



DEPARTMENT OF ENERGY

Privacy Act of 1974; System of Records

AGENCY: U.S. Department of Energy.

ACTION: Notice of a modified system of records.

SUMMARY: As required by the Privacy Act of 1974 and the Office of Management and Budget (OMB) Circulars A-108 and A-130, the Department of Energy (DOE or the Department) is publishing notice of a modification to an existing Privacy Act System of Records. DOE proposes to amend System of Records DOE-7 Whistleblower Investigation, Hearings, and Appeals Records. This System of Records Notice (SORN) is being modified to align with new formatting requirements, published by OMB, and to ensure appropriate Privacy Act coverage of business processes and Privacy Act information. While there are no substantive changes to the “Categories of Individuals” or “Categories of Records” sections covered by this SORN, substantive changes have been made to the “System Locations,” “Routine Uses,” and “Administrative, Technical and Physical Safeguards” sections to provide greater transparency. Changes to “Routine Uses” include new provisions related to responding to breaches of information held under a Privacy Act SORN as required by OMB’s Memorandum M-17-12, “Preparing for and Responding to a Breach of Personally Identifiable Information” (January 3, 2017). Language throughout the SORN has been updated to align with applicable Federal privacy laws, policies, procedures, and best practices.

DATES: This modified SORN will become applicable following the end of the public comment period on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] unless comments are received that result in a contrary determination.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503 and to Ken Hunt, Chief

Privacy Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Rm 8H-085, Washington, DC 20585 or by facsimile at (202) 586-8151 or by email at privacy@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Ken Hunt, Chief Privacy Officer, U.S.

Department of Energy, 1000 Independence Avenue SW, Rm 8H-085, Washington, DC 20585 or by facsimile at (202) 586-8151, by email at privacy@hq.doe.gov, or by telephone at (240) 686-9485.

SUPPLEMENTARY INFORMATION: On January 9, 2009, DOE published a Compilation of its Privacy Act Systems of Records, which included System of Records DOE-7 Whistleblower Investigation, Hearings, and Appeals Records. This notice deletes a previous routine use concerning efforts responding to a suspected or confirmed loss of confidentiality of information as it appears in DOE's compilation of its Privacy Act systems of records (January 9, 2009) and replaces it with one to assist DOE with responding to a suspected or confirmed breach of its records of PII, modeled with language from OMB's Memorandum M-17-12, "Preparing for and Responding to a Breach of Personally Identifiable Information" (January 3, 2017). Further, this notice adds one new routine use to ensure that DOE may assist another agency or entity in responding to the other agency's or entity's confirmed or suspected breach of PII, as appropriate, in alignment with OMB's Memorandum M-17-12. Additionally, in the seventh routine use, "Hearing Officers" has been changed to "Administrative Judges," pursuant to recent title changes. The URL for this routine has also been updated. In the "Categories of Individuals" section, the citation for the National Defense Authorization Act for FY 2000 has been revised from "42 U.S.C. 7239" to "50 U.S.C. 2702." An administrative change required by the FOIA Improvement Act of 2016 extends the length of time a requestor is permitted to file an appeal under the Privacy Act from 30 to 90 days. Both the "System Locations" and "Administrative, Technical and Physical Safeguards" sections have been modified to reflect the Department's usage of cloud-based services for records storage. Language throughout the SORN has been updated to align with applicable Federal privacy laws, policies, procedures, and best practices.

SYSTEM NAME AND NUMBER: DOE-7 Whistleblower Investigation, Hearings, and Appeals Records.

SECURITY CLASSIFICATION: Unclassified and classified.

SYSTEM LOCATION: Systems leveraging this SORN may exist in multiple locations. All systems storing records in a cloud-based server are required to use government-approved cloud services and follow National Institute of Standards and Technology (NIST) security and privacy standards for access and data retention. Records maintained in a government-approved cloud server are accessed through secure data centers in the continental United States.

U.S. Department of Energy, Office of Hearings and Appeals, 1000 Independence Avenue SW, Washington, DC 20585-1615.

SYSTEM MANAGER(S): Headquarters: U.S. Department of Energy, Office of Hearings and Appeals, 1000 Independence Avenue, SW, Washington, DC 20585-1615.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; 42 U.S.C. 2201(b), (c), (i), (p), 5814, 5815, 7251, 7254, 7255, 7257; 50 U.S.C. 2702.

PURPOSE(S) OF THE SYSTEM: Records in this system are maintained and used by the DOE to document and resolve complaints made by current and former employees, contractors, and subcontractors of DOE (including National Nuclear Security Administration (NNSA) contractors and subcontractors), who allege retaliation by their employer for disclosure of information concerning danger to public or worker health or safety, substantial violations of law, or gross mismanagement; for participation in Congressional proceedings; or for refusal to participate in dangerous activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: Current and former employees of DOE, contractors, and subcontractors (including NNSA contractors and subcontractors), whose complaints are received at the Office of Hearings and Appeals pursuant

to 10 CFR part 708, and pursuant to Section 3164 of the National Defense Authorization Act for FY 2000, Public Law 106-65, codified at 50 U.S.C. 2702.

CATEGORIES OF RECORDS IN THE SYSTEM: Whistleblower reprisal complaints; names, Social Security numbers, case numbers, work and home addresses and telephone numbers, job titles, series, grade or pay levels; organization information; supervisors' names and telephone numbers; copies of employee records such as personnel actions, performance appraisals, pay and leave records, and security clearance documents; management reports; witness statements; affidavits; checklists; notes; reports of investigation; and relevant correspondence.

RECORD SOURCE CATEGORIES: The complainant; individuals and organizations that have pertinent knowledge about the subject of the complaint; those authorized by the complainant to furnish information; confidential informants; and Congressional offices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. A record from this system may be disclosed to any source from which additional information is requested when necessary to obtain information relevant to the processing of a whistleblower complaint by the Office of Hearings and Appeals. The source will be provided such information from the System of Records only to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested, as appropriate to the necessary information to process the complaint.
2. A record from this system may be disclosed as a routine use to the appropriate local, Tribal, state, or Federal agency when records, alone or in conjunction with other information, indicate a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

3. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witnesses, potential witnesses, or their representatives and assistants; and (4) any other persons who possess information pertaining to the matter when it is necessary to obtain information or testimony relevant to the matter.
4. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings, or discussion in open court) when such disclosure: (1) is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:
 - a. The Department, its predecessor agencies, current or former contractor of the Department, or other United States Government agencies and their components, or
 - b. A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.
5. A record from this system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

6. A record from this system may be disclosed as a routine use to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from the member concerning the subject matter of the record. The member of Congress must provide a copy of the constituent's signed request for assistance.
7. Decisions, opinions, reports of investigation, orders, and other determinations signed by investigators, Administrative Judges or the Director of the Office of Hearings and Appeals that are records contained in this System of Records may be published for the general public, for precedential or educational purposes, in paper format and electronically on the Office of Hearings and Appeals' website, the current address of which is www.energy.gov/oha/office-hearings-and-appeals.
8. A record from this system may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the System of Records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOE (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.
9. A record from this system may be disclosed as a routine use to another Federal agency or Federal entity, when the Department determines that information from this System of Records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS: Records may be stored as paper records or electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS: Records are retrieved by complainant's name or other personal identifier or case number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Retention and disposition of these records are unscheduled. This requires the records to be retained as permanent until the National Archives and Records Administration approves the draft schedule, which will require the records to be retained 7 years.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS: Electronic records may be secured and maintained on a cloud-based software server and operating system that resides in Federal Risk and Authorization Management Program (FedRAMP) and Federal Information Security Modernization Act (FISMA) hosting environment. Data located in the cloud-based server is firewalled and encrypted at rest and in transit. The security mechanisms for handling data at rest and in transit are in accordance with DOE encryption standards. Records are protected from unauthorized access through the following appropriate safeguards:

- **Administrative:** Access to all records is limited to lawful government purposes only, with access to electronic records based on role and either two-factor authentication or password protection. The system requires passwords to be complex and to be changed frequently. Users accessing system records undergo frequent training in Privacy Act and information security requirements. Security and privacy controls are reviewed on an ongoing basis.
- **Technical:** Computerized records systems are safeguarded on Departmental networks configured for role-based access based on job responsibilities and organizational affiliation. Privacy and security controls are in place for this system and are updated in accordance with applicable requirements as determined by NIST and DOE directives and guidance.

- **Physical:** Computer servers on which electronic records are stored are located in secured Department facilities, which are protected by security guards, identification badges, and cameras. Paper copies of all records are locked in file cabinets, file rooms, or offices and are under the control of authorized personnel. Access to these facilities is granted only to authorized personnel and each person granted access to the system must be an individual authorized to use and/or administer the system.

RECORD ACCESS PROCEDURES: The Department follows the procedures outlined in 10 CFR 1008.4. Valid identification of the individual making the request is required before information will be processed, given, access granted, or a correction considered, to ensure that information is processed, given, corrected, or records disclosed or corrected only at the request of the proper person.

CONTESTING RECORD PROCEDURES: Any individual may submit a request to the System Manager and request a copy of any records relating to them. In accordance with 10 CFR 1008.11, any individual may appeal the denial of a request made by him or her for information about or for access to or correction or amendment of records. An appeal shall be filed within 90 calendar days after receipt of the denial. When an appeal is filed by mail, the postmark is conclusive as to timeliness. The appeal shall be in writing and must be signed by the individual. The words “PRIVACY ACT APPEAL” should appear in capital letters on the envelope and the letter. Appeals of denials relating to records maintained in government-wide System of Records reported by Office of Personnel Management (OPM), shall be filed, as appropriate, with the Assistant Director for Agency Compliance and Evaluation, OPM, 1900 E Street NW, Washington, DC 20415. All other appeals relating to DOE records shall be directed to the Director, Office of Hearings and Appeals (OHA), 1000 Independence Avenue SW, Washington, DC 20585.

NOTIFICATION PROCEDURES: In accordance with the DOE regulation implementing the Privacy Act, 10 CFR part 1008, a request by an individual to determine if a System of Records

contains information about themselves should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name and the time period for which records are sought.

EXEMPTIONS PROMULGATED FOR THE SYSTEM: The system is exempt under subsections 552a(k)(1), (2) and (5) of the Privacy Act to the extent that information within the system meets the criteria of those subsections of the Act. Such information has been exempted from the provisions of subsections (c)(3); 5 U.S.C. 552a(d) and (e)(1) of the Act; see the DOE Privacy Act regulation at 10 CFR part 1008.

HISTORY: This SORN was last published in the *Federal Register* (FR), 74 FR 1005-1006, on January 9, 2009.

Signing Authority

This document of the Department of Energy was signed on January 22, 2024, by Ann Dunkin, Senior Agency Official for Privacy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on March 11, 2024.

Treena V. Garrett,

Federal Register Liaison Officer,

U.S. Department of Energy.