

Subpart A—Registration

8. Section 3.33 is amended by revising paragraph (c)(1) to read as follows:

§ 3.33 Withdrawal from registration.

* * * * *

(c)(1) Where a futures commission merchant or an introducing broker which is not operating pursuant to a guarantee agreement is requesting withdrawal from registration in that capacity and the basis for withdrawal under paragraph (a)(1) of this section is that it has ceased engaging in activities requiring registration, the request for withdrawal must be accompanied by a Form 1-FR-FCM or a Form 1-FR-IB, respectively, which contains the information specified in § 1.10(d)(1) of this chapter as of a date not more than 30 days prior to the date of the withdrawal request: *Provided, however*, That if such registrant is also registered with the Securities and Exchange Commission as a securities broker or dealer, it may file a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA (in accordance with § 1.10(h) of this chapter), in lieu of Form 1-FR-FCM or Form 1-FR-IB. Any financial report submitted pursuant to this paragraph (c)(1) must contain the information specified in § 1.10(d)(1) of this chapter as of a date not more than 30 days prior to the date of the withdrawal request.

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PART 145—COMMISSION RECORDS AND INFORMATION

9. The authority citation for Part 145 continues to read as follows:

Authority: Pub. L. 89-554, 80 Stat. 383, Pub. L. 90-23, 81 Stat. 54, Pub. L. 93-502, 88 Stat. 1561-1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93-463, 88 Stat. 1389 (5 U.S.C. 4a(j)); Pub. L. 99-570, unless otherwise noted.

§ 145.5 [Amended]

10. Section 145.5 is amended by removing and reserving paragraph (d)(1)(i)(G).

PART 147—OPEN COMMISSION MEETINGS

11. The authority citation for Part 147 continues to read as follows:

Authority: Sec. 3(a), Pub. L. 94-409, 90 Stat. 1241 (5 U.S.C. 552b); Sec. 101(a)(11), Pub. L. 93-463, 88 Stat. 1391 (7 U.S.C. 4a(j) (Supp. V 1975)), unless otherwise noted.

§ 147.3 [Amended]

12. Section 147.3 is amended by removing and reserving paragraph (b)(4)(i)(A)(7).

Issued in Washington, D.C. on January 21, 1997 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97-2251 Filed 1-30-97; 8:45 am]

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TENNESSEE VALLEY AUTHORITY**18 CFR Part 1301****Privacy Act Regulations; Implementation**

AGENCY: Tennessee Valley Authority.

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority (TVA) amends its regulations implementing the Privacy Act of 1974 (the Act), 5 U.S.C. 552a. These amendments are needed to modify existing TVA regulations to exempt a system of records known as TVA Police Records (TVA-37) from certain provisions of the Act and corresponding agency regulations.

EFFECTIVE DATE: January 31, 1997.

FOR FURTHER INFORMATION: Wilma H. McCauley, (423) 751-2523.

SUPPLEMENTARY INFORMATION: These amendments allow exemptions authorized by the Act, 5 U.S.C. 552a(j)(2) and (k)(2), for the TVA Police Records—TVA system of records under 5 U.S.C. 552a(k)(2). Under subsections (j)(2) and (k)(2) of the Act, TVA, through rulemaking, may exempt those systems of records maintained by a component of TVA that performs as its principal function any activity pertaining to the enforcement of criminal laws from certain provisions of the Act, if the system of records is used for certain law enforcement purposes.

The TVA Police is a component of TVA that performs as one of its principal functions investigations into violations of criminal law in connection with TVA's programs and operations, pursuant to the Violent Crime Control and Law Enforcement Act of 1994, as amended, the TVA Police Records system of records falls within the scope of subsections (j)(2); i.e., information compiled for the purpose of criminal investigation, reports relating to any stage of the enforcement process, and information compiled for the identification of individual criminals, and (k)(2); i.e., investigatory material compiled for law enforcement purposes, other than material within the scope of (k)(2) above.

The (j)(2) and (k)(2) exemptions for criminal law enforcement records remove restrictions on the manner in which information may be collected and

the type of information that may be collected by the TVA Police in the course of a criminal investigation, limit certain notice requirements, and exempt the system of records from civil remedies for violations of the Act. These additional exemptions are necessary primarily to avoid premature disclosure of sensitive information, including, but not limited to, the existence of a criminal investigation, that may compromise or impede the investigation.

A more complete explanation of each exemption follows, as required by the Act.

TVA adds the following to the current exemptions contained in 18 CFR 1301.24.

Exemptions Pursuant to (j)(2) and (k)(2)

TVA has determined that the TVA Police Records should be exempt from the following provisions of the Privacy Act and corresponding agency regulations. These exemptions are necessary and appropriate to maintain the integrity and confidentiality of criminal investigations.

TVA will use the (j)(2) and (k)(2) exemptions for the following reasons: (a) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his/her request. This accounting must state the date, nature and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure could alert the subject of an investigation to the existence and nature of the investigation and reveal investigative or prosecutive interest by other agencies, particularly in a joint-investigation situation. This could seriously impede or compromise the investigation and case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate with the investigators; lead to suppression, alteration, fabrication, or destruction of evidence; and endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families.

(b) 5 U.S.C. 552a(c)(4) requires an agency to inform outside parties of correction of and notation of disputes about information in a system in accordance with subsection (d) of the Privacy Act. Since this system of records is already exempted from the access provisions of subsection (d) of the Privacy Act, this section is not properly applicable.

(c) 5 U.S.C. 552a(d) and (f) require an agency to provide access to records, make corrections and amendments to

records, and notify individuals of the existence of records upon their request. Providing individuals with access to records of an investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing the access normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate with investigators; lead to suppression, alteration, fabrication, or destruction of evidence; endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach to satisfy any Government claims growing out of the investigation.

(d) 5 U.S.C. 552a(e)(1) requires an agency to maintain in agency records only "relevant and necessary" information about an individual. This provision is inappropriate for investigations, because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear. In other cases, what may appear to be a relevant and necessary piece of information may become irrelevant in light of further investigation.

In addition, during the course of an investigation, the investigator may obtain information that relates primarily to matters under the investigative jurisdiction of another agency (e.g., the fraudulent use of Social Security numbers), and that information may not be reasonably segregated. In the interest of effective law enforcement, TVA Police should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

(e) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual, when the information may result in adverse determinations about an individual's rights, benefits and privileges under Federal programs. The general rule that information be collected "to the greatest extent practicable" from the target individual is not appropriate in

investigations. TVA Police should be authorized to use their professional judgment as to the appropriate sources and timing of an investigation. Often it is necessary to conduct an investigation so that the target does not suspect that he or she is being investigated. The requirement to obtain the information from the targeted individual may put the suspect on notice of the investigation and thereby thwart the investigation by enabling the suspect to destroy evidence and take other action that would impede the investigation. This requirement may also in some cases preclude TVA Police from gathering information and evidence before interviewing an investigative target in order to maximize the value of the interview by confronting the target with the evidence or information. Moreover, in certain circumstances the subject of an investigation cannot be required to provide information to investigators and information must be collected from other sources. Furthermore, it is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

In addition, the statutory term "to the greatest extent practicable" is a subjective standard, and it is impossible adequately to define the term so that individual TVA Police investigators can consistently apply it to the many fact patterns presented in TVA Police investigations.

(f) 5 U.S.C. 552a(e)(3) requires an agency to inform each person whom it asks to supply information, on a form that can be retained by the person, of the authority under which the information is sought and whether disclosure is mandatory or voluntary; of the principal purpose for which the information is intended to be used; of the routine uses which may be made of the information; and of the effects on the person, if any, of not providing all or any part of the requested information. The application of this provision could provide the subject of an investigation with substantial information about the nature of that investigation that could interfere with the investigation. Moreover, providing such a notice to the subject of an investigation could seriously impede or compromise an undercover investigation by revealing its existence and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(g) 5 U.S.C. 552a(e)(4) (G) and (H) require an agency to publish a Federal Register notice concerning its procedures for notifying an individual

at his/her request, if the system of records contains a record pertaining to him/her, how to gain access to such a record and how to contest its content. Since these systems of records are being exempted from subsection (f) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable to the extent that these systems of records will be exempted from these subsections. Although the system would be exempt from these requirements, TVA Police has published information concerning its notification, access, and contest procedures because, under certain circumstances, TVA Police could decide it is appropriate for an individual to have access to all or a portion of his/her records in these systems of records.

(h) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish notice of the categories of sources or records in the system of records. To the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information, to protect privacy and physical safety of witnesses and informants, and to avoid the disclosure of investigative techniques and procedures. TVA Police will, nevertheless, publish such a notice in broad generic terms.

(i) 5 U.S.C. 552a(e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about the individual. Much the same rationale is applicable to this exemption as that set out previously in item (d) (duty to maintain in agency records only "relevant and necessary" information about an individual). While the TVA Police make every effort to maintain records that are accurate, relevant, timely, and complete, it is not always possible in an investigation to determine with certainty that all the information collected is accurate, relevant, timely, and complete. During a thorough investigation, a trained investigator would be expected to collect allegations, conflicting information, and information that may not be based upon the personal knowledge of the provider. At the point of determination to refer the matter to a prosecutive agency, for example, that information would be in the system of records, and it may not be possible until further investigation is conducted, or indeed in many cases until after a trial

(if at all), to determine the accuracy, relevance, and completeness of some information. This requirement would inhibit the ability of trained investigators to exercise professional judgment in conducting a thorough investigation. Moreover, fairness to affected individuals is assured by the due process they are accorded in any trial or other proceeding resulting from the TVA Police investigation.

(j) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available under compulsory legal process when such process becomes a matter of public record. Compliance with this provision could prematurely reveal and compromise an ongoing criminal investigation to the target of the investigation and reveal techniques, procedures, or evidence.

(k) 5 U.S.C. 552a(g) provides for civil remedies if an agency fails to comply with the requirements concerning access to records under subsections (d) (1) and (3) of the Act; maintenance of records under subsection (e)(5) of the Act; and any other provision of the Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual. Allowing civil lawsuits for alleged Privacy Act violations by TVA Police would compromise TVA Police investigations by subjecting the sensitive and confidential information in the TVA Police Records to the possibility of inappropriate disclosure under the liberal civil discovery rules. That discovery may reveal confidential sources, the identity of informants, and investigative procedures and techniques, to the detriment of the particular criminal investigation as well as other investigations conducted by the TVA Police.

The pendency of such a suit would have a chilling effect on investigations, given the possibility of discovery of the contents of the investigative case file, and a Privacy Act lawsuit could therefore become a ready strategic weapon used to impede TVA Police investigations. Furthermore, since, under the current regulations, the system is exempt from many of the Act's requirements, it is unnecessary and contradictory to provide for civil remedies from violations of those provisions in particular.

This final rule has been reviewed under Executive Order No. 12291 and has been determined not to be a "major rule" since it will not have an annual effect on the economy of \$100 million or more.

In addition, it has been determined that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 18 CFR Part 1301

Administrative practice and procedure, Freedom of Information, Privacy Act, Sunshine Act.

For the reasons set forth in the preamble, 18 CFR Ch. XIII, part 1301, is amended as follows:

PART 1301—PROCEDURES

1. The authority citation for part 1301 continues to read as follows:

Authority: 16 U.S.C. 831–831dd, 5 U.S.C. 552.

§ 1301.24 [Amended]

2. Section 1301.24(e) is added to read as follows:

* * * * *

(e) The TVA system TVA Police Records is exempt from subsections (c)(3), (d), (e)(1), (e)(4), (G), (H), and (I) and (f) of 5 U.S.C. 552a (section 3 of the Privacy Act) and corresponding sections of these rules pursuant to 5 U.S.C. 552a(k)(2). The TVA system Police Records is exempt from subsections (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), and (g) pursuant to 5 U.S.C. 552a(j)(2). This system is exempt because application of these provisions might alert investigation subjects to the existence or scope of investigations, lead to suppression, alteration, fabrication, or destruction of evidence, disclose investigative techniques or procedures, reduce the cooperativeness or safety of witnesses, or otherwise impair investigations.

William S. Moore,

Senior Manager, Administrative Services.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1311

[DEA Number 146I]

RIN 1117–AA38

Exemption From Import and Export Requirements for Personal Medical Use; Interpretation Regarding Effect of State Law and Federal Laws

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule; interpretation of existing regulations.

SUMMARY: Current DEA regulations provide an exemption from certain provisions of the Controlled Substances Import Export Act (CSIEA) regarding personal use quantities of certain controlled substances. DEA is amending the language of the exemption to incorporate an existing provision that controlled substances for personal use may be imported only to the extent that such importation is authorized or permitted under other Federal laws or state law. Recent occurrences have demonstrated that the exemption is being improperly promoted and used as a means to import controlled substances for abuse purposes in violation of other Federal laws and state law. This action will prevent misinterpretation of the circumstances under which the exemption applies.

EFFECTIVE DATE: January 31, 1997.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: The CSIEA provides in 21 U.S.C. 956(a) that the Attorney General may, by regulation, exempt an individual who has a controlled substance for personal medical use from the import/export requirements of 21 U.S.C. 952–955. Pursuant to title 21, Code of Federal Regulations (CFR), 1311.27, individuals may enter or depart the United States with a controlled substance in Schedules II, III, IV, or V, that they have lawfully obtained for personal medical use, provided that the controlled substance is in the original container in which it was dispensed and the appropriate declaration is made to the United States (U.S.) Customs Service. However, the exemption must be read within the context of the existing requirements of 21 CFR 1307.02, which states that nothing in DEA's regulations can be construed as authorizing or permitting any person to do any act that is not authorized or permitted under other Federal or state laws.

DEA, the U.S. Customs Service, and independent sources have found that the personal medical use exemption found in 21 CFR 1311.27 is being promoted and exploited as a means to import controlled substances for purposes of trafficking and abuse. Especially troubling is the fact that controlled substances that are not approved for marketing or distribution in the United States are being imported in this manner for trafficking and abuse purposes in amounts that represent a danger to the public health and safety.