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DEPARTMENT OF JUSTICE

28 CFR PART 16

[AAG/A Order No. 241-2001]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice (DOJ) is exempting two Privacy Act systems of records from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5) and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k). These systems of records are the "Correspondence Management Systems (CMS) for the Department of Justice (DOJ), DOJ/003"; and "Freedom of Information Act, Privacy Act, and Mandatory Declassification Review Requests and Administrative Appeals for the Department of Justice (DOJ), DOJ/004". The exemptions are necessary to protect law enforcement and investigatory information and functions and will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k).

EFFECTIVE DATE: This final rule is effective August 8, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Cahill at 202-207-1823.

SUPPLEMENTARY INFORMATION: On June 4, 2001 (66 FR 29921) a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act 5 U.S.C. 601-612, this order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Government in Sunshine Act, Privacy.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, 28 CFR Part 16 is amended as follows:

PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552(b)(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. Add to subpart E, § 16.130 to read as follows:

§ 16.130 Exemption of Department of Justice Systems: Correspondence Management Systems for the Department of Justice (DOJ-003); Freedom of Information Act, Privacy Act and Mandatory Declassification Review Requests and Administrative Appeals for the Department of Justice (DOJ-004).

(a) The following Department of Justice systems of records are exempted from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), (3), (5) and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k). These exemptions apply only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k).

(1) Correspondence Management Systems (CMS) for the Department of Justice (DOJ), DOJ/003.

(2) Freedom of Information Act, Privacy Act, and Mandatory Declassification Review Requests and Administrative Appeals for the Department of Justice (DOJ), DOJ/004.

(b) These systems are exempted for the reasons set forth from the following subsections:

(1) *Subsection (c)(3)*. To provide the subject of a criminal, civil, or counterintelligence matter or case under investigation with an accounting of disclosures of records concerning him or her could inform that individual of the existence, nature, or scope of that investigation, and thereby seriously impede law enforcement of counterintelligence efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties, civil remedies, or counterintelligence measures.

(2) *Subsection (c)(4)*. This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) *Subsection (d)(1)*. Disclosure of investigatory information could interfere with the investigation, reveal the identity of confidential sources, and result in an unwarranted invasion of the privacy of others. Disclosure of classified national security information would cause damage to the national security of the United States.

(4) *Subsection (d)(2)*. Amendment of the records would interfere with ongoing criminal or civil law

enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(5) *Subsections (d)(3) and (4)*. These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) *Subsection (e)(1)*. It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant timely and complete, but, in the interests of effective law enforcement and counterintelligence, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(7) *Subsection (e)(2)*. To collect information from the subject individual could serve notice that he or she is the subject of a criminal investigation and thereby present a serious impediment to such investigations.

(8) *Subsection (e)(3)*. To inform individuals as required by this subsection could reveal the existence of a criminal investigation and compromise investigative efforts.

(9) *Subsection (e)(5)*. It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(10) *Subsection (e)(8)*. To serve notice could give persons sufficient warning to evade investigative efforts.

(11) *Subsection (g)*. This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: July 30, 2001.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

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DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 242-2001]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice (DOJ), is exempting a Privacy Act System of records from subsections (c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(5) and (8), (f) and (g) of the Privacy Act, 5 U.S.C. 552a,

pursuant to 552a(j)(2) and (k)(2). This system of records is maintained by the DOJ Joint Automated Booking System (JABS) Program Office and entitled "Nationwide Joint Automated Booking System, DOG-005." Information in this system of records relates to matters of law enforcement, and the exemptions are necessary to avoid interference with law enforcement responsibilities and to protect the privacy of third parties. The reasons for the exemptions are set forth in the text below.

EFFECTIVE DATE: This final rule is effective August 8, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Cahill—(202) 307-1823.

SUPPLEMENTARY INFORMATION: On April 23, 2001 (66 FR 20410) a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, Privacy.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, Title 28 of the Code of Federal Regulations, Part 16 is amended as set forth below.

PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534, 31 U.S.C. 3717, 9701.

2. Add to subpart E, § 16.131 to read as follows:

§ 16.131 Exemption of Department of Justice (DOJ)/Nationwide Joint Automated Booking System (JABS), DOJ-005.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) and (H), (e)(5) and (8), (f) and (g): Nationwide Joint Automated Booking System, Justice/DOJ-005. These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). Where compliance would not interfere with or adversely affect the law enforcement process, the DOJ may waive the exemptions, either partially or totally.

(b) Exemption from the particular subsections are justified for the following reasons:

(1) From subsections (c)(3), (c)(4), and (d) to the extent that access to records in this system of records may impede or interfere with law enforcement efforts, result in the disclosure of information that would constitute an unwarranted invasion of the personal privacy of collateral record subjects or other third parties, and/or jeopardize the health and/or safety of third parties.

(2) From subsection (e)(1) to the extent that it is necessary to retain all information in order not to impede, compromise, or interfere with law enforcement efforts, e.g., where the significance of the information may not be readily determined and/or where such information may provide leads or assistance to Federal and other law enforcement agencies in discharging their law enforcement responsibilities.

(3) From subsection (e)(2) because, in some instances, the application of this provision would present a serious impediment to law enforcement since it may be necessary to obtain and verify information from a variety of sources other than the record subject to ensure safekeeping, security, and effective law enforcement. For example, it may be necessary that medical and psychiatric personnel provide information regarding and the subject's behavior, physical, health, or mental stability, etc. to ensure proper care while in custody, or it may be necessary to obtain information from a case agent or the court to ensure proper disposition of the subject individual.

(4) From subsection (e)(3) because the requirement that agencies inform each individual whom it asks to supply information of such information as required by subsection (e)(3) may, in some cases, impede the information gathering process or otherwise interfere with or compromise law enforcement efforts, e.g., the subject may deliberately withhold information, or given erroneous information.

(5) From subsection (4)(G) and (H) because the application of these provisions would present a serious impediment to law enforcement efforts.

(6) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the

ability to collect information for law enforcement purposes, may prevent the eventual development of the necessary criminal intelligence, or otherwise impede law enforcement or delay trained law enforcement personnel from timely exercising their judgment in managing the arrestee.

(7) From subsection (e)(8) to the extent that such notice may impede, interfere with, or otherwise compromise law enforcement and security efforts.

(8) From subsection 5 U.S.C. 552a(f) to the extent that compliance with the requirement for procedures providing individual access to records, compliance could impede, compromise, or interfere with law enforcement efforts.

(9) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d).

Dated: July 30, 2001.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-301155; FRL-6793-2]

RIN 2070-AB78

Ethalfuralin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of ethalfuralin in or on safflower seed. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on safflower. This regulation establishes a maximum permissible level for residues of ethalfuralin in this food commodity. The tolerance will expire and is revoked on June 30, 2003.

DATES: This regulation is effective August 8, 2001. Objections and requests for hearings, identified by docket control number OPP-301155, must be received by EPA on or before October 9, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please