

DEPARTMENT OF ENERGY**Privacy Act of 1974; Establishment of a New System of Records****AGENCY:** Department of Energy.**ACTION:** Proposed establishment of a system of records.

SUMMARY: The Department of Energy (DOE) proposes to establish a system of records identified as DOE-83 and entitled "Allegation-Based Inspections Files of the Office of Inspector General." The Office of Inspector General's (OIG's) Office of Inspections compiles various files that are collected and maintained to assist in the performance of the functions of the Office of Inspector General (OIG). The Office of Inspections performs various inspections and analyses as required by the OIG. An OIG inspection is an examination of a DOE or DOE contractor organization, program, project, function, or activity.

The proposed system of records will cover only the files of inspections based on allegations or complaints and which identify subjects and sources of information by name. Inspections performed relate to sensitive allegations of wrongdoing received concerning certain individuals, including agency or DOE contractor employees, or other persons or entities with some relationship to the agency. Allegations include, but are not limited to, abuse of authority; misuse of government time, property, or position; conflicts of interest; whistleblower reprisal; or other non-criminal violations of law, rules, or regulations. The proposed system of records will contain work papers, summaries of work papers, memoranda of interviews, interview notes, memoranda to the file, memoranda for the record, information provided by complainants, contractors and other interested parties, and related documentation.

DATES: Comments should be submitted on or before March 31, 1997.**ADDRESS:** Written comments should be addressed to GayLa D. Sessoms, Director, Freedom of Information Act and Privacy Act Division, U.S. Department of Energy, HR-78, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-5955.**FOR FURTHER INFORMATION CONTACT:**

Jacqueline M. Becker, Office of Inspector General, U.S. Department of Energy, IG-1, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-4393; or
GayLa D. Sessoms, Director, Freedom of Information Act and Privacy Act Division, U.S. Department of Energy,

HR-78, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-5955; or

Abel Lopez, Office of General Counsel, U.S. Department of Energy, GC-80, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-8618.

SUPPLEMENTARY INFORMATION: This notice establishes a new system of records entitled "Allegation-Based Inspections Files of the Office of Inspector General." The proposed system of records will cover only the files of inspections based on allegations or complaints and which identify subjects and sources of information by name. The system of records is necessary to perform the functions of the Office of Inspector General. Exemptions to certain provisions of the Privacy Act also are necessary and are being published as a Proposed Rule elsewhere in this issue.

Allegation-Based Inspections Files are maintained to document information concerning allegations or complaints about DOE or DOE contractor programs or operations. The files may contain information about civil or administrative wrongdoing, or about fraud, waste, or mismanagement, or other violations of law or regulation. This information could be the basis for administrative corrective action or referrals to appropriate authorities for civil or criminal investigation or prosecution.

The Allegation-Based Inspections Files contain information that if disclosed would substantially compromise the effectiveness of OIG inspections and inquiries. These files contain information about informants, complainants, contractor personnel, sources of information, witnesses, and inspections personnel. These files also contain the names of persons or agencies who have received certain information contained in these files.

Information in this system of records will be maintained pursuant to certain functions of the Inspector General (IG). Those functions require that the Office of Inspections conduct inspections and analyses of Departmental operations and programs. Exemptions from certain provisions of the Privacy Act are needed to accomplish the inspection function of the Office of Inspector General, to maintain the integrity and confidentiality of personal information, and to prevent disclosure of sensitive or classified information. These exemptions are also needed to prevent subjects of inspections or inquiries from frustrating the inspection or inquiry process and to prevent the disclosure of

inspection or inquiry techniques. Finally, these exemptions will enable the IG to fulfill commitments to protect the confidentiality of sources, to maintain access to sources of information, and to avoid endangering sources or Office of Inspections personnel.

The information that will be exempt includes, but is not limited to, information that identifies program operating procedures, program operation violations, program management violations, and alleged violators. This information will consist of identifying data and information about fraud, waste, or mismanagement. Other exempt data will be documentation, information from informants, complainants, contractor personnel, reports by inspectors, and information that can identify an individual.

