

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Although this temporary rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in the preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions

Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order, because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From 12:01 a.m. on June 5, 2003, until 6 p.m. on September 26, 2003, in § 117.261, add a new paragraph (tt) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(tt) The Sheridan Street Bridge, mile 1070.5 at Hollywood, need only open a single leaf of the bridge on the hour, 20 minutes after the hour, and 40 minutes after the hour, except that from 6:01 p.m. July 3, 2003, until 6 p.m. on September 26, 2003, both leaves of the bridge will open at these times if the

drawtender receives two hours advance notice requesting a double-leaf opening.

Dated: May 30, 2003.

James S. Carmichael,

*Rear Admiral, Coast Guard, Commander,
Seventh Coast Guard District.*

[FR Doc. 03–14987 Filed 6–12–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AL33

Privacy Act of 1974; Implementation

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) regulations governing the confidentiality and release of VA records subject to the Privacy Act, 5 U.S.C. 552a. It revises the regulation which exempts certain records from the provisions of the Privacy Act authorized under 5 U.S.C. 552a(j)(2) and (k)(2). This revision permits VA to exempt a new Privacy Act system of records, Police and Security Records—VA (103VA07B). **DATES:** This final rule is effective August 12, 2003.

FOR FURTHER INFORMATION CONTACT: Director Police and Security Service (07B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, telephone (202) 273–5544.

SUPPLEMENTARY INFORMATION: This document sets forth the VA regulation to exempt from certain provisions of the Privacy Act an additional VA Privacy Act system of records (see, 38 CFR 1.582) by adding a new system of records, “Police and Security Records—VA (103VA07B),” to that VA system of records already exempt under § 1.582.

In a document published in the **Federal Register** on December 19, 2002 (67 FR 77737), VA proposed to amend VA regulations governing the confidentiality and release of VA records subject to the Privacy Act to exempt certain records from the provisions of the Privacy Act authorized under 5 U.S.C. 552a(j)(2) and (k)(2). This proposal would have allowed VA to exempt a new Privacy Act system of records relating to police and security records. The public comment period ended on February 18, 2003. Since VA did not receive any comments or response on the proposed rule for RIN 2900–AL33, we are now adopting this proposal as a final rule without change.

Under title 5 United States Code (U.S.C.) 552a(j)(2), the head of any agency may exempt any system of records within the agency from certain provisions of the Privacy Act, if the agency or component that maintains the system of records performs as its principal function activities pertaining to the enforcement of criminal laws. The function of the Office of Security and Law Enforcement's Police and Security Service is to provide for the maintenance of law and order and the protection of persons and property on VA property.

The system of records "Police and Security Records—VA (103VA07B)" was created in major part to support the criminal law related activities assigned to the Police and Security Service under the authority of 38 U.S.C. 901. These activities constitute the principal function of this staff. In addition to the principal functions pertaining to the enforcement of criminal laws, the Police and Security Service may receive and investigate complaints or information from various sources concerning the possible existence of activities constituting non-criminal violations of law, rules or regulations or substantial and specific danger to public safety.

Based upon the foregoing, VA exempts this system of records to the extent that it encompasses information pertaining to criminal law related activities from the following provisions of the Privacy Act of 1974, as permitted by 5 U.S.C. 552a(j)(2):

- 5 U.S.C. 552a(c)(3) and (4)
- 5 U.S.C. 552a(d)
- 5 U.S.C. 552a(e)(1), (2) and (3)
- 5 U.S.C. 552a(e)(4)(G), (H) and (I)
- 5 U.S.C. 552a(e)(5) and (8)
- 5 U.S.C. 552a(f)
- 5 U.S.C. 552a(g)

Also, VA exempts this system of records to the extent that it does not encompass information pertaining to criminal law related activities under 5 U.S.C. 552a(j)(2) from the following provisions of the Privacy Act of 1974 as permitted by 5 U.S.C. 552a(k)(2):

- 5 U.S.C. 552a(c) (3)
- 5 U.S.C. 552a(d)
- 5 U.S.C. 552a(e)(1)
- 5 U.S.C. 552a(e)(4)(G), (H) and (I)
- 5 U.S.C. 552a(f)

The exemption of information and material in this system of records is necessary in order to accomplish the law enforcement functions of the Police and Security Service, to prevent subjects of investigations from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to

maintain access to sources of information and to avoid endangering these sources and Police and Security personnel.

Based on the rationale set forth in the proposed rule, we now adopt the proposed rule as a final rule without change.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. This rule will have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The rule applies only to individuals. Accordingly, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for this final rule.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Postal Service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Approved: May 16, 2003.

Anthony J. Principi,
Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 1 is amended as follows:

PART I—GENERAL

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Section 1.582 is amended by adding paragraph (d) preceding the authority citation at the end of the section, to read as follows:

§ 1.582 Exemptions.

* * * * *

(d) *Exemption of Police and Security Records.* VA provides limited access to one Security and Law Enforcement System of Records, Police and Security Records—VA (103VA07B).

(1) The investigations records and reports contained in this System of Records are exempted [pursuant to 5 U.S.C. 552a(j)(2) of the Privacy Act of 1974] from Privacy Act subsections (c)(3) and (c)(4); (d); (e)(1) through (e)(3), (e)(4)(G) through (e)(4)(I), (e)(5), and (e)(8); (f); and (g); in addition, they are exempted [pursuant to 5 U.S.C. 552a(k)(2) of the Privacy Act of 1974] from Privacy Act subsections (c)(3); (d); (e)(1), (e)(4)(G) through (e)(4)(I); and (f).

(2) These records contained in the Police and Security Records—VA (103VA076B) are exempted for the following reasons:

(i) The application of Privacy Act subsection (c)(3) would alert subjects to the existence of the investigation and reveal that they are subjects of that investigation. Providing subjects with information concerning the nature of the investigation could result in alteration or destruction of evidence which is obtained from third parties, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(ii) The application of Privacy Act subsections (c)(4); (d); (e)(4)(G) and (e)(4)(H); (f); and (g) could interfere with investigative and enforcement proceedings, threaten the safety of individuals who have cooperated with authorities, constitute an unwarranted invasion of personal privacy of others, disclose the identity of confidential sources, reveal confidential information supplied by these sources, and disclose investigative techniques and procedures.

(iii) The application of Privacy Act subsection (e)(4)(I) could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This could compromise the ability to conduct investigations and to identify, detect

and apprehend violators. Even though the agency has claimed an exemption from this particular requirement, it still plans to generally identify the categories of records and the sources of these records in this system. However, for the reason stated in paragraph (d)(2)(ii) of this section, this exemption is still being cited in the event an individual wants to know a specific source of information.

(iv) These records contained in the Police and Security Records—VA (103VA076B) are exempt from Privacy Act subsection (e)(1) because it is not possible to detect the relevance or necessity of specific information in the early stages of a criminal or other investigation. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established. In any investigation, the Office of Security and Law Enforcement may obtain information concerning violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the Office of Security and Law Enforcement should retain this information as it may aid in establishing patterns of criminal activity and provide leads for those law enforcement agencies charged with enforcing other segments of civil or criminal law.

(v) The application of Privacy Act subsection (e)(2) would impair investigations of illegal acts, violations of the rules of conduct, merit system and any other misconduct for the following reasons:

(A) In order to successfully verify a complaint, most information about a complainant or an individual under investigation must be obtained from third parties such as witnesses and informers. It is not feasible to rely upon the subject of the investigation as a source for information regarding his/her activities because of the subject's rights against self-incrimination and because of the inherent unreliability of the suspect's statements. Similarly, it is not always feasible to rely upon the complainant as a source of information regarding his/her involvement in an investigation.

(B) The subject of an investigation will be alerted to the existence of an investigation if an attempt is made to obtain information from the subject. This would afford the individual the opportunity to conceal any criminal activities to avoid apprehension.

(vi) The reasons for exempting these records in the Police and Security Records—VA (103VA07B) from Privacy Act subsection (e)(3) are as follows:

(A) The disclosure to the subject of the purposes of the investigation would provide the subject with substantial information relating to the nature of the investigation and could impede or compromise the investigation.

(B) Informing the complainant or the subject of the information required by this provision could seriously interfere with undercover activities, jeopardize the identities of undercover agents and impair their safety, and impair the successful conclusion of the investigation.

(C) Individuals may be contacted during preliminary information gathering in investigations before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would hinder or adversely affect any present or subsequent investigations.

(vii) Since the Privacy Act defines "maintain" to include the collection of information, complying with subsection (e)(5) would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment of its collection. In gathering information during the course of an investigation, it is not always possible to make this determination prior to collecting the information. Facts are first gathered and then placed into a logical order which objectively proves or disproves criminal behavior on the part of the suspect. Material that may seem unrelated, irrelevant, incomplete, untimely, etc., may take on added meaning as an investigation progresses. The restrictions in this provision could interfere with the preparation of a complete investigative report.

(viii) The notice requirement of Privacy Act subsection (e)(8) could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FRL-7511-4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Louisiana, New Mexico, Oklahoma and Bernalillo County, NM; Negative Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving negative declarations submitted by the States of Louisiana, New Mexico, Oklahoma, and the City of Albuquerque (Bernalillo County), New Mexico, which certify that there are no existing small municipal waste combustion units in Louisiana, New Mexico, and Oklahoma subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA). EPA is also approving negative declarations submitted by the State of New Mexico and the City of Albuquerque (Bernalillo County) which certify that there are no existing hospital/medical/infectious waste incinerators subject to the requirements of sections 111(d) and 129 of the CAA. In addition, EPA is approving a negative declaration submitted by the City of Albuquerque (Bernalillo County) which certifies that there are no existing large municipal waste combustion units subject to the requirements of sections 111(d) and 129 of the CAA. Finally, EPA is approving a negative declaration submitted by the State of New Mexico which certifies that there are no existing commercial and industrial solid waste incineration units subject to the requirements of sections 111(d) and 129 of the CAA. This is a direct final action without prior notice and comment because this action is deemed noncontroversial.

DATES: This direct final rule is effective on August 12, 2003 without further notice, unless EPA receives adverse comment by July 14, 2003. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Air Planning Section (6PD-L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following location. Anyone wanting to examine these