

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1611

Privacy Act Regulations

AGENCY: Equal Employment Opportunity Commission.

ACTION: Proposed rule.

SUMMARY: The Equal Employment Opportunity Commission is proposing to revise its regulations which implement the Privacy Act of 1974, to exempt two EEOC systems of records from some of the Act's requirements.

DATE: Written comments on the proposed rule must be received on or before September 30, 2002. The Commission proposes to consider any comments received and thereafter adopt final regulations.

ADDRESS: Comments should be addressed to the Office of Executive Secretariat, Equal Employment Opportunity Commission, Room 10402, 1801 L Street, NW., Washington, DC 20507. As a convenience to commenters, the Executive Secretariat will accept comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 663-4114. (This is not a toll-free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663-4078 (voice) or (202) 663-4077 (TTY). (These are not toll-free numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507, between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, or Kathleen Oram, Senior Attorney, Office of Legal Counsel, (202) 663-4669 (voice) or (202) 663-7026

(TDD). This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to EEOC's Publication Center at 1-800-669-3362.

SUPPLEMENTARY INFORMATION: The Commission proposes to amend §1611.14, to exempt its system of records EEOC-15, Internal Harassment Inquiries, pursuant to section k(2) of the Privacy Act, from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act. In addition, the Commission proposes to add a new §1611.14, to exempt its system of records EEOC-16, Office of Inspector General Investigative Files, pursuant to section (j)(2) from sections (c)(3), (d)(1), (d)(2), (e)(1), (e)(2) and (e)(3) and pursuant to section (k)(2) from sections (c)(3), (d)(1), (d)(2) and (e)(1) of the Act.

Section (k) of the Privacy Act allows an agency to exempt any system of records from the above-referenced subsections of the Act if it consists of "investigatory material compiled for law enforcement purposes." 5 U.S.C. 552(k)(2). Section (j) of the Privacy Act permits an agency to exempt a system of records from sections of the Act, including those noted above, if the system of records is "maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws." 5 U.S.C. 552(j)(2). The files in the Internal Harassment Inquiries system of records contain information obtained by EEOC in its internal investigations of allegations of harassment filed by EEOC employees. The files in the Office of Inspector General Investigations Files system contain information obtained during investigations by the Office of Inspector General relating to programs and operations of the EEOC. It would impede the law enforcement activities of the Commission, and the Office of Inspector General to apply the disclosure and amendment provisions of the Privacy Act to the two systems of records. The regulation includes detailed reasons for the exemption of the two systems of records from the particular provisions of the Privacy Act.

Regulatory Procedures

List of Subjects in 29 CFR Part 1611

Privacy Act.

For the Commission.

Cari M. Dominguez,
Chair.

Accordingly, it is proposed to amend chapter XIV of title 29 of the Code of Federal Regulations as follows:

PART 1611—[AMENDED]

1. The authority citation for Part 1611 continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Section 1611.13 is revised to read as follows:

§ 1611.13 Specific Exemptions—Charge and complaint files

Pursuant to subsection (k)(2) of the Act, 5 U.S.C. 552a(k)(2), systems EEOC-1 (Age and Equal Pay Act Discrimination Case Files), EEOC-3 (Title VII and Americans with Disabilities Act Discrimination Case Files), EEOC-15 (Internal Harassment Inquiries) and EEOC/GOVT-1 (Equal Employment Opportunity Complaint Records and Appeal Records) are exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act. The Commission has determined to exempt these systems from the above named provisions of the Privacy Act for the following reasons:

(a) The files in these systems contain information obtained by the Commission and other Federal agencies in the course of harassment inquiries, and investigations of charges and complaints that violations of Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Americans With Disabilities Act and the Rehabilitation Act have occurred. In some instances, EEOC and agencies obtain information regarding unlawful employment practices other than those complained of by the individual who is the subject of the file. It would impede the law enforcement activities of the Commission and other agencies if these provisions of the Act applied to such records.

(b) The subject individuals of the files in these systems know that the Commission or their employing agencies are maintaining a file on their charge, complaint, or inquiry, and the general nature of the information contained in it.

(c) Subject individuals of the files in EEOC-1 (Age and Equal Pay Act

Discrimination Case Files), EEOC-3 (Title VII and Americans with Disabilities Act Discrimination Case Files, and EEOC/GOVT-1 (Equal Employment Opportunity Complaint Records and Appeal Records) have been provided a means of access to their records by the Freedom of Information Act. Subject individuals of the charge files in system EEOC-3 have also been provided a means of access to their records by section 83 of the Commission's Compliance Manual. Subject individuals of the case files in system EEOC/GOVT-1 have also been provided a means of access to their records by the Commission's Equal Employment Opportunity in the Federal Government regulation, 29 CFR 1614.108(f).

(d) Many of the records contained in system EEOC/GOVT-1 are obtained from other systems of records. If such records are incorrect, it would be more appropriate for an individual to seek to amend or correct those records in their primary filing location so that notice of the correction can be given to all recipients of that information.

(e) Subject individuals of the files in each of these systems have access to relevant information provided by the allegedly discriminating employer, accuser or harasser as part of the investigatory process and are given the opportunity to explain or contradict such information and to submit any responsive evidence of their own. To allow such individuals the additional right to amend or correct the records submitted by the allegedly discriminatory employer, accuser or harasser would undermine the investigatory process and destroy the integrity of the administrative record.

(f) The Commission has determined that the exemption of these four systems of records from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act is necessary for the agency's law enforcement efforts.

3. Section 1611.14 is added to read as follows:

§ 1611.14 Exemptions—Office of Inspector General Files

(a) *General.* The system of records entitled Office of Inspector General Investigative Files consists, in part, of information compiled by the OIG for the purpose of criminal law enforcement investigations. Therefore, to the extent that information in this system falls within the scope of Exemption (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), this system of records is exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3), because release of an accounting of disclosures to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d)(1), because release of investigative records to an individual who is the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsection (d)(2), because amendment or correction of investigative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the OIG to continuously retrograde its investigations attempting to resolve questions of accuracy, relevance, timeliness and completeness.

(4) From subsection (e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, the OIG may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OIG should retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation, information may be provided to the OIG which relates to matters incidental to the main purpose of the investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

(5) From subsection (e)(2), because in a law enforcement investigation it is usually counterproductive to collect information to the greatest extent practicable from the subject thereof. It is not always feasible to rely upon the subject of an investigation as a source for information which may implicate him or her in illegal activities. In

addition, collecting information directly from the subject could seriously compromise an investigation by prematurely revealing its nature and scope, or could provide the subject with an opportunity to conceal criminal activities, or intimidate potential sources, in order to avoid apprehension.

(6) From subsection (e)(3), because providing such notice to the subject of an investigation, or to other individual sources, could seriously compromise the investigation by prematurely revealing its nature and scope, or could inhibit cooperation, permit the subject to evade apprehension, or cause interference with undercover activities.

(b) *Specific.* The system of records entitled Office of Inspector General Investigative Files consists, in part, of investigatory material compiled by the OIG for law enforcement purposes. Therefore, to the extent that information in this system falls within the coverage of exemption (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), this system of records is exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3), because release of an accounting of disclosures to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d)(1), because release of investigative records to an individual who is the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsection (d)(2), because amendment or correction of investigative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the OIG to continuously retrograde its investigations attempting to resolve questions of accuracy, relevance, timeliness and completeness.

(4) From subsection (e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected

may ultimately be evaluated and viewed as irrelevant and unnecessary to investigation. In addition, the OIG may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OIG could retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation, information may be provided to the OIG which relates to matters incidental to the main purpose of the investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

[FR Doc. 02-18894 Filed 7-29-02; 8:45 am]

BILLING CODE 6570-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AD48

Operation of Child Care Centers at VA Facilities

AGENCY: Department of Veterans Affairs.
ACTION: Withdrawal of proposed rule.

SUMMARY: The Department of Veterans Affairs published a proposed rule to amend its regulations regarding the Operation of Child Care Centers at VA Facilities. The proposed rule and the comments we received have been superseded by events. Accordingly, this document hereby withdraws the proposed rule.

FOR FURTHER INFORMATION CONTACT: Renee Bruce, National Child Care Program Manager, telephone number 410-605-7388, VA Maryland Health Care System, 10 N. Greene Street, Baltimore, Maryland 21201.

SUPPLEMENTARY INFORMATION: In a proposed rule published in the **Federal Register** on December 27, 1989 (54 FR 53078), VA proposed to amend its regulations regarding the Operation of Child Care Centers at VA Facilities. The proposed rule and comments VA received have been superseded by events.

The child care needs of VA employees are being met through the provision of child care services by non-VA entities, at, or near VA facilities. While VA does not have any authority other than Veterans' Canteen Service (VCS) statute, to provide child care services directly,

VA facilities can provide, free-of-charge, space and services to privately operated child care centers pursuant to the Tribble Amendment and VA leasing authority. See 38 U.S.C. 7809, 8122(a), 40 U.S.C. 490b. Use of the Tribble Amendment and VA leasing authority has resulted in the existence of dozens of child care centers serving VA employees.

Further, we understand that VCS does not, nor does it intend to, operate any child care centers, directly or by contract. Thus, VA is withdrawing the proposed rule.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contacts, Grants program-health, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and Transportation expenses, Veterans.

Approved: July 5, 2002.

Anthony J. Principi,
Secretary of Veterans Affairs.

[FR Doc. 02-19175 Filed 7-29-02; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2002-D008]

Defense Federal Acquisition Regulation Supplement; Trade Agreements Act—Exception for U.S.-Made End Products

AGENCY: Department of Defense (DoD).
ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the determination of the Under Secretary of Defense (Acquisition, Technology, and Logistics) that, for procurements subject to the Trade Agreements Act, it would be inconsistent with the public interest to apply the Buy American Act to U.S.-made end products that are substantially transformed in the United States.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before

September 30, 2002, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@acq.osd.mil. Please cite DFARS Case 2002-D008 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2002-D008.

At the end of the comment period, interested parties may view public comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0328.

SUPPLEMENTARY INFORMATION:

A. Background

On March 14, 2002, the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)) determined that, for procurements subject to the Trade Agreements Act, it would be inconsistent with the public interest to apply the Buy American Act to U.S.-made end products that are substantially transformed in the United States. This determination expands the May 16, 1997, USD(AT&L) determination (presently implemented in DFARS Part 225) that it would be inconsistent with the public interest to apply the Buy American Act to U.S.-made information technology products in Federal Supply Group 70 or 74. The March 14, 2002, determination is consistent with Federal Acquisition Regulation policy applicable to civilian agencies with regard to the treatment of U.S.-made end products.

This proposed DFARS rule implements the March 14, 2002, USD(AT&L) determination. The rule will simplify evaluation of offers in acquisitions subject to the Trade Agreements Act, because it will no longer be necessary to determine if a U.S.-made end product is also a domestic end product, *i.e.*, the cost of domestic components exceeds the cost of all components by more than 50 percent. Additionally, the provision at DFARS 252.225-7006, Buy American Act—Trade Agreements—Balance of Payments Program Certificate, and the clause at DFARS 252.225-7007, Buy