

paragraphs (b)(4)(i) and (b)(4)(iv) of this section.

**Kevin M. Brown,**

*Deputy Commissioner for Services and Enforcement.*

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## DEPARTMENT OF JUSTICE

### 28 CFR Part 16

[AAG/A Order No. 010-2007]

#### Privacy Act of 1974; Implementation

**AGENCY:** Department of Justice.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Justice proposes to amend the Privacy Act exemptions to the National Security Division's system of records as described in today's notice section of the **Federal Register**: Foreign Intelligence and Counterintelligence Records System (JUSTICE/NSD-001), which incorporates three previous systems of records of the Office of Intelligence Policy and Review (OIPR). These systems of records are the "Policy and Operational Records System, OIPR-001" last published in the **Federal Register** January 26, 1984 (49 FR 3281); "Foreign Intelligence Surveillance Act Records System, OIPR-002" last published in the **Federal Register** January 26, 1984 (49 FR 3282); and "Litigation Records System, OIPR-003" last published in the **Federal Register** January 26, 1984 (49 FR 3284).

**DATES:** Submit any comments by June 18, 2007.

**ADDRESSES:** Address all comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, 1331 Pennsylvania Avenue, NW., Washington, DC 20530 (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:** GayLa Sessoms, (202) 616-5460.

**SUPPLEMENTARY INFORMATION:** The Department proposes to exempt JUSTICE/NSD-001 from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (2), (3), (4)(G), (H) and (I), (5) and (8); (f); (g); and (h). These exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (2) or (5).

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 impact on a substantial number of small business entities.

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

Administrative practices and procedures, Courts, Freedom of Information, and 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, it is proposed to amend 28 CFR part 16 as follows:

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

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

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

2. Section 16.74 is revised to read as follows:

##### § 16.74 Exemption of National Security Division System-limited access.

(a) The following system of records is exempted from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (4)(G), (H) and (I), (5) and (8); (f); (g); and (h) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (2) and (5): Foreign Intelligence and Counterintelligence Records System (JUSTICE/NSD-001). 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), (k)(1), (2), and (5).

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

(1) *Subsection (c)(3)*. To provide the target of a surveillance or collection activity with the disclosure accounting records concerning him or her would hinder authorized United States intelligence activities by informing that individual of the existence, nature, or scope of information that is properly classified pursuant to Executive Order 12958, as amended, and thereby cause damage to the national security.

(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 foreign intelligence and counterintelligence information would interfere with collection activities, reveal the identity of confidential sources, and cause damage to the national security of the United States. To ensure unhampered and effective collection and analysis of foreign intelligence and counterintelligence information, disclosure must be precluded.

(4) *Subsection (d)(2)*. Amendment of the records would interfere with ongoing intelligence activities thereby causing damage to the national security.

(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 intelligence records contained in this system are relevant and necessary, but, in the interests of national security, it is necessary to retain this information to aid in establishing patterns of activity and provide intelligence leads.

(7) *Subsection (e)(2)*. Although this office does not conduct investigations, the collection efforts of agencies that supply information to this office would be thwarted if the agencies were required to collect information with the subject's knowledge.

(8) *Subsection (e)(3)*. To inform individuals as required by this subsection could reveal the existence of collection activity and compromise national security. For example, a target could, once made aware that collection activity exists, alter his or her manner of engaging in intelligence or terrorist activities in order to avoid detection.

(9) *Subsections (e)(4)(G), (H) and (I), and (f)*. These subsections are inapplicable to the extent that this system is exempt from the access provisions of subsection (d).

(10) *Subsection (e)(5)*. It is often impossible to determine in advance if intelligence records contained in this system are accurate, relevant, timely and complete, but, in the interests of national security, it is necessary to retain this information to aid in establishing patterns of activity and providing intelligence leads.

(11) *Subsection (e)(8)*. Serving notice could give persons sufficient warning to evade intelligence collection and anti-terrorism efforts.

(12) *Subsections (g) and (h)*. These subsections are inapplicable to the extent that this system is exempt from

other specific subsections of the Privacy Act.

Dated: April 27, 2007.

**Lee J. Lofthus,**

*Assistant Attorney General for Administration.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD05-07-026]

RIN 1625-AA09

#### Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AIWW), Sunset Beach, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to change the drawbridge operating regulations that govern the S.R. 1172 Bridge, at Atlantic Intracoastal Waterway mile 337.9, Sunset Beach, NC. This proposal would allow the bridge to open on the hour on signal for pleasure vessels from 7 a.m. to 9 p.m. year round. The reason for this change would be to improve the schedule for both roadway and waterway users.

**DATES:** Comments and related material must reach the Coast Guard on or before June 22, 2007.

**ADDRESSES:** You may mail comments and related material to Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704-5004. The Fifth Coast Guard District 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 Commander (dpb), Fifth Coast Guard District between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Gary Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398-6629.

#### 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 CGD05-07-026, 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 format, no larger than 8½ by 11 inches, suitable for copying. If you would like a return receipt, please enclose a stamped, self-addressed postcard or envelope. We will consider all submittals received during the comment period. We may change this proposed rule in view of them.

##### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander (dpb), Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

##### Background and Purpose

The S.R. 1172 Bridge at Sunset Beach has zero vertical clearance to vessels when in the closed position at mean high water.

The North Carolina Department of Transportation (NCDOT) owns and

operates this single-lane, floating steel-barge, swing-span referred to as a pontoon drawbridge. Current regulations set out at 33 CFR 117.821 (a)(5) require the bridge to open on signal for commercial vessels at all times; and on the hour on signal for pleasure vessels between 7 a.m. and 7 p.m., April 1 to November 30, except that on Saturdays, Sundays, and Federal holidays, from June 1 through September 30, the bridge shall open on signal on the hour between 7 a.m. and 9 p.m.

NCDOT and the residents of the Town of Sunset Beach requested a change to the operating regulations for the S.R. 1172 Bridge in an effort to improve the schedule for both roadway and waterway users. The S.R. 1172 Bridge provides the only route on and off Sunset Beach Island. This proposal would not change the requirement for the bridge to open on signal at any time for commercial vessels.

The Coast Guard reviewed the bridge logs for 2005 and 2006 provided by NCDOT which illustrate a small decrease in the numbers of vessels passing through the bridge during the spring, summer, and fall over the past year. Most vessels transiting the area in the spring and fall are operated by owners commonly referred to as "snowbirds". Owners of these transitory recreational vessels are either traveling north to south towards a warmer climate in the fall or south to north towards a cooler climate in the spring which can result in frequent bridge openings due to increased vessel numbers. During the spring and fall months, the flow of recreational vessels is constant.

There were approximately 10,461 and 11,429 vessel passages occurring in 2006 and 2005, respectively, over an eight-month period (during the peak boating season from April to November) according to records furnished by the NCDOT. (See Table A)

TABLE A

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
<b>Bridge Openings for 2006</b>											
233	191	307	392	436	394	451	392	349	386	326	317
<b>Boat Passages for 2006</b>											
273	157	463	1207	1659	1538	1486	1024	921	1234	1392	481
<b>Bridge Openings for 2005</b>											
218	165	313	322	441	439	474	413	327	393	331	297