

**§ 14.12 Principal types of unallowable claims.**

Claims that ordinarily will not be allowed include:

- (a) Loss or damage totaling less than \$25;
- (b) Money or currency, except when deposited with an authorized government agency for safekeeping;
- (c) Loss or damage to an item of extraordinary value or to an antique where the item was shipped with household goods, unless the employee filed a valid appraisal or authentication with the carrier prior to shipment of the item;
- (d) Loss of bankbooks, checks, notes, stock certifications, money orders, or travelers checks;
- (e) Property owned by the United States unless the employee is financially responsible for it to another government agency;
- (f) Claims for loss or damage to a bicycle or a private motor vehicle, unless allowable under § 14.11(b)(6);
- (g) Losses of insurers or subrogees;
- (h) Losses recoverable from insurers or carriers;
- (i) Losses recovered or recoverable pursuant to contract;
- (j) Claims for damage or loss caused, in whole or in part, by the negligent or wrongful acts of the employee or his/her agent;
- (k) Property used for personal business or profit;
- (l) Theft from the possession of the employee unless the employee took reasonable precautions to protect the item from theft;
- (m) Property acquired, possessed or transported in violation of law or regulations;
- (n) Unserviceable property; or
- (o) Damage or loss to an item during shipment of household goods where the damage or loss was caused by the employee's negligence in packing the item.

**§ 14.13 Items fraudulently claimed.**

Where the EPA Claims Officer determines that an employee has intentionally misrepresented the cost, condition, cost of repair or a material fact concerning a claim, he/she may, at his discretion, deny the entire amount claimed for the item. Further, where

the EPA Claims Officer determines that the employee intentionally has materially misrepresented the costs, conditions or nature of repairs of the claim, he will refer it to appropriate officials (e.g., Inspector General, the employee's supervisor, etc.) for action.

**§ 14.14 Computation of award.**

(a) The amount awarded on any item may not exceed its adjusted cost. Adjusted cost is either the purchase price of the item or its value at the time of acquisition, less appropriate depreciation. The amount normally payable for property damaged beyond economical repair is its depreciated value immediately before the loss or damage, less any salvage value. If the cost of repair is less than the depreciated value, it will be considered to be economically repairable and only the cost of repair will be allowable.

(b) Notwithstanding a contract to the contrary, the representative of an employee is limited by 31 U.S.C. 3721(i) to receipt of not more than 10 percent of the amount of an award under this part for services related to the claim. A person violating this paragraph is subject to a fine of not more than \$1,000. 31 U.S.C. 3721(i).

**PART 16—IMPLEMENTATION OF PRIVACY ACT OF 1974**

Sec.

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AUTHORITY: 5 U.S.C. 552a.

## § 16.1

SOURCE: 40 FR 53582, Nov. 19, 1975, unless otherwise noted.

### § 16.1 Purpose and scope.

(a) This part sets forth the Environmental Protection Agency procedures under the Privacy Act of 1974 as required by 5 U.S.C. 552a(f).

(b) These procedures describe how an individual may request notification of whether EPA maintains a record pertaining to him or her in any of its systems of records, request access to the record or to an accounting of its disclosure, request that the record be amended or corrected, and appeal an initial adverse determination concerning any such request.

(c) These procedures apply only to requests by individuals and only to records maintained by EPA, excluding those systems specifically exempt under §§ 16.13 and 16.14 and those determined as government-wide and published by the Civil Service Commission in 5 CFR parts 293 and 297.

### § 16.2 Definitions.

As used in this part:

(a) The terms *individual*, *maintain*, *record*, *system of records*, and *routine use* shall have the meaning given them by 5 U.S.C. 552a (a)(2), (a)(3), (a)(4), (a)(5) and (a)(7), respectively.

(b) *EPA* means the Environmental Protection Agency.

(c) *Working days* means calendar days excluding Saturdays, Sundays, and legal public holidays.

### § 16.3 Procedures for requests pertaining to individual records in a record system.

Any individual who wishes to have EPA inform him or her whether a system of records maintained by EPA contains any record pertaining to him or her which is retrieved by name or personal identifier, or who wishes to request access to any such record, shall submit a written request in accordance with the instructions set forth in EPA's annual notice of systems for that system of records. This request shall include:

(a) The name of the individual making the request;

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(b) The name of the system of records (as set forth in the EPA notice of systems) to which the request relates;

(c) Any other information which the system notice indicates should be included; and

(d) If the request is for access, a statement as to whether a personal inspection or a copy by mail is desired.

### § 16.4 Times, places, and requirements for identification of individuals making requests.

(a) If an individual submitting a request for access under § 16.3 has asked that EPA authorize a personal inspection of records, and EPA has granted the request, he or she may present himself or herself at the time and place specified in EPA's response or arrange another time with the appropriate agency official.

(b) Prior to inspection of records, an individual shall present sufficient identification (e.g., driver's license, employee identification card, social security card, credit card) to establish that he or she is the individual to whom the records pertain. An individual who is unable to provide such identification shall complete and sign, in the presence of an agency official, a statement declaring his or her identity and stipulating that he or she understands it is a misdemeanor punishable by fine up to \$5,000 to knowingly and willfully seek or obtain access to records about another individual under false pretenses.

(c) If an individual, having requested personal inspection of his or her records, wishes to have another person accompany him or her during inspection, he or she shall submit a written statement authorizing disclosure in the presence of the other person(s).

(d) An individual who has made a personal inspection of records may then request copies of those records. Such requests may be granted, but fees may be charged in accordance with § 16.11.

(e) If an individual submitting a request under § 16.3 wishes to have copies furnished by mail, he or she must include with the request sufficient data to allow EPA to verify his or her identity. Should sensitivity of the records

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warrant it, EPA may require a requester to submit a signed and notarized statement indicating that he or she is the individual to whom the records pertain and that he or she understands it is a misdemeanor punishable by fine up to \$5,000 to knowingly and willfully seek or obtain access to records about another individual under false pretenses. Such mail requests may be granted, but fees may be charged in accordance with § 16.11.

(f) No verification of identity will be required where the records sought are publicly available under the Freedom of Information Act, as EPA procedures under 40 CFR part 2 will then apply.

### § 16.5 Disclosure of requested information to individuals.

(a) Each request received will be acted upon promptly.

(b) Within 10 working days of receipt of a request, the system manager shall acknowledge the request. Whenever practicable, the acknowledgment will indicate whether or not access will be granted and, if so, when and where. When access is to be granted, it shall be provided within 30 working days of first receipt. If the agency is unable to meet this deadline, the records system manager shall so inform the requester stating reasons for the delay and an estimate of when access will be granted.

(c) If a request pursuant to § 16.3 for access to a record is in a system of records which is exempted, the records system manager will determine whether the information will nonetheless be made available. If the determination is to deny access, the reason for denial and the appeal procedure will be given to the requester.

(d) Any person whose request is initially denied may appeal that denial to the Privacy Act Officer, who shall make an appeal determination within 10 working days.

(e) If the appeal under paragraph (d) of this section is denied, the requester may bring a civil action under 5 U.S.C. 552a(g) to seek review of the denial.

### § 16.6 Special procedures: Medical records.

Should EPA receive a request for access to medical records (including psychological records) disclosure of which

the system manager determines would be harmful to the individual to whom they relate, EPA may refuse to disclose the records directly to the individual and instead offer to transmit them to a physician designated by the individual.

### § 16.7 Request for correction or amendment of record.

(a) An individual may request correction or amendment of any record pertaining to him or her in a system of records maintained by EPA by submitting to the system manager, in writing, the following:

(1) The name of the individual making the request;

(2) The name of the system, as described in the notice of systems;

(3) A description of the nature and substance of the correction or amendment request; and

(4) Any additional information specified in the system notice.

(b) Any person submitting a request under this section shall include sufficient information in support of that request to allow EPA to apply the standards set forth in 5 U.S.C. 552a (e)(1) and (e)(5).

(c) Any person whose request is denied may appeal that denial to the Privacy Act Officer.

(d) In the event that appeal is denied, the requester may bring a civil action to seek review of the denial, under 5 U.S.C. 552a(g).

### § 16.8 Initial determination on request for correction or amendment of record.

(a) Within 10 working days of receipt of a request for amendment or correction, the system manager shall acknowledge the request, and promptly either:

(1) Make any correction, deletion, or addition which the requester believes should be made; or

(2) Inform the requester of his or her refusal to correct or amend the record, the reason for refusal, and the procedures for appeal.

(b) If the system manager is unable to comply with the preceding paragraphs within 30 working days of his or her receipt of a request, he or she will inform the requester of that fact, the

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reasons, and an estimate of when a determination will be reached.

(c) In conducting the review of the request, the system manager will be guided by the requirements of 5 U.S.C. 552a (e)(1) and (e)(5).

(d) If the system manager determines to grant all or any portion of the request, he or she will:

(1) Advise the individual of that determination;

(2) Make the correction or amendment;

(3) So inform any person or agency outside EPA to whom the record has been disclosed, and, where an accounting of that disclosure is maintained in accordance with 5 U.S.C. 552a(c), note the occurrence and substance of the correction or amendment in the accounting.

(e) If the system manager determines not to grant all or any portion of a request for correction or amendment, he or she will:

(1) Comply with paragraph (d)(3) of this section (if necessary);

(2) Advise the individual of the determination and its basis;

(3) Inform the individual that an appeal may be made; and

(4) Describe the procedures for making the appeal.

(f) If EPA receives from another Federal agency a notice of correction or amendment of information furnished by that agency and contained in one of EPA's systems of records, the system manager shall advise the individual and make the correction as if EPA had originally made the correction or amendment.

### **§ 16.9 Appeal of initial adverse agency determination on request for correction or amendment.**

(a) Any individual whose request for correction or amendment is initially denied by EPA and who wishes to appeal may do so by letter to the Privacy Act Officer. The appeal shall contain a description of the initial request sufficient to identify it.

(b) The Privacy Act Officer shall make a final determination not later than 30 working days from the date on which the individual requests the review, unless, for good cause shown, the Privacy Act Officer extends the 30-day

period and notifies the requester. Such extension will be utilized only in exceptional circumstances.

(c) In conducting the review of an appeal, the Privacy Act Officer will be guided by the requirements of 5 U.S.C. 552a (e)(1) and (e)(5).

(d) If the Privacy Act Officer determines to grant all or any portion of an appeal he or she shall so inform the requester and EPA shall make the correction or amendment and comply with § 16.8(d)(3).

(e) If the Privacy Act Officer determines not to grant all or any portion of an appeal he or she shall inform the requester:

(1) Of the determination and its basis;

(2) Of the requester's right to file a concise statement of reasons for disagreeing with EPA's decision;

(3) Of the procedures for filing such statement of disagreement;

(4) That such statements of disagreements will be made available in subsequent disclosures of the record, together with an agency statement (if deemed appropriate) summarizing its refusal;

(5) That prior recipients of the disputed record will be provided with statements as in paragraph (e)(4) of this section, to the extent that an accounting of disclosures is maintained under 5 U.S.C. 552a(c); and

(6) Of the requester's right to seek judicial review under 5 U.S.C. 552a(g).

### **§ 16.10 Disclosure of record to person other than the individual to whom it pertains.**

EPA shall not disclose any record which is contained in a system of records it maintains except pursuant to a written request by, or with the written consent of, the individual to whom the record pertains, unless the disclosure is authorized by one or more of the provisions of 5 U.S.C. 552a(b).

### **§ 16.11 Fees.**

No fees shall be charged for providing the first copy of a record or any portion to an individual to whom the record pertains. The fee schedule for reproducing other records is the same as that set forth in 40 CFR 2.120.

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### § 16.12 Penalties.

The Act provides, in pertinent part: “Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.” (5 U.S.C. 552a(i)(3).)

### § 16.13 General exemptions.

#### (a) *Systems of records affected.*

¶EPA-4 OIG Criminal Investigative Index and Files—EPA/OIG.

¶EPA-17 NEIC Criminal Investigative Index and Files—EPA/NEIC/OCI.

(b) *Authority.* Under 5 U.S.C. 552a(j)(2), the head of any agency may by rule exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, if the system of records is maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws and which consists of:

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

(c) *Scope of exemption.* (1) The EPA-4 system of records identified in §16.13(a) is maintained by the Office of Investigations of the Office of Inspector General (OIG), a component of EPA which performs as its principal function activities pertaining to the enforcement of criminal laws. Authority for the criminal law enforcement activities of the OIG’s Office of Investigations is the Inspector General Act of 1978, 5 U.S.C. app.

(2) The EPA-17 system of records identified in §16.13(a) is maintained by the Office of Criminal Investigations

(OCI) of the National Enforcement Investigations Center (NEIC), a component of EPA which performs as its principal function activities pertaining to the enforcement of criminal laws. Authority for the criminal law enforcement activities of the NEIC’s Office of Criminal Investigations is 28 U.S.C. 533, with appointment letter from Benjamin Civiletti, Attorney General, to Douglas Costle, Administrator, EPA, dated January 16, 1981.

(3) The systems of records identified in §16.13(a) are exempted from the following provisions of the Privacy Act of 1974: 5 U.S.C. 552a (c)(3) and (4); (d); (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8); (f); and (g).

(4) To the extent that the exemption claimed under 5 U.S.C. 552a(j)(2) is held to be invalid for the systems of records identified in §16.13(a), then an exemption under 5 U.S.C. 552a(k)(2) is claimed for these systems of records.

(d) *Reasons for exemption.* The systems of records identified in §16.13(a) are exempted from the above provisions of the Privacy Act of 1974 for the following reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(2) 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of the Act. Since EPA is claiming that these

systems of records are exempt from subsection (d) of the Act, concerning access to records, this section is inapplicable and is exempted to the extent that these systems of records are exempted from subsection (d) of the Act.

(3) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him, to request amendment to such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting access to records in these systems of records could inform the subject of an investigation of an actual or potential criminal 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 could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony, and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified, security-sensitive, or confidential business information and could constitute an unwarranted invasion of the personal privacy of others.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by executive order of the President. The application of this provision could impair investigations and law enforcement, because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often 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. In addition, during the course of the in-

vestigation, the investigator may obtain information which is incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation, the investigator may obtain information concerning the violation of laws other than those which are within the scope of his jurisdiction. In the interest of effective law enforcement, the EPA investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for other law enforcement agencies.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision could impair investigations and law enforcement by alerting the subject of an investigation of the existence of the investigation, enabling the subject to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Moreover, in certain circumstances the subject of an investigation cannot be required to provide information to investigators, and information must be collected from other sources. Furthermore, it is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

(6) 5 U.S.C. 552a(e)(3) requires an agency to inform each person whom it asks to supply information, on a form that can be retained by the person, of the authority under which the information is sought and whether disclosure is mandatory or voluntary; of the principal purposes for which the information is intended to be used; of the routine uses which may be made of the information; and of the effects on the person, if any, of not providing all or any part of the requested information. The application of this provision could provide the subject of an investigation with substantial information about the

nature of that investigation, which could interfere with the investigation. Moreover, providing such a notice to the subject of an investigation could seriously impede or compromise an undercover investigation by revealing its existence and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(7) 5 U.S.C. 552a(e)(4)(G) and (H) require an agency to publish a FEDERAL REGISTER notice concerning its procedures for notifying an individual at his request if the system of records contains a record pertaining to him, how he can gain access to such a record, and how he can contest its content. Since EPA is claiming that these systems of records are exempt from subsection (f) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable and are exempted to the extent that these systems of records are exempted from subsections (f) and (d) of the Act. Although EPA is claiming exemption from these requirements, EPA has published such a notice concerning its notification, access, and contest procedures because, under certain circumstances, EPA might decide it is appropriate for an individual to have access to all or a portion of his records in these systems of records.

(8) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a FEDERAL REGISTER notice concerning the categories of sources of records in the system of records. Exemption from this provision is necessary to protect the confidentiality of the sources of information, to protect the privacy and physical safety of confidential sources and witnesses, and to avoid the disclosure of investigative techniques and procedures. Although EPA is claiming exemption from this requirement, EPA has published such a notice in broad generic terms in the belief that this is all subsection (e)(4)(I) of the Act requires.

(9) 5 U.S.C. 552a(e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about the individual. Since the Act de-

finis *maintain* to include the collection of information, complying with this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In collecting information for criminal law enforcement purposes, it is not possible to determine in advance what information is accurate, relevant, timely, and complete. Facts are first gathered and then placed into a logical order to prove or disprove objectively the criminal behavior of an individual. Material which may seem unrelated, irrelevant, or incomplete when collected may take on added meaning or significance as the investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigative report, thereby impeding effective law enforcement.

(10) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. Complying with this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(11) 5 U.S.C. 552a(f)(1) requires an agency to promulgate rules which shall establish procedures whereby on an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him. The application of this provision could impede or compromise an investigation or prosecution if the subject of an investigation was able to use such rules to learn of the existence of an investigation before it could be completed. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since EPA is claiming that these systems of records are exempt from subsection (d) of the Act, concerning access to records, the requirements of subsections (f)(2) through (5) of the Act,

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concerning agency rules for obtaining access to such records, are inapplicable and are exempted to the extent that these systems of records are exempted from subsection (d) of the Act. Although EPA is claiming exemption from the requirements of subsection (f) of the Act, EPA has promulgated rules which establish Agency procedures because, under certain circumstances, it might be appropriate for an individual to have access to all or a portion of his records in these systems of records. These procedures are described elsewhere in this part.

(12) 5 U.S.C. 552a(g) provides for civil remedies if an agency fails to comply with the requirements concerning access to records under subsections (d)(1) and (3) of the Act; maintenance of records under subsection (e)(5) of the Act; and any other provision of the Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual. Since EPA is claiming that these systems of records are exempt from subsections (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8), and (f) of the Act, the provisions of subsection (g) of the Act are inapplicable and are exempted to the extent that these systems of records are exempted from those subsections of the Act.

(e) *Exempt records provided by another agency.* Individuals may not have access to records maintained by the EPA if such records were provided by another agency which has determined by regulation that such records are subject to general exemption under 5 U.S.C. 552a(j). If an individual requests access to such exempt records, EPA will consult with the source agency.

(f) *Exempt records included in a non-exempt system of records.* All records obtained from a system of records which has been determined by regulation to be subject to general exemption under 5 U.S.C. 552a(j) retain their exempt status even if such records are also included in a system of records for which a general exemption has not been claimed.

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### § 16.14 Specific exemptions.

(a) *Exemptions under 5 U.S.C. 552a(k)(2)—(1) Systems of records affected.*

¶EPA-2 General Personnel Records—EPA.

¶EPA-4 OIG Criminal Investigative Index and Files—EPA/OIG.

¶EPA-5 OIG Personnel Security Files—EPA/OIG.

¶EPA-17 NEIC Criminal Investigative Index and Files—EPA/NEIC/OIG.

¶EPA-30 OIG Hotline Allegation System—EPA/OIG.

(2) *Authority.* Under 5 U.S.C. 552a(k)(2), the head of any agency may by rule exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, if the system of records is investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2).

(3) *Scope of exemption.* (i) The systems of records identified in §16.14(a)(1) are exempted from the following provisions of the Privacy Act of 1974, subject to the limitations set forth in 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a (c)(3); (d); (e)(1), (4)(G), (H), and (I); and (f).

(ii) An 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," only if the Agency actually uses the material in denying or proposing to deny such right, privilege, or benefit.

(iii) To the extent that records contained in the systems of records identified in §16.14(a)(1) are maintained by the Office of Investigations of the OIG or by the Office of Criminal Investigations of the NEIC, components of EPA which perform as their principal function activities pertaining to the enforcement of criminal laws, then an exemption under 5 U.S.C. 552a(j)(2) is claimed for these records.

(4) *Reasons for exemption.* The systems of records identified in §16.14(a)(1) are exempted from the above provisions of the Privacy Act of 1974 for the following reasons:

(i) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his request. These accountings must state

the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(ii) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him, to request amendment to such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting access to records in these systems of records could inform the subject of an investigation of an actual or potential criminal 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 could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony, and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified, security-sensitive, or confidential business information and could constitute an unwarranted invasion of the personal privacy of others.

(iii) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required

by statute or by executive order of the President. The application of this provision could impair investigations and law enforcement, because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often 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. In addition, during the course of the investigation, the investigator may obtain information which is incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation, the investigator may obtain information concerning the violation of laws other than those which are within the scope of his jurisdiction. In the interest of effective law enforcement, EPA investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for other law enforcement agencies.

(iv) 5 U.S.C. 552a(e)(4)(G) and (H) require an agency to publish a FEDERAL REGISTER notice concerning its procedures for notifying an individual at his request if the system of records contains a record pertaining to him, how he can gain access to such a record, and how he can contest its content. Since EPA is claiming that these systems of records are exempt from subsection (f) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable and are exempted to the extent that these systems of records are exempted from subsections (f) and (d) of the Act. Although EPA is claiming exemption from these requirements, EPA has published such a notice concerning its notification, access, and contest procedures because, under certain circumstances, EPA might decide it is appropriate for an individual to have access to all or a portion of his records in these systems of records.

(v) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a FEDERAL REGISTER

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notice concerning the categories of sources of records in the system of records. Exemption from this provision is necessary to protect the confidentiality of the sources of information, to protect the privacy and physical safety of confidential sources and witnesses, and to avoid the disclosure of investigative techniques and procedures. Although EPA is claiming exemption from this requirement, EPA has published such a notice in broad generic terms in the belief that this is all subsection (e)(4)(I) of the Act requires.

(vi) 5 U.S.C. 552a(f)(1) requires an agency to promulgate rules which shall establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him. The application of this provision could impede or compromise an investigation or prosecution if the subject of an investigation was able to use such rules to learn of the existence of an investigation before it could be completed. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since EPA is claiming that these systems of records are exempt from subsection (d) of the Act, concerning access to records, the requirements of subsections (f)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable and are exempted to the extent that these systems of records are exempted from subsection (d) of the Act. Although EPA is claiming exemption from the requirements of subsection (f), EPA has promulgated rules which establish Agency procedures because, under certain circumstances, it might be appropriate for an individual to have access to all or a portion of his records in these systems of records. These procedures are described elsewhere in this part.

(b) *Exemption under 5 U.S.C. 552a(k)(5)—(1) Systems of records affected.*

¶EPA-2 General Personnel Records—EPA.

¶EPA-4 OIG Criminal Investigative Index and Files—EPA/OIG.

¶EPA-5 OIG Personnel Security Files—EPA/OIG.

(2) *Authority.* Under 5 U.S.C. 552a(k)(5), the head of any agency may by rule exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, if the system of records is investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity would be held in confidence.

(3) *Scope of exemption.* (i) The systems of records identified in §16.14(b)(1) are exempted from the following provisions of the Privacy Act of 1974, subject to the limitations of 5 U.S.C. 552a(k)(5): 5 U.S.C. 552a (c)(3); (d); (e)(1), (4)(H) and (I); and (f)(2) through (5).

(ii) To the extent that records contained in the systems of records identified in §16.14(b)(1) reveal a violation or potential violation of law, then an exemption under 5 U.S.C. 552a(k)(2) is also claimed for these records.

(4) *Reasons for exemption.* The systems of records identified in §16.14(b)(1) are exempted from the above provisions of the Privacy Act of 1974 for the following reasons:

(i) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Making such an accounting could cause the identity of a confidential source to be revealed, endangering the physical safety of the confidential source, and could impair

the future ability of the EPA to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information.

(ii) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him, to request amendment to such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting such access could cause the identity of a confidential source to be revealed, endangering the physical safety of the confidential source, and could impair the future ability of the EPA to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information.

(iii) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by executive order of the President. The application of this provision could impair investigations, because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often 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.

(iv) 5 U.S.C. 552a(e)(4)(H) requires an agency to publish a FEDERAL REGISTER notice concerning its procedures for notifying an individual at his request how he can gain access to any record pertaining to him and how he can contest its content. Since EPA is claiming that these systems of records are exempt from subsections (f)(2) through (5) of the Act, concerning agency rules, and subsection (b) of the Act, concerning access to records, these requirements are inapplicable and are exempted to the extent that these systems of records are exempted from subsections (f)(2) through (5) and (d) of the Act. Although EPA is claiming exemption from these requirements, EPA has

published such a notice concerning its access and contest procedures because, under certain circumstances, EPA might decide it is appropriate for an individual to have access to all or a portion of his records in these systems of records.

(v) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a FEDERAL REGISTER notice concerning the categories of sources of records in the system of records. Exemption from this provision is necessary to protect the confidentiality of the sources of information, to protect the privacy and physical safety of confidential sources, and to avoid the disclosure of investigative techniques and procedures. Although EPA is claiming exemption from this requirement, EPA has published such a notice in broad generic terms in the belief that this is all subsection (e)(4)(I) of the Act requires.

(vi) 5 U.S.C. 552a(f)(2) through (5) require an agency to promulgate rules for obtaining access to records. Since EPA is claiming that these systems of records are exempt from subsection (d) of the Act, concerning access to records, the requirements of subsections (f)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable and are exempted to the extent that this system of records is exempted from subsection (d) of the Act. Although EPA is claiming exemption from the requirements of subsections (f)(2) through (5) of the Act, EPA has promulgated rules which establish Agency procedures because, under certain circumstances, it might be appropriate for an individual to have access to all or a portion of his records in this system of records. These procedures are described elsewhere in this part.

(c) *Exemption under 5 U.S.C. 552a(k)(1)—(1) System of records affected.*

¶EPA-5 OIG Personnel Security Files—EPA/OIG.

(2) *Authority.* Under 5 U.S.C. 552a(k)(1), the head of any agency may by rule exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, if the system of records is subject to the provisions of 5 U.S.C. 552(b)(1). A system of records is subject to the provisions of 5

U.S.C. 552(b)(1) if it contains records that are 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. Executive Order 12356 establishes criteria for classifying records which are to be kept secret in the interest of national defense or foreign policy.

(3) *Scope of exemption.* To the extent that the system of records identified in § 16.14(c)(1) contains records provided by other Federal agencies that are specifically authorized under criteria established by Executive Order 12356 to be kept secret in the interest of national defense or foreign policy and are in fact properly classified by other Federal agencies pursuant to that Executive order, the system of records is exempted from the following provisions of the Privacy Act of 1974: 5 U.S.C. 552a(c)(3); (d); (e)(1), (4)(G), (H), and (I); and (f).

(4) *Reasons for exemption.* The system of records identified in § 16.14(c)(1) is exempted from the above provisions of the Privacy Act of 1974 for the following reasons:

(i) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Making such an accounting could result in the release of properly classified information, which would compromise the national defense or disrupt foreign policy.

(ii) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him, to request amendment to such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting such access could cause the release of properly classified information, which would compromise the national defense or disrupt foreign policy.

(iii) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accom-

plish a purpose of the agency required by statute or by executive order of the President. The application of this provision could impair personnel security investigations which use properly classified information, because it is not always possible to know the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often 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.

(iv) 5 U.S.C. 552a(e)(4)(G) and (H) require an agency to publish a FEDERAL REGISTER notice concerning its procedures for notifying an individual at his request if the system of records contains a record pertaining to him, how he can gain access to such a record, and how he can contest its content. Since EPA is claiming that this system of records is exempt from subsection (f) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable and are exempted to the extent that this system of records is exempted from subsections (f) and (d) of the Act. Although EPA is claiming exemption from these requirements, EPA has published such a notice concerning its notification, access, and contest procedures because, under certain circumstances, EPA might decide it is appropriate for an individual to have access to all or a portion of his records in this system of records.

(v) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a FEDERAL REGISTER notice concerning the categories of sources of records in the system of records. Exemption from this provision is necessary to prevent the release of properly classified information, which would compromise the national defense or disrupt foreign policy. Although EPA is claiming exemption from this requirement, EPA has published such a notice in broad generic terms in the belief that this is all subsection (e)(4)(I) of the Act requires.

(vi) 5 U.S.C. 552(a)(f)(1) requires an agency to promulgate rules which shall establish procedures whereby an individual can be notified in response to his request if any system of records

named by the individual contains a record pertaining to him. The application of this provision could result in the release of properly classified information, which would compromise the national defense or disrupt foreign policy. Since EPA is claiming that this system of records is exempt from subsection (d) of the Act, concerning access to records, the requirements of subsections (f)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable and are exempted to the extent that this system of records is exempted from subsection (d) of the Act. Although EPA is claiming exemption from the requirements of subsection (f) of the Act, EPA has promulgated rules which establish Agency procedures because, under certain circumstances, it might be appropriate for an individual to have access to all or a portion of his records in this system of records. These procedures are described elsewhere in this part.

(d) *Exempt records provided by another agency.* Individuals may not have access to records maintained by the EPA if such records were provided by another agency which has determined by regulation that such records are subject to general exemption under 5 U.S.C. 552a(j) or specific exemption under 5 U.S.C. 552a(k). If an individual requests access to such exempt records, EPA will consult with the source agency.

(e) *Exempt records included in a non-exempt system of records.* All records obtained from a system of records which has been determined by regulation to be subject to specific exemption under 5 U.S.C. 552a(k) retain their exempt status even if such records are also included in a system of records for which a specific exemption has not been claimed.

[51 FR 24147, July 2, 1986, as amended at 59 FR 17485, Apr. 13, 1994]

## PART 17—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN EPA ADMINISTRATIVE PROCEEDINGS

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AUTHORITY: Section 504, Title 5 U.S.C., as amended by sec. 203(a)(1), Equal Access to Justice Act (Title 2 of Pub. L. 96-481, 94 Stat. 2323).

SOURCE: 48 FR 39936, Sept. 2, 1983, unless otherwise noted.

### Subpart A—General Provisions

#### § 17.1 Purpose of these rules.

These rules are adopted by EPA pursuant to section 504 of title 5 U.S.C., as added by section 203(a)(1) of the Equal Access to Justice Act, Public Law No. 96-481. Under the Act, an eligible party may receive an award for attorney's fees and other expenses when it prevails over EPA in an adversary adjudication before EPA unless EPA's position as a party to the proceeding was substantially justified or special circumstances make an award unjust. The purpose of these rules is to establish