

In the paragraph at the bottom of page 2, lines 26-38, some mention should be made of the Privacy Act. As is noted in the comment on page 1, the Privacy Act prevents agencies from disclosing certain information and, thus, in order to comply with its terms, agencies may not be able to disclose all information received in a regulatory comment. Perhaps add something to the end of the paragraph such as: "Similarly, the Privacy Act prohibits the disclosure of certain records about individuals which, unless an individual submitter consents to disclose, generally cannot be disclosed in a public rulemaking docket."

In the paragraph at the bottom of page 3, lines 51-60, the three types of information described do not cover all of the information that agencies generally must protect. Although I acknowledge the comment indicating that the project will not define what is or is not protected material, omitting categories of information that are protected could be misleading. For example, the term "unique identification numbers" on line 52 is much narrower than the definition of a record in the Privacy Act, which defines a protected record as "any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph." 5 U.S.C. 522a(a)(4). Similarly, limiting personally identifiable information such as names and addresses to "accidentally" submitted information (lines 55-56) suggests a narrower definition.

Although I recognize that our focus at the August 31 meeting will be on the preamble, the comment above about the definition of protected material also applies to the classes of protected material set out on lines 72-80: the Privacy Act definition of "record" is broader than the classes of protected material set out here.

Margy O'Herron
Special Advisor
Office of Privacy & Civil Liberties
U.S. Department of Justice
2 Constitution Square
145 N St. NE
Washington, D.C. 20002
Desk: (202) 532-4845
Cell: (202) 598-3178
DOJ email: moherron@jmd.usdoj.gov
External email: Margy.O'Herron2@usdoj.gov