

exist through a payment service provider. In addition, it is suggested that Treasury could use its rulemaking authority to determine a "reasonable cost" for a financial institution account, considering a variety of factors and circumstances. Finally, Treasury could determine that, to satisfy the "consumer protection" requirement of the Act, a financial institution must at least provide its recipients with federal deposit insurance (in the cases where the institution is federally insured) and the benefits of Regulation E.

Other options have also been suggested; these include the imposition by Treasury of enhanced disclosure obligations by financial institutions regarding the products being offered,¹¹ and the enactment of additional state or federal legislation regulating some or all payment service providers. Alternatively, some have suggested that, rather than focusing on the attributes of the financial institution account, regulations should be directed at ensuring that the aggregate fees that may be charged recipients of federal EFT payments are "reasonable."

Treasury invites comments on all the above options and suggestions as to how Treasury might implement them, as well as suggestions as to any other type of measure that the commenters believe would be appropriate for these arrangements, including any factual and legal bases therefor. Treasury also requests that any comments address the following issues: Should a suggested regulation be directed at all payment service providers, or limited to a particular subset, and if limited, what is the basis for making such a distinction? What effect would any such regulation have on the Direct Deposit program generally? How could such regulation be limited so as not to disrupt the many types of standard account arrangements, such as preauthorized debits, that are in wide use and do not give rise to the possible abuses that are the focus of this ANPRM? Would the prohibition or regulation of payment service provider arrangements limit or expand the ability of federal payment recipients to access their funds, if such measure would significantly impede or preclude the functioning of such arrangement? How would such regulation further Treasury's objectives, including helping

¹¹ As noted above, Treasury has already urged the federal bank regulators to endeavor to ensure that the banks they regulate take responsibility for full and fair disclosure of all fees charged by all the parties involved in these kinds of arrangements, the legal relationships involved, and the applicability of federal deposit insurance. Some have suggested that Treasury could amplify this request by adopting a regulation requiring such disclosure.

federal payment recipients access federally insured depository institutions, reducing government costs, and improving the payment system?

It has been determined that this ANPRM does not constitute a "significant regulatory action" for purposes of E.O. 12866. Treasury specifically requests comments on the costs and benefits of the regulatory approaches discussed in this document, and the economic impact such approaches may have on small businesses.

Comments received in response to this ANPRM will be reviewed and considered by Treasury in preparation for possible further action in connection with the issues discussed herein.

This ANPRM is issued under the authority of 31 U.S.C. 321 and 3332.

Dated: January 4, 1999.

Donald V. Hammond,
Fiscal Assistant Secretary.

[FR Doc. 99-354 Filed 1-7-99; 8:45 am]
BILLING CODE 4810-25-P

DEPARTMENT OF THE TREASURY

Customs Service

31 CFR Part 1

Privacy Act of 1974; Implementation

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, Customs has determined to exempt a system of records, the Seized Asset and Case Tracking System (SEACATS) Treasury/ Customs .213 from certain provisions of the Privacy Act. The exemptions are intended to increase the value of the system of records for law enforcement purposes, to comply with legal prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records.

DATES: Comments must be received no later than February 8, 1999.

ADDRESSES: Comments (preferably in triplicate) may be submitted to the U.S. Customs Service, Office of Regulations and Rulings, Disclosure Law Branch, 1300 Pennsylvania Ave. NW., Washington, DC 20229. Comments will be available for inspection and copying at the Disclosure Law Branch, 1300 Pennsylvania Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:
Ellen Mulvenna, Office of Information

and Technology, U.S. Customs Service, (202) 927-0800.

SUPPLEMENTARY INFORMATION: This computerized database will permit the retrieval of information as part of a redesigned work process improving the way the Office of Information and Technology uses technology to maximize efficiency. The purpose of the newly proposed system of records is to provide Customs and the Treasury Executive Office of Asset Forfeiture with a comprehensive system for tracking seized and forfeited property, penalties and liquidated damages from case initiation to final resolution. The system includes investigative reports relating to seizures and other law enforcement matters. Authority for the system is provided by 5 U.S.C. 301; and Treasury Department Order No. 165, Revised, as amended. Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury is publishing separately in the **Federal Register** a notice of a system of records entitled Treasury/Customs .213 Seized Assets and Case Tracking System (SEACATS). This system of records will assist Customs in the proper performance of its functions under the statutes and Treasury Department Order No. 165 cited above.

