

son's participation is prohibited by law, order, or regulation.

to him for the purpose of review, amendment or correction.

PART 1101—PRIVACY ACT OF 1974

§ 1101.2 Definitions.

Sec.

For the purpose of these rules:

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(a) "The Act" means the Privacy Act of 1974.

(b) "The Section" means the United States Section, International Boundary and Water Commission, United States and Mexico.

(c) "The Commission" means the International Boundary and Water Commission, United States and Mexico.

(d) "Agency" is defined to include any executive department, military department, Government corporation, Government controlled corporation or other establishment in the executive branch of the Government (including the Executive Office of the President, or any independent regulatory agency) (5 U.S.C. 552(e)).

(e) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(f) "Maintain" includes maintain, collect, use, or disseminate.

(g) "Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying means assigned to the individual, such as a finger or voice print or a photograph.

(h) "System of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying means assigned to the individual.

(i) "Statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8 (Census data).

(j) "Routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which

AUTHORITY: Privacy Act of 1974 (Pub. L. 93-579, 5 U.S.C. 552a).

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§ 1101.1 Purpose and scope.

The purpose of these rules is to establish policies and procedures for implementing the Privacy Act of 1974 (Pub. L. 93-579, 5 U.S.C. 552a). The main objectives are defining the responsibilities of United States Section employees which will assure that personal information about individuals collected by the United States Section is limited to that which is legally authorized and necessary and is maintained in a manner which precludes unwarranted intrusions upon individual privacy. Further, these rules establish procedures by which an individual can: (a) Determine if the United States Section maintains records or a system of records which include a record pertaining to the individual and (b) gain access to a record pertaining

is compatible with the purpose for which it was collected.

§ 1101.3 Procedures for requests pertaining to individual's records in a record system.

(a) Any individual may submit an inquiry to the United States Section to ascertain whether a system of records contains a record pertaining to him.

(b) The inquiry should be made either in person or by mail addressed to the FOIA Administrator, United States Section, International Boundary and Water Commission, 4110 Rio Bravo, El Paso, Texas 79902. The FOIA Administrator shall provide assistance to the individual making the inquiry to assure the timely identification of the appropriate system of records. The office of the FOIA Administrator is located in Room 212 and is open to an individual between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (excluding holidays).

(c) Inquiries submitted by mail should bear the designation "PRIVACY ACT—1974" in capital letters on the address side of the envelope.

(d) The Section has an official form for making inquiries, a facsimile of which is printed as Appendix B¹ hereto. Its use is urged. Copies may be obtained by contacting the FOIA Administrator, Room 212, United States Section, International Boundary and Water Commission, 4110 Rio Bravo, El Paso, Texas 79902. Copies may also be obtained by contacting the Project Offices listed in Appendix A¹ hereto.

(e) Inquiries concerning whether a system of records contains a record pertaining to an individual should contain the following:

(1) Name, address and telephone number (optional) of the individual making the inquiry;

(2) Name, address and telephone number (optional) of the individual to whom the record pertains, if the inquiring individual is either the parent of a minor or the legal guardian of the individual to whom a record pertains;

(3) A certified or authenticated copy of documents establishing parentage or guardianship;

(4) Whether the individual to whom the record pertains is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States;

(5) Name of the system of records, as published in the FEDERAL REGISTER;

(6) Location of the system of records, as published in the FEDERAL REGISTER;

(7) Such additional information as the individual believes will or might assist the Section in responding to the inquiry and in verifying the individual's identity (for example: Date of birth, place of birth, names of parents, place of work, dates of employment, position title, etc.);

(8) Date of inquiry; and

(9) Individual's signature.

The Section reserves the right to require compliance with the identification procedures appearing at paragraph (f) of this section where conditions warrant.

