(5) Maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as to ensure fairness to the individual in the determination;

(6) Maintain no record describing how any individual exercises rights guaranteed by the First Amendment to the United States Constitution, unless:

(i) The individual has volunteered such information for his own benefit,

(ii) A statute expressly authorizes the Department to collect, maintain, use, or disseminate the information, or

(iii) The individual's beliefs, activities, or membership are pertinent to and within the scope of an authorized law enforcement activity;

(7) Notify the head of the component of the existence or development of any system of records that has not been disclosed to the public;

(8) Disclose no record to anyone, for any use, unless authorized by the Act;

(9) Maintain and use records with care to prevent the inadvertent disclosure of a record to anyone; and

(10) Notify the head of the component of any record that contains information that the Act or the foregoing provisions of this paragraph do not permit the Department to maintain.

§ 71.14 Use of nonpublic information.

(a) *Prohibition*. (1) An employee shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendations, or by knowing unauthorized disclosure. *See* 5 CFR 2635.703.

(2) Nonpublic information is information that an employee gains by reason of Federal employment that he knows or reasonably should know has not been made available to the general public. Nonpublic information includes information contained in a Privacy Act system of records which an individual knew or should have known:

(i) Is normally exempt from disclosure under Exemptions 6 or 7(C) of the Freedom of Information Act, or is otherwise protected from disclosure by statute, Executive Order or regulation;

(ii) Has not actually been disseminated to the general public and is not authorized to be made available to the public upon request.

(b) *Sanctions*. Any DOL employee who willfully discloses any information or records from any file that contains individually-identifiable information to any person or agency not entitled to receive it, and the disclosure of which is prohibited by the Privacy Act or by rules or regulations established thereunder, and who, knowing the disclosure of the specific material is so prohibited, will be subject to disciplinary action, as appropriate.

(c) *Public Disclosures by Third Parties of DOL Privacy Act Records*. When Labor Department records subject to the Privacy Act are disclosed to third parties, and as a condition of the disclosure of such records, the person or entity to whom the records are furnished is expressly prohibited from further disseminating the information, any further dissemination of the information so furnished to such person or entity may be subject to the penalties set forth in 18 U.S.C. 641.

§ 71.15 Training.

All DOL systems managers, disclosure officers, and employees with responsibilities under the Privacy Act shall periodically attend training offered by the Department on the Privacy Act.

Subpart B—Exemption of Records Systems Under the Privacy Act

§ 71.50 General exemptions pursuant to subsection (j) of the Privacy Act.

(a) The following systems of records are eligible for exemption under 5 U.S.C. 552a(j)(2) because they are maintained by a component of the agency or subcomponent which performs as its principal function the enforcement of criminal laws, and they contain investigatory material compiled for criminal law enforcement purposes. Accordingly, these systems of records are exempt from the following subsections of 552a of title 5 U.S. Code: (c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G), (H), and (I), (e)(5) and (8), (f) and (g).

(1) DOL/ESA–45 (Investigative Files of the Office of Labor-Management

Standards), a system of records maintained by the Office of Labor-Management Standards.

(2) DOL/OIG–1 (General Investigative Files, and Subject Title Index, USDOL/OIG), a system of records maintained by the Office of the Inspector General (OIG).

(3) DOL/OIG–2 (Freedom of Information/Privacy Acts Records), a system of records maintained by the OIG.

(4) DOL/OIG–3 (Case Development Records), a system of records maintained by the OIG.

(5) DOL/OIG–5 (Investigative Case Tracking Systems/Audit Information Reporting Systems, USDOL/OIG), a system of records maintained by the OIG.

(6) DOL/MSHA–20 (Civil/Criminal Investigations), a system of records maintained by the Mine Safety and Health Administration.

(7) DOL/PWBA–2 (Office of Enforcement Index Cards and Investigation Files), a system of records maintained by the Pension and Welfare Benefits Administration.

(b) This exemption applies to the extent that information in these systems of records is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(c) These systems are exempted for the reasons set forth in paragraphs (c)(1) through (12) of this section, from the following subsections of 5 U.S.C. 552a:

(1) *Subsection (c)(3).* The release of the disclosure accounting would present a serious impediment to law enforcement by permitting the subject of an investigation of an actual or potential criminal violation to determine whether he is the subject of investigation, or to obtain valuable information concerning the nature of that investigation and the information obtained, or to identify witnesses and informants.

(2) *Subsection (c)(4).* Since an exemption is being claimed for subsection (d) f the Act (Access to Records), this subsection is inapplicable to the extent that these systems of records are exempted from subsection (d).

(3) *Subsection (d).* Access to records contained in these systems would inform the subject of an actual or potential criminal investigation of the existence of that investigation, of the nature and scope of the investigation, of the information and evidence obtained as to his or her activities, and of the identity of witnesses or informants. Such access would, accordingly, provide information that could enable the subject to avoid detection, apprehension, and prosecution. This result, therefore, would constitute a serious impediment to effective law enforcement not only because it would prevent the successful completion of the investigation but also because it could endanger the physical safety of witnesses or informants, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and imposes an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) *Subsection (e)(1).* In the course of criminal and related law enforcement investigations, cases, and matters, the agency will occasionally obtain information concerning actual or potential violations of law that may not be technically within its statutory or other authority, or it may compile information in the course of an investigation which may not be relevant to a specific prosecution. In the interests of effective law enforcement, it is necessary to retain some or all of such information since it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies. Moreover, it is difficult to know during the course of an investigation what is relevant and necessary. In this connection, facts or evidence may not seem relevant at first, but later in the investigation, their relevance is borne out.

(5) *Subsection (e)(2).* To collect information to the greatest extent practicable from the subject individual of a criminal investigation or prosecution would present a serious impediment to law enforcement because the subject of the investigation or prosecution would be placed on notice as to the existence

of the investigation and would therefore be able to avoid detection or apprehension, improperly influence witnesses, destroy evidence, or fabricate testimony.

(6) *Subsection (e)(3).* To provide individuals supplying information with a form which includes the information required by subsection (e)(3) would constitute a serious impediment to law enforcement, i.e., it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(7) *Subsections (e)(4)(G) and (H).* These subsections are inapplicable to the extent that these systems are exempt from the access provisions of subsection (d) and the rules provisions of subsection (f).

(8) *Subsection (e)(4)(I).* The categories of sources of the records in these systems have been published in the FEDERAL REGISTER in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in this system, exemption from this provision is necessary to protect the confidentiality of the sources of criminal and related law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(9) *Subsection (e)(5).* In the collection of information for criminal enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. Furthermore, the accuracy of such information can often only be determined in a court of law. The restrictions of subsection (e)(5) would inhibit the ability of government attorneys in exercising their judgment in reporting on information and investigations and impede the development of criminal information and related data necessary for effective law enforcement.

(10) *Subsection (e)(8).* The individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue warrants or subpoenas and could reveal investigative techniques, procedures, or evidence.

(11) *Subsection (f).* Procedures for notice to an individual pursuant to subsection (f)(1) as to existence of records pertaining to the individual dealing with an actual or potential criminal, civil, or regulatory investigation or prosecution must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation or case, pending or future. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under investigation or may become the subject of an investigation and could enable the subjects to avoid detection, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules required pursuant to subsections (f)(2) through (5) are inapplicable to these systems of records to the extent that these systems of records are exempted from subsection (d).

(12) *Subsection (g).* Since an exemption is being claimed for subsections (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable, and is exempted for the reasons set forth for those subsections, to the extent that these systems of records are exempted from subsections (d) and (f).

§ 71.51 Specific exemptions pursuant to subsection (k)(2) of the Privacy Act.

(a) The following systems of records are eligible for exemption under 5 U.S.C. 552a(k)(2) because they contain investigatory material compiled for law enforcement purposes other than material within the scope of subsection (j)(2) of 5 U.S.C. 552a. 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