

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF JUSTICE

### 28 CFR Part 16

[CPCLO Order No. 004–2010]

### Privacy Act of 1974; System of Records

**AGENCY:** Federal Bureau of Investigation, Department of Justice

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Elsewhere in the **Federal Register**, the Federal Bureau of Investigation (FBI), a component of the Department of Justice, has published a notice of a new Privacy Act system of records, JUSTICE/FBI–021, the Data Integration and Visualization System (DIVS). In this notice of proposed rulemaking, the FBI proposes to exempt this system from certain provisions of the Privacy Act in order to avoid interference with the national security and criminal law enforcement functions and responsibilities of the FBI. Public comment is invited.

**DATES:** Comments must be received by September 30, 2010.

**ADDRESSES:** Address all comments to Privacy Analyst, Office of Privacy and Civil Liberties, National Place Building, 1331 Pennsylvania Ave., NW., Suite 940, Washington, DC 20530–0001 or facsimile 202–307–0693. To ensure proper handling, please reference the CPCLO Order No. in your correspondence. You may review an electronic version of the proposed rule at <http://www.regulations.gov>. You may also comment via the Internet to the Privacy and Civil Liberties Office at *DOJ PrivacyACTProposedRegulations@usdoj.gov*; or by using the comment form for this regulation at <http://www.regulations.gov>. Please include the CPCLO Order No. in the subject box.

Please note that the Department is requesting that electronic comments be submitted before midnight Eastern Daylight Savings Time on the day the comment period closes because <http://www.regulations.gov> terminates the public's ability to submit comments at

midnight Eastern time on the day the comment period closes. Commenters in time zones other than Eastern Time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

*Posting of Public Comments:* Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov> and in the Department's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Department's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION** paragraph.

**FOR FURTHER INFORMATION CONTACT:** Erin Page, Assistant General Counsel, Privacy and Civil Liberties Unit, Office of the General Counsel, FBI, Washington, DC 20535–0001, telephone 202–324–3000.

**SUPPLEMENTARY INFORMATION:** In the Notice section of today's **Federal Register**, the FBI published a new Privacy Act system of records, the Data Integration and Visualization System (DIVS), Justice/FBI–021. The system enhances the analysis and presentation of data maintained in support of the FBI's multifaceted investigative mission by enabling access, search, integration, and analytics across multiple existing databases. The system also allows users to save their queries and create a separate record of relevant identifiers and information.

In this rulemaking, the FBI proposes to exempt certain records in this Privacy Act system of records from certain provisions of the Privacy Act in order to avoid interference with the law enforcement, intelligence and counterintelligence, and counterterrorism responsibilities of the FBI as established in federal law and policy.

### Regulatory Flexibility Act

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

### Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, codified as a note to 5 U.S.C. 601, requires the FBI to comply with small entity requests for information and advice about compliance with statutes and regulations within FBI 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/archive/sum\\_sbrefa.html](http://www.sba.gov/advo/archive/sum_sbrefa.html).

### Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), requires that the FBI consider the impact of paperwork and other information collection burdens imposed on the public. There are no current or new information collection requirements associated with this proposed rule. The records that are contributed to DIVS are created by the FBI or other law enforcement and intelligence entities and sharing of this information electronically will not increase the paperwork burden on the public.

### Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, 109 Stat. 48, requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in aggregate, \$100 million or more in any one year, the UMRA analysis is required. This proposed rule would not impose Federal mandates on any State, local, or tribal government or the private sector.

### List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, and the 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 2940-2008, it is proposed to amend 28 CFR Part 16 as follows:

#### PART 16—[AMENDED]

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.

#### Subpart E—Exemption of Records Systems Under the Privacy Act

2. Section 16.96 is amended by adding paragraphs (v) and (w) to read as follows:

##### § 16.96 Exemption of Federal Bureau of Investigation Systems—limited access.

\* \* \* \* \*

(v) 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) and (3); (e)(4)(G), (H) and (I); (e)(5) and (8); (f) and (g) of the Privacy Act:

(1) Data Integration and Visualization System (DIVS), (JUSTICE/FBI-021).

(2) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) and/or (k). Where compliance would not appear to interfere with or adversely affect the intelligence and law enforcement purpose of this system, and the overall law enforcement process, the applicable exemption may be waived by the FBI in its sole discretion.

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

(1) From subsection (c)(3), the requirement that an accounting be made available to the named subject of a record, because this system is exempt from the access provisions of subsection (d). Also, 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 by the FBI or agencies that are recipients of the disclosures. Revealing this information could compromise ongoing, authorized law enforcement and intelligence efforts, particularly efforts to identify and defuse any potential acts of terrorism or other potential violations of criminal law. Revealing this information could also permit the record subject to obtain valuable insight concerning the information obtained during an investigation and to take measures to impede the investigation, e.g., destroy evidence or flee the area to avoid the investigation.

(2) From subsection (c)(4) notification requirements because this system is exempt from the access and amendment provisions of subsection (d) as well as the access to accounting of disclosures provision of subsection (c)(3). The FBI takes seriously its obligation to maintain accurate records despite its assertion of this exemption, and to the extent it, in its sole discretion, agrees to permit amendment or correction of records, it will share that information in appropriate cases.

(3) From subsection (d)(1), (2), (3), and (4), (e)(4)(G) and (H) because these provisions concern individual access to and amendment of law enforcement, intelligence and counterintelligence, and counterterrorism records and compliance could alert the subject of an authorized law enforcement or intelligence activity about that particular activity and the investigative interest of the FBI and/or other law enforcement or intelligence agencies.

Providing access could compromise sensitive information classified to protect national security; disclose information which would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigative or intelligence technique; could provide information that would allow a subject to avoid detection or apprehension; or constitute a potential danger to the health or safety of law enforcement personnel, confidential sources, and witnesses.

(4) From subsection (e)(1) because it is not always possible to know in advance what information is relevant and necessary for law enforcement and intelligence purposes, and a major tenet of DIVS is that the relevance and utility of certain information that may have a nexus to terrorism or other crimes may not always be evident until and unless it is vetted and matched with other sources of information that are necessarily and lawfully maintained by the FBI.

(5) From subsection (e)(2) and (3) because application of this provision could present a serious impediment to efforts to solve crimes and improve national security. Application of these provisions would put the subject of an investigation on notice of that fact and allow the subject an opportunity to engage in conduct intended to impede that activity or avoid apprehension.

(6) From subsection (e)(4)(I), to the extent that this subsection is interpreted to require more detail regarding the record sources in this system than has been published in the **Federal Register**. Should the subsection be so interpreted, exemption from this provision is necessary to protect the sources of law enforcement and intelligence information and to protect the privacy and safety of witnesses and informants and others who provide information to the FBI. Further, greater specificity of properly classified records could compromise national security.

(7) From subsection (e)(5) because in the collection of information for authorized law enforcement and intelligence purposes, it is impossible to determine in advance what information is accurate, relevant, timely and complete. With time, seemingly irrelevant or untimely information may acquire new significance when new details are brought to light. Additionally, the information may aid in establishing patterns of activity and providing criminal or intelligence leads. It could impede investigative progress if it were necessary to assure relevance, accuracy, timeliness and completeness of all information obtained during the scope of an investigation. Further, some

of the records searched by and/or contained in DIVS may come from other agencies and it would be administratively impossible for the FBI to vouch for the compliance of these agencies with this provision.

(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 FBI and may alert the subjects of law enforcement investigations, who might be otherwise unaware, to the fact of those investigations.

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

Dated: August 20, 2010.

**Nancy C. Libin,**

*Chief Privacy and Civil Liberties Officer.*

[FR Doc. 2010-21247 Filed 8-30-10; 8:45 am]

BILLING CODE 4410-02-P

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### 33 CFR Part 334

#### Restricted Area in Cape Fear River and Tributaries at Sunny Point Army Terminal, Brunswick County, NC

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Army requested that the U.S. Army Corps of Engineers (Corps) revise the regulation for the restricted area in the Cape Fear River and its tributaries at Sunny Point Army Terminal, Brunswick County, North Carolina, by renaming the marker buoys and specifying the latitude and longitude for those buoys. There are no other changes proposed for this restricted area regulation. The purpose of the proposed rule is to correct the buoys designating the boundary of the restricted area which provide security for the facility, and prevent acts of terrorism, sabotage, or other criminal acts against the facility, including vessels loading and offloading at the Sunny Point Army Terminal. In the "Rules and Regulations" section of the **Federal Register**, we are publishing this change to the restricted area regulation as a direct final rule without prior proposal because we view this as a non-controversial adjustment to our restricted area regulations and anticipate no adverse comment. We have explained our reasons for this

approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this rule and it will go into effect. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

**DATES:** Written comments must be received by September 30, 2010.

**SUPPLEMENTARY INFORMATION:** This document concerns the "Restricted Area in Cape Fear River and tributaries at Sunny Point Army Terminal, Brunswick County, NC" rule. For further information, including instructions on how to submit comments, please see the information provided in the direct final rule that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: August 13, 2010.

**Michael G. Ensich,**

*Chief, Operations, Directorate of Civil Works.*

[FR Doc. 2010-21746 Filed 8-30-10; 8:45 am]

BILLING CODE 3720-58-P

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Corps of Engineers

#### 33 CFR Part 334

#### United States Marine Corps, Marine Corps Base Quantico, Quantico VA; Restricted Area

**AGENCY:** U.S. Army Corps of Engineers, Department of Defense.

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** The Corps of Engineers (Corps) is proposing to amend its regulations to establish a permanent restricted area in the waters of the Potomac River in the vicinity of Marine Corps Base (MCB) Quantico, located in Quantico, Virginia. The establishment of a permanent restricted area is necessary to reflect the current security and safety needs at MCB Quantico, including protection of military assets at the Marine Corps Air Facility (MCAF) Quantico, which include the Presidential Helicopter Squadron. The assets located on MCAF Quantico are considered national assets of strategic value and require the increased protection obtained by restricting all public access to within 500 meters of

the MCAF shoreline. The proposed restricted area provides standoff from most small arms weapons, acts as a security buffer, and assists USMC security forces in determining intent amongst heavy boat traffic. Additionally, there is an extreme hazard to small craft and vessels operating in close proximity to the MCAF due to jet and prop wash from heavy jet and rotary wing aircraft operating at low altitudes while conducting takeoff and landing operations. The proposed restricted area protects public safety by denying vessels access to this danger. The restricted area is also required to protect public health by preventing vessels from disturbing a planned environmental remediation area located in the vicinity of MCAF. The restricted area will extend approximately 500 meters from the shoreline of MCB/MCAF Quantico and will include the Chopawamsic Creek channel.

**DATES:** Written comments must be submitted on or before September 30, 2010.

**ADDRESSES:** You may submit comments, identified by docket number COE-2010-0032, by any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*E-mail:*

*David B. Olson@usace.army.mil*. Include the docket number, COE-2010-0032, in the subject line of the message.

*Mail:* U.S. Army Corps of Engineers, Attn: CECW-CO-R (David B. Olson), 441 G Street, NW., Washington, DC 20314-1000.

*Hand Delivery/Courier:* Due to security requirements, we cannot receive comments by hand delivery or courier.

*Instructions:* Direct your comments to docket number COE-2010-0032. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through