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| REQUEST FOR RECORDS DISPOSITION AUTHORITY <i>(See Instructions on reverse)</i> | | LEAVE BLANK | |
| TO: GENERAL SERVICES ADMINISTRATION NATIONAL ARCHIVES AND RECORDS SERVICE, WASHINGTON, DC 20408 | | JOB NO. N1-90-86-4 | DATE RECEIVED 12-02-85 |
| 1. FROM (Agency or establishment) Department of Health and Human Services | | NOTIFICATION TO AGENCY | |
| 2. MAJOR SUBDIVISION Public Health Service | | In accordance with the provisions of 44 U.S.C. 3303a the disposal request, including amendments, is approved except for items that may be marked "disposition not approved" or "withdrawn" in column 10. If no records are proposed for disposal, the signature of the Archivist is not required. | |
| 3. MINOR SUBDIVISION | | | |
| 4. NAME OF PERSON WITH WHOM TO CONFER Linda Querec | 5. TELEPHONE EXT. 443-2055 | DATE 2-21-86 | ARCHIVIST OF THE UNITED STATES <i>Frank R. Burke</i> |
| 6. CERTIFICATE OF AGENCY REPRESENTATIVE | | | |

I hereby certify that I am authorized to act for this agency in matters pertaining to the disposal of the agency's records; that the records proposed for disposal in this Request of 3 page(s) are not now needed for the business of this agency or will not be needed after the retention periods specified; and that written concurrence from the General Accounting Office, if required under the provisions of Title 8 of the GAO Manual for Guidance of Federal Agencies, is attached.

A. GAO concurrence: is attached; or is unnecessary.

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| B. DATE 11/27/85 | C. SIGNATURE OF AGENCY REPRESENTATIVE <i>George Deal</i> Dr. George Deal | D. TITLE DHHS Records Management Officer |
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| 7. ITEM NO. | 8. DESCRIPTION OF ITEM <i>(With Inclusive Dates or Retention Periods)</i> | 9. GRS OR SUPERSEDED JOB CITATION | 10. ACTION TAKEN <i>(NARS USE ONLY)</i> |
|-------------|--|-----------------------------------|--|
| 1 | <p>The Public Health Service requests an exception to the retention periods established in General Records Schedule 14, Items 29b and 30 for Privacy Act report files and systems notices. Because the considerations in the attached justification extend throughout the Federal government, serious consideration should be given to revision of these items in the General Records Schedule.</p> <p><u>Privacy Act Reports Files.</u> Recurring reports and one-time information requirement relating to agency implementation, including annual reports to the Congress of the United States, the Office of Management and Budget, and the Report on New Systems. b. Other reports. <u>Disposition:</u> Destroy 2 years after termination of the system of records or after the danger of potential litigation when the system manager determines that the sensitivity of data suggests that such litigation is likely.</p> | GRS14, Item 29b | |
| 2 | <p><u>Privacy Act General Administrative Files.</u> a. Records relating to the general agency implementation of the Privacy Act including memoranda, routine correspondence, and related records.</p> | GRS 14 Item 30 | |

3 items

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| | <p><u>Disposition:</u> Destroy when 2 years old or sooner if no longer needed for administrative use.</p> <p>b. System notices and related records.</p> <p><u>Disposition:</u> Destroy 2 years after termination of the system of records or after the danger of potential litigation when the system manager determines that the sensitivity of data suggests that such litigation is likely.</p> <p>This request applies to such records located in any component of PHS.</p> <p><u>Justification</u></p> <p>The Privacy Act, subsection (g)(5), sets a basic two year limit on civil actions against agencies; however, in the case of misrepresentation of information, the two years begin when an individual discovers the misrepresentation. If an agency is sued under the Privacy Act, or if its maintenance, use or disclosure of records from a system of records is questioned- either by higher authorities or by the public- the agency must be able to demonstrate the legality of its actions by documenting when and how it met the Privacy Act's requirements for reporting and publishing notices of new and altered systems and for publishing new routine uses.</p> <p>This qualification of the statutory limitation on civil action seems to be far reaching because it applies to misrepresentation of "any information required under this section to be disclosed to an individual." The section requires disclosure to an individual of (1) that individual's record, (2) any accounting of disclosures of that record, (3) notification to an individual requested to provide information, and probably (4) required public notices. Neither the Privacy Act, nor its legislative history, nor OMB Circular A-108 provide any basis for restricting the phrase "any information... required to be disclosed."</p> <p>Reports and notices may be necessary evidence in civil actions alleging misrepresentation of information even after an agency has terminated a system of records. Furthermore, these</p> | | |

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documents are needed in answering official and individual inquiries concerning the propriety of agency actions involving Privacy Act records long after the date of the report or notice. Therefore, it is requested that the retention period for reports and notices be extended accordingly.