Under 5 U.S.C. 552a(j)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a 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, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of: (a) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release and parole and probation status; (b) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (c) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. In addition, under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the

system of records is investigatory material compiled for law enforcement purposes other than material within the scope of subsection (j)(2) set forth above.

Accordingly, pursuant to the authority contained in section 1.23(c) of the regulations of the Department of the Treasury (31 CFR 1.23(c)), the Commissioner of Customs is proposing to exempt the Seized Asset and Case Tracking System (SEACATS) from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(2) and 31 CFR 1.23(c). The specific provisions and the reasons for exempting the system of records from each specific provision of 5 U.S.C. 552a are set forth below as required by 5 U.S.C. 552a(j)(2) and (k)(2).

General Exemption Under 5 U.S.C. 552a(j)(2)

Pursuant to 5 U.S.C. 552a(j)(2), the Commissioner of Customs proposes to exempt the Seized Asset and Case Tracking System (SEACATS) from the following provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), (3), (e)(4)(G), (H) and (I); (e)(5) and (8); (f) and (g).

Specific Exemptions Under 5 U.S.C. 552a(k)(2)

To the extent the exemption under 5 U.S.C. 552a(j)(2) does not apply to the Seized Asset and Case Tracking System (SEACATS), the Commissioner of Customs exempts the Seized Asset and Case Tracking System (SEACATS) from the following provisions of 5 U.S.C. 552a pursuant to 5 U.S.C. 552(k)(2): 5 U.S.C. 552a(c)(3); (d)(1), (2), (3) and (4); (e)(1), (e)(4)(G), (H) and (I); and (f).

Reasons for Exemption Under 5 U.S.C. 552a(j)(2) and (k)(2)

Although more specific explanations are contained in 31 CFR 1.36 under the heading United States Customs Service, the following explanations for exemptions will be helpful.

(1) Pursuant to 5 U.S.C. 552a(e)(4)(G) and (f)(1), individuals may inquire whether a system of records contains records pertaining to them. Application of these provisions to the Seized Asset and Case Tracking System (SEACATS) would give individuals an opportunity to learn whether they have been identified as either suspects or subjects of investigation. As further described in the following subsection, access to such knowledge would impair the ability of the offices supplying information to the Office of Information and Technology to carry out their investigation, since individuals could take steps to avoid detection; inform associates that an

investigation is in progress; learn whether they are only suspects or identified as law violators; begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or destroy evidence needed to prove the violation.

(2) Pursuant to 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5), individuals may gain access to records pertaining to them. The application of these provisions to the Seized Asset and Case Tracking System (SEACATS) would compromise the ability of the Office of Information and Technology to provide useful tactical and strategic information to law enforcement agencies. Permitting access to records contained in the Seized Asset and Case Tracking System (SEACATS) would provide individuals with information concerning the nature of any current investigations concerning them and would enable them to avoid detection or apprehension. By discovering the collection of facts which would form the basis of their arrest, by enabling them to destroy or alter evidence of criminal conduct that would form the basis for their arrest, and by learning that criminal investigators had reason to believe that a crime was about to be committed, they could delay the commission of the crime or change the scene of the crime to a location which might not be under surveillance. Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning crimes to structure their operations in such a way as to avoid detection or apprehension and thereby neutralize law enforcement officers' established investigative tools and procedures. Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informers and the nature of the information supplied and thereby endanger the physical safety of sources of information by exposing them to reprisals for having provided the information. Confidential sources and informers might refuse to provide criminal investigators with valuable information if they could not be secure in the knowledge that their identities would not be revealed through disclosure of either their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the ability of the Office of Information and Technology to carry out its mandate. Furthermore, providing access to records contained in the

Seized Asset and Case Tracking System (SEACATS) could reveal the identities of undercover law enforcement officials who compiled information regarding the individual's criminal activities and thereby endanger the physical safety of those undercover officers or their families by exposing them to possible reprisals. By compromising the law enforcement value of the Seized Asset and Case Tracking System (SEACATS) for the reasons outlined above, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with the Office of Information and Technology and thus would restrict the Office's access to information necessary to accomplish its mission most effectively.

