

For the reasons set forth above, under the authority of 29 U.S.C. 792(a)(6)(A), the Access Board amends chapter XI of title 36 of the Code of Federal Regulations by removing part 1152.

**Lawrence W. Roffee,**

*Executive Director.*

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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Part 1202

RIN 3095-AA66

#### Privacy Act Regulations

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Final rule.

**SUMMARY:** This rule streamlines NARA regulations implementing the Privacy Act of 1974 by revising and simplifying policies for release of medical information, clarifying whom in NARA individuals contact with Privacy Act requests and appeals, and removing detailed internal NARA operating procedures that do not belong in the regulation. We are taking this action after conducting a review of our existing Privacy Act regulations in accordance with Executive Order 12866.

**EFFECTIVE DATE:** January 20, 1999.

**FOR FURTHER INFORMATION CONTACT:** Nancy Allard at (301) 713-7360, extension 226, or Mary Ronan at (301) 713-6025, extension 226.

**SUPPLEMENTARY INFORMATION:** We published a notice of proposed rulemaking on August 26, 1998 (63 FR 45433) for a 60-day comment period. No comments were received. We have made one change to § 1202.14 to specify that the NARA standards of conduct cited in the proposed rule are the standards promulgated by the Office of Government Ethics at 5 CFR 2635.703. We will revise the rule to comply with the President's Memorandum of June 1, 1998, Plain Language in Government Writing at a future time.

The Office of Management and Budget (OMB) reviewed the proposed rule as a significant regulatory action under Executive Order 12866. OMB did not require review of this final rule. As required by the Regulatory Flexibility Act, we certify that this rule will not have a significant impact on small entities.

#### List of subjects in 36 CFR Part 1202

Archives and records, Privacy.

For the reasons set forth in the preamble, NARA is revising part 1202 of

title 36, Code of Federal Regulations, to read as follows:

### PART 1202—REGULATIONS IMPLEMENTING THE PRIVACY ACT OF 1974

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#### Subpart E—Exemptions

- 1202.90 Specific exemptions.

**Authority:** 5 U.S.C. 552a; 44 U.S.C. 2104(a).

#### Subpart A—General Provisions

##### § 1202.1 Scope of part.

(a) This part governs requests for NARA organizational records and certain records of defunct agencies under the Privacy Act, 5 U.S.C. 552a (hereinafter referred to as the Act). This part applies to all NARA records, as defined in § 1202.4, which contain personal information about an individual and some means of identifying the individual, and which are contained in a system of records as defined in 5 U.S.C. 552a(a)(5) from which information is retrieved by use of an identifying particular assigned to the individual. The part prescribes

procedures for notifying an individual of NARA systems of records which may contain a record pertaining to him or her; procedures for gaining access and contesting the contents of such records, and other procedures for carrying out the provisions of the Act.

(b) Policies and procedures governing the disclosure and availability of NARA operational records in general are in part 1250 of this chapter.

##### § 1202.4 Definitions.

For the purposes of this part:

**Access** means a transfer of a record, a copy of a record, or the information in a record to the subject individual, or the review of a record by the subject individual.

**Agency** means agency as defined in 5 U.S.C. 552(f).

**Defunct agency records** means the records in a Privacy Act system of an agency that has ceased to exist without a successor in function that have not yet been transferred to the National Archives of the United States.

**Disclosure** means a transfer by any means of a record, a copy of a record, or the information contained in a record to a recipient other than the subject individual, or the review of a record by someone other than the subject individual.

**Individual** means a citizen of the United States or an alien lawfully admitted for permanent residence.

**Maintain** includes maintain, collect, use, or disseminate.

**NARA Privacy Act appeal official** means the Deputy Archivist of the United States for appeals of denials of access to or amendment of records maintained in a system of records, except where the system manager is the Inspector General. The term means the Archivist of the United States for appeals of denial of access to or amendment of records in systems of records maintained by the Inspector General.

**Record** means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history and criminal or employment history, and that contains his or her name or an identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voiceprint, or photograph. For purposes of this part, "record" does not include archival records that have been transferred to the National Archives of the United States.

*Routine use* means, with respect to the disclosure of a record, the use of that record for a purpose which is compatible with the purpose for which it was collected.

*Solicitation* means a request by a NARA officer or employee that an individual provide information about himself or herself.

*Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

*Subject individual* means the individual named or discussed in a record or the individual to whom a record otherwise pertains.

*System manager* means the NARA employee who is responsible for the maintenance of a system of records and for the collection, use, and dissemination of information therein.

*System of records* means a group of any records under the control of NARA from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier assigned to that individual.

#### **§ 1202.6 Contact point for Privacy Act assistance and referrals.**

Requests for assistance and referral to the responsible system manager or other NARA employee charged with implementing these regulations should be made to the NARA Privacy Act Officer, National Archives and Records Administration, Room 4400, 8601 Adelphi Rd., College Park, MD 20740-6001.

#### **§ 1202.10 Collection and use.**

(a) *General.* Any information used in whole or in part in making a determination about an individual's rights, benefits, or privileges under NARA programs will be collected directly from the subject individual to the greatest extent practicable. The system manager also will ensure that information collected is used only in conformance with the provisions of the Act and this part.

(b) *Solicitation of information.* System managers will ensure that at the time information is solicited the subject individual is informed of the authority for collecting that information, whether providing the information is mandatory or voluntary, the purposes for which the information will be used, the routine uses of the information, and the effects on the individual, if any, of not providing the information. The director of the NARA forms management program will ensure that forms used to

solicit information are in compliance with the Act and this part.

(c) *Solicitation of social security number.* (1) Before a NARA employee or NARA contractor requires an individual to disclose his or her social security number, NARA will ensure that either:

(i) The disclosure is required by Federal law; or

(ii) The disclosure was required under a Federal law or regulation adopted before January 1, 1975, to verify the identity of an individual, and the social security number will become a part of a system of records in existence and operating before January 1, 1975.

(2) If solicitation of the social security number is authorized under paragraph (c)(1) (i) or (ii) of this section, the NARA employee or NARA contractor who requests an individual to disclose his or her social security number must first inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority the number is solicited, and the uses that will be made of it.

(d) *Soliciting information from third parties.* A NARA employee or NARA contractor will inform third parties who are requested to provide information about another individual of the purposes for which the information will be used.

#### **§ 1202.12 Standards of accuracy.**

The system manager will ensure that all records which are used by NARA to make a determination about any individual are maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual.

#### **§ 1202.14 Rules of conduct.**

All NARA employees and/or NARA contractors involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, must review the provisions of 5 U.S.C. 552a and the regulations in this part, and must conduct themselves in accordance with the rules of conduct concerning the protection of nonpublic information in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR 2635.703.

#### **§ 1202.16 Safeguarding systems of records.**

The system manager will ensure that appropriate administrative, technical, and physical safeguards are established to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm,

embarrassment, inconvenience, or unfairness to any individual on whom information is maintained. Personnel information contained in both manual and automated systems of records will be protected by implementing the following safeguards:

(a) Official personnel folders, authorized personnel operating or work folders, and other records of personnel actions effected during a NARA employee's Federal service or affecting the employee's status and service, including information on experience, education, training, special qualifications and skills, performance appraisals, and conduct, will be stored in a lockable metal filing cabinet when not in use by an authorized person. A system manager may employ an alternative storage system providing that it furnishes an equivalent degree of physical security as storage in a lockable metal filing cabinet.

(b) System managers, at their discretion, may designate additional records of unusual sensitivity which require safeguards similar to or greater than those described in paragraph (a) of this section.

(c) System managers will permit access to and use of automated or manual personnel records only to persons whose official duties require such access, or to subject individuals or their representatives as provided by this part.

#### **§ 1202.18 Inconsistent issuances of NARA superseded.**

Any policies and procedures in any NARA issuance which are inconsistent with the policies and procedures in this part are superseded to the extent of that inconsistency.

#### **§ 1202.20 Records of other agencies.**

(a) *Records accessioned into the National Archives of the United States.* Archival records which were contained in systems of records of agencies and which have been transferred to the National Archives of the United States are exempt from most provisions of the Privacy Act (see 5 U.S.C. 552a(l)(2) and (l)(3)). Rules governing access to such records are contained in subchapter C of this chapter.

(b) *Current records of other agencies.* If NARA receives a request for access to records which are the primary responsibility of another agency, but which are maintained by or in the temporary possession of NARA on behalf of that agency in a regional records service facility, NARA will refer the request to the agency concerned for appropriate action. NARA will advise the requester that the request has been

forwarded to the responsible agency. (See 5 U.S.C. 552a(l)(1)).

(c) *Records in Government-wide Privacy Act systems.* Records in the custody of NARA which are the primary responsibility of another agency, e.g., the Office of Personnel Management (OPM) or the Office of Government Ethics (OGE), are governed by the regulations promulgated by that agency pursuant to the Act.

(d) *Records of defunct agencies in the custody of NARA.* Records of defunct agencies in the custody of NARA at a NARA records center but not yet accessioned into the National Archives of the United States are governed by the regulations in this part.

#### **§ 1202.22 Subpoenas and other legal demands.**

Access to NARA systems of records by subpoena or other legal process will be made in accordance with the provisions of part 1250 of this chapter for NARA operational records and records of defunct agencies not yet accessioned into the National Archives of the United States and part 1254 of this chapter for archival records, records center holdings, and donated historical materials.

### **Subpart B—Disclosure of Records**

#### **§ 1202.30 Conditions of disclosure.**

No NARA employee may disclose any record in a system of records to any person or to another agency without the express written consent of the subject individual unless the disclosure is:

(a) To NARA employees who have a need for the information in the official performance of their duties;

(b) Required by the provisions of the Freedom of Information Act, as amended;

(c) For a routine use as published in a notice in the **Federal Register**;

(d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to title 13 U.S.C.;

(e) To a recipient who has provided NARA with advance adequate written assurance that the record will be used solely as a statistical research or reporting record. (The record will be transferred in a form that is not individually identifiable. In addition to deleting personal identifying information from records released for statistical purposes, the system manager will ensure that the identity of the individual cannot reasonably be deduced by combining various statistical records.) The written statement must include as a minimum:

(1) A statement of the purpose for requesting the records; and

(2) Certification that the records will be used only for statistical purposes;

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government; or for evaluation by the Archivist or the designee of the Archivist to determine whether the record has such value;

(g) To another agency or instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality or his or her other designated representative has made a written request to NARA specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person showing compelling circumstances affecting the health or safety of an individual, not necessarily the individual to whom the record pertains. Upon such disclosure, a notification must be sent to the last known address of the subject individual;

(i) To either House of Congress or to a committee or subcommittee (joint or of either House, to the extent that the matter falls within its jurisdiction);

(j) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office;

(k) Pursuant to the order of a court of competent jurisdiction; or

(l) To a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

#### **§ 1202.32 Procedures for disclosure.**

(a) Address all requests for disclosure of records pertaining to a third party to the NARA Privacy Act Officer, National Archives and Records Administration, Room 4400, 8601 Adelphi Rd., College Park, MD 20740-6001. Upon receipt of such request, NARA will verify the right of the requester to obtain disclosure pursuant to § 1202.30. Upon verification, the system manager will make the requested records available. NARA will acknowledge requests within 10 workdays and will make a decision within 30 workdays, unless NARA notifies the requester that the time limit must be extended for good cause.

(b) If NARA determines that the disclosure is not permitted under § 1202.30, the system manager will deny the request in writing. The requester will be informed of the right to submit a request for review and final

determination to the appropriate NARA Privacy Act Appeal Officer.

(1) The Archivist of the United States is the NARA Privacy Act Appeal Officer for records maintained by the Office of the Inspector General. Requests for review involving records for which the Inspector General is the system manager must be addressed to the NARA Privacy Act Appeal Officer (N), National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20470-6001.

(2) The Deputy Archivist of the United States is the appeal officer for all other NARA records. Requests for review involving all other records must be addressed to the NARA Privacy Act Appeal Officer (ND), National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20470-6001.

#### **§ 1202.34 Accounting of disclosures.**

(a) Except for disclosures made pursuant to § 1202.30(a) and (b), an accurate accounting of each disclosure will be made and retained for 5 years after the disclosure or for the life of the record, whichever is longer. The accounting will include the date, nature, and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made.

(b) The system manager also will maintain in conjunction with the accounting of disclosures:

(1) A full statement of the justification for the disclosures;

(2) All documentation surrounding disclosure of a record for statistical or law enforcement purposes; and

(3) Evidence of written consent by the subject individual to a disclosure, if applicable.

(c) Except for the accounting of disclosures made under § 1202.30(g) or of disclosures made from exempt systems (see subpart E of this part), the accounting of disclosures will be made available to the subject individual upon request. Procedures for requesting access to the accounting are in subpart C of this part.

### **Subpart C—Individual Access to Records**

#### **§ 1202.40 Forms of requests.**

(a) Individuals seeking access to their records or to any information pertaining to themselves which is contained in a system of records should notify the NARA Privacy Act Officer, National Archives and Records Administration, Rm. 4400, 8601 Adelphi Rd., College Park, MD 20740-6001.

(b) The request must be in writing and must bear the legend "Privacy Act

Request" both on the request letter and on the envelope. The request letter must contain:

(1) The complete name and identifying number of the NARA system as published in the **Federal Register**;

(2) The full name and address of the subject individual;

(3) A brief description of the nature, time, place, and circumstances of the subject individual's association with NARA; and

(4) Any other information which the subject individual believes would help NARA to determine whether the information about the individual is included in the system of records.

(c) NARA will answer or acknowledge the request within 10 workdays of its receipt by NARA.

(d) NARA at its discretion, may accept oral requests for access to a NARA system of records, subject to verification of identity.

#### **§ 1202.42 Special requirements for medical records.**

When NARA receives a request for access to medical records, if NARA believes, in good faith, that disclosure of medical and/or psychological information directly to the subject individual could have an adverse effect on that individual, the subject individual may be asked to designate in writing a physician or mental health professional to whom he or she would like the records to be disclosed, and disclosure that otherwise would be made to the subject individual will instead be made to the designated physician or mental health professional.

#### **§ 1202.44 Granting access.**

(a) Upon receipt of a request for access to non-exempt records, NARA will make such records available to the subject individual or shall acknowledge the request within 10 workdays of its receipt by NARA. The acknowledgment will indicate when the system manager will make the records available.

(b) If NARA anticipates more than a 10-day delay in making a record available, NARA also will include in the acknowledgment specific reasons for the delay.

(c) If a subject individual's request for access does not contain sufficient information to permit the system manager to locate the records, NARA will request additional information from the individual and will have 10 workdays following receipt of the additional information in which to make the records available or to acknowledge receipt of the request and to indicate when the records will be available.

(d) Records will be made available for authorized access during normal business hours at the NARA offices where the records are located.

(1) Requesters must be prepared to identify themselves by producing at least one piece of identification bearing a name or signature and either a photograph or physical description, e.g., a driver's license or employee identification card. NARA reserves the right to ask the requester to produce additional pieces of identification to assure NARA of the requester's identity. If the individual is unable to produce suitable identification, he or she must sign a statement asserting that he or she is the subject individual and stipulating that he or she understands the criminal penalty for perjury and the penalty in the Privacy Act for requesting or obtaining access to records under false pretenses (5 U.S.C. 552a(i)(3)). NARA will provide a form for this purpose.

(2) Requesters must sign a form indicating that they have been given access.

(e) At the written request of a subject individual, NARA may provide access by mailing a copy of the requested records to that individual or to another person designated by the subject individual. In the request, the subject individual must provide a copy of proof of identity, such as an electrostatic copy of a driver's license, or a statement asserting he or she is the subject individual and stipulating that he or she understands the criminal penalty for perjury and the penalty in the Privacy Act for requesting or obtaining access to records under false pretenses (5 U.S.C. 552a(i)(3)).

(f) Upon request, a system manager will permit a subject individual to examine the original of a non-exempt record, will provide the individual with a copy of the record, or both.

(g) Subject individuals may either pick up a record in person or receive it by mail. A system manager may not make a record available to a third party for delivery to the subject individual, except for medical records as outlined in § 1202.42, or at the explicit written direction of the subject individual in accordance with paragraph (h) of this section.

(h) Subject individuals who wish to have a person of their choosing review, accompany them in reviewing, or obtain a copy of a record must, prior to the disclosure of their record, sign a statement authorizing the disclosure. The system manager will maintain this statement with the record.

(i) The procedure for access to an accounting of disclosures is identical to

the procedure for access to a record as set forth in this section.

#### **§ 1202.46 Denials of access.**

(a) A system manager may deny a subject individual access to his or her record only on the grounds that NARA has published rules in the **Federal Register** exempting the pertinent system of records from the access requirement and the record is exempt from disclosure under the Freedom of Information Act, as amended (FOIA). Exempt systems of records are described in subpart E of this part.

(b) Upon receipt of a request for access to a record which is contained within an exempt system of records, NARA will:

(1) Review the record to determine whether all or part of the record must be released to the requester in accordance with § 1202.44, notwithstanding the inclusion of the record within an exempt system of records, and

(2) Disclose the record in accordance with § 1202.44 or notify the requester that the request has been denied in whole or in part.

(c) If the request is denied in whole or in part, the notice will include a statement specifying the applicable Privacy Act and FOIA exemptions and advising the requester of the right to appeal the decision as provided in § 1202.74.

#### **§ 1202.48 Appeal of denial of access within NARA.**

(a) Requesters denied access in whole or part to records pertaining to them may file with NARA an appeal of that denial. The appeal must be postmarked no later than 35 calendar days after the date of the denial letter from NARA.

(1) The Archivist of the United States is the NARA Privacy Act Appeal Official for records maintained by the Office of the Inspector General. Appeals involving records for which the Inspector General is the system manager must be addressed to NARA Privacy Act Appeal Official (N), National Archives and Records Administration, Washington, DC 20408.

(2) The Deputy Archivist of the United States is the NARA Privacy Act Appeal Official for all other NARA records. All other appeals must be addressed to NARA Privacy Act Appeal Official (ND), National Archives and Records Administration, Washington, DC 20408.

(b) Each appeal to the NARA Privacy Act Appeal Official must be in writing. The appeal must bear the legend "Privacy Act—Access Appeal," on both the face of the letter and the envelope.

(c) Upon receipt of an appeal, the NARA Privacy Act Appeal Official will consult with the system manager, legal counsel, and such other officials as may be appropriate. If the NARA Privacy Act Appeal Official, in consultation with these officials, determines that the request for access should be granted because the subject records are not exempt, the NARA Privacy Act Appeal Official will immediately either instruct the system manager in writing to grant access to the record in accordance with § 1202.44 or shall grant access and will notify the requester of that action.

(d) If the NARA Privacy Act Appeal Official, in consultation with the officials specified in paragraph (c) of this section, determines that the appeal should be rejected, the NARA Privacy Act Appeal Official immediately will notify the requester in writing of that determination. This action will constitute NARA's final determination on the request for access to the record and will include:

(1) The reason for the rejection of the appeal; and

(2) Notice of the requester's right to seek judicial review of NARA's final determination, as provided in § 1202.74.

(e) The final NARA determination will be made no later than 30 workdays from the date on which the appeal is received by the NARA Privacy Act Appeal Official. The NARA Privacy Act Appeal Official may extend this time limit by notifying the requester in writing before the expiration of the 30 workdays. The NARA Privacy Act Appeal Official's notification will include an explanation of the reasons for the extension of time.

#### **§ 1202.50 Records available at a fee.**

NARA will waive fees for copies of records for the first 100 pages copied or when the cost to collect the fee will exceed the amount collected. When a fee is charged, the charge per copy is \$0.30 per page if NARA makes the copy or \$0.10 per page if the requester makes the copy on a NARA self-service copier. Fees for other reproduction processes are computed upon request.

#### **§ 1202.52 Prepayment of fees over \$250.**

If the system manager determines that the estimated total fee is likely to exceed \$250, NARA will notify the individual that the estimated fee must be prepaid prior to NARA's making the records available. NARA will remit any excess amount paid by the individual or bill the individual for an additional amount if there is a variation between the final fee charged and the amount prepaid.

#### **§ 1202.54 Form of payment.**

Payment shall be by check or money order payable to the National Archives and Records Administration and shall be addressed to the NARA Privacy Act Officer.

### **Subpart D—Requests To Amend Records**

#### **§ 1202.60 Submission of requests to amend records.**

Subject individuals who desire to amend any record containing personal information about themselves should write to the NARA Privacy Act Officer, except that a current NARA employee who desires to amend personnel records should write to the Director, Human Resources Services Division. Each request must include evidence of and justification for the need to amend the pertinent record. Each request must bear the legend "Privacy Act—Request To Amend Record" prominently marked on both the face of the request letter and the envelope.

#### **§ 1202.62 Review of requests to amend records.**

(a) NARA will acknowledge receipt of a request to amend a record within 10 workdays. If possible, the acknowledgment will include the system manager's determination either to amend the record or to deny the request to amend as provided in § 1202.66.

(b) When reviewing a record in response to a request to amend, the system manager will assess the accuracy, relevance, timeliness, and completeness of the existing record in light of the proposed amendment. The system manager will determine whether the amendment is justified. With respect to a request to delete information, the system manager also will review the request and existing record to determine whether the information is relevant and necessary to accomplish an agency purpose required to be accomplished by law or Executive order.

#### **§ 1202.64 Approval of requests to amend.**

If the system manager determines that amendment of a record is proper in accordance with the request to amend, he or she promptly will make the necessary amendment to the record and will send a copy of the amended record to the subject individual. NARA will advise all previous recipients of the record, using the accounting of disclosures, of the fact that an amendment has been made and give the substance of the amendment. Where practicable, NARA will send a copy of the amended record to previous recipients.

#### **§ 1202.66 Denial of requests to amend.**

If the system manager determines that an amendment of a record is improper or that the record should be amended in a manner other than that requested by an individual, NARA will advise the requester in writing of the decision. The denial letter will state the reasons for the denial of the request to amend; include proposed alternative amendments, if appropriate; state the requester's right to appeal the denial of the request to amend; and state the procedure for appealing.

#### **§ 1202.68 Agreement to alternative amendments.**

If the denial of a request to amend a record includes proposed alternative amendments and if the requester agrees to accept them, the requester must notify the system manager who will make the necessary amendments in accordance with § 1202.64.

#### **§ 1202.70 Appeal of denial of request to amend a record.**

(a) A requester who disagrees with a denial of a request to amend a record may file an appeal of that denial.

(1) If the denial was signed by a NARA system manager other than the Inspector General, the requester must address the appeal to the NARA Privacy Act Appeal Official (ND), Washington, DC 20408.

(2) If the denial was signed by the Inspector General, the requester must address the appeal to the NARA Privacy Act Appeal Official (N), Washington, DC 20408.

(3) If the requester is an employee of NARA and the denial to amend involves a record maintained in the employee's Official Personnel Folder, or in another Government-wide system maintained by NARA on behalf of another agency, NARA will provide the requester the name and address of the appropriate appeal official in that agency.

(b) Each appeal to the NARA Privacy Act appeal official must be in writing and must be postmarked no later than 35 calendar days from the date of NARA denial of a request to amend a record. The appeal must bear the legend "Privacy Act—Appeal," both on the face of the letter and the envelope.

(c) Upon receipt of an appeal, the NARA Privacy Act appeal official will consult with the system manager, legal counsel, and such other officials as may be appropriate. If the NARA Privacy Act appeal official, in consultation with these officials, determines that the record should be amended as requested, he or she immediately will instruct the system manager to amend the record in

accordance with § 1202.64 and will notify the requester of that action.

(d) If the NARA Privacy Act appeal official, in consultation with the officials specified in paragraph (c) of this section, determines that the appeal should be rejected, the NARA Privacy Act appeal official immediately will notify the requester in writing of that determination. This action will constitute the NARA final determination on the request to amend the record and will include:

(1) The reasons for the rejection of the appeal;

(2) Proposed alternative amendments, if appropriate, which the requester subsequently may accept in accordance with § 1202.68;

(3) Notice of the requester's right to file a Statement of Disagreement for distribution in accordance with § 1202.72; and

(4) Notice of the requester's right to seek judicial review of the NARA final determination, as provided in § 1202.74.

(e) The NARA final determination will be made no later than 30 workdays from the date on which the appeal is received by the NARA Privacy Act appeal official. In extraordinary circumstances, the NARA Privacy Act appeal official may extend this time limit by notifying the requester in writing before the expiration of the 30 workdays. The NARA Privacy Act appeal official's notification must include a justification for the extension of time.

#### **§ 1202.72 Statements of disagreement.**

Upon receipt of a NARA final determination denying a request to amend a record, the requester may file a Statement of Disagreement with the appropriate system manager. The Statement of Disagreement must include an explanation of why the requester believes the record to be inaccurate, irrelevant, untimely, or incomplete. The system manager will maintain the Statement of Disagreement in conjunction with the pertinent record and will include a copy of the Statement of Disagreement in any disclosure of the pertinent record. The system manager will provide a copy of the Statement of Disagreement to any person or agency to whom the record has been disclosed only if the disclosure was subject to the accounting requirements of § 1202.34.

#### **§ 1202.74 Judicial review.**

Within 2 years of receipt of a NARA final determination as provided in § 1202.48 or § 1202.70, a requester may seek judicial review of that determination. A civil action must be filed in the Federal District Court in

which the requester resides or has his or her principal place of business or in which the NARA records are situated, or in the District of Columbia.

### **Subpart E—Exemptions**

#### **§ 1202.90 Specific exemptions.**

(a)(1) The following systems of records are eligible for exemption under 5 U.S.C. 552a(k)(1) because they contain information specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order.

Accordingly, these systems of records are exempt from the following sections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), and (e)(4)(G) and (H):

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(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because accounting for each disclosure could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(ii) From the access and amendment provisions of subsection (d) because access to the records in these systems of records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy. Amendment of either of these series of records would interfere with ongoing investigations and law enforcement or national security activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(iii) From subsection (e)(1) because verification of the accuracy of all information to the records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(iv) From subsection (e)(4) (G) and (H) because these systems are exempt from the access and amendment provisions of subsection (d) pursuant to subsection (k)(1) of the Privacy Act.

(b)(1) The following system of records is eligible for exemption under 5 U.S.C. 552a(k)(2) because it contains investigatory material compiled for law enforcement purposes other than material within the scope of subsection (j)(2) of 5 U.S.C. 552a. However, if any individual is denied any right, privilege or benefit that 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 will 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 January 1, 1975, under an implied promise that the identity of the source would be held in confidence. Accordingly, the following system of records is exempt from subsections (c)(3), (d), (e)(1) and (e)(4) (G) and (H), and (f) of 5 U.S.C. 552a:

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(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because release of disclosure accounting could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and the fact that they are subjects of the investigation, and reveal investigative interest by not only the Inspector General (OIG), but also by the recipient agency. Since release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, release could result in the destruction of documentary evidence, improper influencing of witnesses, endangerment of the physical safety of confidential sources, witnesses, and law enforcement personnel, the fabrication of testimony, flight of the subject from the area, and other activities that could impede or compromise the investigation. In addition, accounting for each disclosure could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(ii) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, of the existence of that investigation; of the nature and scope of the information and evidence obtained as to his activities; of the identity of confidential sources, witnesses, and law enforcement personnel, and of information that may enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement where they prevent the successful completion of the physical investigation, endanger the physical

safety of confidential sources, witnesses, and law enforcement personnel, and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(iii) From subsection (e)(1) because the application of this provision could impair investigations and interfere with the law enforcement responsibilities of the OIG for the following reasons:

(A) It is not possible to detect relevance or necessity of specific information in the early stages of a civil, criminal or other law enforcement investigation, case, or matter. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(B) During the course of any investigation, the OIG may obtain information concerning actual or potential violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OIG should retain this information, as it may aid in establishing patterns of inappropriate activity, and can provide valuable leads for Federal and other law enforcement agencies.

(C) In interviewing individuals or obtaining other forms of evidence during an investigation, information may be supplied to an investigator which relates to matters incidental to the primary purpose of the investigation but which may relate also to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(iv) From subsection (e)(4) (G) and (H) because this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsection (k)(1) and (k)(2) of the Privacy Act.

(v) From subsection (f) because this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsection (k)(1) and (k)(2) of the Privacy Act.

(c)(1) The following system of records is eligible for exemption under 5 U.S.C. 552a(k)(5) because it contains investigatory material compiled solely for the purpose of determining

suitability, eligibility, or qualifications 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 January 1, 1975, under an implied promise that the identity of the source would be held in confidence. Accordingly, this system of records is exempt from 5 U.S.C. 552a(d)(1).

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(2) Exemptions from the particular subsection is justified as access to records in the system would reveal the identity(ies) of the source(s) of information collected in the course of a background investigation. Such knowledge might be harmful to the source who provided the information as well as violate the explicit or implicit promise of confidentiality made to the source during the investigation. Disclosure might violate the privacy of third parties.

Dated: December 14, 1998.

**John W. Carlin,**

*Archivist of the United States.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 152-0104a FRL-6189-9]

#### Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; Kern County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rules from the Kern County Air Pollution Control District (KCAPCD). This action will remove these rules from the Federally approved SIP. The intended effect of this action is to remove rules from the SIP that are no longer in effect in KCAPCD, in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the removal of these rules from the California SIP under provisions of the CAA regarding EPA action on SIP

submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

**DATES:** This rule is effective on February 19, 1999, without further notice, unless EPA receives adverse comments by January 20, 1999. If EPA receives such comment, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of these rules, along with EPA's evaluation report for each rule, are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted requests for rescission are also available for inspection at the following locations:

Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 M Street, Suite 290, Bakersfield, CA 93303.

**FOR FURTHER INFORMATION CONTACT:** Christine Vineyard, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1197.

#### SUPPLEMENTARY INFORMATION:

##### I. Applicability

The KCAPCD rules being removed from the California SIP include: Rule 404, Particulate Matter Concentration—Valley Basin; Rule 408, Fuel Burning Equipment—Valley Basin, Rule 411.1, Steam-enhanced Crude Oil Production Well Vents; Rule 414.2, Refinery Process Vacuum Producing Devices or Systems; Rule 414.3, Refinery Process Unit Turnaround; and Rule 414.4, Polystyrene Foam Manufacturing. These rules were repealed by KCAPCD on April 6, 1995, and submitted by the California Air Resources Board (CARB) to EPA on May 25, 1995 for removal from the SIP.

##### II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or