

decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 96-ASW-28." The postcard will be date/time stamped and returned to the commenter. All comments received on or before the specific closing dates will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of advisory Circular No. 11-2A that describes the application procedure.

#### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace, controlled airspace extending upward from 1,200 feet AGL within the confines of Restricted Area R-5107B and a portion of R-5107A north of latitude 32°18'00"N, White Sands Missile Range, New Mexico, NM. White Sands Missile Range has upgraded the radar coverage within this area to provide air traffic control services for aircraft authorized to operate within this restricted area. The intended effect of this proposal is to provide adequate Class E airspace for aircraft operating within the boundaries of Restricted Area R-5107B and the

portion of Restricted Area R-5107A north of latitude 32°18'00"N, White Sands Missile Range, New Mexico, NM.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

#### PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

##### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points*, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

**Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.**

\* \* \* \* \*

#### ASW NM E5 New Mexico, NM [Amended]

On the eighteenth and nineteenth line, change "excluding Restricted Areas R-5101, R-5107B, and the portion of R-5107A north of Lat. 32°18'00"N to read "excluding Restricted Area R-5101."

\* \* \* \* \*

Issued in Fort Worth, TX, on March 19, 1997.

**Albert L. Viselli,**

*Acting Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 97-7667 Filed 3-25-97; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Departmental Offices

#### 31 CFR Part 1

#### Privacy Act of 1974; Proposed Rule Exempting a System of Records From Certain Provisions of the Privacy Act

**AGENCY:** Departmental Offices, Treasury.  
**ACTION:** Proposed Rule.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of a proposed amendment to 31 CFR 1.36 to exempt a new system of records, the Suspicious Activity Reporting System (the "SAR System"), Treasury/DO .212, 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 certain information about individuals maintained in the system of records.

**DATES:** Comments must be received no later than April 25, 1997.

**ADDRESSES:** Comments should be sent to Office of Legal Counsel, Financial Crimes Enforcement Network ("FinCEN"), 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182-2536. Comments will be made available for inspection and copying by appointment. Persons wishing such an opportunity should call Eileen Dolan at (703) 905-3590.

**FOR FURTHER INFORMATION CONTACT:** Cynthia A. Langwiser, Attorney—Advisor, Financial Crimes Enforcement Network, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182, (703) 905-3582.  
**SUPPLEMENTARY INFORMATION:** The rules of FinCEN, the Board of Governors of the Federal Reserve System (the "Board"), the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation

("FDIC"), the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA") (collectively, the Federal Supervisory Agencies),<sup>1</sup> create an integrated process for reporting suspicious activity and known or suspected crimes at, by, or through depository institutions and certain of their affiliates. The process is based on a single uniform Suspicious Activity Report ("SAR"), filed with FinCEN.

A single information system for the use of SARs is a key part of the integrated system. The single information system will permit enhanced analysis and tracking of such information, and rapid dissemination of the reports to appropriate law enforcement agencies. In accordance with 31 U.S.C. 5318(g) and 5319, data from the SAR System is exchanged, retrieved, and disseminated, both manually and electronically, among FinCEN, the Federal Supervisory Agencies, appropriate federal, state, and local law enforcement agencies, and state banking supervisory agencies. The provisions of 31 U.S.C. 5318(g)(4)(B) specifically require that the agency designated as repository for suspicious transaction reports refer those reports to any appropriate law enforcement or supervisory agency.

Agencies to which information will be referred electronically, which in certain cases may involve electronic transfers of batch information, initially will include the Federal Supervisory Agencies, the Federal Bureau of Investigation, the Criminal Investigation Division of the Internal Revenue Service, the United States Secret Service, the United States Customs Service, and the Executive Office of United States Attorneys, the Offices of the 93 United States Attorneys, and state supervisory agencies and certain state law enforcement agencies that have entered into appropriate agreements with FinCEN. (The FBI and Secret Service may receive electronic transfers of batch information as forms are filed to permit those agencies more efficiently to carry out their investigative responsibilities.) It is anticipated that information from the SAR system will also be disseminated to other appropriate federal, state or local law enforcement and regulatory agencies and also to non-United States financial regulatory

agencies and law enforcement agencies. Organizations to which information from the SAR System is electronically disseminated are collectively referred to as "SAR System Users."

The SAR System is housed at the Internal Revenue Service Computing Center ("DCC") in Detroit, Michigan. The SAR System is managed by FinCEN, with the assistance of the staff of DCC.

Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury is publishing separately a notice of a proposed new system of records, Suspicious Activity Reporting System - Treasury/DO.212.

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."

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) of this section."

The Department of the Treasury is hereby giving notice of a proposed rule to exempt the SAR System from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2) and the authority vested in the Assistant Secretary (Enforcement) by 31 CFR 1.23(c). The reasons for exempting the system of records from sections (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I),

(e)(5), (e)(8), (f) and (g) of the Privacy Act are set forth in the proposed rule.

The Department of the Treasury has determined that this proposed rule is not a "significant regulatory action" under Executive Order 12866.

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

In accordance with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), the Department of the Treasury has determined that this proposed rule will not impose new record keeping, application, reporting, or other types of information collection requirements.

#### Lists 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. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 of Subpart C is amended by revising the heading "Office of the Assistant Secretary for Law Enforcement" to read "Assistant Secretary (Enforcement)" and under the Financial Crimes Enforcement Network by redesignating paragraph (g) as (l) and by adding paragraphs (g) thru (k) to read as follows:

#### § 1.36 Systems exempt in whole or in part from the provisions of 5 U.S.C. 552a and this part.

\* \* \* \* \*

#### ASSISTANT SECRETARY (ENFORCEMENT)

##### Financial Crimes Enforcement Network

\* \* \* \* \*

(g) *In general.* The Assistant Secretary (Enforcement), exempts the system of records entitled "Suspicious Activity Reporting System" (Treasury/DO.212) from certain provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

(h) *Authority.* 5 U.S.C. 552a(j) and (k); 31 CFR 1.23(c).

(i) *General exemptions under 5 U.S.C. 552a(j)(2).* Pursuant to 5 U.S.C. 552a(j)(2), the Assistant Secretary (Enforcement), hereby exempts the Suspicious Activity Reporting System

<sup>1</sup>FinCEN and the Federal Supervisory Agencies have all published rules requiring such reporting. See the rules published by FinCEN, the Board, OCC, FDIC, OTS and NCUA, respectively, at: 61 FR 4326 (February 5, 1996); 61 FR 4338 (February 5, 1996); 61 FR 4332 (February 5, 1996); 61 FR 6095 (February 16, 1996); 61 FR 6100 (February 16, 1996); 61 FR 11526 (March 21, 1996).

(SAR System) of records, maintained by FinCEN, an office reporting to the Assistant Secretary (Enforcement), from the following provisions of the Privacy Act of 1974:

- 5 U.S.C. 552a(c)(3) and (4);
- 5 U.S.C. 552a(d)(1), (2), (3), and (4);
- 5 U.S.C. 552a(e)(1), (2), and (3);
- 5 U.S.C. 552a(e)(4)(G), (H), and (I);
- 5 U.S.C. 552a(e)(5) and (8);
- 5 U.S.C. 552a(f); and
- 5 U.S.C. 552a(g).

(j) *Specific exemptions under 5 U.S.C. 552a(k)(2).* To the extent that the exemption under 5 U.S.C. 552a(j)(2) does not apply to the SAR System of records, the Assistant Secretary (Enforcement), hereby exempts the SAR System of records from the following provisions of 5 U.S.C. 552a pursuant to 5 U.S.C. 552a(k)(2):

- 5 U.S.C. 552a(c)(3);
- 5 U.S.C. 552a(d)(1), (2), (3), and (4)
- 5 U.S.C. 552a(e)(1)
- 5 U.S.C. 552a(e)(4)(G), (H), and (I); and
- 5 U.S.C. 552a(f).

(k) *Reasons for exemptions under 5 U.S.C. 552a(j)(2) and (k)(2).* (1) 5 U.S.C. 552a(e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the SAR System would allow individuals to learn whether they have been identified as suspects or possible subjects of investigation. Access by individuals to such knowledge would seriously hinder the law enforcement purposes that the SAR System is created to serve, because individuals involved in activities that are violations of law could:

- (i) Take steps to avoid detection;
- (ii) Inform associates that an investigation is in progress;
- (iii) Learn the nature of the investigation;
- (iv) Learn whether they are only suspects or identified as violators of law;
- (v) Begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records, or
- (vi) Destroy evidence needed to prove the violation.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (f)(3) and (f)(5) grant individuals access to records containing information about them. The application of these provisions to the SAR System would compromise the ability of the component agencies of the SAR System to use the information effectively for purposes of law enforcement.

(i) Permitting access to records contained in the SAR System would provide individuals with information concerning the nature of any current

investigations and would enable them to avoid detection or apprehension, because they could:

- (A) Discover the facts that would form the basis of an arrest;
- (B) Destroy or alter evidence of criminal conduct that would form the basis of their arrest, and
- (C) Delay or change the commission of a crime that was about to be discovered by investigators.

(ii) 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 so as to avoid detection or apprehension.

(3) 5 U.S.C. 552a(d)(2), (d)(3) and (d)(4), (e)(4)(H) and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record or note the disputed portion of the record and, if the agency refuses to amend the record, to provide a copy of the individual's statement of disagreement with the agency's refusal, to persons or other agencies to whom the record is thereafter disclosed.

Because these provisions depend on the individual's having access to his or her records, and since these rules exempt the SAR System from the provisions of 5 U.S.C. 552a relating to access to records, for the reasons set out in paragraph (e)(2) these provisions do not apply to the SAR System.

(4) 5 U.S.C. 552a(c)(4) requires an agency to 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. Because this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to him or her, and because these rules exempt the SAR System from the provisions of 5 U.S.C. 552a relating to access to and amendment of records, for the reasons set forth in paragraphs (e)(2) and (3), this provision does not apply to the SAR System.

(5) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of any disclosures of records required by 5 U.S.C. 552a(c)(1) 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.

(i) The application of this provision would impair the effective use of information collected in the SAR System. Making an accounting of

disclosures available to the subjects of an investigation would alert them 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 the 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.

(ii) Moreover, providing an accounting to the subjects of investigations would alert them to the fact that FinCEN has information regarding possible criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of the information-gathering and analysis systems of FinCEN, the Federal Supervisory Agencies and other SAR System Users and permit violators to take steps to avoid detection or apprehension.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency 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 SAR System could compromise FinCEN's and the Federal Supervisory Agencies' ability to provide useful information to law enforcement agencies, because revealing sources for the information could:

- (i) Disclose investigative techniques and procedures,
- (ii) Result in threats or reprisals against informers by the subjects of investigations, and
- (iii) 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 an agency to 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 application of this provision to the SAR System could impair the effectiveness of law enforcement because in many cases, especially in the early stages of investigation, it may be impossible immediately to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary, upon further evaluation or upon collation with information

developed subsequently, often may prove helpful to an investigation.

(8) 5 U.S.C. 552a(e)(2) requires an agency 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 SAR System would impair FinCEN's ability to collect, analyze and disseminate to System Users investigative or enforcement information. The SAR System is designed to house information about known or suspected criminal activities or suspicious transactions that has been collected and reported by financial institutions, or their examiners or other enforcement or supervisory officials. It is not feasible to rely upon the subject of an investigation to supply information. An attempt to obtain information from the subject of any investigation would alert that individual to the existence of an investigation, providing an opportunity to conceal criminal activity and avoid apprehension. Further, with respect to the initial SAR, 31 U.S.C. 5318(g)(2) specifically prohibits financial institutions making such reports from notifying any participant in the transaction that a report has been made.

(9) 5 U.S.C. 552a(e)(3) requires an agency to 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 disclosure of information is voluntary or mandatory; the principal purposes for which the agency will use the information; the routine uses that may be made of the information; and the effects on the individual of not providing all or part of the information. The application of these provisions to the SAR System would compromise the ability of the component agencies of the SAR System to use the information effectively for purposes of law enforcement.

(10) 5 U.S.C. 552a(e)(5) requires an agency to 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. Application of this provision to the SAR System would hinder the collection and dissemination of information. Because Suspicious Activity Reports are filed by financial institutions with respect to known or suspected violations of law or

suspicious activities, it is not possible at the time of collection for the agencies that use the SAR System to determine that the information in such records is accurate, relevant, timely and complete.

(11) 5 U.S.C. 552a(e)(8) requires an agency to 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. Application of these requirements to the SAR System would prematurely reveal the existence of an ongoing investigation to the subject of investigation where there is need to keep the existence of the investigation secret. It would render ineffective 31 U.S.C. 5318(g)(2), which prohibits financial institutions and its officers, employees and agents from disclosing to any person involved in a transaction that a SAR has been filed.

(12) 5 U.S.C. 552a(g) provides an individual with civil remedies 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 any determination relating to an individual is based on records that are not accurate, relevant, timely and complete, 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 SAR System should be exempted from this provision to the extent that the civil remedies relate to the provisions of 5 U.S.C. 552a from which paragraphs (k)(1) through (11) of this section exempt the SAR System. There should be no civil remedies for failure to comply with provisions from which this system of records is exempted. Exemption from this provision will also protect FinCEN from baseless civil court actions that might hamper its ability to collate, analyze and disseminate data.

\* \* \* \* \*

Dated: February 3, 1997.

**Alex Rodriguez,**

*Deputy Assistant Secretary (Administration).*

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BILLING CODE: 4820-03-F

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 100

[CGD11-97-004]

#### Special Local Regulation; Laughlin Aquamoto Sports Challenge and Expo

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend the table of events in 33 CFR 100.1102 by adding the Laughlin Aquamoto Sports Challenge and Expo being conducted in the waters of the Colorado River from Davis Dam south to Harrah's Hotel and Casino on the following dates: annually, a four-day weekend event in May or June. These regulations are necessary to provide for the safety of life, property, and navigation on the navigable waters of the United States during scheduled events.

**DATES:** Comments should be received on or before May 12, 1997.

**ADDRESSES:** Comments should be mailed to Lieutenant Mike A. Arguelles, U.S. Coast Guard Marine Safety Office, 2716 North Harbor Drive, San Diego, California 92101, or may be delivered to the same address between 8 a.m. and 3 p.m. Monday through Friday, except federal holidays. The telephone number is (619) 683-6484. The Captain of the Port maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Coast Guard Marine Safety Office, 2716 North Harbor Drive, San Diego.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Mike A. Arguelles, Coast Guard Marine Safety Office, San Diego; telephone number (619) 683-6484.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or comments. Persons submitting comments should include their name and address, identify this rulemaking (CGD11-97-004) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments