

DEPARTMENT OF ENERGY

10 CFR Part 1008

RIN 1901-AA62

Records Maintained on Individuals (Privacy Act)

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) amends its Privacy Act regulations by adding a system of records to the list of systems exempted from certain subsections of the Act. Exemption from certain subsections is needed to enable the Office of Inspector General (OIG) to perform its duties and responsibilities. The system of records is entitled "Allegation-Based Inspections Files of the Office of Inspector General," and allows the Office of Inspector General to perform its functions mandated by statute, regulation or executive order. This system will maintain documents collected in the process of conducting inspections. An Office of Inspector General inspection is an examination of DOE or DOE contractor organizations, programs, projects, functions, or activities. This system of records covers only the files of inspections predicated on allegations or complaints and which identify subjects or sources of information by name. Inspections performed relate to sensitive allegations of wrongdoing received concerning certain individuals, including agency and 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.

EFFECTIVE DATE: January 23, 1998.

FOR FURTHER INFORMATION CONTACT: Jacqueline M. Becker, Office of Inspector General, U.S. Department of Energy, IG-1, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586-4393; or GayLa D. Sessoms, Director, Freedom of Information Act and Privacy Act Division, U.S. Department of Energy, HR-73, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586-5955; or Abel Lopez, Office of General Counsel, U.S. Department of Energy, GC-80, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586-8618.

SUPPLEMENTARY INFORMATION:

I. Background

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- D. Review Under the Paperwork Reduction Act
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I. Background

The Privacy Act of 1974, as amended, at 5 U.S.C. 552a (k) provides that the head of an agency may exempt an agency system of records from certain provisions of the Act. Accordingly, this system of records is added to the list of systems exempted by the Department of Energy from certain subsections of the Act.

The purpose of this rule is to amend the DOE's Privacy Act regulations to enable the Office of Inspector General to carry out its duties and responsibilities as mandated by the Inspector General Act. The Inspector General is mandated to promote economy, effectiveness, and efficiency within the agency and to prevent and detect fraud, waste and abuse in agency programs and operations.

The Office of Inspections in the Office of Inspector General compiles various files that are collected and maintained to assist in the performance of the functions of the Office of Inspector General. The Office of Inspections performs various inspections and analyses as required by the Office of Inspector General. An inspection by the Office of Inspector General is an examination of a DOE or DOE contractor organization, program, project, function, or activity. This system of records covers only the files of inspections predicated on allegations or complaints and which identify subjects or 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 and DOE contractors. 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.

A notice of proposed rulemaking and corresponding system notice were published in the **Federal Register** on

January 29, 1997 (62 FR 4404). No comments were received.

II. Procedural Requirements

A. Regulatory Review

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this regulation meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354. The Regulatory Flexibility Act requires the preparation of a regulatory flexibility analysis for any proposed rule which is likely to have a significant economic impact on a

substantial number of small entities. The Department of Energy certified that the rule will not have a significant economic impact on a substantial number of small entities. The Department did not receive any comments on the certification.

D. Review Under the Paperwork Reduction Act

No new information collection or record keeping requirements are imposed by this rule. As a result, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a new policy action. This rule will not affect States, or the relationship between the Federal Government and the States, in any direct way.

F. Review Under the National Environmental Policy Act

This rulemaking amends the Department's regulations that implement the Privacy Act at 10 CFR part 1008, "Records Maintained on Individuals (Privacy Act)," by adding a new system of records to the list of systems exempted from certain subsections of the Privacy Act. Under the new system of records, the Department would maintain documents collected in inspections conducted by the Office of Inspector General. Implementation of this rule would only affect the manner in which certain files are maintained and made accessible to the public, and would not result in environmental impacts. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A.5 of Appendix A to Subpart D, 10 CFR part 1021, which applies to the amendment or interpretation of existing regulation that does not change the environmental effect of the rule being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

List of Subjects in 10 CFR Part 1008

Privacy.

Issued in Washington, D.C. on November 25, 1997.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

For the reasons set forth in the preamble, 10 CFR part 1008 is amended as set forth below:

PART 1008—RECORDS MAINTAINED ON INDIVIDUALS (PRIVACY ACT)

1. The authority citation continues to read as follows:

Authority: 42 U.S.C. 7101, *et seq.*, Executive Order 12091, (42 FR 46267), 5 U.S.C. 552a.

2. Section 1008.12 is amended by adding paragraphs (b)(2)(ii)(M) and (b)(3)(ii)(O) to read as follows:

§ 1008.12 Exemptions.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(M) Allegation-Based Inspections Files of the Office of Inspector General (DOE-83).

(3) * * *

(ii) * * *

(O) Allegation-Based Inspections Files of the Office of Inspector General (DOE-83).

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