

Mailer endorsement	USPS Treatment of UAA Pieces
"Address Service Re-requested" <sup>2</sup> .	* * * * *
* * * * *	* * * * *
"Change Service Requested" <sup>3</sup> .	In all cases: Separate notice of new address or reason for nondelivery provided (in either case, address correction fee charged); piece disposed of by USPS. Restrictions: Delivery Confirmation is the only special service permitted with this endorsement. Prohibitions: This endorsement is not permitted for Standard Mail containing perishable matter, hazardous materials, or restricted matter.

[Revise footnote 1 and add new footnotes 2 and 3 to read as follows:]

1. Not valid for pieces containing perishable matter, hazardous materials, or restricted matter.

2. Valid for all pieces, including Address Change Service (ACS) participating pieces.

3. Not valid for pieces containing perishable matter, hazardous materials, or restricted matter. Valid for all other pieces, including Address Change Service (ACS) participating pieces.

\* \* \* \* \*

#### 5.4 Package Services

\* \* \* \* \*

[Reletter items c through e as d through f, and insert new item c to read as follows:]

c. The endorsement "Change Service Requested" is not permitted for Package Services mail containing perishable matter under C022, hazardous materials under C023, or restricted matter under C024.

\* \* \* \* \*

#### Exhibit 5.4 Treatment of Undeliverable Package Services Mail

[Revise the listing for "Change Service Requested" to read as follows:]

Mailer endorsement	USPS Treatment of UAA Pieces
* * * * *	* * * * *
"Change Service Requested" <sup>2</sup> .	In all cases: Separate notice of new address or reason for nondelivery provided (in either case, address correction fee charged); piece disposed of by USPS.

Mailer endorsement	USPS Treatment of UAA Pieces
	Restrictions: Delivery Confirmation and Signature Confirmation are the only special services permitted with this endorsement. Prohibitions: This endorsement is not permitted for Package Services Mail containing perishable matter, hazardous materials, or restricted matter.

[Add new footnote 2 to read as follows:]

2. Not valid for pieces containing perishable matter, hazardous materials, or restricted matter. Valid for all other pieces, including Address Change Service (ACS) participating pieces.

\* \* \* \* \*

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

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#### DEPARTMENT OF VETERANS AFFAIRS

##### 38 CFR Part 1

##### RIN 2900-AL33

##### Privacy Act of 1974—Implementation

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend Department of Veterans Affairs (VA) regulations governing the confidentiality and release of VA records subject to the Privacy Act, 5 U.S.C. 552a. We propose to revise

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 would have the intended effect of permitting VA to exempt a new Privacy Act systems of records relating to police and security records.

**DATES:** Comments must be received on or before February 18, 2003.

**ADDRESSES:** Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments to [OGCRegulations@mail.va.gov](mailto:OGCRegulations@mail.va.gov). Comments should indicate that they are submitted in response to "RIN 2900-AL33." All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**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:** Currently, VA regulations only exempt from certain provisions of the Privacy Act two VA Privacy Act systems of records (see, 38 CFR 1.582). This document proposes to add a new system of records, "Police and Security Records—VA (103VA07B)," to those already exempt under § 1.582.

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 noncriminal violations of law, rules or regulations or substantial and specific danger to public safety.

Based upon the foregoing, VA would exempt 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 would exempt 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)

In our opinion, 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.

### 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 proposed 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. 3501–3520).

### 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 proposed rule would 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 proposed rule would apply only to individuals. Accordingly, pursuant to 5 U.S.C. 605(b), this proposed 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 proposed 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: September 25, 2002.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 1 is proposed to be 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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