

National Transportation Safety Board

§ 801.2

PART 801—PUBLIC AVAILABILITY OF INFORMATION

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APPENDIX TO PART 801—FEE SCHEDULE

AUTHORITY: 5 U.S.C. 552; 49 U.S.C. 1101 et seq.; 18 U.S.C. 641 and 2071.

SOURCE: 41 FR 39755, Sept. 16, 1976, unless otherwise noted.

Subpart A—Applicability and Policy

§ 801.1 Applicability.

(a) This part implements the provisions of the Freedom of Information Act (5 U.S.C. 552) as amended by Pub. L. 93-502, November 21, 1974, and the publication and public access requirements embodied in title III of the Independent Safety Board Act of 1974 (88 Stat. 2166 (49 U.S.C. 1901 et seq.)). In addition, it provides for document services and the charges therefor, pursuant to 31 U.S.C. 483a.

(b) This part applies only to records existing when the request for the information is made. The National Transportation Safety Board (Board) is not required to compile or procure records for the sole purpose of making them available hereunder.

(c) Subpart F of this part describes records which are exempt from public disclosure.

§ 801.2 Policy.

In implementing 5 U.S.C. 552, it is the policy of the Board to make information available to the public to the greatest extent possible. Accordingly, all records of the Board, except those that the Board specifically determines must not be disclosed in the national interest, or for the protection of private rights, or for the efficient conduct of public business to the extent permitted by the Freedom of Information Act, are declared to be available for public inspection and copying, as provided in this part. Records are to be made available to the public promptly and to the fullest extent consistent with this policy. No record may be withheld from the public solely because its release might indicate administrative error or embarrass an officer or employee of the Board.

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§ 801.3 Definitions.

Record includes any writing, drawing, map, recording, tape, film, photo, or other documentary material by which information is preserved, and this definition also applies to section 306(a) of the Independent Safety Board Act of 1974, which requires public access to any information. In this part, *document* and *record* shall have the same meaning.

Chairman means the Chairman of the Board.

Managing Director means the Managing Director of the Board.

Subpart B—Administration

§ 801.10 General.

(a) The Director, Bureau of Administration, is responsible for the custody and control of all Board records required to be preserved under directives of the General Services Administration, issued pursuant to 44 U.S.C. 3102.

(b) The Director, Bureau of Administration, shall be solely responsible for the initial determination of whether to release records within the 10 working days' limit, or the extension specified in the Freedom of Information Act.

(c) The Public Inquiries Section, Bureau of Administration, shall:

(1) Maintain for public access and commercial reproduction all accident files containing aviation and surface investigator's reports, factual accident reports or group chairman reports, documentation and accident correspondence files, transcripts of public hearings, if any, and exhibits.

(2) Maintain a public reference room (with self-service duplicator) and, on request, permit the public to inspect public documents during normal working hours.

(3) Maintain copies of public documents, specified in the appendix, for inspection and copying in the public reference room.

(d) Requests for documents must be addressed to the Public Inquiries Section, National Transportation Safety Board, Washington, DC 20594. All requests must reasonably identify the record requested, must be accompanied by the fee or agreement (if any) to pay the reproduction costs shown in the fee

schedule (see appendix), and must contain the address and telephone number of the person making the request. The envelope in which the request is sent should be marked prominently with the letters "FOIA." The Bureau of Administration, if there is a failure to comply fully, will attempt to contact the requester immediately to rectify the omission. However, the 10-working-day limit for processing shall not commence until the Bureau of Administration receives a totally correct request.

(e) The field offices of the Board shall not maintain, for public access, records maintained by the Bureau of Administration. If requests are made to field offices, advice will be promptly given as to how to make such requests.

(f) The Bureau of Administration shall maintain a contract with a commercial reproduction firm to accommodate requests for reproduction of accident records. The reproduction charges may be subject to change with each contract renewal.

(g) Requests for documents generated by other agencies or entities will not be processed unless they are contained in the Board's accident files.

(h) Requests for records not yet issued will be held in abeyance until issuance and then processed. The person making the request will be so notified.

(i) No charge will be made by the Board for notices, decisions, orders, etc., required by law to be served on a party to any proceeding or matter before the Board.

(j) Upon approval of the Director, Bureau of Administration, subscriptions to Board publications may be entered without charge for States, organizations, or other entities specified in the fee schedule set forth in the appendix.

§ 801.11 Segregability of records.

The initial decision of the Director, Bureau of Administration shall include a determination of segregability. If it is reasonable to do so, the exempt portions will be deleted and the non-exempt portions will be sent to the requester.

§ 801.12 Protection of records.

(a) No person may, without permission, remove from the place where it is

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made available any record made available to him for inspection or copying. Stealing, altering, mutilating, obliterating, or destroying, in whole or in part, such a record shall be deemed a crime.

(b) Section 641 of title 18 of the U.S.C. provides, in pertinent part, as follows:

“Whoever * * * steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record * * * or thing of value of the United States or of any department or agency thereof * * * Shall be fined not more than \$10,000 or imprisoned not more than ten years or both; but if the value of such property does not exceed the sum of \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both. * * *”

(c) Section 2071(a) of title 18 of the U.S.C. provides, in pertinent part, as follows:

“(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other things, filed or deposited * * * in any public office, or with any * * * public officer of the United States, shall be fined not more than \$2,000 or imprisoned not more than three years, or both.”

Subpart C—Time Limits

§ 801.20 Initial determination.

An initial determination as to whether to release a record shall be made by the Director, Bureau of Administration within 10 working days (excluding Saturdays, Sundays, and legal public holidays) after the request is received, except that this time limit may be extended up to 10 additional working days in accordance with § 801.22, of this part. The person making the request will be notified immediately in writing of such determination. If such determination is to release the requested record, such record shall be made available promptly. If such determination is made not to release the record, the person making the request shall, when he is notified of such determination, be advised of (a) the reason for the determination, (b) the right to appeal the determination, and (c) the name and title or positions of each person responsible for the denial of the request.

§ 801.21 Final determination.

A determination with respect to any appeal made pursuant to § 801.20, shall be made by the Managing Director within 10 working days (excluding Saturdays, Sundays, and legal public holidays) after receipt of such appeal, except that this time limit may be extended for as many as 10 additional working days, in accordance with § 801.22.

§ 801.22 Extension.

In unusual circumstances as specified in this section, the time limits prescribed in either, but not both, § 801.20 or § 801.21, may be extended by written notice to the person making a request and setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. Such notice shall not specify a date that would result in an extension for more than 10 working days. As used in this paragraph, “unusual circumstances,” to the extent reasonably necessary to the proper processing of the particular request, means—

(a) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Bureau of Administration;

(b) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(c) The need to consult with another agency which has a substantial interest in the disposition of the request or with two or more components of the agency having substantial subject-matter interest therein.

Subpart D—Accident Investigation Records

§ 801.30 Field aircraft accident investigations.

Upon completion of the field investigation (normally 60 days after the accident), the Board's investigator-in-charge shall complete a factual report (with documentation) and send it to the Director, Bureau of Administration, who shall then make the record available to the public for inspection

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or commercial copy order (see appendix).

§ 801.31 Major aircraft accident investigations.

Upon completion of the investigation by a team of Board investigators (normally 60 days after the accident), the report of each investigator (group chairman), with documentation, shall be sent to the Director, Bureau of Administration, who shall make these records available to the public for inspection and commercial copy order (see appendix).

§ 801.32 Aircraft accident public hearings.

Within approximately 2 weeks after a public hearing concerning an aviation accident, the Director, Bureau of Administration, shall make available to the public for inspection or commercial copy order, the hearing transcript and the exhibits introduced at the hearing (see appendix).

§ 801.33 Surface transportation accident investigations.

Upon completion of the Board's investigation of these accidents (normally 60 days after the accident), the investigators shall send to the Director, Bureau of Administration, a file of the documentation obtained. This file shall then be made available by the Bureau of Administration, for public access or commercial copy order (see appendix).

§ 801.34 Surface accident public hearings.

Within approximately 2 weeks after a surface accident public hearing, the Bureau of Administration shall make available for public inspection and commercial copy order, the hearing transcript and exhibits introduced at the hearing.

§ 801.35 Aviation accident reports.

(a) The Board shall report the facts, conditions, and circumstances, and its determination of the cause or probable cause of all U.S. civil aviation accidents approximately 6 months after each accident occurs. All such reports shall be provided by computer print-

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out, published periodically as "Briefs of Accidents."

(b) All major or catastrophic air carrier accidents and noncatastrophic accidents, involving both air carriers and general aviation, which provide unusually significant safety issues shall be reported by the Board in detailed, narrative format. The formal, narrative report shall provide the facts, conditions, and circumstances, and the Board's determination of the cause or probable cause of the accident; the report shall be issued approximately 6 months after date of accident.

(c) After notice of issuance appears in the FEDERAL REGISTER, as required by section 304(a)(2) of the Independent Safety Board Act of 1974, the report shall be made available for public inspection in the Board's public reference room. (See appendix for copies and subscriptions.)

§ 801.36 Surface transportation accident reports.

Any surface transportation accident investigated by the Board, and certain marine accidents investigated by the U.S. Coast Guard, shall result in a formal Board report. Such report shall provide the facts, conditions, circumstances, and the Board's determination of cause or probable cause of the accident. Reports of accidents investigated by the Board shall be issued approximately 6 months after the date of accident. After notice of issuance appears in the FEDERAL REGISTER, as required by section 304 (a)(2) of the Independent Safety Board Act of 1974, the report shall be made available for public inspection in the Board's public reference room. (See appendix for copies and subscriptions.)

Subpart E—Other Board Documents

§ 801.40 The Board's rules.

The Board's rules are published in the Code of Federal Regulations as parts 800 through 899 of this title 49. Reprints of each part are maintained by the Bureau of Administration and are available on request without cost.

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§ 801.41 Transportation safety recommendations.

All transportation safety recommendations issued by the Board, and responses thereto, shall be noticed in the FEDERAL REGISTER as required by section 307 of the Independent Safety Board Act of 1974, and thereafter shall be made available for inspection or copying in the Board's public reference room. (See appendix for copies and subscriptions.)

§ 801.42 Indexes to aviation and maritime enforcement cases.

(a) Pursuant to the Freedom of Information Act, as amended, a quarterly index to the initial decisions of the Board's administrative law judges shall be made available for inspection or copying in the Board's public reference room. (See appendix for subscription to initial decisions.)

(b) Pursuant to the Freedom of Information Act, as amended, a quarterly index to the Board's opinions and orders in aviation and maritime safety enforcement cases shall be made available for inspection or copying in the Board's public reference room. (See appendix for subscription to opinions and orders and availability of bound National Transportation Safety Board Decisions.)

§ 801.43 Administrative staff manuals and instructions and indexes that affect the public.

The index to staff manuals which are not exempt from public disclosure, as set forth in Subpart F, shall be available in the Board's public reference room (see appendix).

§ 801.44 Reports to Congress.

The Board's annual report to Congress, which is required under section 305 of the Independent Safety Board Act of 1974, shall be submitted on July 1 of each year. It may be purchased from the Government Printing Office or inspected in the Board's public reference room. All other reports or comments to Congress shall be available in the Board's public reference room for inspection or by ordering a copy after issuance.

§ 801.45 Other records.

The working files of the Board contain a limited number of records which may not be exempt, in whole or in part, from public disclosure as set forth in Subpart F of this part. Such records shall be made available upon request. Requests for such documents should be made directly to the head of the unit concerned, as set forth in § 801.10(j), and should contain a reasonable description of the specific record desired.

§ 801.46 Special document services.

(a) Although not required by the Freedom of Information Act, the Board provides document services at charges required by 31 U.S.C. 483a, as described in the appendix.

Subpart F—Exemption From Public Disclosure

§ 801.50 General.

This subpart implements section 552 (b) of title 5, United States Code. Section 552 (a) and (b) exempt certain records from public inspection. The Board will, however, release a record authorized to be withheld under section 552(b) unless it determines that the release of that record would be inconsistent with the purpose of the exemption concerned. Examples of records given in §§ 801.51 through 801.58 included within a particular statutory exemption are not necessarily illustrative of all types of records covered by the exemption.

§ 801.51 National defense and foreign policy secrets.

National defense and foreign policy secrets established by Executive Order, and properly classified, are exempt from public disclosure. Requests to the Board for such records will be transferred to the source agency as appropriate. (Executive Orders 11652, March 8, 1972; 10865, February 20, 1960; and 10104, February 1, 1950.)

§ 801.52 Internal personnel rules and practices of the Board.

(a) Records relating solely to internal personnel rules and practices that are within the statutory exemptions

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include memoranda pertaining to personnel matters such as staffing policies, and procedures for the hiring, training, promotion, demotion, or discharge of employees, and management plans, records, or proposals relating to labor-management relations.

(b) The purpose of this section is to protect any records relating to internal personnel rules and practices dealing with the relations between Board management and employees.

§ 801.53 Records exempt by statute from disclosure.

This exemption applies to records specifically exempted from disclosure by statute (other than 5 U.S.C. 552b): *Provided*, That such statute (a) requires that the matters be withheld from the public in such manner as to leave no discretion on the issue, or (b) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(Authority: 5 U.S.C. 552b)

[42 FR 13284, Mar. 10, 1977]

§ 801.54 Interagency and intra-agency exchanges.

(a) Any record prepared by a Board employee for internal Government use is within the statutory exemption to the extent that it contains—

(1) Opinions made in the course of developing official action by the Board but not actually made a part of that official action, or

(2) Information concerning any pending Board proceeding, or similar matter, including any claim or other dispute to be resolved before a court of law, administrative board, hearing officer, or contracting officer.

(b) The purpose of this section is to protect the full and frank exchange of ideas, views, and opinions necessary for the effective functioning of the Government. These resources must be fully and readily available to those officials upon whom the responsibility rests to take official Board action. Its purpose is also to protect against the premature disclosure of material that is in the developmental stage, if premature disclosure would be detrimental to the authorized and appropriate purposes for which the material is being used, or

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if, because of its tentative nature, the material is likely to be revised or modified before it is officially presented to the public.

(c) Examples of materials covered by this section include staff papers containing advice, opinions, or suggestions preliminary to a decision or action; advance information on such things as proposed plans to procure, lease, or otherwise hire and dispose of materials, real estate, or facilities; documents exchanged preparatory to anticipated legal proceedings; material intended for public release at a specified future time, if premature disclosure would be detrimental to orderly processes of the Board; records of inspections, investigations, and surveys pertaining to internal management of the Board; and matters that would not be routinely disclosed in litigation but which are likely to be the subject of litigation.

§ 801.55 Unwarranted invasion of personal privacy.

Any personal, medical, or similar file is within the statutory exemption if its disclosure would harm the individual concerned or would be a clearly unwarranted invasion of his personal privacy. This also applies to financial statements furnished by Board Members and employees and to commercial or financial information customarily subjected to an attorney-client or similar privilege.

§ 801.56 Records compiled for law enforcement purposes.

This exemption from public disclosure applies to records compiled for law enforcement, but only to the extent that disclosure would interfere with enforcement, would be an unwarranted invasion of privacy, would disclose the identity of a confidential source, would disclose investigative procedures and practices, or would endanger the life or security of law enforcement personnel.

§ 801.57 Records for regulation of financial institutions.

Records compiled for agencies regulating or supervising financial institutions are exempt from public disclosure.

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§ 801.58 Geological records.

Records concerning geological wells are exempt from public disclosure.

§ 801.59 Trade secrets and commercial or financial information.

Trade secrets and commercial or financial information obtained from a person and privileged or confidential are exempt from public disclosure.

[42 FR 13284, Mar. 10, 1977]

APPENDIX TO PART 801—FEE SCHEDULE

1. Fees (pursuant to 31 U.S.C. 483a). Upon request, services relating to public documents are available at the following fees:

A. Publications

(1) The response to public requests for the following NTSB publications are handled by the National Technical Information Service (NTIS). The following publications are available through single copies or annual subscriptions and may be purchased in paper copy or 98 page per film microfiche (fees are subject to change by NTIS):

| | Single copies | Calendar year subscription | Microfiche |
|---|---------------|----------------------------|------------|
| PB84-910400 Aircraft Accident Reports | \$5.00 | \$55.00 | (1) |
| PB84-916200 Highway Accident Reports | (1) | 50.00 | (1) |
| PB84-916300 Railroad Accident Reports | (1) | 55.00 | (1) |
| PB84-916400 Marine Accident Reports | (1) | 60.00 | (1) |
| PB84-916500 Pipeline Accident Reports | (1) | 45.00 | (1) |
| PB84-916900 Aviation Accident Briefs | (1) | 160.00 | (1) |
| PB84-917100 Highway Accident Briefs | 12.50 | (2) | (1) |
| PB84-917200 Railroad Accident Briefs | 12.50 | (2) | (1) |
| PB84-917300 Marine Accident Briefs | 10.00 | (2) | (1) |
| PB84-917400 Pipeline Accident Briefs | 10.00 | (2) | (1) |
| PB84-916600 Transportation Safety Recommendations | (1) | 55.00 | (1) |
| PB84-916700 Transportation Initial Decisions and Orders and Board Opinions & Orders | (1) | 200.00 | (1) |
| PB84-917000 Transportation Special Reports ³ | (1) | 50.00 | (1) |

¹ Variable prices based on number of pages; contact NTIS for price quote.

² Highway, Railroad, Marine and Pipeline brief subscriptions are available by standing order only and require an NTIS deposit account (they are issued at irregular intervals, and charges at single copy rates will be made only as reports are distributed).

³ Transportation Special Reports [this category includes all forms of Safety Studies (formerly titled Special Studies, and Safety Effectiveness Evaluations), Special Investigation Reports, and Railroad/Highway Accident Reports].

(2) Send publication orders for the above documents to the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, identifying each subscription by the NTSB Report Number or the NTIS accession number. Telephone (703) 487-4630 (annual subscriptions) or (703) 487-4650 (single copies or microfiche). The NTSB Report Number and the NTIS accession number can be obtained from the NTSB Public Inquiries Section.

B. Access to transportation accident files (all modes). All files dated prior to January 1, 1978, are in hard copy form and are maintained in the Federal Records Center. Files dated January 1, 1978, to present are maintained in microfiche at the NTSB headquarters. All documents in the Board's public files may be examined, without charge, in the Board's public reference room, located in the Public Inquiries Section, Room 805F, 800 Independence Avenue, SW., Washington, DC, telephone (202) 382-6735. A self-service duplicator in the reference room is available for use by the public at a nominal cost. Usually, two weeks' time is required to service a request for reproduction. Filing any request for reproduction of a file that must be retrieved from the Federal Records Center will require two additional weeks.

(1) Availability of accident files. All transportation mode accident files are retained in accordance with the following schedule:

a. Air carrier accident files and all public hearing files are retained for a period of fifteen (15) years and then destroyed.

b. All other transportation accident files are retained for a period of seven (7) years and then destroyed.

(2) Reproduction of accident files. Reproduction of accident files (statements, photographs, hearing transcripts, and other material contained in the Board's accident investigation files) is provided by commercial contractor. Reproduction of printed matter and photographs are made from the best copy available. Requests must be forwarded to the Public Inquiries Section, National Transportation Safety Board, Washington, DC 20594. The contractor may bill and/or require full payment before duplicating the requested documents. Fees are subject to change depending upon the terms of the Board's annual contract.

Current fees are:

- a. Microfiche Duplicate, \$1.65
- b. Microfiche Blowback, .11
- c. Aperture Card Blowback, 1.40
- d. Photographs (from aperture card):
 - 8"x10" B&W Glossy Print, 1.65
 - 8"x10" Color Prints, 2.75
 - 5"x7" Color Prints, 2.47
 - 3½"x5" Color Prints, 2.47

- e. Hardcopy Reproduction:
 8½"x11" .14
 8½"x14" .10
 10"x14" .05
 Oversized Pages (Larger than 10"x14"), .03/sq. in.
- f. Photographs (from prints):
 8"x10" B&W Glossy Prints, 1.65
 8"x10" Color Prints, 2.75
 5"x7" Color Prints, 2.47
 3½"x5" Color Prints, 2.47
 2"x2" Color Slides, 2.47
- g. Minimum Order Complete File, 1.00
 h. Preliminary Report (only), 1.35
 i. Probable Cause (only), 1.35

C. Request for other Board information. Requests for any other Board information such as files on safety recommendations, safety studies, Board orders, Board opinions and orders, and initial decisions are available at a cost of 14 cents per page(s) (\$1.00 minimum charge). These services are provided by a public contractor who may prebill or require full payment before duplicating the requested documents. Requests must be forwarded to the Public Inquiries Section, National Transportation Safety Board, Washington, DC 20594.

D. Reproduction services through the commercial contractor are handled as follows:

Step 1: Requestor places written or telephone order with the Board's Public Inquiries Section for desired documents.

Step 2: The Public Inquiries Section identifies the documents and forwards the request to the contractor.

Step 3: The contractor provides the requestor with an invoice showing the actual costs for the service requested plus postage.

Step 4: Requestor returns a copy of the contractor's invoice with full payment enclosed. Requestor has the option of opening a charge account with the contractor, and contractor will accept major credit cards. (Contractor must respond to request within five working days after receipt of payment.)

Step 5: Contractor reproduces documents and mails them directly to the requestor.

E. Expedited service. A \$2.25 surcharge will be made for expedited service which will be provided within 2 working days commencing when the contractor receives advance payment or other arrangements have been made with the contractor.

F. A fee of \$4.00 will be charged for certification of documents under the Board's seal.

G. Computer tapes and services for aviation accidents. The duplication of computer tapes (or a portion thereof) will be made on requestor supplied magnetic tape for a fee of \$40.00. The requestor must provide a 2,400-foot magnetic tape certified to at least 1,600 bits per inch. Computer tape requests should be addressed to the Public Inquiries Section, National Transportation Safety Board, Washington, DC 20594.

H. The basic fees set forth provide for ordinary first-class postage prepaid. If registered, certified, air, or special delivery mail is requested, postal fees therefor will be added to the basic fee. Also, if special handling or packaging is required, the cost will be added to the basic fee.

2. Services available free of charge.

A. The following documents are available without commercial reproduction cost until limited supplies are exhausted:

(1) Press releases,

(2) Safety Board regulations (chapter VIII of title 49, Code of Federal Regulations),

(3) Indexes to initial decisions, Board orders, opinion and orders, and staff manuals and instructions,

(4) Safety recommendations, and

(5) NTSB Annual Report.

B. NTSB News Digest. The News Digest describes NTSB activities and summarizes certain publications. The News Digest is free, and anyone who is interested in being added to this mailing list should contact the Public Inquiries Section, National Transportation Safety Board, Washington, DC 20594.

3. Documents search fee—The Board has determined that it is in the public interest to eliminate fees for the first hour of search time. For all time expended in locating documents beyond the initial hour, the fee is \$5.00 per hour.

4. Publication, reproduction, and search fees are waived for qualifying foreign countries, international organizations, nonprofit public safety entities, State and Federal transportation agencies, and colleges and universities, after approval by the Director, Bureau of Administration. In addition, fees may be waived or reduced for other requestors not in any of the foregoing categories, when it is determined by the Director, Bureau of Administration that a waiver is appropriate and would contribute to the Board's programs.

(5 U.S.C. 552, 31 U.S.C. 483a, and 49 U.S.C. 1901 et seq.)

[49 FR 4496, Feb. 7, 1984]

PART 802—RULES IMPLEMENTING THE PRIVACY ACT OF 1974

Subpart A—Applicability and Policy

Sec.

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802.6 Types of requests and specification of records.