the Deputy Assistant Judge Advocate General (DAJAG) Admiralty and Maritime Law has determined that USS BUNKER HILL (CG 52) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective July 29, 2013 and is applicable beginning July 16, 2013.


This amendment provides notice that the DAJAG (Admiralty and Maritime Law) of the DoN, under authority delegated by the Secretary of the Navy, has certified that USS BUNKER HILL (CG 52) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel’s ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

For the reasons set forth in the preamble, amend part 706 of title 32 of the CFR as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

1. The authority citation for part 706 continues to read as follows:


2. In § 706.2, in Table 5, revise the entry for USS BUNKER HILL (CG 52) to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

<table>
<thead>
<tr>
<th>Vessel</th>
<th>No.</th>
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<tbody>
<tr>
<td>USS BUNKER HILL</td>
<td>CG 52</td>
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</table>

* * * * *

Approved: July 16, 2013.

A.B. Fischer,
Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

Dated: July 18, 2013.

C.K. Chiappetta,
Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–18100 Filed 7–26–13; 8:45 am]
BILLING CODE 3810–FF–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AO61

Patient Access to Records

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its regulation governing disclosure of information to veterans and other beneficiaries. The current regulation provides for a special procedure for evaluating sensitive records and determining whether an individual may gain access to his or her own records. The special procedure allows VA to prevent an individual’s access to his or her own records if VA determines that such release could have an adverse effect on the physical or mental health of a requesting individual. We have determined that this special procedure is contrary to law, and therefore remove it from the current regulation.

DATES: Effective Date: This final rule is effective July 29, 2013.

FOR FURTHER INFORMATION CONTACT: Stephanie Griffin, Veterans Health Administration Privacy Officer, Office of Informatics and Analytics (10P2C), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (704) 245–2492. (This is not a toll-free number.)

SUPPLEMENTS INFORMATION: The Privacy Act of 1974 (Privacy Act), 5 U.S.C. 552a, requires federal agencies maintaining a system of records to disclose to an individual any record or information pertaining to that individual upon request. The Privacy
Act provides safeguards for an individual against an invasion of personal privacy by requiring federal agencies to permit an individual to (1) determine what records pertaining to that individual are collected, maintained, used, or disseminated; (2) prevent records pertaining to that individual obtained by the agency for a particular purpose from being used or made available for another purpose without consent; and (3) gain access to information pertaining to that individual in agency records, to have a copy made of all or any portion thereof, and to correct or amend such records. Federal agencies are required by the Privacy Act to establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him. These procedures may include, if deemed necessary, a special procedure “for the disclosure to an individual of medical records, including psychological records, pertaining to him.” 5 U.S.C. 552a(f)(3). However, the end result of any procedure, including the special procedure, must be disclosure of the records to the requesting individual.

The special procedure in §1.577(d) is similar to that considered by the court in *Benavides*. It operationalizes the requirement found in 38 U.S.C. 5701(b)(1) that VA disclose information to a veteran as to matters concerning the veteran only after VA determines that the disclosure would not be injurious to the physical or mental health of the veteran. Both the statute and regulation allow VA to withhold information it believes would be injurious. Thus, 38 U.S.C. 5701(b)(1) and §1.577(d) directly conflict with the Privacy Act. We have determined that the Privacy Act governs decisions regarding disclosure to a veteran of information pertaining to that veteran. The Act supersedes 38 U.S.C. 5701(b)(1) to the extent 38 U.S.C. 5701(b)(1) applies to Privacy Act protected records and is controlling. As a general rule of statutory construction, where two laws on the same subject are in conflict and the conflict cannot be reconciled, the later enacted law controls to the extent of the conflict. *J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred International Inc.*, 534 U.S. 124 (2001); *U.S. v. Borden Co.*, 308 U.S. 188 (1939); 1A Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutes and Statutory Construction* §23:9 (7th ed. 2009) (the express mention of one thing implies the exclusion of others).

The Privacy Act authorizes agencies to promulgate rules administering the process by which individuals may request records. However, as noted by the court in *Bavido*, while agencies are allowed under 5 U.S.C. 552a(f)(3) to develop special procedures for disclosure of health records in cases in which direct transmission could adversely affect a requesting individual, “under the plain wording of the statute, these procedures eventually must lead to disclosure of the records to the requesting individual.” *Bavido*, 215 F.3d at 750.

Section 30 of The World War Veteran’s Act of 1924, Public Law 68–242, codified as 38 U.S.C. 5701(b)(1), is applicable to all VA records. The statute contains mandatory language, and it makes disclosure to requesting individuals conditional on VA finding that the content of the record will not be injurious to the physical or mental health of the veteran. Non-disclosure is required if VA determines that disclosure of the content will be injurious to the physical or mental health of the veteran. Nondisclosure is prohibited if VA determines that disclosure would be injurious to the physical or mental health of the veteran. Nondisclosure is prohibited if VA determines that disclosure would be injurious to the physical or mental health of the veteran.
be made directly available to veterans via My HealtheVet, the award-winning web-based VA tool that allows veterans to manage and access their health information. This could result in a two-tiered system wherein only some veterans have access to their entire EHR. The remaining veterans would in effect be stigmatized due to flagged content in their health records.

**Administrative Procedure Act**

This final rule is an interpretive rule that merely reflects VA’s interpretation of the Privacy Act and 38 U.S.C. 5701(b)(1). Therefore, it is exempt from the prior notice-and-comment and delayed effective date requirements of 5 U.S.C. 553. See 5 U.S.C. 553(b)(A) and (d)(2). This final rule eliminates a special procedure that is contrary to law and a potential barrier to VA disclosing a veteran’s health information to that veteran upon request as required under the Privacy Act. Providing patients with access to records upon request is consistent with controlling privacy laws and prevailing practice and is not controversial. This action will directly benefit veterans by eliminating a barrier to veterans receiving information that they are otherwise entitled to receive.

**Effect of Rulemaking**

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA’s implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

**Paperwork Reduction Act**

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will 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. This final rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility (ERF) analysis requirements of 5 U.S.C. 603 and 604.

**Executive Order 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal or regulatory programs or the rights and obligations of recipients thereof; or (5) Have a significant effect on a nonfederal entity, including a small governmental entity or small business, or State, local, or tribal governments or communities.”

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, and it has been determined not to be a significant regulatory action under Executive Order 12866.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers;
ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Approval and Promulgation of State Implementation Plans; State of North Dakota; Interstate Transport of Pollution for the 2006 PM2.5 NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving portions of a State Implementation Plan (SIP) submission from the State of North Dakota which demonstrates that its SIP meets certain interstate transport requirements of the Clean Air Act (“Act” or “CAA”) for the 2006 fine particulate matter (“PM2.5”) National Ambient Air Quality Standards (“NAAQS”). Specifically, EPA is approving the portion of the North Dakota SIP submission that addresses the CAA requirement prohibiting emissions from North Dakota sources from significantly contributing to nonattainment of the 2006 PM2.5 NAAQS in any other state or interfering with maintenance of the 2006 PM2.5 NAAQS by any other state.

DATES: Effective Date: This final rule is effective August 28, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2012–0348. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the FOR FURTHER INFORMATION CONTACT section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–7104, clark.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials Act or CAA mean or refer to the Clean Air Act.

(ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.

(iii) The initials NAAQS mean or refer to National Ambient Air Quality Standards.

(iv) The initials SIP mean or refer to State Implementation Plan.

(v) The initials NDDH mean or refer to the North Dakota Department of Health.

(vi) The words North Dakota and State mean the State of North Dakota.

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II. Response to Comments

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I. Background

On October 17, 2006 EPA promulgated a new NAAQS for PM2.5, revising the level of the 24-hour PM2.5 standard to 35 μg/m³ and retaining the level of the annual PM2.5 standard at 15 μg/m³. (71 FR 61144). By statute, SIPs meeting the “infrastructure” requirements of CAA sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. Among the infrastructure requirements of section 110(a)(2) are the “interstate transport” requirements of section 110(a)(2)(D).

CAA section 110(a)(2)(D)(i) identifies four distinct elements related to the evaluation of impacts of interstate transport of air pollutants. In this action for the state of North Dakota, EPA is addressing the first two elements of section 110(a)(2)(D)(i) with respect to the 2006 PM2.5 NAAQS. The first element of section 110(a)(2)(D)(i) requires that each SIP for a new or revised NAAQS contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will “contribute significantly to nonattainment” of the NAAQS in...