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I. Background

Pursuant to the Privacy Act of 1974 (as amended) (5 U.S.C. 552a (j) and (k)), the Secretary of Energy is authorized to promulgate rules to exempt any system of records within the agency from certain subsections of the Act. Accordingly, two new systems of records are added to the list of systems exempted from certain subsections of the Act.

The purpose of this rule is to amend the DOE's Privacy Act regulation to enable the Office of Counterintelligence to carry out its administrative, analytical, and law enforcement duties and responsibilities.

A notice of proposed rulemaking and corresponding systems notices was published in the **Federal Register** on September 8, 1994 (59 FR 46522). No comments were received.

II. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and 2(b), including eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect;

describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. The DOE certifies that today's rule meets the requirements of sections 2(a) and 2(b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. The DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501).

E. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This rule will not affect States, or the relationship between the Federal Government and the States, in any direct way.

F. National Environmental Policy Act

This rule amends the Department's existing Privacy Act regulation to add two systems of records to the list of systems exempted from certain provisions of the Act. The amendment will enable the Office of Counterintelligence to carry out its

administrative, analytical, and law enforcement duties and responsibilities by establishing principles that will govern how certain records are maintained in the two affected systems of records. Implementation of this rule will not result in any environmental impacts. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A.5 of Appendix A to subpart D, 10 CFR part 1021, which applies to the amendment of existing rules that does not change the rule's environmental effects.

List of Subjects in 10 CFR Part 1008

Privacy.

Issued in Washington, DC on July 6, 1995.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

For the reasons set forth in the preamble, part 1008 of title 10 of the Code of Federal Regulations is amended as set forth below.

PART 1008—RECORDS MAINTAINED ON INDIVIDUALS (PRIVACY ACT)

1. The authority citation for part 1008 continues to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95-91, Executive Order 12091, 42 FR 46267, Privacy Act of 1974, Pub. L. 93-579 (5 U.S.C. 552a).

2. Section 1008.12 is amended by adding paragraphs (a)(2)(ii); (b)(1)(ii) (I) and (J); (b)(2)(ii) (K) and (L); and (b)(3)(ii) (M) and (N) to read as follows:

§ 1008.12 Exemptions.

- (a) * * *
- (2) * * *

(ii) *Law Enforcement Investigative Records (DOE-84).* This system of records is being exempted pursuant to subsection (j)(2) of the Act to enable the Office of Counterintelligence to carry out its duties and responsibilities as they pertain to its law enforcement function. The system is exempted from subsections (c)(3) and (4), (d), (e) (1), (2), and (3), (e)(4) (G) and (H), (e)(8), (f), and (g) of the Act. The system is exempt from these provisions for the following reasons: Notifying an individual at the individual's request of the existence of records in an investigative file pertaining to such individual, or granting access to an investigative file could interfere with investigative and enforcement proceedings and with co-defendants' right to a fair trial; disclose the identity of confidential sources and reveal confidential information supplied by these sources; and disclose investigative techniques and procedures.