

Title 10—Energy

CHAPTER III—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

PART 709—PUBLIC RECORDS

Energy Research and Development Administration.

Effective date: February 19, 1975.

ROBERT C. SEAMANS, Jr., Administrator.

of the Corporation between 8:4 a.m. and 5:30 p.m., except Saturdays, Sundays and official holidays, by telephoning the Office of Public Affairs of the Corporation at (202) 632-1854 during such hours or by writing the Corporation to the attention of the Vice President of Public Affairs. Although the Corporation will endeavor to grant an appointment at the time requested, some delay may be required at times because of the small size of the Corporation's staff. Persons desiring access to the public information files should seek an appointment at least twenty-four (24) hours in advance.

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

§ 706.32 Fees.

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

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

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

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

DAVID GREGG III,

Executive Vice President,

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

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

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

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

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

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

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

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

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

§ 709.1 Applicability.

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

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

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

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

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

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

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

§ 709.2 Policy.

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

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

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

§ 709.3 Definitions.

As used in this part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) ERDA rules and regulations.

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

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

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

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

§ 709.5 Freedom of information officer.

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

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

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

- (4) Morgantown Research Center, ERDA
P.O. Box 830
Morgantown, West Virginia 26505
- (5) Pittsburgh Energy Research Center, ERDA
4800 Forbes Avenue
Pittsburgh, Pennsylvania 15213
- (6) San Francisco Energy Research Center, ERDA
1429 Appraisers Building
630 Sansome Street
San Francisco, California 94111
- (7) Albuquerque Operations Office, ERDA
P.O. Box 5400
Albuquerque, New Mexico 87116
[NOTE.—This office has cognizance over the following area offices: Amarillo, Burlington, Dayton, Kansas City, Los Alamos, Pinellas, Rocky Flats, and Sandia.]
- (8) Chicago Operations Office, ERDA
9800 South Cass Avenue
Argonne, Illinois 60439
[NOTE.—This office has cognizance over the Batavia and Brookhaven area offices and the New Brunswick laboratory.]
- (9) Idaho Operations Office, ERDA
550 2nd St.
Idaho Falls, Idaho 83401
- (10) Nevada Operations Office, ERDA
P.O. Box 14100
Las Vegas, Nevada 89114
- (11) Oak Ridge Operations Office, ERDA
P.O. Box E
Oak Ridge, Tennessee 37830
- (12) Richland Operations Office, ERDA
P.O. Box 550
Richland, Washington 99352
- (13) San Francisco Operations Office, ERDA
1333 Broadway, Wells Fargo Building
Oakland, California 94616
- (14) Savannah River Operations Office, ERDA
P.O. Box "A"
Aiken, South Carolina 29801

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

§ 709.6 Requesting records.

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

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

§ 709.7 Handling of FOI requests:

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

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

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

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

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

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

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

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

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

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

agency having substantial subject-matter interest therein.

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

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

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

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

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

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

§ 709.8 Denial of records.

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

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

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

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

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

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

§ 709.9 Matters exempt from disclosure.

(a) The following items are the matters exempt from disclosure under the Freedom of Information Act, section 552 (b) of Title 5, United States Code, with the statutory language being underlined:

(1) (i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (ii) are in fact properly classified pursuant to such Executive order; Exemption (1) matters are those matters classified as National Security Information under Executive Order 11652, or other matters authorized to be kept secret under other Executive Orders now or hereafter issued. Restricted Data and Formerly Restricted Data under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), are covered by this exemption as well as the exemption in (3) below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 709.10 Administrative appeal of initial denial of records.

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

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

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

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

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

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

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

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

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

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

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

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

§ 709.11 Requests for classified records.

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

of this part 709 with the special qualifications noted below.

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

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

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

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

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

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

§ 709.12 Fees for search and duplication of records.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 709.13 Matters in litigation.

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

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

§ 709.14 Annual report.

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

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

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

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

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

(5) A copy of every rule made by the agency regarding the Freedom of Information Act, section 552, Title 5, United States Code;

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

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

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

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

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Title 18—Conservation of Power and Water Resources
CHAPTER II—TENNESSEE VALLEY AUTHORITY

PART 301—PROCEDURES
Availability of TVA Records and Publications

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

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

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

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

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

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

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

By direction of The Board of Directors.
Dated: February 18, 1975.

H. N. STROUD,
Assistant General Manager.