When a Privacy Act request for exempt records concerning an individual is received from that individual, that request will be processed under the Freedom of Information Act. This will provide the maximum disclosure of responsive records to the individual.

This system is established pursuant to the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3. The statute mandates that the Inspector General provide leadership and coordination, and recommend policies for activities designed to promote economy, effectiveness, and efficiency in the administration of DOE programs or operations. The IG is also mandated to conduct activities relating to the prevention or detection of fraud or abuse in these programs or operations.

The maintenance of this system could have a substantial effect on the privacy and other rights of individuals. However, the Department has adopted measures to ensure that maintaining this information will not compromise the privacy and other rights of the affected individuals. The information will be collected only for the stated purpose, access to the information will be restricted, and the information will be maintained in a secured manner.

The text of the system notice is set forth below.

Issued in Washington, DC on December 31, 1996.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

DOE-83**SYSTEM NAME:**

Allegation-Based Inspections Files of the Office of Inspector General.

SECURITY CLASSIFICATION:

Generally unclassified. Some records may contain classified material.

SYSTEM LOCATION:

Official Allegation-Based Inspections Files are located at:

U.S. Department of Energy, Office of Inspector General, Headquarters, 1000 Independence Avenue, SW, Washington, DC 20585.

U.S. Department of Energy, Office of Inspector General, PO Box 5400, Albuquerque, New Mexico 87115.

U.S. Department of Energy, Office of Inspector General, PO Box 2270, Livermore, California 94550.

U.S. Department of Energy, Office of Inspector General, PO Box 1328, Oak Ridge, Tennessee 37831.

U.S. Department of Energy, Office of Inspector General, PO Box A, Aiken, South Carolina 29808.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are the subjects of inspections or inquiries concerning allegations or complaints, individuals who have pertinent knowledge about the inspection or inquiry, individuals authorized to furnish information, confidential informants, or complainants, Office of Inspector General (OIG) inspections personnel, and other individuals involved in these inspections.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inspection files predicated on allegations or complaints and which identify subjects and sources of information by name. Inspections performed relate to sensitive allegations of wrongdoing received concerning certain individuals, including agency employees, or other persons or entities with some relationship to the agency. Allegations include, but are not limited to, abuse of authority; misuse of government time, property, or position; conflicts of interest; whistleblower reprisal; or other non-criminal violations of law, rules, or regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended, 5 U.S.C. App. 3.

PURPOSE(S):

Pursuant to the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, the records in this system are used by the OIG in furtherance of the responsibilities of the Inspector General. These responsibilities include evaluating the effectiveness and efficiency of an operation, determining compliance with laws and regulations, evaluating Departmental program

operations and results, preventing and detecting fraud and abuse in such programs and operations, and assuring the investigation of complaints by contractor employees alleging retaliation for making disclosures protected under 10 CFR part 708 and 41 U.S.C. 315, section 6006.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Pursuant to the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, information contained in the files of the OIG Office of Inspections is collected and maintained in carrying out the duties and responsibilities of the Inspector General to evaluate the effectiveness and efficiency of an operation, determine compliance with laws and regulations, evaluate Departmental program operations and results, and prevent and detect fraud and abuse in such programs and operations. Material compiled is used for prosecutive, civil, or administrative actions.

1. Pursuant to section 552a(b)(7), the Department will provide a record within this system of records for law enforcement purposes at the prior written request of the head (or designee of the head) of a Federal agency or instrumentality. In the event that a record within this system of records, alone or in conjunction with other information, indicates a violation or potential violation of law, regulation, policy or procedure, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the Department, at its initiative, may refer relevant records in the system of records as a routine use to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order.

2. To disclose information to any source from which additional information is requested, when necessary to obtain information relevant to an IG inspection, the source will be provided such information from the system of records only to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

3. A record from this system of records may be disclosed to a Federal agency, in response to its written request, to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the

issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter and the Department deems the disclosure to be compatible with the purpose for which the Department collected the information.