(f) The requirements for identification of individuals seeking access to records are as follows:

(1) *In person.* Each individual making a request in person shall be required to present satisfactory proof of identity. The means of proof, in the order of preference and priority, are:

(i) A document bearing the individual's photograph (for example, driver's license, passport or military or civilian identification card);

(ii) A document bearing the individual's signature, preferably issued for participation in a federally sponsored program (for example, Social Security card, unemployment insurance book, employer's identification card, national credit card and professional, craft or union membership card); and

(iii) A document bearing either the photograph or the signature of the individual, preferably issued for participation in a federally sponsored program (for example, Medicaid card). In the event the individual can provide no suitable documentation of identity, the Section will require a signed statement asserting the individual's identity and stipulating that the individual understands the penalty provision of 5 U.S.C. 552a(1)(3).

¹ Filed as part of original document.

(2) *Not in person.* If the individual making a request does not appear in person before the FOIA Administrator, a certificate of a notary public or equivalent officer empowered to administer oaths must accompany the request. The Section's official form, Appendix B,¹ for requests contains a certificate.

(3) *Parents of minors and legal guardians.* An individual acting as the parent of a minor or the legal guardian of the individual or an heir or legal representative of a deceased person to whom a record pertains shall establish his or her personal identity in the manner prescribed in either paragraph (f)(1) or (2) of this section. In addition, such individual shall establish his or her identity in the representative capacity of parent or legal guardian. In the case of the parent of a minor, the proof of identity shall be a certified or authenticated copy of the minor's birth certificate. In the case of a legal guardian of an individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, the proof of identity shall be a certified or authenticated copy of the court's order. A parent or legal guardian may act only for a living individual, not for a decedent. A parent or legal guardian may be accompanied during personal access to a record by another individual, provided the requirements of paragraph (f) of § 1101.4 are satisfied. In the case of an heir or legal representative of a deceased person, the proof of identity shall be a certified copy of the Will, if any; the order of a court of competent jurisdiction admitting the Will to probate; the order of a court of competent jurisdiction appointing an executor, executrix, administrator; a letter of administration; or any other documentary evidence which establishes the identity of the individual as an heir or legal representative of a deceased person.

(g) When the provisions of this part are alleged to have the effect of impeding an individual in exercising his or her right to access, the Section will consider, from an individual making a request, alternative suggestions re-

garding proof of identity and access to records.

(h) An inquiry which is not addressed as specified in paragraph (b) of this section or which is not marked as specified in paragraph (c) of this section will be so addressed and marked by the Section's personnel and forwarded immediately to the FOIA Administrator. An inquiry which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring time periods for response until forwarding of the inquiry to the FOIA Administrator has been effected. In each instance when an inquiry so forwarded is received, the FOIA Administrator shall notify the individual that his or her inquiry was improperly addressed and the date when the inquiry was received at the proper address.

(i) Each inquiry received shall be acted upon promptly by the FOIA Administrator. Every effort will be made to respond within ten (10) days (excluding Saturdays, Sundays and holidays) of the date of receipt. If a response cannot be made within ten (10) days, the FOIA Administrator shall send an acknowledgment during that period providing information on the status of the inquiry and asking for such further information as may be necessary to process the inquiry.

(j) An individual shall not be required to state a reason or otherwise justify his or her inquiry.

§ 1101.4 Disclosure of requested information to individuals.

(a) Each request received shall be acted upon promptly by the FOIA Administrator. Every effort will be made to respond within ten (10) days (excluding Saturdays, Sundays and holidays) of the date of receipt. If a response cannot be made within ten (10) days due to unusual circumstances, the comptroller shall send an acknowledgment during that period providing information on the status of the request and asking for such further information as may be necessary to process the request. "Unusual circumstances" shall include circumstances where a search for and collection of requested records from inactive stor-

¹ Filed as part of original document.

age, field facilities or other establishments are required, cases where a voluminous amount of data is involved, instances where information on other individuals must be separated or expunged from the particular record, and cases where consultations with other agencies having a substantial interest in the determination of the request are necessary.

(b) *Grant of access—(1) Notification.*

(i) An individual shall be granted access to a record pertaining to him or her except where the record is subject to an exemption under the Act and these rules.

(ii) The FOIA Administrator shall notify the individual of such determination and provide the following information:

(A) The methods of access, as set forth in paragraph (b)(2) of this section;

(B) The place at which the record may be inspected;

(C) The earliest date on which the record may be inspected and the period of time that the records will remain available for inspection. In no event shall the earliest date be later than thirty days from the date of notification;

(D) The estimated date by which a copy of the record could be mailed and the estimate of fees pursuant to § 1101.10. In no event shall the estimated date be later than thirty (30) days from the date of notification;

(E) The fact that the individual, if he or she wishes, may be accompanied by another individual during personal access, subject to the procedures set forth in paragraph (f) of this section; and

(F) Any additional requirements needed to grant access to a specific record.

(2) *Method of access.* The following methods of access to records by an individual may be available depending on the circumstances of a given situation:

(i) Inspection in person may be made in the office specified by the FOIA Administrator, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (excluding holidays);

(ii) Transfer of records to a Federal facility more convenient to the indi-

vidual may be arranged, but only if the FOIA Administrator determines that a suitable facility is available, that the individual's access can be properly supervised at that facility, and that transmittal of the records to that facility will not unduly interfere with operations of the Section or involve unreasonable costs, in terms of both money and manpower; and

(iii) Copies may be mailed at the request of the individual, subject to payment of the fees prescribed in § 1101.10. The Section, at its own initiative, may elect to provide a copy by mail, in which case no fee will be charged the individual.

(c) Access to medical records is governed by § 1101.5.

(d) The Section shall supply such other information and assistance at the time of access as to make the record intelligible to the individual.

(e) The Section reserves the right to limit access to copies and abstracts of original records, rather than the original records. This election would be appropriate, for example, when the record is in an automated data media such as tape or disc, when the record contains information on other individuals, and when deletion of information is permissible under exemptions (for example, 5 U.S.C. 552 (k)(1)). In no event shall original records of the Section be made available to the individual except under the immediate supervision of the FOIA Administrator or his designee. Title 18 U.S.C. section 2701(a) makes it a crime to conceal, mutilate, obliterate, or destroy a record filed in a public office, or to attempt to do any of the foregoing.

(f) Any individual who requests access to a record pertaining to that individual may be accompanied by another individual of his or her choice. "Accompanied" includes discussion of the record in the presence of the other individual. The individual to whom the record pertains shall authorize the presence of the other individual in writing and shall include the name of the other individual, a specific description of the record to which access is sought, and the date and the signature of the individual to whom the record pertains. The other individual shall sign the authorization in the presence

of the FOIA Administrator or his designee. An individual shall not be required to state a reason or otherwise justify his or her decision to be accompanied by another individual during personal access to a record.

(g) *Initial denial of access*—(1) *Grounds.* Access by an individual to a record which pertains to that individual will be denied only upon a determination by the FOIA Administrator that:

(i) The record is subject to an exemption under the Act and these rules;

(ii) The record is information compiled in reasonable anticipation of a civil action or proceeding;

(iii) The provisions of § 1101.5(b) pertaining to medical records have been temporarily invoked; or

(iv) The individual unreasonably has failed to comply with the procedural requirements of these rules.

(2) *Notification.* The FOIA Administrator shall give notice of denial of access to records to the individual in writing and shall include the following information:

(i) The FOIA Administrator's name and title or position;

(ii) The date of the denial;

(iii) The reasons for the denial, including citation to the appropriate section of the Act and these rules;

(iv) The individual's opportunities for further administrative consideration, including the identity and address of the responsible official;

(v) If stated to be administratively final within the section, the individual's right to judicial review under 5 U.S.C. 552a(g) (1) and (5).

(3) *Administrative review.* When an initial denial of a request is issued by the FOIA Administrator, the individual's opportunities for further consideration shall be as follows:

(i) As to denial under paragraph (g)(1)(i) of this section, the sole procedure is a petition for the issuance, amendment, or repeal of a rule under 5 U.S.C. 553(e). Such petition shall be filed with the United States Commissioner, International Boundary and Water Commission, P.O. Box 20003, El Paso, Texas 79998. If the exception was determined by another agency, the FOIA Administrator will provide

the individual with the name and address of the other agency and any relief sought by the individual shall be that provided by the regulations of the other agency. Within the United States Section, no such denial is administratively final until such a petition has been filed by the individual and disposed of on the merits by the United States Commissioner.

