

to the negotiated grievance process under DOE Order 3771.1 "Grievance Policy and Procedures." However, DOE Order 3771.1 does not apply to employees who are members of a bargaining unit and who are covered by negotiated grievance procedures. These employees are specifically excluded from coverage under that particular DOE Order. The commenter further stated that if the intent is to maintain records pertaining specifically to employees covered under a negotiated grievance process, the system should not reference DOE Order 3771.1. Thus, the commenter stated that Albuquerque Operations Office should not be listed as a system location because Albuquerque employees are not members of a bargaining unit and, therefore, not covered by the negotiated grievance process.

*Response:* The Freedom of Information Act and Privacy Act Group consulted the System Manager for DOE-1 and was informed that the system was established to include records of employees in both Headquarters and in Field components who are covered by both negotiated grievance procedures, and the Administrative Grievance process under DOE Order 3771.1. The system will maintain records that are a part of a negotiated grievance process and/or a grievance that is a part of the administrative grievance process. For this reason, the purpose section for DOE-1 has been written with greater clarity to include records of employees that are subject to either the negotiated grievance process or DOE's administrative grievance process under DOE Order 3771.1.

*Comment:* Comments were received concerning the type of records maintained in DOE-3 "Employee Concerns Program Records" and DOE-7 "Whistle Blower Investigations, Hearings and Appeals Records." In the section entitled "Categories of Records in the System" of the systems of records, security documents are listed as a type of document maintained in the systems. The commenters stated security records should not be maintained in these systems but should be in DOE-43 "Personnel Security Clearance Files," DOE-44 "Special Access Authorization for Categories of Classified Information," or another appropriate system.

*Response:* The Freedom of Information Act and Privacy Act Group contacted the system managers for DOE-3 and DOE-7 and was informed that the records maintained in these systems are acquired from individuals who file informal and formal complaints. The Department does not

obtain the records from an individual's security file, but the individual may submit such records with his or her complaint. The records provided by individuals are used in the Department's deliberative process. The Department is in compliance with section (e)(4)(C) of the Privacy Act and OMB's guidance to agencies that when describing "Categories of Records" in the public notice, the notice should describe the type of information maintained in a system. Therefore, the commenter's suggestion is not adopted.

*Comment:* The Department also received a comment on DOE-34 "Employee Assistance Program" (EAP) Records. The commenter suggested that the Albuquerque Operations Office, the Amarillo Area Office and the Kansas City Area Office should not be identified as locations for EAP records because these types of records are not maintained at those locations. In addition, the commenter pointed out that the Albuquerque Operations Office only maintains statistical information on the use of EAP records.

*Response:* The system manager for this system of records informed DOE's Freedom of Information Act and Privacy Act Group that service providers have contracts with the Albuquerque Operations Office, Amarillo Area Office, and the Kansas City Area Office. All DOE sites have service providers that provide counseling services for their employees. The records are maintained by the service provider for the Department and statistical information is sent to Albuquerque. However, the records are maintained at the locations listed in the notice. Therefore, the commenter's suggestion is not adopted.

*Comment:* One commenter noted that DOE offices that are part of the National Nuclear Security Administration (NNSA) should be referenced as such. When a particular system of records references only DOE and makes no mention of the NNSA, it could lead to confusion because it may be interpreted that the system only pertains to those offices or programs under DOE and not any function performed by the NNSA.

*Response:* DOE's Office of the Assistant General Counsel for General Law informed the Freedom of Information Act and Privacy Act Group that it is the policy of the Department to specifically identify NNSA in all appropriate notices and Departmental Orders. Therefore, the comment has been adopted and all of the systems of records have been revised in accordance with the comment.

*Comment:* The Department of Labor (DOL) expressed concern that DOE has added routine uses to a number of its

systems of records so as to authorize DOE to disclose information from these systems of records to the Department of Health and Human Services (HHS), no similar routine use was added to authorize disclosure of this information to DOL. DOL stated that it also needs these types of information to administer and make determinations on claims filed under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA). In addition, DOL stated that there is no valid reason for DOE to provide information to HHS and not provide the same information to DOL when DOL is the agency that will issue actual determinations on claims made to DOL under EEOICPA.

DOL provided language for DOE to consider to modify the routine use language for those systems where DOE established a routine use authorizing disclosure to HHS. In addition, DOL suggested that DOE amend its systems notices to add a separate specific routine use that authorizes disclosure to DOL of the same information authorized for disclosure to HHS.

*Response:* The system manager for DOE-10 "Worker Advocacy Records" was contacted and agreed that DOL should be provided with the information it needs to administer its EEOICPA obligations. However, the system manager stated that a routine use already exists that allows disclosure to DOL. The routine use states that, "A record from this system may be disclosed as a routine use to the personnel, contractors, grantees, and cooperative agreement holders of the Federal agency or agencies and its components, designated by the President to implement the Federal compensation program established by the EEOICPA." However, DOE has no objection to the language that DOL suggested. The routine use language has been modified accordingly.

Many of the comments submitted to DOE requested administrative changes to various systems. Appropriate administrative changes have been noted and adopted.

### III. Proposed Amendment to an Existing System of Records

#### DOE-54 Investigative Files of the Inspector General

This notice proposes to amend DOE-54 "Investigative Files of the Inspector General" by establishing a new routine use to comply with the recently enacted Homeland Security Act of 2002.

Specifically, section 812(a) of the Homeland Security Act of 2002 amended the Inspector General Act of