(3) Pursuant to 5 U.S.C. 552a (d)(2), (3), and (4), (e)(4)(H), and (f)(4) an individual may request amendment of a record pertaining to him or her and the agency must either amend the record, or note the disputed portion of the record and provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual's having access to his or her records, and since these rules exempt the Seized Asset and Case Tracking System (SEACATS) from provisions of 5 U.S.C. 552a, as amended, relating to access to records, for the reasons set out in (2) above, these provisions should not apply to the Seized Asset and Case Tracking System (SEACATS).

(4) Under 5 U.S.C. 552a(c)(3) an agency is required to make an accounting of disclosure of records available to the individual named in the record upon his or her request. The accounting must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would impair the ability of enforcement agencies outside the Department of the Treasury to make effective use of information provided by the Seized Asset and Case Tracking System (SEACATS). Making an accounting of disclosure available to the subjects of an investigation would alert those individuals to the fact that another agency is conducting an investigation into their criminal activities and could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and dates on which that investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection or

apprehension by altering their operations, by transferring their criminal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for arrest. Moreover, providing accounting to the subjects of investigations would alert them to the fact that the Seized Asset and Case Tracking System (SEACATS) has information regarding their criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of Customs' information gathering and analysis systems and permit violators to take steps to avoid detection or apprehension.

(5) Under 5 U.S.C. 552a(c)(4) an agency must inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to him or her, and since these rules exempt the Seized Asset and Case Tracking System (SEACATS) from the provisions of 5 U.S.C. 552a relating to access to and amendment of records, for the reasons set out in paragraph (3) above, this provision ought not apply to the Seized Asset and Case Tracking System (SEACATS).

(6) Under 5 U.S.C. 552a(e)(4)(I) an agency is required to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the Seized Asset and Case Tracking System (SEACATS) could compromise its ability to provide useful information to law enforcement agencies, since revealing sources for the information could disclose investigative techniques and procedures, result in threats or reprisals against informers by the subjects of investigations, and cause informers to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(7) 5 U.S.C. 552a(e)(1) requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term "maintain" as defined in 5 U.S.C. 552a(a)(3) includes "collect" and "disseminate." At the time that information is collected by the Customs Service, there is often insufficient time to determine whether the information is relevant and necessary to accomplish a

purpose of the Customs Service; in many cases information collected may not be immediately susceptible to a determination of whether the information is relevant and necessary, particularly in the early stages of investigation, and in many cases information which initially appears to be irrelevant and unnecessary may, upon further evaluation or upon continuation of the investigation, prove to have particular relevance to an enforcement program of the Customs Service. Further, not all violations of law discovered during a Customs Service criminal investigation fall within the investigative jurisdiction of the Customs Service; in order to promote effective law enforcement, it often becomes necessary and desirable to disseminate information pertaining to such violations to other law enforcement agencies which have jurisdiction over the offense to which the information relates. The Customs Service should not be placed in a position of having to ignore information relating to violations of law not within its jurisdiction where that information comes to the attention of the Customs Service through the conduct of a lawful Customs Service investigation. The Customs Service therefore believes that it is appropriate to exempt the above cited system of records from the provisions of 5 U.S.C. 552a(e)(1).

(8) Under 5 U.S.C. 552a(e)(2) an agency is requested 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 application of this provision to the Seized Asset and Case Tracking System (SEACATS) would impair the ability to collate, analyze, and disseminate investigative intelligence and enforcement information. Most information collected about an individual under criminal investigation is obtained from third parties, such as witnesses and informers. It is usually not feasible to rely upon the subject of the investigation as a source for information regarding his criminal activities. An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension. In certain instances, the subject of a criminal investigation is not required to supply information to criminal investigators as

a matter of legal duty. During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify information already obtained.

(9) Pursuant to 5 U.S.C. 552a(e)(3) an agency must inform each individual whom it asks to supply information, on the form that it uses to collect the information or on a separate form that the individual can retain, the agency's authority for soliciting the information; whether the disclosure of information is voluntary or mandatory; the principal purposes for which the agency will use the information and the effects on the individual of not providing all or part of the information. The Seized Asset and Case Tracking System (SEACATS) should be exempted from this provision to avoid impairing the ability of the Office of Information and Technology to collect and collate investigative intelligence and enforcement data. Confidential sources or undercover law enforcement officers often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation or his or her associates know that a criminal investigation is in progress. If it became known that the undercover officer was assisting in a criminal investigation, the officer's physical safety could be endangered through reprisal, and that officer may not be able to continue working on the investigation. Further, individuals for personal reasons often would feel inhibited in talking to a person representing a criminal law enforcement agency but would be willing to talk to a confidential source or undercover officer whom they believe not to be involved in law enforcement activities. Providing a confidential source of information with written evidence that he or she was a source, as required by this provision, could increase the likelihood that the source of information would be subject to retaliation by the subject of the investigation. Further, application of the provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, where further investigation reveals that the subject was not involved in any criminal activity.

(10) Pursuant to 5 U.S.C. 552a(e)(5) an agency must maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. Since 5 U.S.C. 552a(a)(3) defines "maintain" to include "collect"

and "disseminate", application of this provision to the Seized Asset and Case Tracking System (SEACATS) would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. Similarly, application of this provision would seriously restrict the ability of Customs to disseminate information from SEACATS pertaining to a possible violation of law to law enforcement and regulatory agencies. In collecting information during a criminal investigation, it is often impossible or unfeasible to determine accuracy, relevance, timeliness or completeness prior to collection of the information. Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collected and analyzed with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting results obtained during criminal investigations.

(11) Under 5 U.S.C. 552a(e)(8) an agency must make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The Seized Asset and Case Tracking System (SEACATS) should be exempted from this provision to avoid revealing investigative techniques and procedures outlined in those records and to prevent revelation of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(12) Under 5 U.S.C. 552a(g) civil remedies are provided to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual. The Seized Asset and Case Tracking System (SEACATS) is exempted from this provision to the extent that the civil remedies may relate to this provision of 5 U.S.C. 552a from which these rules exempt the Seized Asset and Case Tracking System (SEACATS), since there are civil remedies for failure to comply with provisions from which SEACATS is exempted. Exemption from this

provision will also protect the Seized Asset and Case Tracking System from baseless civil court actions that might hamper its ability to collate, analyze, and disseminate investigative intelligence and law enforcement data.

Consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), 1.4 Treasury Department Regulations (31 CFR 1.4), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, 1300 Pennsylvania Avenue, NW., Washington, DC.

After consideration of the comments received, notice will be given concerning the exempt status of the system of records. If the Department finally exempts as herein proposed, a conforming amendment to 31 CFR 1.36 will also be published.

As required by Executive Order 12866, it has been determined that this proposed rule is not a significant regulatory action and, therefore, does not require a regulatory impact analysis.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby certified that this rule will not have significant economic impact on a substantial number of small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department of the Treasury has determined that this proposed rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1 of Title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 522 as amended. Subpart C also issued under 5 U.S.C. 552a.

§ 1.36 [Amended]

2. Section 1.36 of Subpart C is amended by adding the following text in numerical order in paragraphs a.1. and b.1. under the heading UNITED STATES CUSTOMS SERVICE:

- * * * * *
- a. * * *
- 1. * * *
- * * * * *

00.213—Seized Asset and Case Tracking System (SEACATS)

- * * * * *
- b. * * *
- 1. * * *

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00.213—Seized Asset and Case Tracking System (SEACATS)

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Dated: November 19, 1998.

Shelia Y. McCann,
Deputy Assistant Secretary (Administration).
[FR Doc. 99-355 Filed 1-7-99; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01-98-032]

RIN 2115-AE47

Drawbridge Operation Regulations; Lake Champlain, NY and VT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulations for the US2 Bridge, mile 91.8, between South Hero Island and North Hero Island over Lake Champlain in Vermont. This change is proposed to relieve vehicular traffic congestion at the bridge due to frequent openings during the height of the boating season. It is expected that the proposed bridge operating regulations will better balance the needs of vehicular traffic and the needs of navigation during peak traffic hours.

DATES: Comments must be received by the Coast Guard on or before March 9, 1999.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, Ma. 02110-3350, or deliver them to the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223-8364. The First Coast Guard District Bridge Branch maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the above address 7 a.m. to 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223-8364.

SUPPLEMENTARY INFORMATION: