

under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures. (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

#### PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**92-04-07. Boeing; Amendment 39-8178. Docket 92-NM-16-AD.**

**Applicability:** All Model 737-300, 737-400, and 737-500 series airplanes, certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent the occurrence of fire and smoke in the passenger cabin and cockpit, accomplish the following:

(a) Within 20 days after the effective date of this AD, visually inspect the wire bundles above the cockpit-to-cabin door header frame for damage due to chafing or interference with the door header frame. Pay particular attention to the wire bundle crossing over the right-hand corner of the header frame. Proper inspection requires removal of the aft center ceiling panel located just forward of the cockpit-to-cabin door. Ensure that the wire bundle clamps above the cockpit-to-cabin door header frame located approximately at Station 282.5, stringers 2R and 2L, are connected securely to stringer clip standoffs. (These should not be free floating clamps.) If any damaged wire bundle or loose clamp is found, prior to further flight, repair and/or secure it, in accordance with Boeing Standard Wiring Practices Document.

(b) Repeat the inspection procedure required by paragraph (a) of this AD at intervals not to exceed 120 days.

(c) Within 30 days after the effective date of this AD, sleeve the wire bundles in the area where they cross the cockpit-to-cabin door header frame with Expando PT or equivalent protective sleeving. Ensure that there is a minimum of 0.25 inch of clearance between these bundles and the cockpit-to-cabin door header, to prevent chafing or interference. If rework is necessary, perform it prior to further flight, in accordance with Boeing Standard Wiring Practices Document.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle Aircraft Certification Office (ACO).

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) This amendment (39-8178), AD 92-04-07, becomes effective February 21, 1992.

Issued in Renton, Washington, on January 30, 1992.

**James V. Devany,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 92-3170 Filed 2-10-92; 8:45 am]

**BILLING CODE 4910-13-M**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 14 CFR Part 1203b

**RIN 2700-AA80**

#### Security Programs; Arrest Authority and Use of Force by NASA Security Force Personnel

**AGENCY:** National Aeronautics and Space Administration (NASA)

**ACTION:** Final rule.

**SUMMARY:** NASA implements section 304(f) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2456a). By establishing guidelines for the exercise of arrest authority and for the exercise of physical force, including deadly force, in conjunction with such arrest authority.

**EFFECTIVE DATE:** February 11, 1992.

**ADDRESSES:** NASA Security Office, NASA Headquarters, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Erwin V. Minter, (202) 453-2911.

**SUPPLEMENTARY INFORMATION:** The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small business entities.

2. This rule is not a major rule as defined in Executive Order 12291.

#### List of Subjects in 14 CFR Part 1203b

Security programs, Arrest authority, Use of force.

Title 14 of the Code of Federal Regulations is amended by adding a new part 1203b to read as follows:

#### PART 1203b—SECURITY PROGRAMS; ARREST AUTHORITY AND USE OF FORCE BY NASA SECURITY FORCE PERSONNEL

Sec.	
1203b.100	Purpose.
1203b.101	Scope.
1203b.102	Definitions.
1203b.103	Arrest authority.
1203b.104	Exercise of arrest authority—general guidelines.
1203b.105	Use of non-deadly physical force when making an arrest.
1203b.106	Use of deadly force.
1203b.107	Use of firearms.
1203b.108	Management oversight.
1203b.109	Disclaimer.

**Authority:** Sec. 304(f) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2456a).

#### § 1203b.100 Purpose.

This regulation implements section 304(f) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2456a), by establishing guidelines for the exercise of arrest authority and for the exercise of physical force, including deadly force, in conjunction with such arrest authority.

#### § 1203b.101 Scope.

This part applies to only those NASA and NASA contractor security force personnel who are authorized to exercise arrest authority in accordance with 42 U.S.C. 2456a and this regulation.

#### § 1203b.102 Definitions.

**Accredited Course of Training.** A course of instruction offered by the Federal Law Enforcement Training Center, or an equivalent course of instruction offered by another Federal agency. See § 1203b.103(a)(1).

**Arrest.** An act, resulting in the restriction of a person's movement, other than a brief detention for purposes of questioning about a person's identity and requesting identification.

accomplished by means of force or show of authority under circumstances that would lead a reasonable person to believe that he/she was not free to leave the presence of the officer.

**Contractor.** NASA contractors and subcontractors at all tiers.

**§ 1203b.103 Arrest authority.**

(a) NASA security force personnel may exercise arrest authority, provided that:

- (1) They graduate from an accredited training course (see § 1203b.102(a)); and
- (2) They have been certified in writing by the Associate Administrator for Management Systems and Facilities, or designee, as specifically authorized to exercise arrest authority.

(b) The authority of NASA security force personnel to make a warrantless arrest is subject to the following conditions:

(1) The arresting officer must be guarding and protecting property owned or leased by, or under the control of, the United States under the administration and control of NASA or one of its contractors or subcontractors, at facilities owned by or contracted to NASA; and

(2) The person to be arrested has committed in the arresting officer's presence any offense against the United States; or

(3) The arresting officer has reasonable grounds to believe that the person to be arrested has committed or is committing any felony cognizable under the laws of the United States.

(c) The Office of the General Counsel, NASA Headquarters, or the Installation Chief Counsel's Office, as appropriate, shall provide guidance as to the applicability of these regulations.

**§ 1203b.104 Exercise of arrest authority—general guidelines.**

(a) In making an arrest, the security force officer should announce his/her authority and that the person is under arrest prior to taking the person into custody. If the circumstances are such that making such announcements would be useless or dangerous to the security force officer or others, the security force officer may dispense with these announcements.

(b) The security force officer at the time and place of arrest may search the arrested person and the area immediately surrounding the arrested person for weapons and criminal evidence. This is to protect the arresting officer and to prevent the destruction of evidence.

(c) After the arrest is effected, the arrested person shall be advised of his/

her constitutional right against self-incrimination. If the circumstances are such that making such advisement is dangerous to the officer or others, this requirement may be postponed until the immediate danger has passed. However, no interrogation of the individual may occur until he/she has been properly advised of his/her right against self-incrimination.

(d) Custody of the person arrested should be transferred to other Federal law enforcement personnel (e.g., United States Marshals or FBI agents) or to local law enforcement agency personnel, as appropriate, as soon as possible, in order to ensure that the person is brought before a magistrate without unnecessary delay.

**§ 1203b.105 Use of non-deadly physical force when making an arrest.**

When a security force officer has the right to make an arrest, as discussed in § 1203b.103, the officer may use only that non-deadly physical force which is reasonable and necessary to apprehend and arrest the offender; to prevent the escape of the offender; or to defend himself/herself or a third person from what the security force officer reasonably believes to be the use or threat of imminent use of non-deadly physical force by the offender. Verbal abuse alone by the offender cannot be the basis under any circumstances for use of non-deadly physical force by a security force officer.

**§ 1203b.106 Use of deadly force.**

Deadly force shall be used only in those circumstances where the security force officer reasonably believes that either he/she or another person is in imminent danger of death or serious bodily harm.

**§ 1203b.107 Use of firearms.**

(a) If it becomes necessary to use a firearm in any of the circumstances described in § 1203b.106, NASA security force personnel shall comply with the following precautions whenever possible:

- (1) Give an order to halt before firing.
- (2) Do not fire if shots are likely to harm innocent bystanders.
- (3) Aim to disable.
- (b) Warning shots are not authorized.
- (c) In the event that a security force officer discharges a weapon while in a duty status:

(1) The incident shall be reported by the security force officer to the NASA Security Office as expeditiously as possible, with as many details supplied as are available.

(2) The officer shall be promptly

suspended from duty with pay or reassigned to other duties not involving the use of a firearm, as the Installation Director or the Associate Administrator for Management Systems and Facilities deems appropriate, pending investigation of the incident.

(3) The cognizant Installation Director, or for incidents occurring at NASA Headquarters, the Associate Administrator for Management Systems and Facilities, shall appoint an investigating officer to conduct a thorough investigation of the incident. Additional personnel may also be appointed, as needed to assist the investigating officer. Upon conclusion of the investigation, the investigating officer shall submit a written report of findings and recommendations to the appropriate Installation Director or the Associate Administrator for Management Systems and Facilities.

(4) Upon conclusion of the investigation, the Installation Director or the Associate Administrator for Management Systems and Facilities, with the advice of Counsel, shall determine the disposition appropriate to the case.

(d) Firearms will be periodically inspected and kept in good working order by a qualified gunsmith. Ammunition, holsters, and related equipment will be periodically inspected for deterioration and kept in good working order. Firearms and ammunition will be securely stored separately in locked containers. Firearms will not be stored in a loaded condition. Neither firearms nor ammunition will be stored in the same containers as money, drugs, precious materials, or classified information. NASA Headquarters and each Installation shall adopt procedures for the maintenance of records with respect to the issuance of firearms and ammunition.

**§ 1203b.108 Management oversight.**

(a) The Administrator shall establish a committee to exercise management oversight over the implementation of arrest authority.

(b) The Administrator shall establish a reporting requirement for Headquarters and Field Installations.

(c) The Associate Administrator for Management Systems and Facilities, or designee, will ensure that all persons who are authorized to exercise arrest authority will, before performing these duties:

- (1) Receive instructions on regulations regarding the use of force, including deadly force; and

(2) Demonstrate knowledge and skill in the use of unarmed defense techniques and their assigned firearms.

(d) The Associate Administrator for Management Systems and Facilities, or designee, will also:

(1) Provide periodic refresher training to ensure continued proficiency and updated knowledge as to the use of unarmed defense techniques;

(2) Require security force officers exercising arrest authority to re-qualify annually with their assigned firearms; and

(3) Require periodic refresher training to ensure continued familiarity with regulations.

(e) The Associate Administrator for Management Systems and Facilities and Installation Directors shall issue local management instructions, subject to prior NASA Headquarters approval, which will supplement this regulation for Headquarters/Installation-specific concerns.

#### § 1203b.109 Disclaimer.

These regulations are set forth solely for the purpose of internal National Aeronautics and Space Administration guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, and they do not place any limitations on otherwise lawful activities of security force personnel or the National Aeronautics and Space Administration.

Dated: February 4, 1992.

Richard H. Truly,

Administrator.

[FR Doc. 92-3157 Filed 2-10-92; 8:45 am]

BILLING CODE 7510-01-M

## 14 CFR Part 1212

RIN 2700-AB20

### Privacy Act—NASA Regulations

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Interim final rule with request for comment.

**SUMMARY:** NASA is revising its regulations implementing the Privacy Act of 1974, 5 U.S.C. 552a, as amended, which currently appear at 14 CFR part 1212. These regulations establish procedures for individuals to access their Privacy Act records and to request amendment of information in records concerning them. It also provides for procedures for appeals and other remedies.

**EFFECTIVE DATE:** February 11, 1992. Comments must be received in writing on or before March 12, 1992.

**ADDRESSES:** IRM Policy and Acquisition Management Office, Code JTD-1, NASA Headquarters, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Wallace O. Keene, 202/453-1775.

**SUPPLEMENTARY INFORMATION:** This revision changes internal Agency responsibility with regard to the handling of appeals, sets forth general housekeeping policies and procedures, and makes changes to bring NASA's regulation in line with statutory requirements.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

#### List of Subjects in 14 CFR Part 1212

Privacy Act, Administrative practice and procedure.

For reasons set out in the Preamble, 14 CFR part 1212 is revised to read as follows:

### PART 1212—PRIVACY ACT—NASA REGULATIONS

#### Subpart 1212.1—Basic Policy

- Sec.  
1212.100 Scope and purpose.  
1212.101 Definitions.

#### Subpart 1212.2—Access to Records

- 1212.200 Determining existence of records subject to the Privacy Act.  
1212.201 Requesting a record.  
1212.202 Identification procedures.  
1212.203 Disclosures.  
1212.204 Fees.  
1212.205 Exceptions to individuals' rights of access.

#### Subpart 1212.3—Amendments to Privacy Act Records

- 1212.300 Requesting amendment.  
1212.301 Processing the request to amend.  
1212.302 Granting the request to amend.

#### Subpart 1212.4—Appeals and Related Matters

- 1212.400 Appeals.  
1212.401 Filing statements of dispute.  
1212.402 Disclosure to third parties of disputed records.

#### Subpart 1212.5—Exemptions to Individuals' Rights of Access

- 1212.500 Exemptions under 5 U.S.C. 552a(j) and (k).  
1212.501 Record systems determined to be exempt.

#### Subpart 1212.6—Instructions for NASA Employees

- 1212.600 General policy.  
1212.601 Maintenance and publication requirements for systems of records.  
1212.602 Requirements for collecting information.  
1212.603 Mailing lists.  
1212.604 Social security numbers.  
1212.605 Safeguarding information in systems of records.  
1212.606 Duplicate copies of records or portions of records.

#### Subpart 1212.7—NASA Authority and Responsibilities

- 1212.700 NASA employees.  
1212.701 Assistant Deputy Administrator.  
1212.702 Associate Administrator for Management Systems and Facilities.  
1212.703 Headquarters and Field or Component Installations.  
1212.704 System manager.  
1212.705 Assistant Administrator for Procurement.  
1212.706 Delegation of authority.

#### Subpart 1212.8—Failure to Comply With Requirements of This Part

- 1212.800 Civil remedies.  
1212.801 Criminal penalties.

**Authority:** The National Aeronautics and Space Act of 1958, as amended, 72 Stat. 429, 42 U.S.C. 2473; the Privacy Act of 1974, as amended, 88 Stat. 1896, 5 U.S.C. 552a.

#### Subpart 1212.1—Basic Policy

##### § 1212.100 Scope and purpose.

This part 1212 implements the Privacy Act of 1974, as amended (5 U.S.C. 552a). It establishes procedures for individuals to access their Privacy Act records and to request amendment of information in records concerning them. It also provides procedures for administrative appeals and other remedies. This part applies to systems of records located at or under the cognizance of NASA Headquarters, NASA Field Installations, and NASA Component Installations, as defined in part 1201 of this chapter.

##### § 1212.101 Definitions.

For the purposes of this part, the following definitions shall apply in addition to definitions contained in the Privacy Act of 1974, as amended (5 U.S.C. 552a):

(a) The term *individual* means a living person who is either a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) The term *maintain* includes maintain, collect, use or disseminate.

(c) The term *record* means any item, collection, or grouping of information about an individual including, but not limited to, education, financial transactions, medical history, and criminal or employment history, and that contains a name, or the identifying

number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(d) The term *system of records* means a group of any records from which information is retrieved by the name of the individual or by some identifying number, symbol or other identifying particular assigned to the individual.

(e) The term *system manager* means the NASA official who is responsible for a system of records as designated in the system notice of that system of records published in the **Federal Register**. When a system of records includes portions located at more than one NASA Installation, the term *system manager* includes any subsystem manager designated in the system notice as being responsible for that portion of the system of records located at the respective Installation.

(f) The term *systems notice* means, with respect to a system of records the publication of information in the **Federal Register** upon establishment or revision of the existence and character of the system of records. The notice shall include that information as required by 5 U.S.C. 552a(e)(4).

(g) The term *routine use* means, with respect to the disclosure of a record, the use of the record for a purpose which is compatible with the purpose for which it was collected.

(h) The term *NASA employee or NASA official*, particularly for the purpose of § 1212.203(g) related to the disclosure of a record to those who have a need for the record in the performance of their official duties, includes employees of a NASA contractor which operates or maintains a NASA system of records for or on behalf of NASA.

(i) The term *NASA information center* refers to information centers established to facilitate public access to NASA records under part 1206 of this chapter. See § 1206.401 of this chapter for the address of each NASA information center.

#### Subpart 1212.2—Access to Records

##### § 1212.200 Determining existence of records subject to the Privacy Act.

The procedures outlined in this subpart 1212.2 apply to the following types of requests under the Privacy Act made by individuals concerning records about themselves:

(a) To determine if information on the requester is included in a system of records;

(b) For access to a record; and

(c) For an accounting of disclosures of the individual's Privacy Act records.

##### § 1212.201 Requesting a record.

(a) Individuals may request access to their Privacy Act records, either in person or in writing.

(b) Individuals may also authorize a third party to have access to their Privacy Act records. This authorization shall be in writing, signed by the individual and contain the individual's address as well as the name and address of the representative being authorized access. The identities of both the subject individual and the representative must be verified in accordance with the procedures set forth in § 1212.202 of this part.

(c)(1) Requests must be directed to the appropriate system manager, or, if unknown, to the NASA Headquarters or Field Installation Information Center. The request should be identified clearly on the envelope and on the letter as a "Request Under the Privacy Act."

(2) Where possible, requests should contain the following information to ensure timely processing:

- (i) Name and address of subject.
- (ii) Identity of the system of records.
- (iii) Nature of the request.
- (iv) Identifying information specified in the applicable system notice to assist in identifying the request, such as location of the record, if known, full name, birth date, etc.

(d) NASA has no obligation to comply with a nonspecific request for access to information concerning an individual, e.g., a request to provide copies of "all information contained in your files concerning me," although a good faith effort will be made to locate records if there is reason to believe NASA has records on the individual. If the request is so incomplete or incomprehensible that the requested record cannot be identified, additional information or clarification will be requested in the acknowledgement, and assistance to the individual will be offered as appropriate.

(e) If the information center receives a request for access, the Information Center will record the date of receipt and immediately forward the request to the responsible system manager for handling.

(f) Normally, the system manager shall respond to a request for access within 10 work days of receipt of the request and the access shall be provided within 30 work days of receipt.

(1) In response to a request for access, the system manager shall:

- (i) Notify the requester that there is no record on the individual in the system of records and inform the requester of the procedures to follow for appeal (See § 1212.4);

(ii) Notify the requester that the record is exempt from disclosure, cite the appropriate exemption, and inform the requester of the procedures to follow for appeal (See § 1212.4);

(iii) Upon request, promptly provide copies of the record, subject to the fee requirements (§ 1212.204); or

(iv) Make the individual's record available for personal inspection in the presence of a NASA representative.

(2) Unless the system manager agrees to another location, personal inspection of the record shall be at the location of the record as identified in the system notice.

(3) When an individual requests records in a system of records maintained on a third party, the request shall be processed as a Freedom of Information Act (FOIA) request under 14 CFR part 1206. If the records requested are subject to release under FOIA (5 U.S.C. 552(b)), then a Privacy Act exemption may not be invoked to deny access.

(4) When an individual requests records in a system of records maintained on the individual, the request shall be processed under this part. NASA will not rely on exemptions contained in FOIA to withhold any record which is otherwise accessible to the individual under this part.

##### § 1212.202 Identification procedures.

(a) The system manager will release records to the requester or representative in person only upon production of satisfactory identification which includes the individual's name, signature, and photograph or physical description.

(b) The system manager will release copies of records by mail only when the circumstances indicate that the requester and the subject of the record are the same. The system manager may require that the requester's signature be notarized or witnessed by two individuals unrelated to the requester.

(c) Identity procedures more stringent than those required in this section may be prescribed in the system notice when the records are medical or otherwise sensitive.

##### § 1212.203 Disclosures.

(a) The system manager shall keep a disclosure accounting for each disclosure to a third party of a record from a system of records. This includes records disclosed pursuant to computer matching programs (See NASA Management Instruction (NMI) 1382.18).

(b) Disclosure accountings are not required but are recommended for disclosures made:

- (1) With the subject individual's consent; or
- (2) In accordance with § 1212.203(g) (1) and (2), below.
- (c) The disclosure accounting required by paragraph (a) of this section shall include:
- (1) The date, nature, and purpose of the disclosure; and
- (2) The name and address of the recipient person or Agency.
- (d) The disclosure accounting shall be retained for at least 5 years after the disclosure or for the life of the record, whichever is longer.
- (e) The disclosure accounting maintained under the requirements of this section is not itself a system of records.
- (f) Records in a NASA system of records may not be disclosed to third parties without the consent of the subject individual. However, in consonance with 5 U.S.C. 552a(b), disclosure may be authorized without consent, if disclosure would be:
- (1) To an officer or employee of NASA who has a need for the record in the performance of official duties;
- (2) Required under the Freedom of Information Act (5 U.S.C. 552) and part 1206 of this chapter;
- (3) For a routine use described in the system notice for the system of records;
- (4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13, U.S. Code;
- (5) To a recipient who has provided NASA with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;
- (6) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government or for evaluation by the Archivist of the United States or the Archivist's designee to determine whether the record has such value;
- (7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law and if the head of the agency or instrumentality has made a written request to NASA specifying the particular portion desired and the law enforcement activity for which the record is sought;
- (8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if

upon such disclosure notification is transmitted to the last known address of such individual;

(9) To either House of Congress or, to the extent the matter is within its jurisdiction, any committee or subcommittee, or any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any of the Comptroller's authorized representative(s), in the course of the performance of the duties of the General Accounting Office;

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

(12) To a consumer reporting agency in accordance with section 3711(f) of Title 31.

#### § 1212.204 Fees.

(a) Fees will not be charged for:

(1) Search for a retrieval of the requesting individual's records;

(2) Review of the records;

(3) Making a copy of a record when it is a necessary part of the process of making the record available for review;

(4) Transportation of the record(s);

(5) Making a copy of an amended record to provide evidence of the amendment; or

(6) Copies of records if this is determined to be in the best interest of the Government.

(b) Fees for the duplication of records will be assessed in accordance with § 1206.700(a) of this chapter.

(c) Where it appears that duplication fees chargeable under this section will exceed \$25, the requester shall be provided an estimate of the fees before copies are made. Where possible, the requester will be afforded the opportunity to confer with Agency personnel in a manner which will reduce the fees, yet still meet the needs of the requester.

(d) Where the anticipated fee chargeable under this section exceeds \$25, an advance deposit of part or all of the anticipated fee may be required.

#### § 1212.205 Exceptions to individual's rights of access.

(a) The NASA Administrator has determined that the systems of records set forth in § 1212.501 are exempt from disclosure to the extent provided therein.

(b) Medical records. Normally, an individual's medical record shall be disclosed to the individual, unless the system manages, in consultation with a medical doctor, determines that access to the record could have an adverse effect upon the individual. In this case, NASA shall allow access to the record

by a medical doctor designated in writing by the requesting individual.

(c) Test and qualification materials. Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process and copies of certificates of eligibles and other lists of eligibles, the disclosure of which is proscribed by 5 CFR 300.201, shall be removed from an individual's record containing such information before granting access.

(d) Information compiled for civil actions or proceedings. Nothing in this part shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

#### Subpart 1212.3—Amendments to Privacy Act Records

##### § 1212.300 Requesting amendment.

Individuals may request that NASA amend their records maintained in a NASA system of records. This request shall be in writing, addressed to the appropriate system manager, and shall contain the following:

(a) A notation on the envelope and on the letter that it is a "Request for Amendment of Individual Record under the Privacy Act;"

(b) The name of the system of records;

(c) Any information necessary to retrieve the record, as specified in the system notice for the system of records (See § 1212.201(c)(2));

(d) A description of that information in the record which is alleged to be inaccurate, irrelevant, untimely, or incomplete; and,

(e) Any documentary evidence or material available to support the request.

##### § 1212.301 Processing the request to amend.

(a) Within 10 work days of receipt by NASA of a request to amend a record, the system manager shall provide the requester with a written determination or acknowledgement advising when action may be taken.

(b) When necessary, NASA may utilize up to 30 work days after receipt to provide the determination on a request to amend a record.

(c) If the request for amendment is denied, the determination shall explain the reasons for the denial and inform the requester of the procedures to follow for appeal (See § 1212.4).

**§ 1212.302 Granting the request to amend.**

NASA shall make the requested amendment clearly on the record itself and all information deemed to be inaccurate, irrelevant, or untimely shall be deleted and destroyed. Incomplete information shall either be amended or deleted and destroyed. The individual shall then be informed in writing that the amendment has been made. If the inaccurate, irrelevant, untimely, or incomplete portion of the record has previously been disclosed, then the system manager shall notify those persons or agencies of the amended information, referencing the prior disclosures (See § 1212.402).

**Subpart 1212.4—Appeals and Related Matters****§ 1212.400 Appeals.**

(a) Individuals may appeal to the Assistant Deputy Administrator when they:

(1) Have requested amendment of a record and have received an adverse initial determination;

(2) Have been denied access to a record; or,

(3) Have not been granted access within 30 work days of their request.

(b) An appeal shall:

(1) Be in writing and addressed to the Assistant Deputy Administrator, NASA, Washington, DC 20546;

(2) Be identified clearly on the envelope and in the letter as an "Appeal under the Privacy Act;"

(3) Include a copy of any pertinent documents; and

(4) State the reasons for the appeal.

(c) Appeals from adverse initial determinations or denials of access must be submitted within 30 work days of the date of the requester's receipt of the initial determination. Appeals involving failure to grant access may be submitted any time after the 30 work day period has expired (See § 1212.201(f)).

(d) A final determination on an appeal shall be made within 30 work days after its receipt by the Assistant Deputy Administrator, unless, for good cause shown, the Assistant Deputy Administrator extends such 30 work day period. Prior to the expiration of the 30 work day period, the requester shall be notified of any such extension.

(e) If a denial of a request to amend a record is upheld, the final determination shall:

(1) Explain the basis for the detail;

(2) Include information as to how the requester goes about filing a statement of dispute under the procedures of § 1212.401; and,

(3) Include a statement that the final determination is subject to judicial review under 5 U.S.C. 552a(g).

**§ 1212.401 Filing statements of dispute.**

(a) A statement of dispute shall:

(1) Be in writing;

(2) Set forth reasons for the individual's disagreement with NASA's refusal to amend the record;

(3) Be concise;

(4) Be addressed to the system manager; and,

(5) Be identified on the envelope and in the letter as a "Statement of Dispute under the Privacy Act."

(b) The system manager shall prepare an addendum to the statement explaining the basis for NASA's refusal to amend the disputed record. A copy of the addendum shall be provided to the individual.

(c) The system manager shall ensure that the statement of dispute and addendum are either filed with the disputed record or that a notation appears in the record clearly referencing the statement of dispute and addendum so that they may be readily retrieved.

**§ 1212.402 Disclosure to third parties of disputed records.**

(a) The system manager shall promptly provide persons or agencies to whom the disputed portion of a record was previously disclosed and for which an accounting of the disclosure exists under the requirements of § 1212.203 of this part, with a copy of the statement of dispute and addendum, along with a statement referencing the prior disclosure. The subject individual shall be notified as to those individuals or agencies which are provided with the statement of dispute and addendum.

(b) Any subsequent disclosure of a disputed record shall clearly note the portion of the record which is disputed and shall be accompanied by a copy of the statement of dispute and addendum.

**Subpart 1212.5—Exemptions to Individuals' Rights of Access****§ 1212.500 Exemptions under 5 U.S.C. 552a(j) and (k).**

(a) These provisions authorize the Administrator of NASA to exempt certain NASA Privacy Act systems of records from portions of the requirements of this regulation.

(b) The Administrator has delegated this authority to the Assistant Deputy Administrator (See § 1212.701).

(c) For those NASA systems of records that are determined to be exempt, the system notice shall describe the exemption and the reasons.

**§ 1212.501 Record systems determined to be exempt.**

The Administrator has determined that the following systems of records are exempt to the extent provided hereinafter.

(a) *Inspector General Investigations Case Files*—(1) *Sections of the Act from which exempted.* (i) The Inspector General Investigations Case Files system of records is exempt from all sections of the Privacy Act (5 U.S.C. 552a) except the following: (b) relating to conditions of disclosure; (c) (1) and (2) relating to keeping and maintaining a disclosure accounting; (e)(4) (A) through (F) relating to publishing a system notice setting forth name, location, categories of individuals and records, routine uses, and policies regarding storage, retrievability, access controls, retention and disposal of the records; (e) (6), (7), (9), (10), and (11) relating to dissemination and maintenance of records, and (i) relating to criminal penalties. This exemption applies to those records and information contained in the system of records pertaining to the enforcement of criminal laws.

(ii) To the extent that there may exist noncriminal investigative files within this system of records, the Inspector General Investigations Case Files system of records is exempt from the following sections of the Privacy Act (5 U.S.C. 552a): (c)(3) relating to access to the disclosure accounting, (d) relating to access to records, (e)(1) relating to the type of information maintained in the records; (e)(4)(G), (H), and (I) relating to publishing the system notice information as to agency procedures for access and amendment and information as to the categories of sources or records, and (f) relating to developing agency rules for gaining access and making corrections.

(2) *Reason for exemptions.* (i) The Office of Inspector General is an office of NASA, a component of which performs as its principal function activity pertaining to the enforcement of criminal laws, within the meaning of 5 U.S.C. 552a(j)(2). This exemption applies only to those records and information contained in the system of records pertaining to criminal investigations.

This system of records is exempt for one or more of the following reasons:

(A) To prevent interference with law enforcement proceedings.

(B) To avoid unwarranted invasion of personal privacy, by disclosure of information about third parties, including other subjects of investigation, investigators, and witnesses.

(C) To protect the identity of Federal employees who furnish a complaint or information to the OIG, consistent with

section 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. App.

(D) To protect the confidentiality of non-Federal employee sources of information.

(E) To assure access to sources of confidential information, including that contained in Federal, State, and local criminal law enforcement information systems.

(F) To prevent disclosure of law enforcement techniques and procedures.

(G) To avoid endangering the life or physical safety of confidential sources and law enforcement personnel.

(ii) Investigative records within this system of records which are compiled for law enforcement purposes, other than material within the scope of subsection (j)(2), are exempt under the provisions of 5 U.S.C. 552a(k)(2): *Provided, however*, That if any individual is denied any right, privilege, or benefit that they would otherwise be entitled by Federal law, or for which they would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the sources would be held in confidence. This system of records is exempt for one or more of the following reasons:

(A) To prevent interference with law enforcement proceedings.

(B) To protect investigatory material compiled for law enforcement purposes.

(C) To avoid unwarranted invasion of personal privacy, by disclosure of information about third parties, including other subjects of investigation, law enforcement personnel, and sources of information.

(D) To fulfill commitments made to protect the confidentiality of sources.

(E) To protect the identity of Federal employees who furnish a complaint or information to the OIG, consistent with section 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. App.

(F) To assure access to sources of confidential information, including that contained in Federal, State, and local criminal law enforcement information systems.

(G) To prevent disclosure of law enforcement techniques and procedures.

(H) To avoid endangering the life or physical safety of confidential sources and law enforcement personnel.

(iii) Records within this system of records comprised of investigatory

material compiled solely for the purpose of determining suitability or eligibility for Federal civilian employment or access to classified information, are exempt under the provisions of 5 U.S.C. 552a(k)(5), but only to the extent that disclosure would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. This system of records is exempt for one or more of the following reasons:

(A) To fulfill commitments made to protect the confidentiality of sources.

(B) To assure access to sources of confidential information, including that contained in Federal, State, and local criminal law enforcement information systems.

(b) *Security Records System.*—(1) *Sections of the Act from which exempted.* The Security Records System is exempted from the following sections of the Privacy Act (5 U.S.C. 552a): (c)(3) relating to access to the disclosure accounting; (d) relating to access to the records; (e)(1) relating to the type of information maintained in the records; (e)(4) (G), (H), and (I) relating to publishing the system notice information as to agency procedures for access and amendment, and information as to the categories of sources of records; and (f) relating to developing Agency rules for gaining access and making corrections.

(2) *Reason for exemption.* (i) Personnel Security Records contained in the system of records which are compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information are exempt under the provisions of 5 U.S.C. 552a(k)(5), but only to the extent that the disclosure of such material would reveal the identity of the source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the sources would be held in confidence. This system of records is exempt for one or more of the following reasons:

(A) To fulfill commitments made to protect the confidentiality of sources.

(B) To assure access to sources of confidential information, including that contained in Federal, State, and local criminal law enforcement information systems.

(ii) Criminal Matter Records are contained in the system of records and are exempt under the provisions of 5

U.S.C. 552a(k)(2): *Provided, however*, That if any individual is denied any right, privilege, or benefit that they would otherwise be entitled by Federal law, or for which they would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the sources would be held in confidence. This system of records is exempt for one or more of the following reasons:

(A) To prevent interference with law enforcement proceedings.

(B) To protect investigatory material compiled for law enforcement purposes.

(C) To avoid unwarranted invasion of personal privacy, by disclosure of information about third parties, including other subjects of investigation, law enforcement personnel, and sources of information.

(D) To fulfill commitments made to protect the confidentiality of sources.

(E) To assure access to sources of confidential information, including that contained in Federal, State, and local criminal law enforcement information systems.

(F) To prevent disclosure of law enforcement techniques and procedures.

(G) To avoid endangering the life or physical safety of confidential sources and law enforcement personnel.

(iii) The system of records includes records subject to the provisions of 5 U.S.C. 552(b)(1) (required by Executive order to be kept secret in the interest of national defense or foreign policy), and such records are exempt under 5 U.S.C. 552a(k)(1).

#### Subpart 1212.6—Instructions for NASA Employees

##### § 1212.600 General policy.

In compliance with the Privacy Act and in accordance with the requirements and procedures of this regulation, NASA has an obligation to:

(a) Advise individuals, when requested, as to whether any specific system of records maintained by NASA contains records pertaining to them;

(b) Prevent records being maintained by NASA in a system of records for a specific purpose from being used or made available for another purpose without the individual's consent; and,

(c) Permit individuals to have access to information about themselves in a

NASA system of records, to have a copy made, and, if appropriate under Subpart 1212.3 of this part, to amend the records.

**§ 1212.601 Maintenance and publication requirements for systems of records.**

(a) In maintaining systems of records, NASA shall:

(1) Maintain any record in a system of records for necessary and lawful purposes only, assure that the information is current and accurate for its intended use, and provide adequate safeguards to prevent misuse of the information.

(2) Maintain only information about an individual relevant and necessary to accomplish a purpose or to carry out a function of NASA authorized by law or by Executive order of the President.

(3) Maintain records used by NASA officials in making any determination about any individual with such accuracy, relevance, timeliness, and completeness reasonably necessary to assure fairness to the individual in making the determination.

(4) Maintain no record describing how an individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute, by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

(5) Maintain and provide access to records of other agencies under NASA's control consistent with the regulations of this part.

(b) Any system of records maintained by NASA which is in addition to or substantially different from a Governmentwide systems of records described in a systems notice published by another agency shall be regarded as a NASA system of records subject to the requirements of this part, and the NASA system notice shall include a reference to the system notice of the other agency.

(c) NASA shall provide adequate advance notice to Congress and OMB of any proposal to establish a new system of records or alter any existing system of records as prescribed by OMB Circular No. A-130, Appendix I.

**§ 1212.602 Requirements for collecting information.**

In collecting information for systems of records, the following requirements shall be met:

(a) Information shall be collected 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. Exceptions to this policy may be made under certain

circumstances, such as one of the following:

(1) There is a need to verify the accuracy of the information supplied by an individual.

(2) The information can only be obtained from a third party.

(3) There is no risk that information collected from third parties, if inaccurate, could result in an adverse determination to the individual concerned.

(4) Provisions are made to verify with the individual information collected from a third party.

(b) Each individual who is asked to supply information shall be informed of the following:

(1) The authority (whether granted by statute, or by Executive order of the President) for requesting the information;

(2) Whether disclosure is mandatory or voluntary;

(3) The intended official use of the information;

(4) The routine uses which may be made of the information, as published in the system notices;

(5) The effects, if any, on the individual of not providing all or any part of the requested information.

**§ 1212.603 Mailing lists.**

NASA will not sell, rent, or otherwise disclose an individual's name and address to anyone, unless otherwise specifically authorized by law.

**§ 1212.604 Social security numbers.**

(a) It is unlawful for NASA to deny to individuals any rights, benefits, or privileges provided by law because of the individuals' refusal to disclose their social security numbers, except where:

(1) The disclosure is required by law; or

(2) The disclosure is from a system of records in existence and operating before January 1, 1975, and was required under statute or regulation adopted before that date to verify the identity of the individual(s).

(b) Any time individuals are requested to disclose their social security numbers, NASA shall indicate whether that disclosure is mandatory or voluntary, by what authority the numbers are requested, and what uses will be made of them.

**§ 1212.605 Safeguarding information in systems of records.**

(a) Safeguards appropriate for a NASA system of records shall be developed by the system manager in a written plan approved by the Installation Security Officer.

(b) When records or copies of records are distributed within NASA they shall be prominently identified as records protected under the Privacy Act and shall be subject to the same safeguard, retention, and disposition requirements applicable to the system of records.

(c) When records or copies of records are distributed to other Federal agencies, other than those having custody of the systems of records, they shall be prominently identified as records protected under the Privacy Act.

(d) Records that are otherwise required by law to be released to the public need not be safeguarded or identified as Privacy Act records.

**§ 1212.606 Duplicate copies of records or portions of records.**

(a) NASA officials may maintain and use, for official purposes, duplicate copies of records or portions of records from a system of records maintained by their own organizational unit. This practice should occur only where there are justifiable organizational needs for it, e.g., where geographic distances make use of the system of records time consuming or inconvenient. These duplicate copies shall not be considered a separate NASA system of records. For example, an office head or designee may keep duplicate copies of personnel, training, or similar records on employees within the organization for administrative convenience purposes.

(b) No disclosure shall be made from duplicate copies outside of the organizational unit. Any outside request for disclosure shall be referred to the appropriate system manager for response.

(c) Duplicate copies are subject to the same safeguard requirements applicable to the system of records.

**Subpart 1212.7—NASA Authority and Responsibilities**

**§ 1212.700 NASA employees.**

(a) Each NASA employee is responsible for adhering to the requirements of the Privacy Act and this regulation.

(b) An employee shall not seek or obtain access to a record in a NASA system of records or to copies of any portion of such records under false pretenses. Only those employees with an official "need to know" may seek and obtain access to records pertaining to others.

(c) Employees shall refrain from discussing or disclosing personal information about others which they have obtained because of their official

need to know such information in the performance of official duties.

(d) To the extent included in a contract which provides for the maintenance by or on behalf of NASA of a system of records to accomplish a function of NASA, the requirements of this section shall apply to contractor employees who work under the contract.

**§ 1212.701 Assistant Deputy Administrator.**

The Assistant Deputy Administrator is responsible for:

- (a) Making final Agency determinations on appeals (§ 1212.400);
- (b) Authorizing exemptions from one or more provisions of the Privacy Act for NASA systems of records (See § 1212.500); and,
- (c) Authorizing an extension for making a final determination on an appeal (§ 1212.400(d)).

**§ 1212.702 Associate Administrator for Management Systems and Facilities.**

(a) The Associate Administrator for Management Systems and Facilities is responsible for the following:

- (1) Providing overall supervision and coordination of NASA's policies and procedures under this regulation;
- (2) Approving system notices for publication in the *Federal Register*;
- (3) Assuring that NASA employees and officials are informed of their responsibilities and that they receive appropriate training for the implementation of these requirements; and,
- (4) Preparing and submitting the biennial report on implementation of the Privacy Act to OMB and special reports required under this regulation, including establishing appropriate reporting procedures in accordance with OMB Circular No. A-130.

(b) The Associate Administrator for Management Systems and Facilities may establish a position of 'NASA Privacy Officer,' or designate someone to function as such an officer, reporting directly to the Associate Administrator for Management Systems and Facilities, and delegate to that officer any of the functions described in paragraph (a) of this section.

**§ 1212.703 Headquarters and Field or Component Installations.**

(a) Officials-in-Charge of Headquarters Offices, Directors of NASA Field Installations and Officials-in-Charge of Component Installations are responsible for the following with respect to those systems of records maintained in their organization:

- (1) Avoiding the establishment of new systems of records or new routine uses of a system of records without first

complying with the requirements of this regulation;

(2) Ensuring that the requirements of this regulation and the Privacy Act are followed by employees;

(3) Ensuring that there is appropriate coordination within NASA before a determination is made to disclose information without the individual's consent under authority of 5 U.S.C. 552a(b) (See § 1212.203(g)); and

(4) Providing appropriate oversight for responsibilities and authorities exercised by system managers under their jurisdiction (§ 1212.704).

(b) Directors of NASA Field Installations and Officials-in-Charge of Component Installations or designees may establish a position of installation Privacy Officer to assist in carrying out the responsibilities listed in paragraph (a) of this section.

**§ 1212.704 System manager.**

(a) Each system manager is responsible for the following with regard to the system of records over which the system manager has cognizance:

- (1) Overall compliance with the "Privacy Act—NASA Regulations" (NASA Management Instruction (NMI) 1382.17) and the Computer Matching Program (NMI 1382.18);
- (2) Ensuring that each person involved in the design, development, operation, or maintenance of the system of records is instructed with respect to the requirements of this regulation and the possible penalties for noncompliance;
- (3) Submitting a request to the Assistant Deputy Administrator for an exemption of the system under subpart 1212.5 of this part, setting forth in proposed rulemaking form the reasons for the exemption and citing the specific provision of the Privacy Act which is believed to authorize the exemption;
- (4) After consultation with the Office of the General Counsel or the Chief Counsel, making 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;
- (5) Making an initial determination on an individual's request to correct or amend a record, in accordance with § 1212.302;
- (6) Prior to disclosure of any record about an individual, assuring that the record is first reviewed for accuracy, completeness, timeliness, and relevance;
- (7) Authorizing disclosures of a record without the individual's consent under § 1212.203(g)(1) through (12);
- (8) Responding within the requirements of § 1212.200 to an

individual's request for information as to whether the system contains a record pertaining to the individual;

(9) Responding to an individual's request for access and copying of a record, in accordance with subpart 1212.2 of this part;

(10) Amending a record under subpart 1212.3 of this part, or filing in an individual's record a statement of dispute;

(11) Preparing an addendum to an individual's statement of dispute to be filed in the individual's records, in accordance with § 1212.401;

(12) Maintaining disclosure accountings in accordance with 5 U.S.C. 552a(c) and 14 CFR 1212.203. This includes records disclosed pursuant to any computer matching programs;

(13) Notifying persons to whom a record has been disclosed and for which an accounting was made as to disputes and corrections involving the record; and

(14) Developing appropriate safeguards for the system of records in accordance with § 1212.605(a).

(b) Where a system of records has subsystems described in the system notice, the subsystem manager will have the responsibilities outlined in paragraph (a) of this section. Although the system manager has no line authority over subsystem managers, the system manager does have overall functional responsibility for the total system, and may issue guidance to subsystem managers on implementation of this part. When furnishing information for required reports, the system manager will be responsible for reporting the entire system of records, including any subsystems.

(c) Exercise of the responsibilities and authorities in paragraph (a) of this section by any system or subsystem managers at a NASA Installation shall be subject to any conditions or limitations imposed in accordance with § 1212.703 (a)(4) and (b).

**§ 1212.705 Assistant Administrator for Procurement.**

The Assistant Administrator for Procurement is responsible for developing appropriate procurement regulations and procedures under which NASA contracts requiring the maintenance of a system of records in order to accomplish a NASA function are made subject to the requirements of this part.

**§ 1212.706 Delegation of authority.**

Authority necessary to carry out the responsibilities specified in this regulation is delegated to the officials

named, subject to any conditions or limitations imposed in accordance with this subpart 1212.7.

#### Subpart 1212.8—Failure To Comply With Requirements of This Part

##### § 1212.800 Civil remedies.

Failure to comply with the requirements of the Privacy Act and this part could subject NASA to civil suit under the provisions of 5 U.S.C. 552a(g).

##### § 1212.801 Criminal penalties.

(a) A NASA officer or employee may be subject to criminal penalties under the provisions of 5 U.S.C. 552a(i) (1) and (2).

(1) Section 552a(i)(1). Any officer or employee of an agency, who by virtue of employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Section 552a(i)(2). Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

(3) These two provisions apply to NASA civil service employees as well as those employees of a NASA contractor with responsibilities for maintaining a Privacy Act system of records.

(b) Section 552a(i)(3). 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.

Dated: February 5, 1992.

Richard H. Truly,

Administrator.

[FR Doc. 92-3156 Filed 2-10-92; 8:45 am]

BILLING CODE 7510-01-M

#### FEDERAL TRADE COMMISSION

##### 16 CFR Part 600

#### Statement of General Policy or Interpretation; Commentary on the Fair Credit Reporting Act

AGENCY: Federal Trade Commission.

**ACTION:** Amendment to commentary.

**SUMMARY:** The Commission is issuing an amendment to its Commentary on the Fair Credit Reporting Act revising one sentence in comment 7 to section 609 of that Act to reflect the Commission's view that a "risk score" must be disclosed to a consumer by a consumer reporting agency.

**EFFECTIVE DATE:** February 11, 1992.

**ADDRESSES:** Federal Trade Commission, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Clarke Brinckerhoff, Attorney, Division of Credit Practices, Federal Trade Commission, Washington, DC 20580, 202-326-3208.

**SUPPLEMENTARY INFORMATION:** The Commission published its Commentary on the Fair Credit Reporting Act ("FCRA") on May 4, 1990 (55 FR 18804) to provide guidance to the consumer reporting industry, consumer report users, and consumers.

Section 609 of the FCRA specifies the disclosures that consumer reporting agencies must make to consumers who properly request the information maintained on them. The Commentary, in comment 7 to section 609, currently includes the following sentence:

Similarly, a point score that is provided to evaluate the report for its recipient (and/or the scoring system used to calculate the score) need not be disclosed, because the score is not used in preparing future reports. 55 FR 18822.

Based on a review of the use of point scores (also referred to as risk scores) by consumer reporting agencies and consistent with the legislative history of the FCRA, the Commission has reconsidered its position on the disclosure of a risk score that is provided to assist the recipient in evaluating the report. The Commission has determined that such risk scores must be disclosed by consumer reporting agencies to consumers requesting information maintained on them.

Risk scores, which were used less frequently in the past, now are commonly provided by consumer reporting agencies to assist clients in interpreting the agencies' consumer reports. Indeed, through recent investigations in the consumer reporting industry, the Commission has learned that, in some instances, a consumer reporting agency provides only a risk score and no other information to its client. Congresswoman Leonor Sullivan, when introducing the conference report on the bill that ultimately enacted the FCRA, stated:

(The House conferees) stressed that the consumer should have access to all information in any form which would be relayed to a prospective employer, insurer or creditor in making a judgment as to the worthiness of the individual's application for such benefits \* \* \*. It is not intended that the credit reporting firm should have a free hand in excluding from the consumer's access information other than medical information it just does not want to give him, but will give to a client-user.

116 Cong. Rec. 36572, October 12, 1970 (Emphasis added)

A consumer reporting agency provides a risk score (or other numerical evaluation, however named) to its client (creditor, insurer, employer, etc.) specifically to assist that client in making a judgment as to the worthiness of the consumer's application (for credit, insurance, employment, etc.). In light of this information and consistent with the legislative history of the FCRA, the Commission believes that the FCRA Commentary should be revised. Accordingly, comment 7 to section 609 (55 FR 18822) is revised by deleting the above-quoted sentence and replacing it with the following:

However, a risk score (or other numerical evaluation, however named) that is reported by a consumer reporting agency to a client to assist in evaluating a consumer's eligibility for credit (or other permissible purposes) must be disclosed (along with an explanation of the risk score), because, as indicated in the legislative history, each consumer should have access to all such information, regardless of form. [See 116 Cong. Rec. 36572 (1970) (remarks of Rep. Sullivan).]

#### List of Subjects in 16 CFR Part 600

Credit, Trade practices.

For the reasons set out in the preamble, title 16, chapter I, part 600 of the Code of Federal Regulations, is amended as follows:

#### PART 600—STATEMENT OF GENERAL POLICY OR INTERPRETATIONS

1. The authority citation for part 600 continues to read as follows:

**Authority:** 15 U.S.C. 1681s and 16 CFR 1.73.

2. Section 609 of the appendix is amended by revising comment 7 to read as follows:

**Appendix—Commentary on the Fair Credit Reporting Act**

*Section 609—Disclosure to Consumers*

#### 7. Ancillary Information

A consumer reporting agency is not required to disclose information consisting of an audit trail of changes it makes in the