

Title 10—Energy

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CHAPTER II—FEDERAL ENERGY ADMINISTRATION

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SUBCHAPTER A—OIL

PART 202—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

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AUTHORITY: Freedom of Information Act, 5 U.S.C. 552; Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159; Federal Energy Administration Act of 1974, Pub. L. 93-275, E.O. 11790, 39 FR 23185.

SOURCE: 39 FR 35472, Oct. 1, 1974, unless otherwise noted.

Subpart A—Production or Disclosure Under 5 U.S.C. 552

SOURCE: 40 FR 11707, Mar. 13, 1975, unless otherwise noted.

§ 202.1 Purpose and scope.

This subpart contains the regulations of the Federal Energy Administration (FEA) implementing 5 U.S.C. 552 (1970) as amended by Pub. L. 93-502, 88 Stat. 1561. The regulations of this subpart provide information concerning the procedures by which records may be obtained from all divisions within the FEA. Official records of the FEA made available pursuant to the requirements of 5 U.S.C. 552 shall be furnished to members of the public as prescribed by this

subpart. Officers and employees of the FEA may furnish to the public, informally and without compliance with procedures prescribed herein, information and records of types which prior to enactment of 5 U.S.C. 552 were furnished customarily in the regular performance of their duties to the public by other agencies. Persons seeking information or records of the FEA may find it useful to consult with FEA's Office of Public Affairs before invoking the formal procedures set out below. To the extent permitted by other laws, the FEA will make available records which it is authorized to withhold under 5 U.S.C. 552 unless it determines that such disclosure is not in the public interest.

§ 202.2 Public reference facilities.

(a) The National Office, FEA and Regional Offices, FEA will maintain in a public reading room or public reading area, the materials relating to that office which are required by 5 U.S.C. 552(a) (2) and 552(a) (4) to be made available for public inspection and copying.

(b) Each of these public reference facilities will maintain and make available for public inspection and copying current indexes of the materials available at that facility which are required to be indexed by 5 U.S.C. 552(a) (2), and the National Office, FEA, will maintain and make available for public inspection and copying copies of all such indexes. Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system, indexes and publishes a number of the materials required to be made public under 5 U.S.C. 552(a) (2), and is available through private commercial subscription. The Guidelines are available for inspection and copying in the public reading rooms. In addition, the FEA National Energy Information Center will publish, on a quarterly basis, a listing of all energy data bases and publications as a guide to other types of information, not referred to by 5 U.S.C. 552(a) (2), collected or generated by the FEA.

§ 202.3 Requests for reasonably described records and copies.

(a) *Addressed to the Director of Public Affairs.* A request for a record of the FEA which is not customarily made available and which is not available in a public

reference facility as described in § 202.2 shall be addressed to the Director of Public Affairs, Federal Energy Administration, Washington, D.C. 20461, and shall be clearly marked on the envelope "Attention: Information Access Officer". Except as provided in § 202.8(c), a request which is so addressed and marked will be considered to be received by the FEA for purposes of 5 U.S.C. 552(a) (6) when it has been delivered to the FEA National Office by the United States Postal Service if mailed, and upon delivery to the Information Access Office, Room 206, Old Post Office Building at 12th and Pennsylvania Avenue N.W., Washington, D.C., if hand-delivered. A request under 5 U.S.C. 552 which is not so addressed and marked shall be considered to be received upon actual receipt by the Information Access Officer. Documents delivered after regular business hours are deemed received on the next regular business day. Regular business hours for the FEA National Office are 8 a.m. to 4:30 p.m.

(b) *Request should be in writing and for reasonably described records.* A request for access to records should be submitted in writing and should reasonably describe the records requested to enable FEA personnel to locate them with a reasonable amount of effort. Where possible, specific information regarding dates, titles, file designations, and other information which may help identify the records should be supplied by the requester, including the names and titles of any FEA officers or employees who have been contacted regarding the request prior to filing of a written request. If the request relates to a matter in pending litigation, the court and its location should be identified to aid in locating the documents. If the records are known to be in a Regional Office of the FEA, the request should so state and should identify the Regional Office concerned.

(c) *Form may be requested.* Where the information supplied by the requester is not sufficient to permit location of the records by FEA personnel with a reasonable amount of effort, the requester may be sent and asked to fill out and return a form which is designed to elicit the necessary information.

(d) *Categorical requests*—(1) *Must meet reasonably described records requirement.* A request for all records fall-

ing within a reasonably specific category shall be regarded as conforming to the statutory requirement that records be reasonably described if it can reasonably be determined which particular records are sought in the requests, and the records can be searched for, collected, and produced without unreasonably burdening or interfering with FEA operations because of the staff time consumed or the resulting disruption of files.

(2) *Assistance in reformulating non-conforming requests.* If it is determined that a categorical request would unreasonably burden or interfere with the operations of the FEA under subparagraph (1) of this paragraph, the response denying the request on those grounds shall specify the reasons why and the extent to which compliance would burden or interfere with FEA operations, and shall extend to the requester an opportunity to confer with knowledgeable FEA personnel in an attempt to restate the request or reduce the request to manageable proportions by reformulation and by agreeing on an orderly procedure for the production of the records.

(e) *Requests for records of other agencies.* Some of the records in the files of the FEA have been obtained from other federal agencies. Where it is determined that the question of the availability of requested records is primarily the responsibility of another federal agency, the Information Access Officer will inquire of the originating agency as to whether it concurs in release of the records. If that agency does not concur within the time for FEA response to the request, the Information Access Officer will refer the request to the originating agency, and inform the requester of the appropriate official with whom to pursue his request. The FEA will accompany such referral with a recommendation, based on the interest of FEA in such records, concerning the disclosure of the requested records.

§ 202.4 Time for response to request for records.

(a) An Information Access Officer, appointed by the Director of Public Affairs, shall be responsible for processing written requests for records submitted pursuant to this part. Upon receiving such a request, the Information Access Officer shall ascertain which division or divisions of the FEA have primary responsibility for, custody of, or concern with the records requested and forward the

request to such division or divisions, who shall promptly identify and review the records encompassed by the request. After reviewing the material, the division or divisions concerned shall forward to the Information Access Officer either the requested material, or a recommendation that the request be wholly or partially denied. Any recommendation that a request be denied shall set forth the policy considerations supporting such denial and shall be forwarded, with the information sought or a representative sample thereof, to the Information Access Officer, who shall provide such recommendation and materials to the General Counsel for his review and recommendation.

(b) On the basis of the recommendations of the division or divisions, the Information Access Officer shall either (1) grant the request, (2) deny the request, (3) grant it in part and/or deny it in part, or (4) reply with a response either stating that the request has been referred to another agency under § 202.3(e) of this part, or that additional information is needed from the requester to render the records reasonably described; such a response shall specify any further information needed by the FEA from the requester, the agency to whom the request has been referred, if any, and the name of the appropriate official of that agency with whom to pursue the matter. The Deputy Administrator or his delegate shall, in cases of denials of requests, determine the official or officials responsible for such denial.

(c) Action pursuant to paragraph (b) of this section shall be taken within 10 days of receipt of a request for FEA records ("receipt" is defined in § 202.3(a)) except that if unusual circumstances require an extension of time before a decision of a request can be reached, and the person requesting records is promptly informed in writing setting forth the reasons for such extension and the date on which a determination is expected to be dispatched, then the Information Access Officer may respond to the request within 15 days of the receipt of the request, or within 20 days of receipt of the request if the Director, Office of Exceptions and Appeals shall concur with such later response. If a response is given by FEA stating that additional information is needed from the requester to render records reasonably described, any reformulated request submitted by the requester shall be treated as an initial request for purposes of time for FEA response.

(d) For purposes of this section and § 202.6(b) the term "unusual circumstances" means:

(1) 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;

(2) 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

(3) 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.

(e) If the Information Access Officer does not respond to a request for records within the time limits provided in paragraph (c) of this section, the requester may petition the Deputy Administrator to take appropriate measures to assure prompt action on the request.

(f) For purposes of this section, the term "division" includes all administrative or operating units of the FEA.

§ 202.5 Responses by Information Access Officer: form and content.

(a) *Form of grant.* When a requested record has been identified and is to be made available, the Information Access Officer or other appropriate official of FEA shall notify the requester as to when the record is available, and shall promptly make the records available to the person making the request. The notification shall also advise the requester of any applicable fees under § 202.8.

(b) *Form of denial.* A reply denying a written request for a record shall be in writing signed by the Information Access Officer and shall include:

(1) *Reason for denial:* A statement of the reason for denial, containing, as applicable:

(i) *Exemption category.* A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of the record, and to the extent consistent with the purposes of the exemption, a brief explanation of how the exemption applies to the record withheld, and, if the Information Access Officer considers it appropriate, a statement of why the exempt record is being withheld;

(ii) *Denial because record cannot be located or does not exist.* If a requested

record is known to have been destroyed or otherwise disposed of, or if no such record was ever known to exist, the requester shall be so notified.

(2) *Persons responsible for denial.* A statement setting forth the names and the titles or positions of each person responsible for the denial of such request; and

(3) *Administrative appeal and judicial review.* A statement that the denial may be appealed within 30 days to the Deputy Administrator, and the judicial review will be thereafter available either in the district in which the requester resides or has a principal place of business or in which the agency records are situated or in the District of Columbia.

§ 202.6 Appeals to the Deputy Administrator from initial denials.

(a) *Appeal to Deputy Administrator.* When the Information Access Officer has denied a request for records in whole or in part, the requester may, within 30 days of its receipt, appeal the denial to the Deputy Administrator, FEA. The appeal shall be in writing and shall be addressed to the Deputy Administrator, Federal Energy Administration, Washington, D.C. 20461, and shall be clearly marked on the envelope "Appeal—Freedom of Information Act; Attention: Director, Office of Exceptions and Appeals." A request which is so addressed and marked will be considered to be received by the FEA for purposes of 5 U.S.C. 552(a) (6) when it has been delivered to the FEA National Office by the United States Postal Service if mailed, and upon delivery to the Office of Exceptions and Appeals, Room 8002, 2000 M Street NW., Washington, D.C., if hand-delivered. An appeal of the denial of a request which is not so addressed and marked shall be considered to be received upon actual receipt by the Director, Office of Exceptions and Appeals. Documents delivered after regular business hours are deemed received on the next regular business day. Regular business hours for the FEA National Office are 8 a.m. to 4:30 p.m.

(b) *Action within 20 days.* The Deputy Administrator shall act upon the appeal within 20 days of its receipt, and more rapidly if practicable, except that if unusual circumstances require an extension of time before a decision on a request can be reached, the Director, Office of Exceptions and Appeals, acting

on behalf of the Deputy Administrator, may extend the time for final action for an additional 10 days less the number of days of any extension which may have been taken by the Information Access Officer during the period of initial determination, upon notifying the requester in writing of the reasons for the extended deadline and the date on which a final determination is expected to be dispatched.

(c) *Form of action on appeal.* The Deputy Administrator's action on an appeal shall be in writing, and shall set forth his name and title. A denial in whole or in part of a request on appeal shall set forth the exemption relied on, a brief explanation consistent with the purpose of the exemption of how the exemption applies to the records withheld, and the reasons for asserting it. It shall also contain a statement that judicial review will be available either in the district in which the requester resides or has a principal place of business or in which the agency records are situated or in the District of Columbia. Documents determined by the Deputy Administrator to be documents subject to release shall be made promptly available to the applicant.

§ 202.7 Maintenance of files.

(a) *Maintenance of file open to public.* The Information Access Officer shall maintain a file, open to the public, which shall contain copies of all grants or denials of all requests for information or appeals made under this subpart. The material shall be indexed by the exemption asserted by the FEA, if any, and, to the extent feasible, according to the type of records requested.

(b) *Protection of privacy.* Where the identity of a requester, or other identifying details related to a request, would constitute an invasion of a personal privacy if made generally available, the Information Access Officer shall delete identifying details from the copies of documents maintained in the public file established under paragraph (a) of this section.

§ 202.8 Fees for provision of records.

(a) *When charged.* User fees pursuant to 5 U.S.C. 552, as amended and 31 U.S.C. 483a, shall be charged according to the schedule contained in paragraph (b) of this section for services rendered in responding to requests for FEA records

under this subpart unless the Information Access Officer determines, in conformity with the provisions of 5 U.S.C. 552, as amended, and 31 U.S.C. 483a, that a waiver of payment of such charges or a portion thereof is in the public interest. Such a determination shall ordinarily not be made unless the service to be performed will be of benefit primarily to the public as opposed to the requester, or unless the requester is an indigent individual. Fees shall not be charged where they would amount, in the aggregate, for a request or series of related requests, to less than \$3. Ordinarily, fees for search shall not be charged if the records requested are not found, or if all of the records located are withheld as exempt. However, if the time expended in processing the request is substantial, and if the requester has been notified of the estimated cost pursuant to paragraph (c) of this section and has been specifically advised that it cannot be determined in advance whether any records will be made available, fees for search may be charged.

(b) *Services charged for, and amount charged.* For the services listed below expended in locating or making available records or copies thereof, the following charges shall be assessed:

(1) *Copies.* For copies of documents (maximum of 5 copies will be supplied) \$.10 per copy of each page.

(2) *Clerical searches.* For each one quarter hour spent by clerical personnel in excess of the first quarter hour in searching for and producing a requested record, \$1.25.

(3) *Certification.* For certification of true copies, each, \$1.

(4) *Nonroutine, nonclerical searches.* Where a search cannot be performed by clerical personnel, for example, where the task of determining which records fall within a request and collecting them requires the time of professional or managerial personnel, and where the amount of time that must be expended in the search and collection of the requested records by such higher level personnel is substantial, charges for the search may be made at a rate in excess of the clerical rate, namely for each one quarter hour spent in excess of the first quarter hour by such higher level personnel in searching for a requested record, \$3.75.

(5) *Examination and related tasks in screening records.* No charge shall be made for time spent in resolving legal or policy issues affecting access to rec-

ords of known contents. In addition, no charge shall be made for the time involved in examining records to determine whether they are exempt from mandatory disclosure and should be withheld as a matter of sound policy.

(6) *Computerized records.* Fees for services in processing requests maintained in whole or part in computerized form shall be in accordance with this section so far as practicable. Services of personnel in the nature of a search will be charged for at rates prescribed in paragraph (b) (4) of this section unless the level of personnel involved permits rates in accordance with paragraph (b) (2) of this section. A charge may be made for the computer time involved, based upon the prevailing level of costs to governmental organizations and upon the particular types of computer and associated equipment and the amounts of time on such equipment that are utilized. A charge may also be made for any substantial amounts of special supplies or materials used to contain, present, or make available the output of computers, based upon prevailing levels of costs to governmental organizations and upon the type and amount of such supplies or materials that is used. Nothing in this paragraph shall be construed to entitle any person, as of right, to any services in connection with computerized records, other than services to which such person may be entitled under 5 U.S.C. 552 and under the provisions, not including this paragraph (b), of this subpart.

(c) *Notice of anticipated fees in excess of \$25.* Unless the requester specifically states that he is willing to pay whatever fees are assessed by FEA for meeting the request or, alternatively, specifies an amount in excess of \$25 which he is willing to pay and which in fact covers the anticipated fees for meeting the request, a request that is expected to involve assessed fees in excess of \$25 will not be deemed to have been received until the requester is advised of the anticipated cost, agrees to bear it, and makes any advance deposit required. Such notification shall be made by the Information Access Officer promptly upon receipt of the request.

(d) *Form of payment.* Payment should be made by check or money order payable to the Treasury of the United States.

§ 202.9 Exemptions.

(a) 5 U.S.C. 552 exempts from all of its publication and disclosure requirements

nine categories of records which are described in subsection (b) of that section. These categories include such matters as national defense and foreign policy information; investigatory files, internal procedures and communications; materials exempted from disclosure by other statutes; information given in confidence; and matters involving personal privacy. Specifically, the exemption in 5 U.S.C. 552(b) applies to matters that are—

(1) (i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of the 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 an agency;

(3) Specifically exempted from disclosure by statute;

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

(5) Inter-agency 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;

(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, 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.

(b) Any reasonably segregable portion of a record will be provided to any person requesting such record. The FEA will delete portions which are exempt under the exceptions listed above only if it is determined that such deletions are required by law or are in the public interest.

(c) The scope of the exemption is discussed generally in the Attorney General's Memorandum on the Public Information section of the Administrative Procedure Act, which was published in June 1967 and the Attorney General's Memorandum on the 1974 amendments to the Freedom of Information Act, published in February 1975. These documents are available from the Superintendent of Documents and may be consulted in considering questions arising under 5 U.S.C. 552.

§ 202.10 Computation of time.

In computing any period of time prescribed or allowed by this subpart, the day of the event from which the designated period of time begins to run is not to be included; the last day of the period so computed is to be included; and Saturdays, Sundays and legal public holidays are excepted.

Subpart B—Production or Disclosure in Response to Subpoenas or Demands of Courts or Other Authorities

§ 202.21 Purpose and scope.

(a) This subpart sets forth the procedures to be followed when a subpoena, order, or other demand (hereinafter referred to as a "demand") of a court or other authority is issued for the production or disclosure of (1) any material contained in the files of the Federal Energy Administration (FEA), (2) any information relating to material contained in the files of the FEA, or (3) any information or material acquired by any person while such person was an employee of the FEA as a part of the performance of his official duties or because of his official status.

(b) For purposes of this subpart, the term "employee of the FEA" includes all officers and employees of the United States appointed by, or subject to the supervision, jurisdiction, or control of, the Administrator of FEA.

§ 202.22 Production or disclosure prohibited unless approved by appropriate FEA official.

No employee or former employee of the FEA shall, in response to a demand

of a court or other authority, produce any material contained in the file of the FEA or disclose any information relating to material contained in the files of the FEA, or disclose any information or produce any material acquired as part of the performance of his official duties or because of his official status without prior approval of the General Counsel of FEA.

§ 202.23 Procedure in the event of a demand for production or disclosure.

(a) Whenever a demand is made upon an employee or former employee of the FEA for the production of material or the disclosure of information described in § 202.21(a), he shall immediately notify the Regional Counsel for the region where the issuing authority is located. The Regional Counsel shall immediately request instructions from the General Counsel of FEA.

(b) If oral testimony is sought by the demand, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or his attorney, setting forth a summary of the testimony desired, must be furnished for submission by the Regional Counsel to the General Counsel.

§ 202.24 Final action by the appropriate FEA official.

If the General Counsel approves a demand for the production of material or disclosure of information, he shall so notify the Regional Counsel and such other persons as circumstances may warrant.

§ 202.25 Procedure where a decision concerning a demand is not made prior to the time a response to the demand is required.

If response to the demand is required before the instructions from the General Counsel are received, a U.S. attorney or FEA attorney designated for the purpose shall appear with the employee or former employee of the FEA upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate FEA official and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

§ 202.26 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 202.25 pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand. "United States ex rel Touhy v. Ragen," 340 U.S. 462.

PART 203—STANDARDS OF CONDUCT

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