

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 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:

§ 1008.12

(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, 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 func-

10 CFR Ch. X (1-1-06 Edition)

tioning 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,

Department of Energy

§ 1008.12

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)(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 Federal 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.

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