

## § 16.7

### § 16.7 Administrative review of initial denial of access.

(a) Review shall be available only from a written denial of a request for access issued under §16.6(a) (2) or (3) and only if a written request for review is filed within thirty calendar days after the issuance of the written denial.

(b) A request for review shall be addressed to the Privacy Appeals Officer identified in the initial denial, which official is authorized to make final determinations. The envelope containing the request for review and the letter itself should both clearly indicate that the subject is a PRIVACY ACT REQUEST FOR REVIEW.

(c) When a request for review is misdirected by the requester, or not addressed as specified in paragraph (b) of this section, the Department official receiving same shall promptly refer it to the Privacy Appeals Officer and the time of receipt for processing purposes will be the time when it is received by the appropriate official.

(d) When a request for review fails to provide necessary information as set forth in paragraph (e) of this section, the requester shall be given reasonable opportunity to amend the request and shall be advised that the time of receipt for processing purposes will be the time when the additional necessary information is received by the appropriate official.

(e) The filing of a request for review may be accomplished by mailing to the Privacy Appeals Officer a copy of the request for access, if in writing; a copy of the written denial issued under §16.6; and a statement of the reasons why the initial denial is believed to be in error. The appeal shall be signed by the individual.

(f) No hearing will be allowed in connection with administrative review of an initial denial of access.

(g) The Privacy Appeals Officer shall act upon the appeal and issue a final determination in writing not later than thirty days (excluding Saturdays, Sundays and holidays) from the date on which the appeal is received; provided, that the Privacy Appeals officer may extend the thirty days upon deciding that a fair and equitable review cannot be made within that period, but

## 24 CFR Subtitle A (4-1-03 Edition)

only if the individual is advised in writing of the reason for the extension and the estimated date by which a final determination will issue, which estimated date should not be later than the sixtieth day (excluding Saturdays, Sundays and holidays) after receipt of the appeal unless there exist unusual circumstances, as described in §16.5(a).

(h) The decision after review will be in writing, will constitute final action of the Department on a request for access, and, if the denial of the request is in whole or part upheld, the Department shall notify the person making the request of his right to judicial review under 5 U.S.C. 552a(g)(1), as amended by 5 U.S.C. 552a(g)(5).

### § 16.8 Request for correction or amendment to record.

(a) Any individual, regardless of age, may submit to the Department a request for correction or amendment of a record pertaining to that individual. The request should be made either in person at the office of, or by mail addressed to, the Privacy Act Officer who processed the individual's request for access to the record. Although an oral request may be honored, a requester may be asked to submit his or her request in writing. The envelope containing the request and the letter itself should both clearly indicate that the subject is a PRIVACY ACT REQUEST FOR CORRECTION OR AMENDMENT.

(b) When a request for correction or amendment is misdirected by the requester, or not addressed as specified in paragraph (a) of this section, the Department official receiving same shall make reasonable effort to identify, and promptly refer it to, the appropriate Privacy Act Officer and the time of receipt for processing purposes will be the time when it is received by the appropriate official.

(c) When a request for correction or amendment fails to provide necessary information as set forth in paragraph (e) of this section, the requester shall be given reasonable opportunity to answer the request and shall be advised that the time of receipt for processing purposes will be the time when the additional necessary information is received by the appropriate official.

(d) Since the request, in all cases, will follow a request for access under §16.4, the individual's identity will be established by his or her signature on the request.

(e) A request for correction or amendment should include the following:

(1) A specific identification of the record sought to be corrected or amended (for example, description, title, date, paragraph, sentence, line and words);

(2) The specific wording to be deleted, if any;

(3) The specific wording to be inserted or added, if any, and the exact place at which it is to be inserted or added; and

(4) A statement of the basis for the requested correction or amendment, with all available supporting documents and materials which substantiate the statement.

(f) The provisions of §16.3(b) (2) and (3) apply to the information obtained under paragraph (e) of this section.

**§ 16.9 Agency procedures upon request for correction or amendment of record.**

(a)(1) Not later than ten days (excluding Saturdays, Sundays and holidays) after receipt of a request to correct or amend a record, the Privacy Act Officer shall send an acknowledgment providing an estimate of time within which action will be taken on the request and asking for such further information as may be necessary to process the request. The estimate of time may take into account unusual circumstances as described in §16.5(a). No acknowledgment will be sent if the request can be reviewed, processed, and the individual notified of the results of review (either compliance or denial) within the ten days. Requests filed in person will be acknowledged at the time submitted.

(2) Promptly after acknowledging receipt of a request, or after receiving such further information as might have been requested, or after arriving at a decision within the time prescribed in §16.9(a)(1), the Privacy Act Officer shall either:

(i) 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 effected in cases where a copy cannot be provided; or,

(ii) Inform the individual in writing that his or her request is denied and provide the following information:

(A) The Privacy Act Officer's name and title and position;

(B) The date of the denial;

(C) The reasons for the denial, including citation to the appropriate sections of the Act and this part; and,

(D) The procedures for appeal of the denial as set forth in §16.10, including the name and address of the Privacy Appeals Officer. The term *promptly* in this §16.9 means within thirty days (excluding Saturdays, Sundays and holidays). If the Privacy Act Officer cannot make the determination within thirty days, the individual will be advised in writing of the reason therefor and of the estimated date by which the determination will be made.

(b) Whenever an individual's record is corrected or amended pursuant to a request by that individual, the Privacy Act Officer shall see to the notification of all persons and agencies to which the corrected or amended portion of the record had been disclosed prior to its correction or amendment, if an accounting of such disclosure was made as required by the Act. The notification shall require a recipient agency maintaining the record to acknowledge receipt of the notification, to correct or amend the record and to appraise any agency or person to which it had disclosed the record of the substance of the correction or amendment.

(c) The following criteria will be considered by the Privacy Act Officer in reviewing a request for correction or amendment:

(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 terms of the purpose for which it was collected;

(4) The timeliness and currency of the information in terms of the purpose for which it was collected;