;

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity;

(4) Responding pursuant to § 1005.10 of this part if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 1005.10 if a state process provides a state process recommendation to the Department through a single point of contact.

**§ 1005.12 How may a state simplify, consolidate, or substitute federally required state plans?**

(a) As used in this section:

(1) *Simplify* means that a state may develop its own format, choose its own submission date, and select the planning period for a state plan.

(2) *Consolidate* means that a state may meet statutory and regulatory requirements by combining two or more plans into one document and that the state can select the format, submission date, and planning period for the consolidated plan.

(3) *Substitute* means that a state may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a state may decide to try to simplify, consolidate, or substitute federally required state plans without prior approval by the Secretary.

(c) The Secretary reviews each state plan that a state has simplified, consolidated, or substituted and accepts the plan only if its contents meet federal requirements.

**§ 1005.13 May the Secretary waive any provision of these regulations?**

In an emergency, the Secretary may waive any provision of these regulations.

**PART 1008—RECORDS MAINTAINED ON INDIVIDUALS (PRIVACY ACT)**

**Subpart A—General Provisions**

Sec.

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### Subpart C—Disclosure to Third Parties

- 1008.16 Prohibition against disclosure.
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- 1008.20 Content of systems of records.
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- 1008.24 Criminal penalties—failure to publish a system notice.

AUTHORITY: 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; 5 U.S.C. 552a.

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

### Subpart A—General Provisions

#### § 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 §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).

#### § 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 Organiza-

tion Act, Public Law 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) Bonneville Power Administration, P.O. Box 3621–KDP–7, Portland, OR 97232.

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

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

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

(5) Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401.

(6) Headquarters, Department of Energy, Washington, DC 20585.

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

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

(9) National Nuclear Security Administration Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–3521.

(10) National Energy Technology Laboratory, 3610 Collins Ferry Road, Morgantown, WV 26507–0800.

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

(12) Office of Scientific and Technical Information, 175 S. Oak Ridge Turnpike, P.O. Box 62, Oak Ridge, TN 37830.

(13) Pacific Northwest Site Office, P.O. Box 350, Mail Stop K8–50, Richland, WA 99352.

(14) Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

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

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

(17) Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

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

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

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

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

(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 §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. 8. See subsection (a)(6) of the Act.

(1) *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, Public Law 93-579; references to subsections of the Act mean subsections of section 3 of the Act.

[45 FR 61577, Sept. 16, 1980, as amended at 71 FR 68735, Nov. 28, 2006]

### §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 §1008.18(a).

(2) Collect information, wherever possible, directly from the individual to whom it pertains. See subsection (e)(2) of the Act and §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 §1008.19(b).

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(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 §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.

#### **§ 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 §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,

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(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 § 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).

### § 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

### § 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 § 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 §§ 1008.7 and 1008.10 until actual receipt by the appropriate Privacy Act Officer. The individual making the request shall be

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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 §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.

### § 1008.7 Processing of requests.

(a) Receipt of a request made in accordance with §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.

### § 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 §1008.9 of this part. The Privacy Act Officer shall notify the individual of such determination and provide the following information:

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(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 §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 §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 paragraphs (c) (1) and (2) of this section, the request will be considered denied, and the appeal rights provided in §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.

### **§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

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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 § 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 § 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 § 1008.12.

### **§ 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

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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 § 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 § 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:



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(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 (c) 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; 46 FR 31637, June 17, 1981]

### § 1008.11 Appeals of denials of requests pursuant to § 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.

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(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 §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 §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 §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

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paragraph (j)(1) of this section, the Privacy Act Officer shall take steps to insure that the actions provided in paragraphs (j)(1) (i), (ii) and (iii) of this section are taken.

### § 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 exempted 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 subsections (c)(3) and (4), (d), (e) (1), (2), and (3), (e)(4) (G) and (H), (e)(8), (f), 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 interfere with investigative and enforcement proceedings and with co-defendants' right to a fair trial; disclose the identity of confidential sources and reveal 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).

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(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).

(K) Employee Concerns Program Records (DOE-3)

(L) Whistleblower Investigation, Hearing and Appeal Records (DOE-7)

(M) Intelligence Related Access Authorization (DOE-15)

(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).

(M) Allegation-Based Inspections Files of the Office of Inspector General (DOE-83).

