



DEPARTMENT OF THE INTERIOR

43 CFR Part 2

[BSEE–2016–0001; 201E1700D2 EECC000000 ET1EX0000.G40000]

RIN 1014-AA41

Privacy Act Regulations; Exemptions for the Investigations Case Management System

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior is issuing a final rule to amend its regulations to exempt certain records in the BSEE-01, Investigations Case Management System, from one or more provisions of the Privacy Act because of civil and administrative law enforcement requirements.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Rowena Dufford, Associate Privacy Officer, Bureau of Safety and Environmental Enforcement, 45600 Woodland Road, Mail Stop VAE-MSD, Sterling, VA 20166, privacy@bsee.gov or (703) 787-1257.

SUPPLEMENTARY INFORMATION:

Background

The Department of the Interior (DOI) published a notice of proposed rulemaking in the *Federal Register* at 81 FR 67267, September 30, 2016, proposing to exempt certain records in the Investigations Case Management System (CMS) in accordance with 5

U.S.C. 552a(k)(2) of the Privacy Act of 1974, as amended, because of civil and administrative law enforcement requirements. The CMS system of records notice was published in the *Federal Register* at 81 FR 67386, September 30, 2016.

Comments were invited on the CMS system of records notice and the notice of proposed rulemaking. DOI received no comments on the system of records notice, but received two comments on the notice of proposed rulemaking. One commenter did not address the specific exemption but expressed concern that access to the records should be preserved and not taken away. The other commenter suggested the proposed rule contravenes the intent of the Privacy Act by creating a “blanket [exemption]” on disclosures of all types of agency records. The commenter further stated that by amending the rule, the Bureau of Safety and Environmental Enforcement indicates that all information in CMS is intended for law enforcement purposes and that there is concern that the release of this information could lead to witness tampering. As stated in the proposed rule and consistent with the Privacy Act, the exemptions from one or more provisions of the Privacy Act may be waived on a case-by-case basis where a release would not interfere with or adversely affect investigations or enforcement activities. These comments on the notice of proposed rulemaking require no revisions, therefore, DOI will implement the rulemaking as proposed.

Procedural Requirements

1. Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The

Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. DOI developed this rule in a manner consistent with these requirements.

2. Regulatory Flexibility Act.

DOI certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). This rule does not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rule. The exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the Regulatory Flexibility Act.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA).

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act.

This rule does not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or on the private sector, of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. This rule makes only minor changes to 43 CFR part 2. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630).

In accordance with Executive Order 12630, the rule does not have significant takings implications. The rule is not a governmental action capable of interference with constitutionally protected property rights. This rule makes only minor changes to 43 CFR part 2. A takings implication assessment is not required.

6. Federalism (E.O. 13132).

In accordance with Executive Order 13132, this rule does not have any federalism implications to warrant the preparation of a Federalism Assessment. The rule is not associated with, nor will it have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and

responsibilities among the various levels of government. A Federalism Assessment is not required.

7. Civil Justice Reform (E.O. 12988).

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Does not unduly burden the judicial system.

(b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

8. Consultation with Indian Tribes (E.O. 13175).

In accordance with Executive Order 13175, the Department of the Interior has evaluated this rule and determined that it would have no substantial effects on federally recognized Indian Tribes.

9. Paperwork Reduction Act.

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required.

10. National Environmental Policy Act (NEPA) of 1969.

This rule does not constitute a major Federal Action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. This rule meets the criteria set forth in 43 CFR 46.210(i), 516 Departmental Manual 15.4C(1), and the BSEE Interim NEPA Policy Document 2013-09,

for a categorical exclusion. The rule's administrative effects are to exempt CMS from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2) because of civil and administrative law enforcement requirements and therefore would not have any environmental impacts. BSEE also analyzed this rule to determine if it involves any of the extraordinary circumstances set forth in 43 CFR 46.215 that would require an environmental assessment or an environmental impact statement for actions otherwise eligible for a categorical exclusion. BSEE concluded that this rule does not meet any of the criteria for extraordinary circumstances.

11. Data Quality Act.

In developing this rule, there was no need to conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554).

12. Effects on Energy Supply (E.O. 13211).

This rule is not a significant energy action under the definition in Executive Order 13211, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. A Statement of Energy Effects is not required.

13. Clarity of this Regulation.

We are required by Executive Order 12866 and 12988, the Plain Writing Act of 2010 (H.R. 946), and the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means each rule we publish must:

- Be logically organized;
- Use the active voice to address readers directly;
- Use clear language rather than jargon;
- Be divided into short sections and sentences; and

- Use lists and tables wherever possible.

List of Subjects in 43 CFR Part 2

Administrative practice and procedure, Confidential information, Courts, Freedom of Information Act, Privacy Act.

For the reasons stated in the preamble, the Department of the Interior amends 43 CFR part 2 as follows:

PART 2 - - FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461.

2. Amend § 2.254 by adding paragraph (b)(18) to read as follows:

§ 2.254 Exemptions.

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(b) * * *

(18) Investigations Case Management System (CMS), BSEE-01.

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Teri Barnett,
Departmental Privacy Officer,
Department of the Interior.

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