

working gas/cushion gas ratio and/or to improve the capability of the storage field.

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### 28 CFR Part 16

[AAG/A Order No. 010–2006]

#### Privacy Act of 1974: Implementation

**AGENCY:** Drug Enforcement Administration, DOJ.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Justice (DOJ), Drug Enforcement Administration (DEA), proposes to exempt a new system of records entitled the El Paso Intelligence Center (EPIC) Seizure System (ESS) (JUSTICE/DEA–022) 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 of 1974 pursuant to 5 U.S.C. 552a(j) and (k). The exemption is necessary to avoid interference with the law enforcement, intelligence, counter-drug, counterterrorism functions and responsibilities of the DEA and its El Paso Intelligence Center (EPIC). Public comment is invited.

**DATES:** Comments must be received by August 7, 2006.

**ADDRESSES:** Address all comments to Mary E. Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building), Facsimile Number (202) 307–1853. To ensure proper handling, please reference the AAG/A Order No. on your correspondence. You may review an electronic version of this proposed rule at <http://www.regulations.gov>. You may also comment via the Internet to the DOJ/Justice Management Division at the following e-mail address: [DOJPrivacyACTProposedRegulations@usdoj.gov](mailto:DOJPrivacyACTProposedRegulations@usdoj.gov); or by using the <http://www.regulations.gov> comment form for this regulation. When submitting comments electronically, you must include the AAG/A Order No. in the subject box.

**FOR FURTHER INFORMATION CONTACT:** Mary E. Cahill, (202) 307–1823.

**SUPPLEMENTARY INFORMATION:** In the notice section of today's **Federal Register**, the DEA provides a description of the "El Paso Intelligence

Center (EPIC) Seizure System (ESS), JUSTICE/DEA–022" in compliance with the Privacy Act, 5 U.S.C. 552a(e)(4) and (11). The ESS is a system of records established to support the mission of the El Paso Intelligence Center to support criminal investigations conducted by Federal, state, local, tribal, and international law enforcement agencies. EPIC maintains information in databases obtained from contributing law enforcement agencies and provides information upon request from authorized law enforcement agencies and officers in support of criminal investigations. Additional information about EPIC and its operations is provided in the **Federal Register** notice referenced above.

#### Regulatory Flexibility Act

This proposed rule relates to individuals, as opposed to small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, the proposed rule will not have a significant economic impact on a substantial number of small entities.

#### Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the DEA to comply with small entity requests for information and advice about compliance with statutes and regulations within DEA jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at [http://www.sba.gov/advo/laws/law\\_lib.html](http://www.sba.gov/advo/laws/law_lib.html).

#### List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 793–78, it is proposed to amend 28 CFR part 16 as follows:

#### PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

1. The authority citation 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. Section 16.98 is amended to add new paragraphs (g) and (h) to read as follows:

#### § 16.98 Exemption of Drug Enforcement Administration Systems—limited access.

\* \* \* \* \*

(g) The following system of records is exempt from 5 U.S.C. 552a (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g): EPIC Seizure System (ESS) (JUSTICE/DEA–022). These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(2). Where compliance would not appear to interfere with or adversely affect the law enforcement and counter-drug purposes of this system, and the overall law enforcement process, the applicable exemption may be waived by the DEA in its sole discretion.

(h) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would specifically reveal any investigative interest in the individual. Revealing this information would permit the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to determine whether he is the subject of investigation, or to obtain valuable information concerning the nature of that investigation, and the information obtained, or the identity of witnesses and informants. Similarly, disclosing this information could reasonably be expected to compromise ongoing investigatory efforts by notifying the record subject that he/she is under investigation. This information could also permit the record subject to take measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(2) From subsection (c)(4) because this system is exempt from the access and amendment provisions of subsection (d).

(3) From subsections (d)(1), (2), (3), and (4) because these provisions concern individual access to and amendment of records contained in this system, which consists of counter-drug and criminal investigatory records. Compliance with these provisions could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation, or the nature and scope of the information and evidence obtained as to his activities, of the identity of witnesses and informants, or would provide information that could enable the subject to avoid detection or apprehension. These factors would present a serious impediment to

effective law enforcement because they could prevent the successful completion of the investigation; endanger the physical safety of witnesses or informants; or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(4) From subsection (e)(1) because it is not always possible to know in advance what information is relevant and necessary to complete an identity comparison between the individual being screened and a known or suspected criminal or terrorist. Also, it may not always be known what information will be relevant to law enforcement for the purpose of conducting an operational response or on-going investigation.

(5) From subsection (e)(2) because application of this provision could present a serious impediment to law enforcement and counter-drug efforts in that it would put the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct designed to frustrate or impede that activity. The nature of counter-drug investigations is such that vital information about an individual frequently can be obtained only from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his own activities.

(6) From subsection (e)(3), to the extent that this subsection is interpreted to require EPIC to provide notice to an individual if EPIC receives information about that individual from a third party. Should the subsection be so interpreted, exemption from this provision is necessary to avoid impeding counter-drug efforts by putting the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that activity.

(7) From subsection (e)(5) because many of the records in this system are derived from other domestic record systems and therefore it is not possible for the DEA and EPIC to vouch for their compliance with this provision; however, EPIC has implemented internal quality assurance procedures to ensure that ESS data is as thorough, accurate, and current as possible. In addition, EPIC supports but does not conduct investigations; therefore, it must be able to collect information related to illegal drug and other criminal activities and encounters for distribution to law enforcement and

intelligence agencies that do conduct counter-drug investigations. In the collection of information for law enforcement and counter-drug 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 as further investigation brings new details to light. The restrictions imposed by (e)(5) would limit the ability of those agencies' trained investigators and intelligence analysts to exercise their judgment in conducting investigations and impede the development of intelligence necessary for effective law enforcement and counterterrorism efforts. EPIC has, however, implemented internal quality assurance procedures to ensure that ESS data is as thorough, accurate, and current as possible. ESS is also exempt from the requirements of subsection (e)(5) in order to prevent the use of a challenge under subsection (e)(5) as a collateral means to obtain access to records in the ESS. ESS records are exempt from the access and amendment requirements of subsection (d) of the Privacy Act in order to protect the integrity of investigations. Exempting ESS from subsection (e)(5) serves to prevent the assertion of challenges to a record's accuracy, timeliness, completeness, and/or relevance under subsection (e)(5) to circumvent the exemption claimed from subsection (d).

(8) From subsection (e)(8) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on the DEA and EPIC and could alert the subjects of counter-drug, counterterrorism, law enforcement, or intelligence investigations to the fact of those investigations when not previously known. Additionally, compliance could present a serious impediment to law enforcement as this could interfere with the ability to issue warrants or subpoenas and could reveal investigative techniques, procedures, or evidence.

(9) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: June 19, 2006.

**Lee J. Lofthus,**

*Acting Assistant Attorney General for Administration.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD08-06-013]

RIN 1625-AA09

#### Drawbridge Operation Regulation; Illinois Waterway, IL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes that the procedures found in § 117.393 for operation of the Pekin Railroad Drawbridge, Mile 151.2, across the Illinois Waterway at Pekin, Illinois, be revised to reflect the actual procedures that have always been followed. The present regulation in § 117.393 was intended to be temporary, for test purposes only, and was inadvertently permanently included. The revision would eliminate the "Specific Requirements" for remote operation and the bridge would continue to operate, as required by the Coast Guard, under the "General Requirements".

**DATES:** Comments and related material must reach the Coast Guard on or before August 25, 2006.

**ADDRESSES:** You may mail comments and related material to Commander, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103-2832. Commander (dwb) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 2.107f in the Robert A. Young Federal Building, Eighth Coast Guard District, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger K. Wiebusch, Bridge Administrator, (314) 269-2378.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD08-06-013], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound