

no charge or at a reduced charge, whichever he or she deems to be appropriate.

(2)(i) Where a copy of a record is made available for the first time to the subject of the record or an individual designated by the subject person, then the disclosure officer shall assess no fee.

(ii) In addition, where it is determined that a person, because of special circumstances, is unable to pay the fees prescribed in paragraph (b) of this section, and it is clear that the public interest would be served by providing the requested information free of charge, then no fee shall be charged for such information.

(f) *Authentication of copies.* Requirements pertaining to the certification or attestation under seal of copies of records required to be made available under this part are the same as the requirements for authentication of copies of records under the Freedom of Information Act as set forth in § 70.68 of this chapter.

#### § 70a.12 Penalties.

(a) *General.* (1) This section sets forth criminal sanctions for three violations of the Act:

(i) Unauthorized disclosure,

(ii) Failure to publish a public notice of a system of records subject to the requirements of this part and the Act, and

(iii) Obtaining access to information under false pretenses.

(2) Paragraphs (a)(1) (i) and (ii) of this section apply to employees of the Department, and pursuant to 5 U.S.C. 552a(m), certain contractor personnel for contracts agreed to on or after September 27, 1975.

(b) *Unauthorized disclosure.* Any officer or employee of the Department, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information, the disclosure of which is prohibited by this part, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any matter to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(c) *Failure to give public notice of a system of records.* Any officer or employee of the Department who willfully maintains a system of records without meeting the notice requirements of section (3)(4) of the Act shall be guilty of a misdemeanor and fined not more than \$5,000.

(d) *Obtaining access to information under false pretenses.* Any person who knowingly and willfully requests or obtains any record concerning an individual from the Department of Labor under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

#### § 70a.13 Exemptions.

(a) *General exemption—(1) General.* Section (j) of 5 U.S.C. 552a permits certain agencies within the Department to promulgate rules in accordance with the requirements of sections 553 (b) (1), (2), and (3) (c) and (e) of title 5 U.S.C., to exempt certain systems of records from all the requirements of the Privacy Act except those set forth in paragraph (a)(3) of this section.

(2) *Systems of records which may be exempt pursuant to the general exemption.* Those types of systems of records which may be exempt from certain provisions of the Privacy Act by virtue of section (j) of 5 U.S.C. 552a are those systems which:

(i) Are maintained by an agency, or a component thereof, which performs as its principal function any activity pertaining to the enforcement of criminal laws, and

(ii) Contain information compiled for the purpose of: (A) A criminal investigation, including reports of informants and investigators associated with an identifiable individual, or (B) identifying individual criminal offenders and alleged offenders, and consists only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status.

(3) *Requirements from which systems are exempt under the general exemption.* Those systems of records which qualify for the general exemption are not subject to any provisions of the Privacy Act, nor any of the provisions set forth in this part, except for the following:

§ 70a.13

29 CFR Subtitle A (7-1-98 Edition)

(i) The conditions of disclosure required under paragraph (b) of 5 U.S.C. 552a and §70a.3 of this part.

(ii) The requirements to account for the disclosure of records and maintain an accounting of such disclosures as set forth in sections (c)(1) and (c)(2) of 5 U.S.C. 552a;

(iii) The requirements prescribed in section (e)(4) of 5 U.S.C. 552a to publish annually in the FEDERAL REGISTER notice of the existence and character of systems of records, except that the procedures for: (A) Identifying a record, (B) gaining access to it, (C) contesting its accuracy, and (D) identifying the source of a record, need not be included in such notice;

(iv) The obligation set forth in section (e)(6) of 5 U.S.C. 552a to check for the accuracy, relevance, timeliness, and completeness of records before disclosing such records to any person other than an agency, or to the public pursuant to the Freedom of Information Act;

(v) The requirement restricting the maintenance of records pertaining to an individual's exercise of his First Amendment rights (See section (e)(7) of 5 U.S.C. 552a);

(vi) The requirement to establish rules governing the development, maintenance and safeguarding of systems of records as prescribed in sections (e)(9) and (e)(10) of 5 U.S.C. 552a;

(vii) The requirement to give notice of any new use or intended use of the information contained within a system of records prior to publication pursuant to section (e)(4)(D) of 5 U.S.C. 552a (See section (e)(11) of 5 U.S.C. 552a); and

(viii) The criminal penalties set forth in section (i) of 5 U.S.C. 552a.

(4) *Procedure required to exempt system of records under general exemption.* In order to exempt a system of records described in paragraph (a)(2) of this section from all of the provisions of the Privacy Act, excluding those provisions set forth in paragraph (a)(3) of this section, a notice must be published in the FEDERAL REGISTER in accordance with the rulemaking provisions set forth in paragraph (a)(1) of this section. Such notice shall include at least the following:

(i) The name of the system of records (i.e., the same name used in the annual notice published pursuant to section (e)(4) of 5 U.S.C. 552a, and

(ii) The specific provisions of the Act, and the regulations, from which it is proposed to exempt the system, and the reasons therefor.

(b) *Special exemption*—(1) *General.* The Department, or its component units, may promulgate rules in accordance with sections 553 (b) (1), (2) and (3) (c) and (e) of title 5 U.S.C., to exempt those types of systems of records described in paragraph (b)(2) of this section from the requirements of the Privacy Act, and the regulations of this part, set forth in paragraph (b)(3) of this section.

(2) *Systems of records which may be exempt under special exemption.* The following types of systems of records may be exempt from those provisions of the Privacy Act, and the corresponding provisions of this part, set forth in paragraph (b)(3) of this section.

(i) *Investigatory material compiled for law enforcement purposes.* (A) Systems of records containing solely investigatory material compiled for law enforcement purposes, other than systems within the scope of paragraph (a)(2) of this section, may be exempt to the extent indicated in paragraph (b)(1). However, if any individual is denied any right, privilege, or benefit, that he would otherwise be entitled to 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.

(B) The phrase *investigatory material compiled for law enforcement purposes* is the same as that used in exemption (b)(7) of the Freedom of Information Act.

(C)(1) The phrase *to the extent that the disclosure of such material would reveal the identity of a source* \* \* \* means that

if a record can be disclosed in such a way as to conceal its source, a promise of confidentiality to the source is not sufficient grounds for withholding such a record. In certain cases the contents of records may be such that the identity of the source would be revealed even if the name of the source of other identifying particulars were removed (e.g., where a record contains information that could only have been furnished by one individual known to the subject). In such a case the substance of the record may be withheld to protect the identity of a source and but only to the extent necessary to do so. When any reasonable doubt exists as to whether the disclosure of a record, or a portion thereof, would reveal the identity of a confidential source then such record, or the applicable portions thereof, may be withheld.

(2) In no instance is paragraph (b)(2)(i)(C)(I) of this section to be applied in a manner which deprives an individual from learning of the existence of information maintained in a record about him, even though the information may have been received from a *confidential source*. The fact of the record's existence and, to the maximum extent feasible, a general characterization of that record must be made known to the individual in every case. Furthermore, this section in no way precludes an individual from ascertaining the substance and source of confidential information, should that information be used to deny him a promotion in a Government job, access to classified information, or some other right, benefit or privilege for which he is entitled to bring legal action, when the Government chooses to base any part of its legal case on that information.

(ii) *Records maintained to provide protective services*. Systems of records maintained in connection with providing protective services to the President of the United States, or to other individuals pursuant to section 3056 of title 18 U.S.C., may be exempt as indicated in paragraph (b)(1) of this section. This exemption pertains to systems, the compilation of which are necessary for assuring the safety of individuals protected pursuant to 18 U.S.C. 3056, but are not within the scope of the law en-

forcement records exemption set forth in paragraph (b)(2)(i) of this section.

(iii) *Statistical records*. Systems of records consisting of statistical records which are required by statute to be maintained and used solely for statistical research or reporting purposes, and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 18 U.S.C., may be exempt as indicated in paragraph (b)(1) of this section. The language, *required by statute to be maintained \* \* \* solely*, means that systems of records which qualify for this exemption are those composed exclusively of records, that by statute, are prohibited from being used in any manner associated with the making of a determination about an individual to whom a particular record pertains, not merely that the agency does not use the information for such purposes.

(iv) *Investigatory material compiled for determining suitability for Federal employment*. (A) Systems of records containing only investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information may be exempt as indicated in paragraph (b)(1) of this section, 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, under an implied promise that the identity of the source would be held in confidence.

(B) Paragraph (b)(2)(iv)(A) of this section permits, among other things, the exemption of systems of records from the individual access provisions of the Act, and the corresponding provisions of this part, §§ 70a.4 through 70a.9, when disclosure of the records contained therein would cause the identity of a confidential source to be revealed, but only under the following conditions:

(1) The material must be maintained only for purposes of determining an individual's qualifications, eligibility or suitability for employment in the Federal civilian service, or on a Federal

contract, or for access to classified material. By implication, employment would include appointments to Federal advisory committees or to membership agencies, whether or not salaried;

(2) The material must be relevant and necessary for making a judicious determination as to qualifications, eligibility or suitability of an individual for a particular position, and the information must be of such a nature that it can only be obtained by providing assurance to the source that his or her identity will not be revealed to the subject of the record (e.g., for *critically sensitive positions*); and

(3) The contents of the record, even with the removal of individual identifiers, would reveal the identity of the source.

(C) Regulations issued by the Civil Service Commission establishing procedures for when a pledge of confidentiality is to be made in order to obtain the information described in paragraph (b)(2)(iv)(A) of this section shall be complied with before this exemption is to be employed.

(D) The compilation of investigatory material with regard to Federal contracts pertains not only to investigatory material collected about individuals being considered for employment on an existing Federal contract, but also to investigatory material compiled to evaluate the capabilities of firms competing for Federal contracts.

(c) *Requirements from which systems of records may be exempt under special exemption.* A system of records which meets the requirements of paragraph (b)(2) of this section need not comply with the following provisions of the Privacy Act and the corresponding requirements set forth in this part:

(1) The requirement to make an accounting of a record available to the individual to whom it pertains at his or her request. (See section (c)(3) of 5 U.S.C. 552a);

(2) The requirement for access to records as set forth in section (d) of 5 U.S.C. 552a and §§ 70a.3 through 70a.9 of this part;

(3) The provisions of section (e)(1) of 5 U.S.C. 552a which restricts the contents of records to only such information about an individual as is relevant

and necessary to accomplish the purpose of the agency; and

(4) The provisions of section (e)(4) (G), (H) and (I) of 5 U.S.C. 552a, which require the annual notice of system of records published in the FEDERAL REGISTER to set forth:

(i) The procedures whereby an individual can be notified at his request:

(A) If a system of records contains a record pertaining to him, and

(B) How that person can gain access to any record pertaining to him contained in a system of records, and how he can contest its contents; and

(ii) The categories of sources of records in the system.

(d) *Procedure required to exempt a system of records under special exemption.* In order to exempt a system of records described in paragraph (b)(2) of this section from the provisions of the Privacy Act set forth in paragraph (b)(3) of this section, and the corresponding provisions of this part, notice of intention to exempt must be published in the FEDERAL REGISTER, and such notice shall meet the requirements prescribed in paragraph (a)(4) of this section. The Department of Labor has published notice of intention to exempt the following record systems:

(1) ESA-18, Farm Labor Contractor Employee Records File is exempt under paragraph 3(k)(2) from paragraphs (c)(3), (d), (e)(4), (6), (h) and (f) of 5 U.S.C. 552a. Disclosure of information would enable subjects of the file to take action to prevent detection of illegal activities and could lead to the intimidation of informants, witnesses or their families. Except for information which would reveal the identity of a confidential source, relevant records will be made available only after a determination has been made based upon the information contained therein.

(2) OASA-3, General Investigation File is exempt under paragraphs (3)(j)(2) and 3(k) (2), (3) and (5) of 5 U.S.C. 552a. Information related to criminal investigations [3(j)(2)] is exempt from the provisions of the Act except for the requirements of paragraphs (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10) and (11), and (i). Disclosure of information could enable the subject of the record to take

action to escape prosecution and, in addition, might lead to the intimidation of witnesses, informants or their families. Other material which is exempted under 3(k) (2), (3) and (5) of the Act relates to civil law enforcement investigations, including shared information, files maintained in connection with assisting the U.S. Secret Service to provide protective services to government officials, and investigatory material compiled to determine the suitability, eligibility and qualification of DOL contractors. In the first two instances, the material is exempted from the requirements of paragraphs (c)(3), (d), (e)(4) (G), (H) and (I), and (f) of 5 U.S.C. 552a. Contract investigations are exempt from the provision of (c)(3), (d) and (f). Civil law enforcement material is exempted until such time as a determination is made based upon the information except that information which would reveal the identity of a confidential source will continue to be exempted. Contract information is exempt to the extent that disclosure would reveal the identity of a source when an express pledge of confidentiality has been given or the circumstances indicate that confidentiality has been implied. These exemptions are necessary to preserve the integrity of the investigations and to prevent the intimidation or harassment of informants, witnesses or their families.

(3) LMSA-1, Index Cards, Division of Enforcement relates to investigations under the Labor-Management Reporting and Disclosure Act and E.O. 11441. This system is exempt and paragraphs 3(5)(2) and 3(k)(2) of 5 U.S.C. 552a. Material relating to criminal law enforcement [3(5)(2)] is exempted under paragraphs, (b), (c)(1) and (2), (e)(4) (A) through (F); (e) (6), (7), (9), (10) and (11), and (i) of the Act. Disclosure of this material could enable the subject of the record to evade prosecution and could, in addition, jeopardize the safety and welfare of investigators, witnesses, informants and their respective families. Material related to civil law enforcement [3(k)(2)] is exempt from the provisions of paragraphs (c)(3), (d), (e) (4), (6), (H), and (I), and (f) of 5 U.S.C. 552a. Disclosure would enable the subject to take action to prevent detection of illegal activities or avoid the con-

sequences of violation of the law and, further, could lead to the intimidation or harassment of witnesses, informants, or their families.

(4)-(10) [Reserved]

(11) OSHA-1, Discrimination Complaint File is exempt under paragraph (k)(2) of the Privacy Act from paragraphs (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of 5 U.S.C. 552a. Disclosure of information contained in this file could threaten investigators, witnesses, informants and their families with adverse consequences and could hinder effective enforcement of the Occupational Safety and Health Act. In order to conduct effective investigations it is necessary to guarantee the confidentiality of information being collected. Release of such information would constitute a breach of the guarantee of confidentiality, could lead to the intimidation, harassment or dismissal from employment of those involved, and would discourage those contacted in future investigations from cooperating with investigators.

(e) *Segregation of systems of records.* System of records which may be exempt under paragraphs (a) or (b) of this section shall, to the extent practicable: (1) Be separated from systems of records which are not so exempt, and (2) when it is practicable to exempt only a portion of a system of records, rather than the entire system, then only such portion shall be exempted.

(5 U.S.C. 552a(5), 5 U.S.C. 553, 29 CFR 70a.13)

[42 FR 6106, Feb. 1, 1977, as amended at 43 FR 36070, Aug. 15, 1978]

## PART 75—DEPARTMENT OF LABOR REVIEW AND CERTIFICATION PROCEDURES FOR RURAL INDUSTRIALIZATION LOAN AND GRANT PROGRAMS UNDER THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT OF 1972

Sec.

75.1 Introduction.

75.11 Standards for the review of applications.

AUTHORITY: Sec. 118, Pub. L. 92-419, 86 Stat. 663 (7 U.S.C. 1932).