

Department of Energy

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(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 infor-

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

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

(c) The appeal shall include the following:

(1) A copy of the original request for access or for amendment;

(2) A copy of the initial denial; and

(3) A statement of the reasons why the initial denial is believed to be in error.

(d) The records or record to which the individual was denied access, or which was requested to be corrected or amended, will be supplied to the appropriate appeal authority by the Privacy Act Officer who issued the initial denial. While such records normally will comprise the entire record on appeal,

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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 upon 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 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