(ii) As to denial under paragraph (g)(1) (ii), (iii) or (iv) of this section, the individual may file for review with the United States Commissioner, as indicated in the FOIA Administrator's initial denial notification.

(h) If a request is partially granted and partially denied, the FOIA Administrator shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

§ 1101.5 Special procedures: Medical records.

(a) In every case of a request by an individual for access to medical records, the FOIA Administrator shall:

(1) Inform the individual that no response to any request for access to medical records will be issued for a period of seven (7) days (excluding Saturdays, Sundays and holidays);

(2) Obtain the name and address of the individual's physician and psychologist, if the individual consents to give them;

(3) Obtain specific, written consent for the Section to consult the individual's physician and psychologist in the event that the Section believes such consultation is advisable. There will be no consultation without the written consent of the individual;

(4) Obtain specific, written consent for the Section to provide the medical records to the individual's physician or psychologist in the event that the Section believes access to the record by the individual is best effected under the guidance of the individual's physician or psychologist; no records will be provided to a physician or psychologist without the written consent of the individual; and

(b) If an individual refuses to give the names and consents set forth in paragraphs (a) (2) through (4) of this

section and the Section has determined that disclosure could have an adverse effect upon the individual, the Section shall refuse the individual access to said records.

§ 1101.6 Request for correction of or amendment to a record.

(a) Any individual may submit a request for correction of or amendment to a record to the Section. The request should be made either in person or by mail addressed to the FOIA Administrator who processed the individual's request for access to the record, and to whom is delegated authority to make initial determinations on requests for correction or amendment.

(b) Since the request, in all cases, will follow a request for access under § 1101.3, the individual's identity will be established by his or her signature on the request.

(c) A request for correction or amendment should include the following:

(1) A specific identification of the record sought to be corrected or amended (for example, description, title, date, paragraph, sentence, line and words);

(2) The specific wording to be deleted, if any;

(3) The specific wording to be inserted or added, if any, and the exact place at which it is to be inserted or added; and

(4) A statement of the basis for the requested correction or amendment, with all available supporting documents and materials which substantiate the statement. The statement should identify the standard of the Act being invoked, that is, whether the information in the record is unnecessary, inaccurate, irrelevant, untimely or incomplete.

§ 1101.7 Agency review of request for correction or amendment of record.

(a)(1) Not later than ten (10) days (excluding Saturdays, Sundays and holidays) after receipt of a request to correct or amend a record, the FOIA Administrator shall send an acknowledgment providing an estimate of time within which action will be taken on the request and asking for such further information as may be necessary

to process the request. The estimate of time may take into account unusual circumstances as described in § 1101.4(a). No acknowledgment will be sent if the request can be reviewed, processed and the individual notified of the results of review (either compliance or denial) within ten (10) days (excluding Saturdays, Sundays and holidays). Requests filed in person will be acknowledged in writing at the time submitted.

(2) Promptly after acknowledging receipt of a request, or after receiving such further information as might have been requested, or after arriving at a decision within ten (10) days, the FOIA Administrator shall either;

(i) Make the requested correction or amendment and advise the individual in writing of such action, providing either a copy of the corrected or amended record or a statement as to the means whereby the correction or amendment was effected in cases where a copy cannot be provided (for example, erasure of information from a record maintained only in an electronic data bank); or

(ii) Inform the individual in writing that his or her request is denied and provide the following information:

(A) The FOIA Administrator's name, title and position;

(B) The date of the denial;

(C) The reasons for the denial, including citation to the appropriate sections of the Act and these rules;

(D) The procedures for appeal of the denial as set forth in § 1101.8.

The term "promptly" in this paragraph means within thirty (30) days (excluding Saturdays, Sundays and holidays). If the FOIA Administrator cannot make the determination within thirty (30) days, the individual will be advised in writing of the reason therefor and of the estimated date by which the determination will be made.

(b) Whenever an individual's record is corrected or amended pursuant to a request by that individual, the FOIA Administrator shall notify all persons and agencies to which copies of the record had been disclosed prior to its correction or amendment, if an accounting of such disclosure required by the Act was made. The notification

shall require a recipient agency maintaining the record to acknowledge receipt of the notification, to correct or amend the record, and to apprise any agency or person to which it had disclosed the record of the substance of the correction or amendment.

(c) The following criteria will be considered by the FOIA Administrator in reviewing a request for correction or amendment:

(1) The sufficiency of the evidence submitted by the individual;

(2) The factual accuracy of the information;

(3) The relevance and necessity of the information in terms of purpose for which it was collected;

(4) The timeliness and currency of the information in light of the purpose for which it was collected;

(5) The completeness of the information in terms of the purpose for which it was collected;

(6) The degree of possibility that denial of the request could unfairly result in determinations adverse to the individual;

(7) The character of the record sought to be corrected or amended; and

(8) The propriety and feasibility of complying with the specific means of correction or amendment requested by the individual.

(d) The Section will not undertake to gather evidence for the individual, but does reserve the right to verify the evidence which the individual submits.

(e) Correction or amendment of a record requested by an individual will be denied only upon a determination by the FOIA Administrator that:

(1) The individual has failed to establish, by a preponderance of the evidence, the propriety of the correction or amendment in light of the criteria set forth in paragraph (c) of this section;

(2) The record sought to be corrected or amended was compiled in a terminated judicial, quasi-judicial or quasi-legislative proceeding to which the individual was a party or participant;

(3) The record sought to be corrected or amended is the subject of a pending judicial, quasi-judicial or

quasi-legislative proceeding to which the individual is a party or participant;

(4) The correction or amendment would violate a duly enacted statute or promulgated regulation; or

(5) The individual unreasonably has failed to comply with the procedural requirements of these rules.

(f) If a request is partially granted and partially denied, the FOIA Administrator shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

§ 1101.8 Appeal of initial adverse agency determination on correction or amendment.

(a) An appeal of the initial refusal to amend a record under § 1101.7 may be requested by the individual who submitted the request. The appeal must be requested in writing, signed by the individual making the request, and received by the Section within sixty (60) days of the date the individual is informed of the FOIA Administrator's refusal to amend a record in whole or in part. The request should be addressed and sent via certified mail to the Commissioner, United States Section, International Boundary and Water Commission, P.O. Box 20003, El Paso, Texas 79998. The processing of appeals will be facilitated if the words "PRIVACY APPEAL" appear in capital letters on both the envelope and the top of the appeal papers. An appeal not addressed and marked as provided herein will be marked by Section personnel when it is so identified and will be forwarded immediately to the Commissioner.

(b) The time for decision on the appeal begins on the date the appeal is received by the Commissioner. The appeal should include any documentation, information or statements advanced for the amendment of the record.

(c) There shall be a written record of the reason for the final determination. The final determination will be made not later than thirty (30) days (excluding Saturdays, Sundays and holidays) from the date the Commissioner receives the appeal; unless for good cause shown, the Commissioner ex-

tends such determination beyond the thirty (30) day period.

(d) When the final determination is that the record should be amended in accordance with the individual's request, the Commissioner shall direct the office responsible for the record to comply. The office responsible for the record shall:

- (1) Amend the record as directed;
 - (2) If a distribution of the record has been made, advise all previous recipients of the record of the amendment and its substance;
 - (3) So advise the individual in writing.
- (e) When the final decision is that the request of the individual to amend the record is refused, the Commissioner shall advise the individual:

- (1) Of the refusal and the reasons for it;
 - (2) Of his or her right to file a concise statement of the reasons for disagreeing with the decision of the Section;
 - (3) Of the procedures for filing the statement of disagreement;
 - (4) That the statement which is filed will be made available to anyone to whom the record is subsequently disclosed together with, at the discretion of the Section, a brief statement by the Section summarizing its reasons for refusing to amend the record;
 - (5) That prior recipients of the disputed record will be provided a copy of any statement of dispute to the extent that an accounting of disclosures was maintained; and
 - (6) Of his or her right to seek judicial review of the Section's refusal to amend the record.
- (f) When the final determination is to refuse to amend a record and the individual has filed a statement under paragraph (e)(2) of this section, the Section will clearly annotate the record so that the fact that the record is disputed is apparent to anyone who may subsequently have access to, use, or disclose it. When information that is the subject of a statement of dispute filed by an individual is subsequently disclosed, the Section will note that the information is disputed and provide a copy of the individual's statement. The Section may also include a brief summary of the reasons for not

making a correction when disclosing disputed information. Such statements will normally be limited to the reasons given to the individual for not amending the record. Copies of the Section's statement shall be treated as part of the individual's record for granting access; however, it will not be subject to amendment by the individual under these rules.

(g) An appeal will be decided on the basis of the individual's appeal papers and the record submitted by the FOIA Administrator. No personal appearances or hearing on appeal will be allowed.

§ 1101.9 Disclosure of record to person other than the individual to whom it pertains.

(a) The Section will not disclose any information about an individual to any person other than the individual except in the following instances:

- (1) Upon written request by the individual about whom the information is maintained;
- (2) Prior written consent of the individual about whom the information is maintained;
- (3) To parent or legal guardian, heir(s) and their legal representative(s).
- (4) When permitted under 5 U.S.C. 552a(b) (1) through (11) which provides as follows:
 - (i) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;
 - (ii) Required under section 552 of Title 5 of the U.S. Code;
 - (iii) For a routine use as defined in the Act 552a(a)(7);
 - (iv) 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 of the U.S. Code;
 - (v) To a recipient who has provided the agency 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;
 - (vi) To the National Archives of the United States 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 Administrator of General Services or his designee to determine whether the record has such value;

(vii) 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 the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(viii) 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;

(ix) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee, and to a Congressman who is acting on behalf of his constituent.

(x) To the FOIA Administrator General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(xi) Pursuant to the order of a court of competent jurisdiction.

(5) When required by the Act and not covered explicitly by the provisions of 5 U.S.C. 552a(b). These situations include the following:

(i) Dissemination of a corrected or amended record or notation of a disagreement statement (5 U.S.C. 552a(c)(4));

(ii) Disclosure of records to an individual to whom they pertain (5 U.S.C. 552a(d));

(iii) Civil actions by an individual (5 U.S.C. 552a(g));

(iv) Release of records or information to Privacy Protection Study Commission (5 U.S.C. 552—section 5(e)(2));

(v) Fulfill needs of Office of Management and Budget to provide continuing oversight and assistance to the

section in implementation of the Act (5 U.S.C. 552—section 6).

§ 1101.10 Fees.

(a) The Section will charge no fee for the first copy of an individual's personnel record.

(b) The Section will charge a fee of \$0.10 per page for copies of documents which are identified by an individual and reproduced at the individual's request for retention, except that there will be no charge for requests involving cost of \$1.00 or less, but the copying fees for contemporaneous request by the same individual shall be aggregated to determine the total fee.

(c) Special and additional services provided at the request of the individual, such as certification or authentication, will be charged to the individual in accordance with other published regulations of the Section pursuant to statute (for example, 5 U.S.C. 552—Freedom of Information Act).

(d) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, a postal money order, or cash. Remittance shall be made payable to the order of the Treasurer of the United States and delivered to or mailed to the FOIA Administrator, United States Section, International Boundary and Water Commission, 4110 Rio Bravo, El Paso, Texas 79902. The Section will assume no responsibility for cash sent by mail.

(e) A receipt for fees paid will be given only upon request.

§ 1101.11 Penalties.

(a) *Criminal penalties.* The criminal penalties which have been established for violations of the Privacy Act of 1974 are set forth in 5 U.S.C. 552a(i). These penalties are applicable to any officer or employee of the Section and individuals who commit any of the violations. The three possible violations of the Act are:

(1) Unauthorized disclosure.

(2) Failure to publish a public notice of a system of records subject to these rules.

(3) Obtaining access to information under false pretenses.

(b) *Civil remedies.* (1) An individual may bring a civil action against the United States Section to correct or amend a record, or where there is a refusal to comply with an individual request or failure to maintain any record with accuracy, relevance, timeliness and completeness, so as to guarantee fairness or failure to comply with other sections of the Act and these rules.

(2) A district court of the United States may order correction or amendment of a record and enjoin the Section from withholding a record and order the production to an individual.

(3) A district court of the United States may assess against the United States reasonable attorney fees and other costs, in any case in which a complaining individual has substantially prevailed.

§ 1101.12 General exemptions.

Individuals may not have access to records maintained by the Section but originating with another agency which has determined by regulations that such information is subject to a general exemption under 5 U.S.C. 552a(j). If such records are within a request for access, the Section will advise the requestor of their existence and of the name and address of the source agency which the requestor must contact for any further information.

§ 1101.13 Specific exemptions.

(a) Pursuant to subsection 3(k)(1) of the Act those records in any of the system of records maintained by the section which contain any information properly classified under Executive Order 11652 and which are required by the executive order to be kept secret in the interest of national defense or a foreign policy are exempt. This exemption which conceivably could be applicable to individual records in any system of records for which the Section has published a systems notice is necessary because certain records in systems not specifically designated could contain isolated items of information which have been properly classified and which can not be disclosed.

(b) Those listed in the Notice of Records.

§ 1101.14 Employee: rules of conduct.

(a) Heads of Divisions, Branches, and the projects shall ensure that all Section personnel subject to their supervision are advised of the provisions of the Privacy Act, including the criminal penalties and civil liabilities provided therein, and that Section personnel are made aware of their responsibilities to protect the security of personal information, to assure its accuracy, relevance, timeliness and completeness, to avoid unauthorized disclosure either orally or in writing, and to ensure that no system of records concerning individuals, no matter how small or specialized, is maintained without public notice.

(b) Section personnel shall:

(1) Collect no information of a personal nature from individuals unless authorized to collect it to achieve a function or carry out a responsibility or function of the Section;

(2) Collect from individuals only that information which is necessary to Section responsibilities or functions;

(3) Collect information, wherever possible, directly from the individual to whom it relates;

(4) Inform individuals from whom information is collected of the authority for collection, the purpose thereof, the uses that will be made of the information, and the effects, both legal and practical, of not furnishing the information;

(5) Neither collect, maintain, use nor disseminate information concerning an individual's religious or political beliefs or activities or his membership in associations or organizations, unless (i) the individual has volunteered such information for his own benefit; (ii) the information is expressly authorized by statute to be collected, maintained, used or disseminated; or (iii) the activities involved are pertinent to and within the scope of an authorized investigation or adjudication activity;

(6) Advise an individual's supervisors of the existence or contemplated development of any system of records which retrieves information about individuals by individual identifier;

(7) Maintain an accounting of all disclosures of information to other than Section personnel;

(8) Disclose no information concerning individuals to other than Section personnel except when authorized by the Act or pursuant to a routine use published in the **FEDERAL REGISTER**;

(9) Maintain and process information concerning individuals with care in order to ensure that no inadvertent disclosure of the information is made to other than Section personnel; and

(10) Call to the attention of the FOIA Administrator any information in a system maintained by the Section which is not authorized to be maintained under the provisions of the Act, including information on First Amendment activities, information that is inaccurate, irrelevant or so incomplete as to risk unfairness to the individual concerned.

(c) The system of records maintained by the Section shall be reviewed annually by the FOIA Administrator to ensure compliance with the provisions of the Act.

(d) Information which may be used in making determinations about an individual's rights, benefits, and privileges shall, to the greatest extent practicable, be collected directly from that individual. In deciding whether collection of information from an individual, as opposed to a third party source, is practicable, the following criteria, among others, may be considered:

(1) Whether the nature of the information sought is such that it can only be obtained from a third party;

(2) Whether the cost of collecting the information from the individual is unreasonable when compared with the cost of collecting it from a third party;

(3) Whether there is a risk that information requested from the third parties, if inaccurate, could result in an adverse determination to the individual concerned;

(4) Whether the information, if supplied by the individual, would have to be verified by a third party; or

(5) Whether provisions can be made for verification by the individual of information collected from third parties.

(e) Employees whose duties require handling of records subject to the Act shall, at all times, take care to protect the integrity, security and confidentiality of these records.

(f) No employee of the Section may alter or destroy a record subject to the Act unless (1) such alteration or destruction is properly undertaken in the course of the employee's regular duties or (2) such alteration or destruction is required by a decision of the Commissioner or the decision of a court of competent jurisdiction.

§ 1101.15 Security, confidentiality and protection of records.

(a) The Act requires that records subject to the Act be maintained with appropriate administrative, technical and physical safeguards to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience or unfairness to any individual on whom information is maintained.

(b) When maintained in manual form (typed, printed, handwritten, etc.) records shall be maintained, at a minimum, subject to the following safeguards, or safeguards affording comparable protection:

(1) Areas in which the records are maintained or regularly used shall be posted with an appropriate warning stating that access to the records is limited to authorized persons. The warning shall also summarize the requirements of § 1101.14 and state that the Act contains a criminal penalty for the unauthorized disclosure of records to which it applies.

(2) During working hours: (i) The area in which the records are maintained or regularly used shall be occupied by authorized personnel or (ii) access to the records shall be restricted by their storage in locked metal file cabinets or a locked room.

(3) During non-working hours, access to the records shall be restricted by their storage in locked metal file cabinets or a locked room.

(4) Where a locked room is the method of security provided for a system, that security shall be supplemented by (i) providing lockable file cabinets or containers for the records or (ii) changing the lock or locks for the room so that they may not be

opened with a master key. For purposes of this paragraph, a master key is a key which may be used to open rooms other than the room containing records subject to the Act, unless those rooms are utilized by officials or employees authorized to have access to the records subject to the Act.

(5) Personnel handling personal information during routine use will ensure that the information is properly controlled to prevent unintentional or unauthorized disclosure. Such information will be used, held, or stored only where facilities or conditions are adequate to prevent unauthorized or unintentional disclosure.

(c) When the records subject to the Act are maintained in computerized form, safeguards shall be utilized based on those recommended in the National Bureau of Standard's booklet "Computer Security Guidelines for Implementing the Privacy Act of 1974" (May 30, 1975), and any supplements thereto, which are adequate and appropriate to assuring the integrity of the records.

§ 1101.16 Accounting for disclosures.

(a) Each system manager shall establish a system of accounting for all disclosures of records, either orally or in writing made outside the U.S. Section, unless otherwise exempted under this section. Accounting procedures may be established in the least expressive and most convenient form that will permit the FOIA Administrator to advise individuals promptly upon request of the persons or agencies to which records concerning them have been disclosed. Accounting of disclosures made under subsection (b)(7) of the Privacy Act (552a) relating to civil or criminal law enforcement activities shall not be made available to the individual named in the record.

(b) Accounting records, at a minimum, shall include the date, nature, and purpose of each disclosure of a record and the name and address of the person or agency to whom the disclosure was made. Accounting records shall be maintained for at least five years of the life of the record, whichever is longer.

(c) Accounting is not required to be kept for disclosure made within the

U.S. Section or disclosures made pursuant to the Freedom of Information Act.

(d) If an accounting of the disclosure was made, the FOIA Administrator shall inform any person or other agency about any correction or notation of dispute made by the U.S. Section in accordance with subsection (d) of section 552a of any record that has been disclosed to the person or agency.

PART 1102—FREEDOM OF INFORMATION ACT

Sec.

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AUTHORITY: (5 U.S.C. 552), Pub. L. 93-502.

SOURCE: 41 FR 8474, Feb. 27, 1976, unless otherwise noted.

§ 1102.1 Purpose.

The purpose of these regulations is to prescribe rules, guidelines and procedures to implement the Freedom of Information Act, 5 U.S.C. 552, as amended on November 21, 1974, by Pub. L. 93-502.

§ 1102.2 Definitions.

(a) "The Section" means United States Section, International Boundary and Water Commission, United States and Mexico.

(b) "Act" means the Freedom of Information Act, as amended, 5 U.S.C. 552.

(c) "Records" and/or "information" are defined as all books, papers, manuals, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the Section under the Federal law or in connection with the transaction of public business or in carrying out its treaty responsibilities and obligations, and preserved or appropriate for preservation by the Section as evidence of the organization, functions, policies, decisions, proce-