4. For purposes of settlement of claims and the preparation and conduct of litigation, a record in this system of records may be disclosed to: (1) The Department's and its contractors' counsel; (2) other counsel representing the United States Government; (3) individuals or companies represented by Department counsel or counsel to other United States Government agencies; (4) opposing counsel; (5) persons possessing information pertaining to the claims or litigation to the extent necessary to obtain relevant information; and (6) claimants or other parties to the claim or litigation.

5. A record from this system of records may be disclosed in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when individuals or entities listed below are parties to, or have an interest in, the litigation or proceedings and the Department determines that such disclosure: (1) Is relevant to, and necessary for, the proceeding; and (2) is compatible with the purpose for which the Department collected the records:

(a) The agency, or any component thereof;

(b) Any employee of the agency in his or her official capacity;

(c) Any employee of the agency in his or her individual capacity where the United States has agreed to represent the employee;

(d) The agency's contractors and contractors' employees where the Department has agreed, or is obligated by statute, to represent such persons; and,

(e) The parties and their representatives in a 10 CFR part 708 and 41 U.S.C. 315, section 6006 proceeding.

6. A record from this system of records may be disclosed to foreign governments or international organizations, in accordance with treaties, international conventions, or executive agreements.

7. A record from this system of records may be disclosed as a routine use to the Office of Management and Budget (OMB) in connection with the

review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

8. A record from this system of records may be disclosed to Department contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to Department officers and employees under the Privacy Act.

9. A record from this system of records may be disclosed to a member of Congress submitting a request involving the individual when the individual has requested assistance from the member with respect to the subject matter of the record, and the member of Congress provides a copy of the individual's request or an other written statement clearly delineating the scope of the individual's request for assistance.

10. A record from this system of records which contains medical and/or psychological information may be disclosed to the physician or mental health professional of any individual submitting a request for access to the record under the Privacy Act of 1974 and the Department's Privacy Act regulations if, in its sole judgment and good faith, the Department believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 552a(f)(3) and applicable Department regulations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, micrographic, and/or electronic media.

RETRIEVABILITY:

By name of individual involved, case number, report title or subject matter.

SAFEGUARDS:

Allegation-Based Inspections Files are maintained within locked containers or areas. Classified information is maintained in locked General Services Administration approved class 6 security containers. Data maintained on personal computers can be accessed only by authorized staff using established procedures.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE Order

1324.2. "Records Disposition." Records within DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate. Automated files are handled and maintained according to approved security processes.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Inspector General for Inspections, U.S. Department of Energy, Room 5B-250, 1000 Independence Avenue, SW, Washington, DC 20585.

NOTIFICATION PROCEDURE:

The Department of Energy has exempted the system from this requirement. See the Exemption section of this notice.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Subject individuals; individuals and organizations that have pertinent knowledge about a subject individual or corporate entity; those authorized by an individual to furnish information; confidential informants; and Federal Bureau of Investigation (FBI) and other Federal, state, and local entities.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Under 5 U.S.C. 552a(k)(1) and (2) of the Privacy Act, this system is exempt from the following subsections:

5 U.S.C. 552a(c)(3)
5 U.S.C. 552a(d)
5 U.S.C. 552a(e)(1)
5 U.S.C. 552a(e)(4) (G) and (H)
5 U.S.C. 552a(f)

Exemption (k)(1) provides that the head of an agency may exempt an agency system of records from certain provisions of the Privacy Act if the system of records is subject to section 552(b)(1) of the Freedom of Information Act, 5 U.S.C. 552. That section of the Freedom of Information Act protects from disclosure properly classified national security information.

The proposed system of records will exempt properly classified national security information in the OIG's Allegation-Based Inspections Files. The detailed reasons for exemptions under 5 U.S.C. 552a(k)(1) follow:

(1) 5 U.S.C. 552a(c)(3) requires that, upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature, and purpose of each

disclosure of the record and the name and address of the recipient. The Department of Energy has programs involving classified material which may be the subject of Office of Inspections review. The application of this accounting provision to reviews involving properly classified material could reveal classified material. If this information about classified material were disclosed, national security might be compromised.

