

of the Corporation between 8:45 a.m. and 5:30 p.m., except Saturdays, Sundays and official holidays, by telephoning the Office of Public Affairs of the Corporation at (202) 632-1854 during such hours or by writing the Corporation to the attention of the Vice President of Public Affairs. Although the Corporation will endeavor to grant an appointment at the time requested, some delay may be required at times because of the small size of the Corporation's staff. Persons desiring access to the public information files should seek an appointment at least twenty-four (24) hours in advance.

(b) Access to any records of the Corporation not otherwise made available by the Corporation to the public under the provisions of 5 U.S.C. 552(a) (1) and (2), or the duplication of such records by the Corporation, shall be granted only upon specific written request to the Corporation, addressed to the attention of the Vice President for Public Affairs, which shall be deemed not to have been received by the Corporation until actual receipt thereof by the Corporation's Office of Public Affairs. Such request shall to the maximum extent required under the law, accurately describe the records to which access to or duplication of is requested such as, by way of example only, the subject matter, format, date, and where pertinent, the country, project or person involved. Any such request which does not describe such records sufficiently enough to permit the staff of the Corporation to promptly locate such records shall be returned to the requester.

§ 706.32 Fees.

(a) The following schedule of fees representing direct costs shall be charged for services rendered by the Corporation under 5 U.S.C. 552(a) in furnishing information to members of the public:

Service

- (1) Searching for records, etc., \$15.00 per hour per person.
- (2) Other facilitative assistance, \$15.00 per hour per person.
- (3) Photocopy duplication, .20 per page.
- (4) Certification of a true copy, \$3.50.
- (5) Certified statement of negative results of a search, \$3.50.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Vice President for Public Affairs may waive or reduce any fee otherwise due under paragraph (a) of this section for the preparation, release or distribution of any document, instrument, publication or class thereof, for which he determines that waiver or reduction of such fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

Issued in Washington, D.C. on February 14, 1975.

DAVID GREGG III,
Executive Vice President.

[PR Doc.75-4637 Filed 2-18-75; 8:45 am]

Title 10—Energy

CHAPTER III—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

PART 709—PUBLIC RECORDS

The Energy Research and Development Administration (ERDA) was established by the Energy Reorganization Act of 1974, Pub. L. 93-438, 88 Stat. 1233, and the Act was made effective on January 19, 1975 by Executive Order 11834 dated January 15, 1975, which Executive Order was published on January 17, 1975, at 40 Fed. Reg. 2971.

Consistent with the establishment of ERDA, a new Chapter III of Title 10, Code of Federal Regulations, is established consisting at this time of Part 709, Public Records, which is set forth below.

On an interim basis, the rules and regulations of the Atomic Energy Commission contained in Chapter I of Title 10, Code of Federal Regulations (Parts 0 through 170 of Chapter I of Title 10, CFR, respectively), except Part 9 thereof, approved as of the effective date of the reorganization (January 19, 1975) including any proposed rules thereunder, are applicable to ERDA to the extent they are not inconsistent with applicable law, for all ERDA activities under the Energy Reorganization Act of 1974, the Federal Nonnuclear Energy Research and Development Act of 1974 (Pub. L. 93-577), and other applicable law.

Pursuant to the authority vested in me by section 105(a) of the Energy Reorganization Act of 1974, and pursuant to the provisions of section 552 of Title 5, United States Code, as amended by Pub. L. 93-502 (the Freedom of Information Act, as amended), Part 709 of Chapter III, Title 10, Code of Federal Regulations, which Part is entitled "Public Records" and implements for ERDA the Freedom of Information Act, including the 1974 amendments thereto is hereby issued.

Except as provided below, Part 709 is a statement of ERDA policies and procedures for implementing the Freedom of Information Act, as amended, and the relevant provisions of 5 U.S.C. 553 requiring notice of proposed rule making, opportunity for public participation and delay in effective date, are inapplicable.

On page 2714 of the FEDERAL REGISTER of January 15, 1975, there was published a notice of proposed rule making regarding a proposed uniform schedule of fees for document search and duplication. No comments have been received in response to that notice and no changes have been made to the charges proposed for searching and duplicating. These charges for document search and duplication are set forth in § 709.12 below.

While these regulations are effective February 19, 1975, the public is invited to submit comments thereon, provided they are received within 90 days of publication of these regulations. Any comments submitted should be in writing and submitted to the Office of the Gen-

eral Counsel, Energy Research and Development Administration.

Effective date: February 19, 1975.

ROBERT C. SEAMANS, JR.,
Administrator.

Sec.	
709.1	Applicability.
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AUTHORITY: 5 U.S.C. 552 and sec. 105(a), Pub. L. 93-438.

§ 709.1 Applicability.

(a) This part implements section 552 of Title 5, United States Code, and prescribes rules governing the availability to the public of the records of the Energy Research and Development Administration (ERDA).

(b) This part only applies to requests which (1) reasonably describe records and (2) are made in accordance with this part.

(c) Under section 552 of Title 5 there is no obligation to compile or create a record solely for the purpose of satisfying a request for records.

(d) Nothing in this part shall inhibit the dissemination of scientific, technical, or other information in accordance with established ERDA policies or programs for such dissemination.

(e) Except where specifically noted otherwise, this part applies to all records whether they predate or postdate July 4, 1967.

(f) This part supersedes any other ERDA policy, rule, or regulation to the extent inconsistent with this part.

(g) This part shall be interpreted so as to be consistent with the "Privacy Act of 1974," Pub. L. 93-579.

§ 709.2 Policy.

(a) In implementing section 552 of Title 5, United States Code, it is the policy of ERDA to make records available to the public to the greatest extent possible in keeping with the spirit of that section. Therefore, all records of ERDA which are requested in accordance with this part shall be made available promptly, except those that ERDA specifically determines in accordance with this part (1) are exempt from disclosure under § 709.9, and (2) that disclosure is contrary to the public interest or will adversely affect the rights of any person.

(b) If records requested contain material exempt from disclosure, any reasonably segregable portion of a record shall be provided to a person requesting such record after deletion of the portions which are exempt from disclosure. However, the entire record will be exempt where exempt material in that record is inextricably intertwined with nonexempt material.

(c) Requests made under this part shall be considered without regard to any showing of need.

§ 709.3 Definitions.

As used in this part:

(a) "ERDA" means the Energy Research and Development Administration established by the Energy Reorganization Act of 1974 (Pub. L. 93-438).

(b) "ERDA personnel" means employees, consultants, and members of advisory boards, committees and panels of ERDA; members of boards designated by the Administrator, Deputy Administrator, or other designee of the Administrator or Deputy Administrator to preside at adjudicatory proceedings; and officers or employees of Government agencies, including military personnel, assigned to duty at ERDA.

(c) "Administrator" means the Administrator of Energy Research and Development provided for in section 102(a) of the Energy Reorganization Act of 1974.

(d) "Deputy Administrator" means the Deputy Administrator provided for in section 102(b) of the Energy Reorganization Act of 1974.

(e) "Assistant Administrator" means an Assistant Administrator provided for in section 102(d) of the Energy Reorganization Act of 1974 or such other Assistant Administrator as the Administrator may appoint under section 102(f) of the Energy Reorganization Act of 1974.

(f) "Government" means the United States of America.

(g) "Agency" is defined as provided in section 551(1) of Title 5, United States Code, and includes any executive department, military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

(h) "Record" includes any book, paper, map, photograph, brochure, punch card, magnetic tape, paper tape, sound recording, pamphlet, slide, motion picture, or other documentary material regardless of form or characteristics, which evidences ERDA organization, functions, policies, decisions, procedures, operations, programs or other activities, and which was made by, in the possession of, or under the control of ERDA pursuant to ERDA contracts, or Federal law or in connection with the transaction of public business. "Records" do not include objects or articles such as structures, furniture, tangible objects or models, or vehicles and equipment, nor

formulas, designs, and the like which are significant not as records but as items of valuable property.

(i) "Freedom of Information Officer" has the meaning as set forth in § 709.5 below.

(j) Except as otherwise provided in § 709.11(c), "Authorizing Official" means the Assistant Administrator for International Affairs, the Assistant Administrator for Planning and Analysis, and Directors of Offices and Divisions in ERDA Headquarters, and Directors of Energy Research Centers and Managers of Operations Offices for ERDA field organizations, who are authorized to make the initial determination for ERDA to grant or deny, in whole or in part, requests for records under this part. The officials designated above may in their discretion redelegate the above authority without power or further redelegation.

(k) Except as otherwise provided in § 709.11(e) "Freedom of Information (FOI) Appeal Panel" means a panel consisting of the following three officials:

(1) The Assistant Administrator for Administration or his designee, who shall be Chairman of the panel, (2) the Director of the Office of Public Affairs, or his designee, and (3) such other ERDA official as the Chairman shall designate to consider a specific appeal. The appointment of the third panel member shall be made with due regard to the particular records involved. It is contemplated that such panel members shall be Assistant Administrators, Deputy Assistant Administrators, or other high ranking ERDA officials in keeping with the policy stated in § 709.2. No member of the FOI Appeal Panel shall have been involved in the determination from which the appeal under consideration is being taken.

§ 709.4 Statement of organization, functions, procedure, and substantive rules, final opinions, statement of policy, staff manuals and instructions.

(a) As required by section 552, Title 5, United States Code, a statement as to the sources of information concerning the following subjects may be found in § 701 of this chapter: (1) A description of the central and field organization of ERDA and the established places at which, the offices from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions, except for Freedom of Information requests which requests shall be made in accordance with the procedures set forth in § 709.6 of this part; (b) statements of the general course and method by which ERDA functions are channeled and determined, including the nature and requirements of all formal and informal procedures available; (c) ERDA rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations; (d) ERDA substantive rules of general applicability adopted as authorized by law, and state-

ments of general policy or interpretations of general applicability formulated and adopted by ERDA; and (e) every amendment, revision, or repeal of the foregoing.

(b) As required by section 552, Title 5, United States Code, the following records are made available for public inspection and copying at the ERDA Public Document Room at 1717 H Street NW., Washington, D.C.:

(1) All final opinions (including concurring and dissenting opinions) and all orders in the adjudication of cases.

(2) Statements of policy and interpretations which have been adopted by ERDA and are not published in the Federal Register.

(3) ERDA rules and regulations.

(4) ERDA Manuals and instructions to ERDA personnel that affect any member of the public.

(c) The records specified in § 709.4(b) (3) and (4) above are also made available for public inspection and copying at any one of the ERDA field organizations identified in § 701 of this chapter.

(d) The ERDA Public Document Room will be open between 8:30 a.m. and 5:15 p.m. on Mondays through Fridays. The Public Document Room at the ERDA field organizations referenced above will be open during regular office hours on Mondays through Fridays.

(e) Indexes (or supplements thereto) of those records specified in § 709.4(b) (1), (2) and (4) of this section, and issued, adopted, or promulgated after July 4, 1967, will be published and made available for sale to the public at no more than quarterly intervals, unless it is determined by the Administrator or Deputy Administrator, by order published in the Federal Register, that such publication would be unnecessary and impracticable, in which case there shall be provided copies of such index on request at a cost not to exceed the direct cost of duplication. Inclusion of a record in the index does not constitute a determination that such record is required by law to be indexed.

§ 709.5 Freedom of information officer.

(a) There is appointed at ERDA Headquarters, Washington, D.C. 20545 a Freedom of Information (FOI) Officer whose duties shall hereinafter be described.

(b) There shall be designated by each Director of an Energy Research Center and Manager of an Operations Office for each of the following ERDA field organizations a Freedom of Information (FOI) Officer whose duties shall hereinafter be described:

- (1) Bartlesville Energy Research Center, ERDA
P.O. Box 1398
Bartlesville, Oklahoma 74003
- (2) Grand Forks Energy Research Center, ERDA
P.O. Box 8213, University Station
Grand Forks, North Dakota 58201
- (3) Laramie Research Center, ERDA
P.O. Box 3395, University Station
Laramie, Wyoming 82070

- (4) Morgantown Research Center, ERDA
P.O. Box 830
Morgantown, West Virginia 26505
- (5) Pittsburgh Energy Research Center,
ERDA
4800 Forbes Avenue
Pittsburgh, Pennsylvania 15213
- (6) San Francisco Energy Research Center,
ERDA
1429 Appraisers Building
630 Sansome Street
San Francisco, California 94111
- (7) Albuquerque Operations Office, ERDA
P.O. Box 5400
Albuquerque, New Mexico 87115
[Note.—This office has cognizance over the following area offices: Amarillo, Burlington, Dayton, Kansas City, Los Alamos, Pinellas, Rocky Flats, and Sandia.]
- (8) Chicago Operations Office, ERDA
9800 South Cass Avenue
Argonne, Illinois 60439
[Note.—This office has cognizance over the Batavia and Brookhaven area offices and the New Brunswick laboratory.]
- (9) Idaho Operations Office, ERDA
550 2nd St.
Idaho Falls, Idaho 83401
- (10) Nevada Operations Office, ERDA
P.O. Box 14100
Las Vegas, Nevada 89114
- (11) Oak Ridge Operations Office, ERDA
P.O. Box E
Oak Ridge, Tennessee 37830
- (12) Richland Operations Office, ERDA
P.O. Box 550
Richland, Washington 99352
- (13) San Francisco Operations Office, ERDA
1333 Broadway, Wells Fargo Building
Oakland, California 94616
- (14) Savannah River Operations Office,
ERDA
P.O. Box "A"
Aiken, South Carolina 29801

(c) The FOI Officers shall make no determinations to deny requests received under this part but shall receive and log each request by time and date, shall ascertain where the documents requested are located, shall acknowledge receipt of requests by letter to the requester, shall refer the request to the proper Authorizing Official and shall make such reports and perform such other functions as are hereinafter set forth or otherwise delegated.

§ 709.6 Requesting records.

(a) A request need not be in any particular format, but it (1) must be addressed to any one of the FOI Officers listed in § 709.5 above, (2) must be in writing, (3) must be clearly identified both on the envelope and in the letter as a Freedom of Information Act or FOIA request, (4) must reasonably describe the records sought to permit identification, and (5) must state that the requester promptly will pay the fees chargeable under § 709.12.

(b) Because of the strict statutory time limits it would be helpful if the request could be addressed to the FOI Office where the desired records are located or are believed to be located, or to the FOI Officer who is in the office which has, or it is believed has, cognizance over the records. However, it is not the responsibility of the requester to ascertain the location of the records requested.

§ 709.7 Handling of FOI requests.

(a) Promptly upon receipt of a request made in accordance with § 709.6 above, the FOI Officer shall log the date and time of receipt, ascertain the location of the records requested and the identity of the appropriate Authorizing Official, immediately dispatch the request to such Authorizing Official by the fastest available means advising him of the date and time of receipt and when the ten working days permitted for a determination will expire, and acknowledge receipt in writing of the request stating the time and date of receipt and the appropriate Authorizing Official to whom the request has been directed.

(b) Any request not made in accordance with § 709.6 shall be promptly brought to the attention of a FOI Officer by the ERDA Official or employee receiving such a request, or the requester shall be referred to the FOI Officer, as appropriate. The FOI Officer shall assist the requester in making the request in accordance with § 709.6.

(c) All Freedom of Information requests properly made in accordance with § 709.6 shall be deemed to have been received when date and time stamped by a FOI Officer.

(d) If a request can be immediately complied with in accordance with this part, it should be.

(e) The Authorizing Official shall advise the requester in writing within ten working days of the receipt of the request by the FOI Officer (see paragraph (c) of this section) whether the request is to be complied with. A copy of the letter to the requester shall be sent to the appropriate FOI Officer. Where a determination is made to comply with a request in whole or in part, the records shall be made available to the requester promptly in accordance with this part, subject to the requirement for payment under § 709.12.

(f) (1) The Freedom of Information Act, as amended, section 552(a) (6) (B), Title 5, United States Code, provides that:

In unusual circumstances . . . the time limits prescribed . . . [the 10-day initial determination limit or the 20-day administrative appeal limit] may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. . . . "[U]nusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) 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

(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the

agency having substantial subject-matter interest therein.

(2) The ten working day extension provided for in unusual circumstances permits more than one extension, either divided between the initial and appeal stages (see § 709.10 below concerning appeal procedures) or within a single stage, so long as the total extended time does not exceed ten working days with respect to a particular request.

(3) The Authorizing Official has the discretion unilaterally to invoke any or all of the ten working day extension, if the unusual circumstances exist and if the additional time is considered as reasonably necessary to the proper processing of the particular request. This discretionary authority can only be invoked after consultation with counsel.

(4) The requester must be promptly notified in writing of the extension, setting forth the reasons of the extension, and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, over and above the ten working days allowed for the initial determination.

(5) The FOI Officer shall be advised by copy of a letter to the requester or otherwise of any extension invoked.

(g) The Authorizing Official or FOI Officer, shall consult with the appropriate agency when records are requested, which are in the possession of ERDA, but which were originated by another agency. Unless the other agency agrees that the document may be released by ERDA, the request shall be forwarded to the other agency for their disposition. The requester shall be advised in writing when a request is referred to another agency (see § 709.11 regarding classified documents or information originated by another agency).

(h) Nothing in this part shall preclude the Authorizing Official and a requester from agreeing to an extension of time for the initial determination on a request. Any such agreement shall be confirmed in writing and shall clearly specify the total time agreed upon for the initial determination.

§ 709.8 Denial of records.

(a) Any record, or any portion of a record may be denied to a requester by the Authorizing Official only if he determines it contains matters specified in § 709.9 below and further determines that disclosure of such matters is contrary to the public interest or will adversely affect the rights of any person. The Authorizing Official shall make such determinations only after consultation with counsel. A subsequent request for identical records previously denied shall be considered on its own merits.

(b) Any reasonably segregable portion of a record shall be provided after deletion of the portions exempt under § 709.9 below. Those portions of documents which are deleted shall be identified in an appropriate manner, e.g., by placing

the word "DELETED" in the space where material is deleted.

(c) (1) If the Authorizing Official determines that a request will be denied in whole or in part, a written notice of the determination shall be promptly dispatched to the requester within the appropriate time period set forth in § 709.7 above. Such notice shall be sent by certified or registered mail, return receipt requested. Such notice shall appropriately advise the requester of the reasons for denying the request or any portion thereof and that the Authorizing Official signing the determination is the person responsible for that determination. If other Authorizing Officials, or appropriate officials of other agencies are responsible for denying any portion of a record requested, their names and titles or positions shall be listed in the notice of denial and it shall be clearly indicated what portion or portions they were responsible for denying.

(2) The reasons for denying the request shall where possible be more than a recitation of the statutory exemptions listed in § 709.9 below. Where material has been deleted from a record furnished, there shall also be furnished a brief explanation of why the material was deleted (each deletion may be coded as to what exemption is being used).

(3) The notification of the denial determination shall also advise the requester of the right to appeal to the FOI Appeal Panel as provided in § 709.10 below. A copy of the denial determination should be provided to the appropriate FOI Officer.

§ 709.9 Matters exempt from disclosure.

(a) The following items are the matters exempt from disclosure under the Freedom of Information Act, section 552 (b) of Title 5, United States Code, with the statutory language being underlined: (1) (i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (ii) are in fact properly classified pursuant to such Executive order; Exemption (1) matters are those matters classified as National Security Information under Executive Order 11652, or other matters authorized to be kept secret under other Executive Orders now or hereafter issued. Restricted Data and Formerly Restricted Data under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), are covered by this exemption as well as the exemption in (3) below.

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute; Restricted Data and Formerly Restricted Data come within the meaning of this exemption (see (1) above).

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; Whenever a record is requested which comes within or might come within this exemption, it is necessary that the person whose information it is, be notified immediately to see if there is any ob-

jection to its release. Criteria applicable in making a determination concerning this exemption include, but are not necessarily limited to the following:

(A) Whether the information has been held in confidence by its owner;

(B) Whether the information is of a type customarily held in confidence by its owner and whether there is a reasonable basis therefor;

(C) Whether the information was transmitted to and received by the agency in confidence; and

(D) Whether the information is available in public sources.

(ii) This exemption may be invoked for the benefit of the person who has provided the information, even though the agency has no interest in withholding the information.

(iii) Records held in confidence which identify procedures for safeguarding special nuclear material or detailed security measures for the physical protection of a facility or plant comes within this exemption except to the extent that portions thereof come within any other exemption.

(iv) Naval nuclear propulsion information which is held in confidence by ERDA, its contractors or subcontractors is deemed to come within this exemption except to the extent that portions thereof come within any other exemption. This exemption also applies to material obtained in confidence from a foreign source.

(5) Interagency or intragency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(i) This exemption includes all internal memoranda which would not routinely be disclosed to a party other than a Government agency through the discovery process in litigation with ERDA or the Government, such as internal drafts or memoranda between officials or agencies; opinions, interpretations, and evaluations prepared by staff personnel, contractors or consultants for the use of ERDA; records of the deliberations of ERDA staff groups; staff criteria or guidelines used for auditing or inspection purposes; and documents or information which ERDA has received or generated before it completes the process of awarding a contract or issuing an order, decision, or regulation; ERDA plans or materials that are in process of preparation or development and are likely to be revised before being finalized, such as budget proposals, long range plans or studies, drafts of speeches or statements, or legislative proposals; ERDA plans (such as those included in budget justification material) which, even though finalized, the disclosure of which would be harmful to public or private interests, if made available in advance of the effective date; documents awaiting patent review; and working papers of ERDA attorneys and documents which come within the attorney-client privilege.

(ii) This exemption is intended to allow the withholding the type of records indicated above to the extent they

reflect deliberative or policy making decisional processes, including advice, opinions, or recommendations that are part of ERDA's deliberative or policy making decisional processes.

(iii) While the policy set forth under § 709.2(b) applies to the exemption, where materials reflecting deliberative or policy making processes are inextricably intertwined with factual material in a particular record, the entire record may be withheld.

(iv) The withholding of records, or portions thereof, under this exemption is discretionary on the part of the Authorizing Official, and whether such exemption should be invoked is to be considered on a case-by-case basis in accordance with the policy set forth in § 709.2 above.

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source, and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(i) The scope of this exception against disclosure of "investigative techniques and procedures" shall not be interpreted to include routine techniques and procedures already well known to the public, such as ballistics tests, fingerprinting, and other scientific tests or commonly known techniques.

(ii) This exemption shall not be interpreted to include records falling within the scope of subsection 552(a) (2) of Title 5, United States Code, (see § 709.4 above) such as administrative staff manuals and instructions to staff that affect a member of the public.

(iii) "Confidential source" in (7) (d) includes the identity of a person other than a paid informer who may be protected if the person provided information under an express assurance of confidentiality or in circumstances from which such an assurance could be reasonably inferred. In every case where the investigatory records sought were compiled for law enforcement purposes—either civil or criminal in nature—the agency can withhold the names, addresses, and other information that would reveal the identity of a confidential source who furnished the information. However, where the records are compiled by a criminal law enforcement authority, all of the information furnished only by a confidential source may be withheld if the information was compiled in the course of a

criminal investigation. In addition, where the records are compiled by an agency conducting a lawful national security intelligence investigation, all of the information furnished only by a confidential source may also be withheld. The term "criminal law enforcement authority" is to be narrowly construed to include the Federal Bureau of Investigation and similar investigative authorities. Likewise, "national security" is to be strictly construed to refer to military security, national defense, or foreign policy. The term "intelligence" used in (7) (d) is intended to apply to positive intelligence-gathering activities, counter-intelligence activities, and background security investigations by governmental units which have authority to conduct such functions. The term "an agency" is intended to include criminal law enforcement authorities as well as other agencies. Personnel, regulatory, and civil enforcement investigations are intended to be covered by the first clause authorizing withholding of information that would reveal the identity of a confidential source but are not encompassed by the second clause authorizing withholding of all confidential information under the specified circumstances.

(iv) Disclosure of information about a person to that person does not constitute an invasion of his privacy.

(8) *Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or*

(9) *Geological and geophysical information and data, including maps, concerning wells.*

By memorandum dated February 1975, the Attorney General of the United States has provided agency guidance with respect to the amendments to the Freedom of Information Act, section 552 of Title 5, United States Code.

§ 709.10 Administrative appeal of initial denial of records.

(a) Any person, whose request for records made under procedures set forth in this part, is denied in whole or in part, as provided in § 709.8, shall have the right to appeal such initial determination of denial to an FOI Appeal Panel.

(b) Appeals shall be made by written notice mailed to the Freedom of Information Officer, ERDA Headquarters, and shall be filed within sixty days after receipt of an initial denial letter by the person requesting the records. Both the letter and envelope must clearly identify that a Freedom of Information appeal is being made. The sixty-day time limit may be waived by the FOI Appeal Panel for good cause shown.

(c) Notices of appeal received by ERDA shall be processed in a manner similar to request for records under § 709.7 including mutual agreements which may be made with the requester by the FOI Officer at ERDA Headquarters or the Chairman of the FOI Appeal Panel to extend the twenty-day

period set forth in (e) below. Appeals shall be deemed to have been received when date and time stamped by the FOI Officer at ERDA Headquarters.

(d) Upon receipt of an appeal, the FOI Officer, ERDA Headquarters, will promptly advise the Chairman of the FOI Appeal Panel who will then promptly constitute the Panel as provided in § 709.3(k). The FOI Officer shall promptly notify the Authorizing Official who was responsible for the original denial and arrange to have the appropriate records transmitted to ERDA Headquarters as may be necessary to consider the appeal.

(e) The FOI Appeal Panel shall have twenty working days from date of receipt of the appeal by the FOI Officer to make a final decision on such an appeal.

(f) The FOI Appeal Panel shall consult with counsel prior to making a final decision.

(g) A decision of the FOI Appeal Panel to uphold in whole or in part an initial decision to deny access to records shall be by a simple majority vote of the Panel members and shall be in writing, and shall make the necessary determinations stating the reasons therefor in the manner provided for in § 709.8, as necessary to sustain, modify, qualify, or expand the initial denial.

(h) The written decision of the FOI Appeal Panel upholding in whole or part the initial denial determination shall state that the decision is a final decision of the Administrator. The decision shall also advise the requester of the provisions for judicial review of the decision, as set forth in section 552(a) (4), of Title 5, United States Code, and shall set forth the names and titles or positions of each person responsible for the denial, including the person or persons who made the initial denial determination. The term "responsible persons" is limited to the Authorizing Official who signed the initial notice of denial and other Authorizing Officials or officials of other agencies listed in the initial notice of denial as being responsible for any portion of the initial denial (see § 709.8) and those members of the FOI Appeal Panel who concur in whole or in part with the initial denial.

(i) Decisions of the FOI Appeal Panel shall be final decisions of the Administrator.

(j) The FOI Appeal Panel may invoke that portion of the 10-day extension period set forth in § 709.7(f), if the "unusual circumstances" as defined therein are applicable. The FOI Officer shall advise the Panel if any of the 10-day extension period had been used at the initial denial stage.

(k) The FOI Officer shall take all appropriate steps to obtain the necessary files, including the initial written denial from the Authorizing Official, for the FOI Appeal Panel to review.

§ 709.11 Requests for classified records.

(a) Requests for classified records including requests made to field organizations shall be subject to the provisions

of this part 709 with the special qualifications noted below.

(b) Any request for records made in accordance with this part, except those requests for access to classified records which are made specifically pursuant to the mandatory review provisions of Executive Order 11652 shall be automatically considered a Freedom of Information Act request under this part.

(c) The Director, Division of Classification shall be the Authorizing Official for all requests for classified records. In this capacity he shall advise the office originating the records, or who has cognizance or responsibility for the records, of the request and consult with such office or offices prior to making a determination under this section.

(d) The written notice of a determination to deny records, or portions of records, which contain both classified material and other exempt material shall be signed by the appropriate Authorizing Official listed in (c) above. If other Authorizing Officials or appropriate officials of other agencies are responsible for denying any portion of the record, their names and titles or positions shall be listed in the notice of denial and it shall be clearly indicated what portion or portions they were responsible for denying.

(e) The Assistant Administrator for National Security or his designee shall replace the Director of the Office of Public Affairs as a member of the FOI Appeal Panel to the extent the appeal involves records or portions thereof which have been denied because they are classified. Other provisions of § 709.3(k) shall remain applicable.

(f) Requests for ERDA records containing classified information received from another agency, or records prepared jointly by ERDA and other agencies, will be treated as requests for ERDA records except that coordination will be effected by the ERDA Authorizing Official with the appropriate official of the other agency. Such coordination will be done on an expedited basis, for the purpose of determining whether the agency official wishes to deny the request (as far as it concerns another agency's classified material) and obtaining the other agency denying official's certification, signature, and identity on a record copy of the document being requested. The notice of determination to the requester, in the event part or all of the record is denied by the other agency shall cite the other agency denial official, as well as the ERDA Authorizing Official if a denial by ERDA is also involved.

(g) If the request specifically cites a document from another agency, the request will be referred directly to the proper official in the other agency and the requester will be so notified of the referral together with a copy of the referral. The notification to the requester should also include the statement that the ten-day time period will start when that request is received by the other agency.

§ 709.12 Fees for search and duplication of records.

(a) Requests for the duplication of records at the ERDA Public Document Room located in Washington, D.C. will be honored upon payment of the following charges:

(1) Sizes up to 8½ x 14 inches made on office copying machines—\$0.08 per page copy. Microfiche—paper copy enlargement up to 8½ inches x 11 inches—\$0.15 per page copy.

(2) Unless waived as provided below, the charge for duplicating records other than those specified above will be computed on the basis of ERDA's direct cost.

(3) Unless waived as provided below, the charges of duplication for requests made in accordance with § 709.6 will be the same as paragraph (a) (1) and (2) of this section.

(4) The cost of searching as provided in § 709.12(c) below.

(b) Requests for copies of records to be duplicated and furnished by ERDA at all locations, except ERDA's Public Document Room located in Washington, D.C., will be honored upon payment of the following charges unless the charges are waived as provided below:

(1) Sizes up to 8½ x 14 inches made on office copying machines—\$0.10 per page copy. Larger sizes—\$0.10 for each 8½ x 14 inch unit or fraction thereof per page copy.

(2) The charge for duplicating records other than those specified above will be computed on the basis of ERDA's direct cost.

(3) The cost of searching as provided in § 709.12(c) below.

(c) If a request is for records not already available for public inspection in the Public Document Room the rates for searching are \$5.70 per hour for clerical personnel and \$16.00 per hour for non-clerical personnel. Fractional parts of an hour will be charged on a pro rata basis. When a computer search is necessary in order to fulfill a request, the computer search charge will be the actual direct cost of the computer search.

(d) No records shall be made available to a requester until all charges as provided herein are paid in full. Checks, drafts, or other negotiable instruments shall be made payable to the Energy Research and Development Administration.

(e) Transcripts by a reporting firm under contract with ERDA, may be purchased directly from the reporting firm or ERDA at the cost of reproduction as provided for in the ERDA contract with the reporting firm.

(f) Material which has been copyrighted will not be reproduced in violation of the copyright laws.

(g) Documents shall be furnished without charge or at a reduced charge where the Authorizing Official initially considering the FOI request, or the FOI Appeal Panel, determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting

the public interest. Except for records reproduced in an ERDA Public Document Room or by a reporting firm under contract with ERDA or another Government agency, no charge shall be made under this part where the cost of search and duplication of records does not exceed \$10.00.

(h) No charge will be made when no record responsive to a request has been found or when a request is denied in whole.

(i) Unless the request made under § 709.6 specifically states that whatever cost is involved will be acceptable, or acceptable up to a specified limit that covers anticipated costs, a request will not be deemed to have been received in accordance with § 709.7 until the requester is advised of the estimated costs of searching and duplicating and agrees in writing to bear the cost.

§ 709.13 Matters in litigation.

(a) Any request for records shall be processed to initial determination or determination on appeal without regard to the pendency of litigation on a request under this part.

(b) When a matter is in litigation at the time the initial determination is made, the Authorizing Official shall file an appeal under § 709.10 on his own motion if the initial determination is to deny in whole or in part any of the request.

§ 709.14 Annual report.

(a) On or before March 1 of each calendar year, ERDA shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include—(1) the number of determinations made by ERDA not to comply with requests for records made to ERDA under this part and the reasons for each such determination;

(2) The number of appeals made by persons under this part, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) The names and titles or positions of each person responsible for the denial of records requested and the number of instances of participation for each; this listing shall include those persons responsible for this initial determination to deny records, or parts thereof as well as those persons responsible for denial on appeal;

(4) The results of each proceeding conducted pursuant to subsection 552(a)

(4) (F) of Title 5, United States Code, including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) A copy of every rule made by the agency regarding the Freedom of Infor-

mation Act, section 552, Title 5, United States Code;

(6) A copy of the fee schedule and the total amount of fees collected by the agency for making records available under this part; and

(7) Such other information as indicates efforts to administer fully this part.

(b) The Freedom of Information Officer, ERDA Headquarters, shall prepare the annual report for the Administrator's signature, which shall be transmitted to the respective Houses on or before March 1 of each calendar year.

(c) The Freedom of Information Officers in the field shall forward the necessary information concerning their activities to the Freedom of Information Officer, ERDA Headquarters, within thirty days after the end of the calendar year.

[FR Doc.75-4665 Filed 2-18-75;8:45 am]

Title 18—Conservation of Power and Water Resources

CHAPTER II—TENNESSEE VALLEY AUTHORITY

PART 301—PROCEDURES

Availability of TVA Records and Publications

The Freedom of Information Act (5 U.S.C. 552) was recently amended by Pub. L. 93-502. These amendments change the exemptions relating to classified material and investigative records and require agencies to institute certain procedures to ensure prompt availability of nonexempt agency records. Accordingly, the Tennessee Valley Authority hereby revises § 301.1 to reflect these changes.

This revision of § 301.1 makes certain other changes which include:

1. Provision of an agency appellate procedure to be followed in case of an initial determination not to comply with a request for records;

2. Clarification of TVA's practice that the availability of certain classes of non-exempt records is deferred where premature disclosure might interfere with accomplishment of TVA's statutory responsibilities; and

3. A statement of TVA's determination that records relating to special nuclear material and nuclear facilities are exempt from public disclosure.

These regulations are effective on February 19, 1975. Since the material contained herein concerns rules involving agency procedure and public property, the relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable.

The regulations are issued under the authority of 16 U.S.C. 831-831dd and Pub. L. 93-502.

By direction of The Board of Directors.

Dated: February 18, 1975.

H. N. STROUD,
Assistant General Manager.

Effective February 19, 1975, § 301.1 of Title 18 is revised to read as follows:

§ 301.1 Records.

(a) *Records available.* TVA's records will be made available for inspection and copying upon request as provided in this section, except that records are exempt and are not made available if they are (1) (i) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (ii) are in fact properly classified pursuant to such Executive order; (2) related solely to the internal personnel rules and practices of TVA; (3) specifically exempted from disclosure by statute; (4) trade secrets and commercial or financial information obtained from any person and privileged or confidential; (5) inter-agency or inter-agency memorandums or letters which would not be available by law to a private party in litigation with TVA, including without limitation records relating to control and accounting for special nuclear material and to the physical security plans for the protection of TVA's nuclear facilities; (6) personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; (7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel; (8) contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institution; or (9) geological and geophysical information and data, including maps, concerning wells. The availability of certain classes of nonexempt records is deferred for such time as TVA may determine is reasonably necessary to avoid interference with the accomplishment of its statutory responsibilities. Such records include bids and information concerning the identity and number of bids received prior to bid opening; all nonexempt records relating to bids between the time of bid opening and award; and all nonexempt records relating to negotiations in progress involving contracts or agreements for the acquisition or disposal of real or personal property by TVA prior to the conclusion of such negotiations. Any reasonably segregable portion of an available record shall be provided to any person requesting such record after de-

letion of the portions which are exempt under this paragraph.

(b) *Requests.* Requests to inspect and copy TVA records shall be directed to the Director of Information, Tennessee Valley Authority, Knoxville, Tennessee 37902. A request shall:

- (1) be in writing;
- (2) state in the text that it is a request for records pursuant to the Freedom of Information Act or the regulations in this section;
- (3) reasonably describe the records requested with sufficient specificity to permit their location and identification; and
- (4) include a statement (if such is the case) that the person making the request will pay all applicable fees under § 301.2, or a statement of the amount of the maximum applicable fee that such person is willing to pay without further notification from TVA. Requests may be made personally or by mail, but to permit expeditious processing, a mailed request should be identified on the envelope as a Freedom of Information Act request.

(c) *Processing of requests.* (1) *Initial determination.* (i) Within 10 days (excluding Saturdays, Sundays, and legal public holidays) after a request is received by TVA, and subject to paragraph (c) (3) of this section, TVA shall make an initial determination as to whether to comply with the request, and shall immediately give written notice of the determination to the person making the request. Initial determinations shall be made by the Director or Assistant Director of Information. If the initial determination is not to comply with the request, the notice to the person making the request shall include a statement of the reasons for the denial of the request; a notice of the right of the person making the request to appeal the denial to TVA's General Manager, and the time limits therefor; and the name and job title of the person responsible for the initial determination.

(ii) For purposes of this paragraph, a request is deemed to be received by TVA only when it is physically delivered to Office of the Director of Information and meets all the requirements of paragraph (b) of this section. If the request does not contain a sufficient description of the record as required by paragraph (b) (3) of this section, TVA will promptly notify the person making the request of the need for clarification, and the request will not be deemed received until clarification is obtained. If the request does not contain a statement as required by paragraph (b) (4) of this section, or if the amount of anticipated search fees exceeds the higher of the amount stated or \$25, TVA will promptly notify the person making the request of the amount of the anticipated fee. Such notice shall include an offer to confer in order to determine if the request can be reformulated so as to meet the person's needs at lower cost, and the request will not be deemed received until agreement is reached concerning fees.

(2) *Appeal.* (i) If the initial determination is to deny the request, the person making the request may appeal such action to TVA's General Manager. Such an appeal must be taken within 30 days after the person's receipt of the initial determination, and is taken by delivering a written notice of appeal to the General Manager, Tennessee Valley Authority, Knoxville, Tennessee 37902. Such notice shall include a statement that it is an appeal from a denial of a request under the Freedom of Information Act and shall indicate (A) the date on which the denial was issued, and (B) the date on which the denial was received by the person making the request.

(ii) Within 20 days (excluding Saturdays, Sundays, and legal public holidays) after an appeal is received, and subject to paragraph (c) (3) of this section, TVA shall make a final determination on the appeal. In making such a determination, TVA will consider whether or not to waive the provisions of any exemption contained in paragraph (a) of this section, except that without the written permission of the person involved, TVA will not waive the exemptions contained in paragraph (a) (4), (6) and (7) of this section. Determinations of appeals under this section shall be made by the General Manager, the Assistant General Manager, or an Assistant to the General Manager. If the determination on the appeal is to deny the request for records, TVA shall notify the person making the request of such determination, including the reason for the denial; a notice of the person's right to judicial review of the denial; and the name and job title of the TVA official responsible for the determination of the appeal.

(3) *Extensions of time.* (i) The 10-day time limit provided in paragraph (c) (1) of this section may be extended by TVA for unusual circumstances as set forth in this paragraph upon written notice to the person making the request specifying the reason for such extension and the date on which an initial determination is expected to be dispatched to such person. Such extension may not exceed 10 working days, and a decision to make such extension shall be made by the Director of Information or the Assistant Director of Information.

(ii) The 20-day time limit provided in paragraph (c) (2) of this section may be extended by TVA for unusual circumstances as set forth in this paragraph upon written notice to the person appealing a denial of a request for records. The notice shall specify the reasons for the extension and the date on which a determination of the appeal is expected to be dispatched. The aggregate length of an extension under this paragraph when combined with any extension provided under paragraph (c) (1) of this section shall not exceed 10 working days. A decision to make an extension under this paragraph shall be made by the General Manager, Assistant General Manager, or an Assistant to the General Manager.

(iii) For the purposes of this paragraph, unusual circumstances means, to the extent reasonably necessary to the proper processing of the particular request or appeal:

(A) Time necessary to search and collect requested records from segments of the agency separate from the office processing the request;

(B) Time necessary to search for, collect, and appropriately examine the voluminous number of records demanded in a single request; or

(C) Time necessary for consultation with another agency having a substantial interest in the determination of the request, or among two or more components of the agency which have an interest in the subject matter of the request.

(d) *Manner of making records available.* When TVA determines to comply with a request for records, the records are made available promptly for inspection and copying at the place it considers most feasible. TVA will notify the person requesting the records of the place at which the records will be made available and the amount of the applicable fee pursuant to § 301.2, and will request the person to set up a mutually convenient time for inspection. Applicable fees are payable prior to actual inspection of the records or prior to receipt of requested copies after inspection, respectively. If TVA deems it more convenient to do so, it may furnish copies of available requested records in lieu of permitting physical inspection thereof. In such case payment of applicable fees is due within 30 days after receipt of the copies.

(e) *Publications.* TVA publishes and sells to the public at nominal cost various materials concerning its activities and other matters within its statutory responsibilities, and also provides for the sale of other materials, such as maps prepared by other agencies, at prices prescribed by such agencies. Such services are not performed under the Freedom of Information Act, and requests for the purchase of such materials are not covered by the provision of subsections (a) through (d) of this section. A price list and order form for some of the most frequently asked for TVA publications and reports is contained in TVA Form 3077, which may be obtained by writing the Director of Information, Tennessee Valley Authority, Knoxville, Tennessee 37902. Information about other informational material available for sale or distribution by TVA may be obtained at the same address.

(16 U.S.C. 831-831dd)

[FR Doc. 75-4683 Filed 2-18-75; 8:45 am]

Title 22—Foreign Relations

CHAPTER II—AGENCY FOR INTERNATIONAL DEVELOPMENT, DEPARTMENT OF STATE

[A.I.D. Reg. 12]

PART 212—PUBLIC INFORMATION

On November 21, 1974, Congress amended the Freedom of Information

Act (5 U.S.C. 552). These amendments (Pub. L. 93-502) change the directives under which the former Public Information regulations of the Agency for International Development were issued and require changes in the procedures by which information requests are processed. Accordingly, Part 212 is hereby repealed and a new Part 212 is substituted therefor setting forth new procedures for requests, appeals and processing such requests and appeals under the Freedom of Information Act.

Since the Freedom of Information amendments require persons making requests to follow published rules stating the time, place, fees, and procedures to be followed, it is considered in the public interest to publish promptly the required rules of this Agency. It would be impractical to delay the effective date of the regulations beyond the effective date of the Freedom of Information amendments. Therefore, pursuant to 5 U.S.C. 553(d), these regulations shall be effective on February 19, 1975 without the normal 30-day notice being given.

However, in accordance with the spirit of the public policy set forth in 5 U.S.C. 553, interested persons may submit written comments, suggestions, data or arguments to the Director, Office of Public Affairs, Agency for International Development, Department of State, 21st and Virginia Ave., NW, Washington, D.C. 20523, on or before March 25, 1975. Material thus submitted will be evaluated and acted upon in the same manner as if this document were a proposal.

Subpart A—General

Sec.
212.1 Statement of policy.

Subpart B—Publication in the Federal Register

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212.41 Exemptions from the publication and disclosure requirements of Subparts B, C, and D.

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212.51 General policy.

AUTHORITY: The provisions of Part 212 are issued under Sec. 621, the Foreign Assistance Act of 1961, as amended, 75 Stat. 445 (22 U.S.C. 2402), Executive Order 10501, as amended by Executive Order 10816, sec. 3,

Administrative Procedure Act, 60 Stat. 237, as revised by Pub. L. 89-487, 80 Stat. 250 as amended by Pub. L. 93-502, 88 Stat. 1561 (5 U.S.C. 552).

Subpart A—General

§ 212.1 Statement of policy.

(a) It is the policy of the Agency for International Development that information about its objectives and operations be freely available to the public in accordance with the provisions of Pub. L. 89-487 (80 Stat. 250) as amended by Pub. L. 93-502. The Director, Office of Public Affairs is responsible for administration of the provisions of the regulations of this part.

(b) All records of the Agency for International Development shall be made available to the public upon compliance with the procedures established in this regulation, except to the extent a determination is made to withhold a record exemptable under 5 U.S.C. 552(b). Such a determination shall be made pursuant to procedures set forth in §§ 212.36 and 212.37.

(c) The term "record" includes all books, papers, maps, photographs, or other documentary material, or copies thereof, regardless of physical form or characteristics, made in or received by the Agency for International Development (including its Missions abroad), and preserved as evidence of its organization, functions, policies, decisions, procedures, operations, or other activities. It does not include copies of the records of other Government agencies, foreign governments, international organizations, or non-governmental entities which do not evidence organization, functions, policies, decisions, procedures, operations, or activities of the Agency for International Development.

Subpart B—Publication in the Federal Register

§ 212.11 Materials to be published.

(a) The Agency separately states and currently publishes in the FEDERAL REGISTER for the guidance of the public:

(1) Descriptions of its central and field organization and the established places at which, the officers from whom and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which its functions are channelled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Agency; and

(5) Every amendment, revision or repeal of the foregoing.

(b) A.I.D. Public Notice No. 1 and the A.I.D. Regulations published in Chapter

II of Title 22 and in Sub-Title A. Chapter 7 of Title 41 of the Code of Federal Regulations, implement the provisions of this section.

§ 212.12 Effect of nonpublication.

Except to the extent that a person has actual and timely notice of the terms thereof, no person shall in any manner be required to resort to, or be adversely affected by any A.I.D. matter required to be published in the FEDERAL REGISTER and not so published.

§ 212.13 Incorporation by reference.

For purposes of this Subpart B, A.I.D. matter which is reasonably available to the class of persons affected thereby is deemed to be published in the FEDERAL REGISTER when it has been incorporated by reference therein with the approval of the Director of the FEDERAL REGISTER.

Subpart C—Availability of Information for Public Inspection and Copying

§ 212.21 Public records.

In accordance with this subpart, A.I.D. makes the following information and materials available for public inspection and copying:

- (a) All final opinions (including concurring and dissenting opinions), and all orders made in the adjudication of cases;
- (b) Those statements of policy and interpretations which have been adopted by the Agency and are not published in the FEDERAL REGISTER; and
- (c) Administrative staff manuals and instructions to staff that affect any member of the public.

§ 212.22 Protection of personal privacy.

To the extent required to prevent a clearly unwarranted invasion of personal privacy, the Agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction, and will, in each such case, explain in writing the justification for the deletion.

§ 212.23 Current index.

The Agency maintains and makes available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated after July 4, 1967, and which is required by § 212.21 to be made available or published. Publication of an index is deemed both unnecessary and impractical. However, copies of the index are available upon request for a fee of the direct cost of duplication.

§ 212.24 Effect of noncompliance.

No final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects any member of the public will be relied upon, used, or cited as precedent by the Agency against any private party unless it has been indexed and either made available or published as provided by this subpart, or unless that private party shall have actual and timely notice of the terms thereof.

§ 212.25 Procedures for obtaining materials under this subpart.

(a) The materials required to be made available for public inspection and copying in accordance with this subpart are available to members of the public at the Agency for International Development Public Reading Room, Room 4943, Department of State Building, 21st and Virginia Ave., NW., Washington, D.C. which is open from 9 a.m. to 5 p.m., Monday through Friday, except on Holidays.

(b) Requests for materials which are available under this subpart should follow the procedures under Subpart D.

(c) The direct costs of any necessary duplication will be charged in accordance with the fee schedule set forth in § 212.35.

(d) The USAID Missions in countries abroad are not responsible for the maintenance of the index and materials available under this subpart. However, in so far as they do have these materials, they will make them available to citizens of the United States who are present in their respective countries upon either in person application or writing to the Director, USAID, c/o American Embassy in the applicable country.

Subpart D—Access to Agency Records

§ 212.31 Availability of Agency Records.

Upon receiving a request for a record, which reasonably describes such record, and which is made in accordance with the provisions of this Subpart, the Agency for International Development will make such records promptly available to any person, except the following: (a) matters published in the FEDERAL REGISTER pursuant to Subpart B; (b) matters made available to the public pursuant to Subpart C; and (c) matters exempt from disclosure pursuant to § 212.41.

§ 212.32 Identification of records.

The request for a record by a member of the public must contain a reasonably specific description of the particular record sought so that an officer of the Agency who is familiar with the subject matter of the request may be able to locate the record with a reasonable amount of effort. A description that includes as much information as possible, such as the subject matter, format, approximate date, and where pertinent, the name of the country or person involved, will facilitate the search for the requested record.

§ 212.33 Procedure for making requests.

(a) Requests for reasonably described records may be made by a member of the public either in person or by writing to the Director, Office of Public Affairs, Agency for International Development, Department of State, 21st and Virginia Ave., NW., Washington, D.C. 20523. The request and the envelope must be plainly marked "FOI Request." Requests may be made in person by going to the Agency for International Development Public

Reading Room, Room 4943, Department of State Building, 21st and Virginia Ave., NW., Washington, D.C., which is open from 9 a.m. to 5 p.m., Monday through Friday, except on Holidays. Telephonic requests cannot be accepted.

(b) Requests for reasonably described records may be made directly to USAID missions abroad only by citizens of the United States who are present in their respective countries by either personal application or by written application to the Director, USAID, care of American Embassy in the applicable country. Any written request and its envelope must be plainly marked "FOI Request."

(c) If a request not properly marked "FOI Request" on the request and envelope is inadvertently delayed in reaching the Director, Office of Public Affairs, or is erroneously sent to a USAID mission abroad, it will not be deemed received by the Agency until actually received by the Director, Office of Public Affairs. In such event, the person making the request will be furnished a notice of the effective date of receipt.

§ 212.34 Procedures for responding to requests for records.

(a) Upon receipt of the request by the Director, Office of Public Affairs, a maximum of 10 working days will normally be taken to determine to what extent the Agency can provide the information requested, and upon the making of the determination, the person making the request will be immediately informed. Copies of the releasable documents shall be made available promptly thereafter upon receipt of appropriate fees as set forth in § 212.35.

(b) In unusual circumstances, the Agency may not be able to determine the availability of the requested documents within 10 working days, in which event the person making the request will be informed by written notice of the delay, the reasons for the delay and the date on which a determination may be expected. The maximum time in making a determination of availability will be 20 working days from receipt of the request. If only part of the permissible 10 working days extension is used, the Agency reserves the right to use any remainder of the time for an extension of time for the determination of an appeal, if one is made, and the unusual circumstances require an extension of time to decide an appeal. A time extension for unusual circumstances will be used as reasonably necessary for a particular request in the following instances:

(1) When there is a need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

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

(3) When there is a need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two

or more components of the agency having substantial subject-matter interest therein.

(c) If, in spite of diligent efforts, circumstances are such that the Agency cannot make a complete and final determination even within the 10-day extension period, a denial of the request may be made. However, the Agency will continue the determination process and the denial will contain a statement to this effect with a date when final determination is expected. As soon as a final determination can be made, the person making the request will be further notified. This provision does not in any way limit or abridge the person's right to appeal the initial denial. It is only an informal process that may exist in addition to the appeal procedure in an attempt to prevent the necessity of appeal when the denial is issued without a full determination but solely in order to meet the Agency's time deadlines.

(d) If a request is made to this Agency for material that is controlled or held by another agency, the request will be referred to the appropriate agency for action and the person making the request will be immediately notified of the referral, unless the other agency has, by public regulation, delegated the release authority to this Agency. If release authority has been delegated, this Agency will follow the procedures authorized by the delegation in determining whether to release the information. If a request for material is referred to this Agency from another agency, the time period for determination of release of the information will not start until the request is received by the Director, Office of Public Affairs. The person making the request will be immediately notified of the referral and the date the request was received in this Agency. This Agency will not accept referral of requests unless and until the Director, Office of Public Affairs, determines that the material requested is actually within the scope and control of the release authority of the Agency for International Development.

(e) If only a part of a record is exempt from disclosure, then any reasonably segregable portion of such record shall be furnished after deletion of the portions which are exempt, provided that the segregable portion constitutes an intelligible record which is not distorted out of context or contradictory to the substance of the entire record before segregation.

§ 212.35 Schedule of fees and method of payment for services rendered.

(a) The following specific fees shall be applicable with respect to services rendered to members of the public under this part:

- (1) Searching for records, per hour, after 1st hour.....\$9.00
- (2) Copies made by photostat or otherwise (per page). (Maximum of 2 copies will be provided.).....10
- (3) Duplication of architectural photographs and drawings.....2.00

(b) When no specific fee has been established for a service, for example, when the search involves computer time or special travel, transportation, or communications costs, the Director, Office of Public Affairs, is authorized to determine the direct costs of the service and include such costs in the fees chargeable under this section.

(c) Where it is anticipated that the fees chargeable under this section will amount to more than \$25, and the requester has not indicated in advance his willingness to pay fees as high as are anticipated, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In appropriate cases an advance deposit may be required. The requester is at any time welcome to confer with knowledgeable Agency personnel in an attempt to formulate the request in a manner which will reduce the fees and meet the needs of the requester. A request will not be deemed to have been received until the requester has agreed to pay the anticipated fees and has made an advance deposit if one is required.

(d) Search costs are due and payable even if the record which was requested cannot be located after all reasonable efforts or if the Agency determines that a record which has been requested but which is exempt from disclosure under this part is to be withheld.

(e) Fees must be paid in full prior to issuance of requested copies.

(f) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, a postal money order, or cash. Remittances shall be made payable to the order of the Treasury of the United States and mailed to the Director, Freedom of Information Staff, Office of Public Affairs, Agency for International Development, Washington, D.C. 20523. The Agency will assume no responsibility for cash which is lost in the mail.

(g) A receipt for fees paid will be given only upon request. Refund of fees paid for services actually rendered will not be made.

(h) The Director, Office of Public Affairs, or an officer designated by the Director may waive all or part of any fee provided for in this section when the Director or the designated officer deems it to be in either the Agency's interest or in the general public's interest.

§ 212.36 Denial of request for access to records.

(a) If it is determined that the Agency cannot comply with all or part of a request for records, the person making the request shall be immediately notified of the determination, the reasons for the determination, the name and title of each officer responsible for the denial, and the right of the person to appeal the adverse determination.

(b) The denial of a request for records may be made only by the Director, Office of Public Affairs or his delegate. The General Counsel shall be consulted prior to a decision to deny access.

(c) Any person who has been denied access to records pursuant to this section may appeal the adverse decision not later than 60 days after the date of the notification of denial or, in the case of a partial denial, after the date the releasable documents are actually furnished the person making the request, whichever is later. The appeal shall be in writing addressed to the Administrator or Deputy Administrator, Agency for International Development, 21st and Virginia Ave., NW., Washington, D.C. 20523. In order to make a timely response to the appeal, both the appeal and the envelope must be plainly marked "FOI Appeal". The appeal should contain a reasonable description of the record sought and withheld, a copy of the initial decision to deny access and any other information that will enable the Administrator or Deputy Administrator to make the final decision.

§ 212.37 Procedures for Agency consideration of appeals.

(a) Upon receipt of the appeal by the Administrator or Deputy Administrator, a maximum of 20 working days will normally be taken to decide the appeal. In unusual circumstances, as defined in § 212.34, the 20 working days may be extended by 10 working days or by the number of days not used in the original denial of the request.

(b) If the appeal is granted, the person making the appeal shall be immediately notified and copies of the releasable documents shall be made available promptly thereafter upon receipt of appropriate fees as set forth in 212.35. If the appeal is denied in whole or part, the person making the request shall be immediately notified of the decision and of the provisions of judicial review of the Agency's denial of the request.

(c) In the event a determination is not issued within the appropriate time limit and the person making the request chooses to sue the Agency, the determination process shall continue and the Administrator or Deputy Administrator may review any initial denial of the requested records.

(d) If appeals not properly marked "FOI Appeal" on the appeal and envelope are inadvertently delayed in reaching the Administrator or Deputy Administrator, they will not be deemed received by the Agency until actually received by the Administrator or Deputy Administrator. In such event, the person making the appeal will be furnished a notice of the effective date of receipt.

Subpart E—Exemptions From Disclosure

§ 212.41 Exemption from the publication and disclosure requirements of Subparts B, C, and D.

None of the provisions of Subparts B, C, and D which provide for publication and disclosure of certain information and records shall be applicable to matters that are:

- (a) (1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (2)

are in fact properly classified pursuant to such Executive order;

(b) Related solely to the internal personnel rules and practices of the agency;

(c) Specifically exempted from disclosure by statute;

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel;

(h) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions; and

(i) Geological and geophysical information and data (including maps) concerning wells.

Subpart F—Opening of Records for Nonofficial Research Purposes

§ 212.51 General policy.

(1) In accordance with the policy of the Department of State, the Agency for International Development will open its records on an equitable basis to all individuals engaged in private research as soon as such action may be taken without adversely affecting the national security, the maintenance of friendly relations with other nations, the efficient operation of the agency, and the administrative feasibility of servicing requests for access to such records.

(2) Access for research in the classified foreign policy records in A.I.D.'s custody will be governed by the regulations of the Department of State in respect thereto, as set forth in Part 6, Chapter II of Title II of the Code of Federal Regulations. Application for such access may be made to the Director, Public Affairs, Agency for International Development, 21st and Virginia Avenue NW., Washington, D.C. 20523. The Director, Public Affairs, in consultation with the Director, Historical Office, Department of State, will determine the action to be taken and advise the researcher.

Effective date. This regulation is effective February 19, 1975.

Dated: February 14, 1975.

JOHN E. MURPHY,
Deputy Administrator, Agency
for International Development.

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Title 39—Postal Service

CHAPTER I—UNITED STATES POSTAL SERVICE

PART 265—RELEASE OF INFORMATION

Freedom of Information Act Regulations

The purpose of this document is to adopt revised regulations to govern the release of records to the public and to establish procedures implementing the Freedom of Information Act, as amended, insofar as it applies to the Postal Service.

The revised regulations are placed in Part 265 of Title 39, Code of Federal Regulations, and supersede regulations adopted by the former Post Office Department presently appearing as Parts 261 and 262 of Title 39, Code of Federal Regulations. While continuing generally the organization of Parts 261 and 262, the new regulations have been substantially rewritten in the interest of clarity, and have been modified as necessary in the light of recent statutory developments, principally §§ 410 and 412 of Title 39, United States Code, as enacted by Pub. L. 91-375, and the Freedom of Information Act Amendments, Pub. L. 93-502.

For purposes of analysis, the new regulations may be divided roughly into two groups of sections. The first group, consisting of §§ 265.1 through 265.6, states the policy of the Postal Service on the release of records and lists the principal categories of records that are available to the public as of right and those that are exempt from mandatory disclosure. The second group, consisting of §§ 265.7 through 265.9, establishes the procedures to be followed by the public in submitting requests for records and by the Postal Service in responding to those requests.

Discussed below are the major changes effected by the revision. There are in addition minor changes, not discussed, which have been made in the light of either statutory changes or the experience of the Postal Service under the previous regulations.

In order to conform the regulations to § 410(c) of Title 39, U.S.C., several categories of records have been added to the list of those exempt from mandatory disclosure contained in § 265.6 (formerly § 261.2). Of particular interest among these may be paragraphs (b) (3), relating to commercial information, and (d), relating to the names and addresses of postal customers. Paragraph (e) (1) of § 265.6 is a new provision added to reflect the prohibition of the disclosure by the Postal Service to the public of mailing lists, which is contained in 39 U.S.C. 412. Paragraph (e) (2) of § 265.6, although not altogether new, has been

revised to reflect the changes effected by Pub. L. 93-502 in 5 U.S.C. 552(b) (1) relating to classified defense and foreign policy materials. Paragraph (c) of § 265.6, relating to disclosure of investigatory records, has similarly been revised to state the policy of the Postal Service normally to make investigatory records available to the public when disclosure would be required by 5 U.S.C. 552(b) (7) as amended by Pub. L. 93-502, even though withholding would be authorized by 39 U.S.C. 410(c) (6).

The new regulations generally continue the system of procedures for responding to Freedom of Information Act requests that has been in effect under the prior regulations. Under this system, a request is submitted to the head of the facility at which the record is maintained. This custodian makes the initial determination whether to grant or deny the request. If it is denied, an appeal may be taken to the General Counsel whose decision is final within the Postal Service.

The sections relating to procedures and fees for requesting access to records, viz., §§ 265.7 and 265.8, have been substantially rewritten and expanded to conform to the requirements of the 1974 Amendments and to provide additional guidance to the public and to postal employees in submitting and responding to requests for records. The procedures which have been adopted are designed to take account of the fact that postal records are maintained at more than 30,000 post offices and other facilities located throughout the United States and its overseas territories. If the statutory time limits for response to requests are to be met, expeditious handling is essential. To facilitate the identification of requests for records so that priority treatment may be given them, § 265.7(a) (1) requires that a person desiring a response to his request within the statutory period label it as a Freedom of Information Act request or use a designated Postal Service form and that any envelope bear the same label. Requests not fulfilling this requirement will, of course, be given prompt treatment, but they will not be deemed as coming within the framework of these formal procedures. Such treatment seems, moreover, consistent with our experience that many inquiries which could be treated formally are, in fact, casual in nature, and can be answered informally to the greater satisfaction of the inquirer.

Paragraph (a) (2) of § 265.7 requires that requests be submitted to the custodian of the requested record, i.e., the head of the facility at which it is maintained. If it is submitted to some other facility it will, of course, be forwarded to the proper one, but it will be deemed to have been received by the Postal Service for purposes of computing the response period when it has been received by the actual custodian. If the location of the record is not known to the requester he may obtain this information from the Postal Service Records Officer or he may submit his request to the