

DEPARTMENT OF JUSTICE**28 CFR Part 16****[AAG/A Order No. 193–2000]****Privacy Act of 1974; Implementation****AGENCY:** Department of Justice.**ACTION:** Proposed rule.

SUMMARY: The Department of Justice, Environment and Natural Resources Division, proposes to amend 28 CFR part 16 to exempt a system of records from certain provisions of the Privacy Act, 5 U.S.C. 552a. The system of records may contain information which relates to official Federal investigations and matters of law and regulatory enforcement. Accordingly, where applicable, the exemption is necessary to avoid interference with law and regulatory enforcement functions. Specifically, the Division proposes to exempt the Environment and Natural Resources Division Case and Related Files System, JUSTICE/ENRD–003, from subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(5), (e)(8), and (g) of the Privacy Act. These exemptions are necessary to protect the confidentiality of civil investigatory and criminal law enforcement materials and of properly classified information.

DATES: All comments must be received by April 3, 2000.

ADDRESSES: Address all comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, National Place Building, Room 1400 North, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

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

SUPPLEMENTARY INFORMATION:**Regulatory Flexibility Act:**

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.

Executive Order 12988

The rule complies with the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No. 12988.

Executive Order 12866

The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12966, and accordingly, this rule has not been reviewed by the Office of Management and Budget.

List of Subjects in Part 16

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

Dated: January 27, 2000.

Stephen R. Colgate,
Assistant Attorney General for Administration.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552 and delegated to me by the Attorney General Order 793–78, 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.

2. Section 16.92 is amended by revising paragraphs (a) and (b) to read as follows:

§ 16.92 Exemption of Environment and Natural Resources Division Systems—Limited Access.

(a)(1) The following system of records is exempted pursuant to 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(5), (e)(8), (f) and (g); in addition, the following systems of records are exempted pursuant to 5 U.S.C. 552a(k)(1) and (k)(2) from subsections (c)(3), (d), and (e)(1):

(i) Environment and Natural Resources Division Case and Related Files System, JUSTICE/ENRD–003.

(ii) [Reserved]

(2) These exemptions apply only to the extent that information in this system relates to the investigation, prosecution or defense of actual or potential criminal or civil litigation, or which has been properly classified in the interest of national defense and foreign policy, and therefore is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1) and (k)(2). To the extent that information in a record pertaining to an individual does not relate to national defense or foreign policy, official Federal investigations, and/or law enforcement matters, the exemption does not apply. In addition, where compliance would not appear to interfere with or adversely affect the overall law or regulatory enforcement process, the applicable exemption may be waived by the Environment and Natural Resources Division.

(b) Only that information that relates to the investigation, prosecution or defense of actual or potential criminal or civil litigation, or which has been

properly classified in the interest of national defense and foreign policy is exempted for the reasons set forth from the following subsections:

(1) Subsection (c)(3). Subsection (c)(3) requires an agency to provide an accounting of disclosures of records concerning an individual. To provide the subject of a criminal or civil matter or case under investigation with an accounting of disclosures of records would inform that individual (and others to whom the subject might disclose the records) of the existence, nature, or scope of that investigation and thereby seriously impede law enforcement efforts by permitting the record subject and others to avoid criminal penalties and civil remedies.

(2) Subsections (c)(4) (requiring an agency to inform individuals about any corrections made to a record that has been disclosed) and (g) (providing for civil remedies when an agency fails to comply with these provisions). These provisions are inapplicable to the extent that this system of records is exempted from subsection (d).

(3) Subsection (d). Subsection (d) requires an agency to allow individuals to gain access to a record about him or herself; to dispute the accuracy, relevance, timeliness or completeness of such records; and to have an opportunity to amend his or her record or seek judicial review. To the extent that information contained in this system has been properly classified, relates to the investigation and/or prosecution of grand jury, civil fraud, and other law enforcement matters, disclosure could comprise matters which should be kept secret in the interest of national security or foreign policy; compromise confidential investigations or proceedings; impede affirmative enforcement actions based upon alleged violations of regulations or of civil or criminal laws; reveal the identity of confidential sources; and result in unwarranted invasions of the privacy of others. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) Subsection (e)(1). Subsection (e)(1) requires an agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish the agency's purpose. In the course of criminal or civil investigations, cases, or other matters, the Environment and Natural Resources Division may obtain information concerning the actual or potential violation of laws which are not strictly

within its statutory authority. In the interest of effective law enforcement, it is necessary to retain such information since it may establish patterns of criminal activity or avoidance of other civil obligations and provide leads for Federal and other law enforcement agencies.

(5) Subsections (e)(2). Subsection (e)(2) requires an agency to collect information to the greatest extent practicable from the subject individual when the information may result in adverse determinations about an individual's rights, benefits and privileges under Federal programs. To collect information from the subject of a criminal investigation or prosecution would present a serious impediment to law enforcement in that the subject (and others with whom the subject might be in contact) would be informed of the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(6) Subsection (e)(3). Subsection (e)(3) requires an agency to inform each individual whom it asks to supply information, on a form that can be retained by the individual, the authority which authorizes the solicitation, the principal purpose for the information, the routine uses of the information, and the effects on the individual of not providing the requested information. To comply with this requirement during the course of a criminal investigation or prosecution could jeopardize the investigation by disclosing the existence of a confidential investigation, revealing the identity of witnesses or confidential informants, or impeding the information gathering process.

(7) Subsection (e)(5). Subsection (e)(5) requires an agency to maintain records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual. In compiling information for criminal law enforcement purposes, the accuracy, completeness, timeliness and relevancy of the information obtained cannot always be immediately determined. As new details of an investigation come to light, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can often only be determined in a court of law. Compliance with this requirement would therefore restrict the ability of government attorneys in exercising their judgment in developing information necessary for effective law enforcement.

(8) Subsection (e)(8). Subsection (e)(8) requires agencies to make reasonable

efforts to serve notice on an individual when any record on the individual is made available to any person under compulsory legal process. To serve notice would give persons sufficient warning to evade law enforcement efforts.

(9) Subsections (f) and (g). Subsection (f) requires an agency to establish procedures to allow an individual to have access to information about him or herself and to contest information kept by an agency about him or herself. Subsection (g) provides for civil remedies against agencies who fail to comply with the Privacy Act requirements. These provisions are inapplicable to the extent that this system is exempt from the access and amendment provisions of subsection (d).

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[USCG-1999-4974]

Port Access Route Study; Strait of Juan de Fuca and Adjacent Waters

AGENCY: Coast Guard, DOT.

ACTION: Notice of preliminary study recommendations with request for comments.

SUMMARY: The Coast Guard announces preliminary study recommendations of a Port Access Route Study which is evaluating the continued applicability of and the need for modifications to the current vessel routing measures in and around the Strait of Juan de Fuca and adjacent waters. The goals of the study are to help reduce the risk of marine casualties and increase vessel traffic management efficiency in the study area. Preliminary recommendations indicate that marine transportation safety can be enhanced through several modifications to the existing vessel routing system and limited regulatory changes. The Coast Guard solicits comments on the preliminary recommendations presented in this document so we can complete our Port Access Route Study.

DATES: Comments and related material must reach the Docket Management Facility on or before April 24, 2000.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket,

please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG-1999-4974), U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.

(2) By hand delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Web Site for the Docket Management System at <http://dms.dot.gov>.

The Docket Management Facility maintains the public docket for this document. Comments and material received from the public, as well as documents mentioned 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 PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

Additional information and charts showing the recommended changes will be posted on the Thirteenth Coast Guard District Web Site which can be accessed at <http://www.uscg.mil/d13/pars/sjdf.html>. If you do not have Web access, then you may obtain the additional information and paper copies of the charts by contacting LT Steve Wheeler at 206-220-7274, e-mail Swheeler@pacnorwest.uscg.mil.

FOR FURTHER INFORMATION CONTACT: For questions on this document, contact John Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, Thirteenth Coast Guard District, telephone 206-220-7272, e-mail Jmikesell@pacnorwest.uscg.mil; or George Detweiler, Office of Vessel Traffic Management, Coast Guard, telephone 202-267-0416, e-mail Gdetweiler@comdt.uscg.mil. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202-366-9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this study by submitting comments and related material. If you do so, please