An example of an issue involving classified material which can affect national security would be a review of the Department's maintenance or transportation of special nuclear material. Such information could be utilized by terrorist groups. Another example would be Departmental work with intelligence information obtained from other Federal agencies.

(2) 5 U.S.C. 552a(d), (e)(4) (G) and (H), and (f) relate to the following: an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to or amendment of records; and agency procedures relating to access to and amendment of records and the content of information contained in such records. If these provisions were applied to classified material in the Allegation-Based Inspections Files, this could (1) interfere with inspections or inquiries undertaken in connection with national security; (2) disclose the identity of sources kept secret to protect national security; (3) reveal classified information kept secret to protect national security supplied by these sources; or (4) generally violate the secrecy of the classification.

For example, the Office of Inspections conducts counterintelligence administrative inquiries and inspections. These reviews are to uncover clandestine relationships, contacts with foreign intelligence services, and other hostile activities. Such actions could be directed against Departmental facilities, property, personnel, programs, and contractors and contractor employees. These hostile activities may be conducted by foreign powers, foreign organizations or their agents. In conducting these reviews, the Office of Inspections collects classified information that if disclosed could compromise Federal counterintelligence activities.

The Office of Inspections may also compile information pertaining to foreign energy matters. Disclosure of this information could identify sensitive sources and methods used by the national intelligence community. The Office of Inspections may compile

information regarding classified technology being developed by the Department or other agencies. Disclosure of this information could identify sensitive Departmental projects or operations that could be targets for foreign intelligence service collection operations.

(3) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. The OIG does not create the material it collects and has no control over the content of that material.

There are additional reasons why application of this provision could impair inspections and interfere with the statutory responsibilities of the OIG. It is not always possible to detect the relevance or necessity of specific information in the early stages of an inspection or inquiry. This applies when an inspection or inquiry uses properly classified information.

Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevancy and necessity of such information can be established. Furthermore, information outside the scope of the OIG's jurisdiction may be helpful in establishing patterns of activities or problems or in developing information that should be referred to other entities. Such information cannot always readily be segregated.

The detailed reasons for the exemptions under 5 U.S.C. 552a(k)(2) follow:

(1) 5 U.S.C. 552a(c)(3) requires that, upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature, and purpose of each disclosure of the records and the name

and address of the recipient. To apply this provision would alert those who may be the subjects of an inspection or inquiry pertaining to an allegation or complaint to the existence of the inspection or inquiry or that they are the subjects of such an inspection or inquiry. Release of this information could result in the altering or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the inspection or inquiry.

(2) 5 U.S.C. 552a (d), (e)(4) (G) and (H), and (f) relate to the following: an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to or amendment of records; and agency procedures relating to access to and amendment of records and the content of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: to notify an individual, at the individual's request, of the existence of records in an inspection file pertaining to a complaint or allegation about the individual or to grant access to this type of inspection file could (1) interfere with inspections proceedings predicated on a complaint or allegation, (2) constitute an unwarranted invasion of the personal privacy of others, (3) disclose the identity of confidential sources and reveal confidential information supplied by those sources, or (4) disclose inspection techniques and procedures.

In addition, this system is exempt from paragraph (d)(2) of this section, because to require the Office of the Inspector General, to amend information thought to be incorrect, irrelevant or untimely, because of the nature of the information collected and the essential length of time it is maintained, would create an impossible administrative and investigative burden by forcing the

agency to continuously retrograde its investigations attempting to resolve questions of accuracy.

(3) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed because:

a. It is not always possible to detect the relevance or necessity of specific information in the early stages of an inspection involving a complaint or allegation.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated or the inspection is closed that the relevancy and necessity of such information can be established.

c. In any inspection involving a complaint or allegation, the Inspector General may obtain information concerning the violation of laws other than those within the scope of his jurisdiction. In the interest of effective law enforcement, the Inspector General should be able to retain this information as it may aid in establishing patterns of program violations or criminal activity, and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In conducting an inspection or inquiry involving a complaint or allegation, information obtained may relate to the main purpose of the inspection or inquiry as well as to matters under the jurisdiction of another agency. Such information is not readily segregable.

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