



3215-F5

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF ADMINISTRATION

3 CFR Part 101

5 CFR Chapter XV

RIN 0300-AA00

Removal of Published Rules to Align Published Policy with Current Sources of Law

AGENCY: Executive Office of the President, Office of Administration.

ACTION: Final rule.

SUMMARY: The Executive Office of the President, Office of Administration, is removing regulations from the Code of Federal Regulations related to the status of records created and maintained by the Executive Office of the President. This action is being taken in order to align Office of Administration policy with well-settled legal interpretations of the Office of Administration's status under Federal law and Executive Orders, including the Freedom of Information Act, the Privacy Act of 1974, and Executive Order 13526. The Office of Administration, as an entity whose sole function is to advise and assist the President of the United States, is not an agency under the Freedom of Information Act or the Privacy Act of 1974, nor does its implementation of Executive Order 13526 affect members of the public. Accordingly, the provisions of the Code of Federal Regulations to be removed are without legal effect.

DATES: This rule is effective [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Hugh L. Brady, General Counsel, Executive Office of the President, Office of Administration, 202-395-1268.

SUPPLEMENTARY INFORMATION: The Executive Office of the President, Office of Administration, removes the following provisions from the Code of Federal Regulations: Chapter XV, title 5, comprising 5 CFR parts 2500, 2502, and 2504; and 3 CFR 101.3. This action is being taken in order to implement well-settled legal interpretations of the Office of Administration's status under Federal law and Executive Orders, including the Freedom of Information Act, the Privacy Act of 1974, and Executive Order 13526. The Office of Administration, as an entity whose sole function is to advise and assist the President of the United States, is not an agency within the meaning of 5 U.S.C. 552(f), and thus is not subject to the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a). The Office of Administration's implementation of Executive Order 13526 does not affect members of the public and the Office of Administration is therefore not required to publish its internal policies. Accordingly, the provisions of the Code of Federal Regulations to be removed are without legal effect.

This rule removing 5 CFR parts 2500, 2502, and 2504, and 3 CFR 101.3 is issued pursuant to, among other authorities, C.R.E.W. v. Office of Admin., 566 F.3d 219 (D.C. Cir. 2009); Whether the Office of Admin. Is an "Agency" for Purposes of Freedom of Information Act, 31 Op. O.L.C. (Aug. 21, 2007); Franklin v. Mass., 505 U.S. 788 (1992); and Kissinger v. Reporters Comm. for Freedom of the Press, 445 U.S. 136 (1980). In C.R.E.W., the United States Court of Appeals for the District of

Columbia Circuit held that the Office of Administration is not an agency within the meaning of 5 U.S.C. 552(f). Accordingly, the Office of Administration is not an agency for purposes of the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a). All records of the Office of Administration are Presidential records under the Presidential Records Act, 44 U.S.C. 2201-2207, and are not available to the public until the fifth anniversary of the last year of an Administration.

Additionally, Office of Administration procedures recorded at 5 CFR part 2500 reflect an internal process that has been discontinued. The Office of Administration does not have regulations implementing Executive Order 13526 that affect members of the public and is therefore not required to publish its internal policies.

This rule removes all rules previously issued by the Executive Office of the President, Office of Administration, that are without legal effect under well-settled interpretations of the law by the courts, the Department of Justice, and the current provisions of Executive Order 13526. The Office of Administration therefore removes chapter XV, title 5 and 3 CFR 101.3.

#### Notice and comment requirements

The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, the opportunity for public participation, and a 30-day delay in effective date set forth in 5 U.S.C. 553 are inapplicable because they are "unnecessary" under 5 U.S.C. 553(b) (B) and the United States Court of Appeals for the District of Columbia Circuit's holding in C.R.E.W. The court's holding in C.R.E.W. clarifies that the Freedom of Information Act has no legal effect on the Office of Administration because the Office of Administration is

not an agency within the meaning of 5 U.S.C. 552(f). This rule is published solely to align relevant provisions of the Code of Federal Regulations with well-settled law. Thus, this rule involves no agency discretion, so notice of proposed rulemaking, the opportunity for public participation, and a 30-day delay in effective date would be unnecessary.

If this rulemaking were delayed to allow for notice and comment and a 30-day delay in effectiveness, it would delay alignment of the Code of Federal Regulations with existing Federal law as interpreted by the courts, the Department of Justice, and the current provisions of Executive Order 13526, as well as Office of Administration policy.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be issued for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612) are not applicable. Therefore, this regulation is issued in final form.

## Rulemaking requirements

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has not been designated a "significant regulatory action" under Executive Order 12866.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521), unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule does not involve any collection of information subject to the Paperwork Reduction Act.

This rule does not contain "policies that have federalism implications" as that term is defined under Executive Order 13132.

## List of Subjects

### 3 CFR Part 101

Freedom of information.

### 5 CFR Part 2500

Classified information.

### 5 CFR Part 2502

Courts, Freedom of information.

### 5 CFR Part 2504

Privacy.

Accordingly, under the authority of 5 U.S.C. 553 and as discussed in the preamble, amend 3 CFR part 101 and chapter XV of title 5 of the Code of Federal Regulations as follows.

Title 3-The President

CHAPTER I-EXECUTIVE OFFICE OF THE PRESIDENT

PART 101-PUBLIC INFORMATION PROVISIONS OF THE ADMINISTRATIVE PROCEDURES ACT

1. The authority citation for part 101 continues to read as follows:

Authority: 5 U.S.C. 552.

§ 101.3 [REMOVED]

2. Remove §101.3.

Title 5-Administrative Personnel

CHAPTER XV [REMOVED]

3. Remove chapter XV, consisting of parts 2500 through 2599.

Dated: February 23, 2015.

Beth A. Jones,

Deputy Assistant to the President

Director, Office of Administration.

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