(N) Employee Concerns Program Records (DOE-3)

(O) Whistleblower Investigation, Hearing and Appeal Records (DOE-7)

(P) Intelligence Related Access Authorization (DOE-15)

(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.

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(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).
- (O) Allegation-Based Inspections Files of the Office of Inspector General (DOE-83).
- (P) Employee Concerns Program Records (DOE-3)
- (Q) Whistleblower Investigation, Hearing and Appeal Records (DOE-7)
- (R) Intelligence Related Access Authorization (DOE-15)

(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 Fed-

eral 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, July 12, 1995; 62 FR 67519, Dec. 24, 1997; 67 FR 4171, Jan. 29, 2002]

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### § 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 §§1008.7 and 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.

### § 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.

### § 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

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\$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

#### § 1008.16 Prohibition against disclosure.

Except as provided in § 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.

#### § 1008.17 Conditions of disclosure.

(a) Notwithstanding the prohibition contained in § 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 § 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 § 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 § 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.

#### § 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

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(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 §1008.2(c) of this part. However, the accounting shall not be revealed with respect to disclosures made under §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 §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 §§1008.10(a)(2)(iv) and 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 §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 §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.

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### § 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

### § 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 of this requirement has been claimed by DOE, as provided in §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.

### § 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 §1008.12

(b) Unless an exemption from the Act has been claimed by DOE under subsection (j)(2), as provided in §1008.12, DOE shall inform each individual



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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.

### § 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.

### § 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) through (9) of this section if DOE has claimed a general or specific exemption from the requirements of the Act, as provided in § 1008.12.

(c) Copies of the notices as printed in the FEDERAL REGISTER shall be available at the DOE locations listed at § 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

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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.

### § 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.

## PART 1009—GENERAL POLICY FOR PRICING AND CHARGING FOR MATERIALS AND SERVICES SOLD BY DOE

Sec.

- 1009.1 Purpose and scope.
- 1009.2 Definitions.
- 1009.3 Policy.
- 1009.4 Exclusions.
- 1009.5 Supersessions.
- 1009.6 Dissemination of prices and charges.

AUTHORITY: Sec. 644 of the Dept. of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7254); Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.) “User Fee Statute”, 31 U.S.C. 483a, 42 U.S.C. 2111, 2112 and 2201.

SOURCE: 45 FR 70430, Oct. 24, 1980, unless otherwise noted.

### § 1009.1 Purpose and scope.

(a) This part establishes Department of Energy policy for establishing prices and charges for Department materials and services sold to organizations and persons outside the Federal Government.

(b) This part applies to all elements of the Department except the Federal Energy Regulatory Commission.

### § 1009.2 Definitions.

For the purposes of this regulation:

(a) *Allocable cost* means a cost allocable to a particular cost objective (i.e., a specific function, project, process, or organization) if the costs incurred are chargeable or assignable to such cost objectives in accordance with the relative benefits received or other

equitable relationships. Subject to the foregoing, a cost is allocable if:

(1) It is incurred solely for materials or services sold;

(2) It benefits both the customer and the Department in proportions that can be approximated through use of reasonable methods, or

(3) It is necessary to the overall operation of the Department and is deemed to be assignable in part to materials or services sold.

(b) *Byproduct material* means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(c) *Charges* means an accumulation of job related costs for materials and services sold by the Department.

(d) *Commercial price* means the price that a willing buyer is currently paying or would pay a willing seller for materials and services in the market.

(e) *Direct cost* is any cost which can be identified specifically with a particular final cost objective.

(f) *Full cost* includes all direct costs and all allocable costs of producing the material or providing the service consistent with generally accepted accounting principles. Direct costs and allocable costs may include, but are not limited to, the following cost elements:

- (1) Direct labor.
- (2) Personnel fringe benefits.
- (3) Direct materials.
- (4) Other direct costs.
- (5) Processing materials and chemicals.
- (6) Power and other utilities.
- (7) Maintenance.
- (8) Indirect cost, i.e., common costs which cannot be directly assigned to specific cost objectives and are therefore allocated to cost objectives in a systematic cost allocation process.
- (9) Depreciation which includes depreciation costs that are directly associated with facilities and equipment utilized, and allocated depreciation costs for support and general facilities and equipment.
- (10) Added factor includes general and administrative costs and other support costs that are incurred for the