

the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(ii) In determining whether disclosure of the information is not primarily in the commercial interest of the requester, Eximbank will consider the following factors:

(A) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(B) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(2) The requester in all cases has the burden of presenting sufficient evidence or information to justify the requested waiver or reduction. The requester may use the procedures set forth in §404.5 to appeal the denial of a waiver request under this section.

[52 FR 37438, Oct. 7, 1987]

#### § 404.7 Annual Report to Congress.

On March 1 of each calendar year, Eximbank will report to Congress on the administration of the public requests for information and records during the prior calendar year.

#### § 404.8 Appearances and testimony by Eximbank officers and employees.

Whenever an officer or employee of Eximbank is served with a subpoena demanding the disclosure of the information or the production of files, documents, and records described in this part, or is requested by court, committee or other body to disclose such information, the officer or employee shall promptly inform his superior of the requirements of the subpoena or request and shall ask for instructions from the General Counsel or his designee with respect thereto. Such officer or employee shall appear before the court, committee or body and, if the President and Chairman or his designee has not authorized disclosure, the employee shall respectfully decline to disclose the information or produce the files, documents, and records demanded

or requested, basing such refusal upon this part

[40 FR 7238, Feb. 19, 1975, as amended at 42 FR 56316, Oct. 25, 1977]

### PART 405—PRIVACY ACT RULES

Sec.

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AUTHORITY: 5 U.S.C. 552a(f).

SOURCE: 41 FR 19299, May 12, 1976, unless otherwise noted.

#### § 405.1 Purpose and scope.

This part sets forth the Eximbank procedures under the Privacy Act of 1974, as required by 5 U.S.C. 552a(f), whereby individuals may safeguard their privacy by obtaining access to and requesting corrections of those records under the control of Eximbank which contain information about them.

#### § 405.2 Procedures for notification of existence of records pertaining to individuals.

(a) The systems of records, as defined in the Privacy Act of 1974, maintained by Eximbank are listed annually in the FEDERAL REGISTER as required by that Act. Any individual who wishes to know whether any of these systems of records contains a record pertaining to him or her may either appear in person at Room 1031, 811 Vermont Avenue, NW., Washington, DC 20571, on work days between the hours of 8:45 a.m. and 5:00 p.m. or may write to the Vice President—Administration, Export-Import Bank of the United States, 811 Vermont Avenue, NW., Room 1031, Washington, DC 20571. It is recommended that requests be made in writing, as it will not always be possible to determine the existence of a

record on the same day that the request is made. Verification of the identity of the requester will be in accordance with the requirements of § 405.3 (a) and (b), of this part.

(b) Requests for notification of the existence of a record should specifically identify the system of records involved, and should state, if the requester is other than the individual to whom the record pertains, the relationship of the requester to that individual. (Note that requests pursuant to the Privacy Act will not be honored by Eximbank unless made:

(1) By the individual to whom the record pertains, or

(2) By such individual's parent, if the individual is a minor, or

(3) By such individual's legal guardian, if the individual has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction.)

If an individual is unable to specifically identify the system of records in which that individual is interested, as above required, he or she may so inform Eximbank in writing, stating the reason for the inability, with as full a description of said system of records or the record itself as possible. Eximbank will thereupon use its best efforts to specifically identify the desired system of records.

(c) Eximbank will attempt to respond in writing to a request as to whether a record exists or for assistance in identifying the relevant system of records within 10 days from the time it receives the request or from the time any required identification is established, whichever is later.

**§ 405.3 Procedures for requests for access to or disclosure of records pertaining to individuals.**

(a) Verification of the identity of individuals making written requests to the Vice President—Administration for access to or disclosure of records pertaining to him or her ordinarily will not be required. The signature upon such requests shall be deemed to be a certification by the individual signing that he or she is the individual to whom the record pertains or the parent of a minor or the duly appointed legal guardian of the individual to whom the

record pertains. The Vice President—Administration may, however, require additional verification of identity as specified by him in any instance in which he deems it advisable.

(b) In the case of individuals making requests by appearing at Eximbank, the amount of personal identification required will of necessity vary with the sensitivity of the record involved. Reasonable identification such as employment identification cards, drivers licenses, or credit cards will normally be accepted as sufficient evidence of identity in the absence of any indications to the contrary.

(c) Any individual (subject to the requirements of § 405.2(b) of this part) may request access to or disclosure of records pertaining to him or her by either appearing at Eximbank or by writing to Eximbank (all as provided in § 405.2(a) of this part). The request should specifically identify the system of records involved and the nature of the information therein which is desired. Eximbank will attempt to provide individuals who appear at Eximbank with access to their records (providing that all of the other relevant rules hereof are properly met) on the same day as their appearance, if such occurs before 11:00 a.m. Eximbank will attempt to answer written requests by making the record available within 10 working days of the request or by informing the requester of the need for additional identification or the tendering of fees (as specified in paragraph (d) of this section) within said time period. If the record is to be made available, Eximbank will so notify the requester, which notice will state when the requested disclosure will be sent or when and where the records will be available for personal inspection, and, if a copy of a record has been requested, the number of pages Eximbank will copy to comply with the individual's request and that the copy will be mailed to the individual or held at Eximbank for the individual upon receipt of a check or money order payable to Eximbank for the sum due for copying these documents. In the case of an adverse determination with respect to a request, the Vice President—Administration shall so notify the individual in writing,