

(other than by a *de minimis* amount), taking into account applicable interest charges, for the taxable year that includes the termination date (or a prior taxable year in which the taxpayer took a position on a return that was inconsistent with the treatment of the foreign corporation as a PFIC) than the shareholder would have had if the shareholder had properly made the section 1298(b)(1) election in the time prescribed in paragraph (b)(2) or (c)(3) of this section (or had not taken a position in a return for an earlier year that was inconsistent with the status of the foreign corporation as a PFIC). The time value of money is taken into account for purposes of this computation.

(3) *Procedural requirements*—(i) *In general.* The amount due with respect to a late purging election is determined in the same manner as if the purging election had been timely filed. However, the shareholder is also liable for interest on the amount due, pursuant to section 6601, determined for the period beginning on the due date (without extensions) for the taxpayer's income tax return for the year in which the termination date falls and ending on the date the late purging election is filed with the IRS.

(ii) *Filing instructions.* A late purging election is made by filing a completed Form 8621-A, "Return by a Shareholder Making Certain Late Elections to End Treatment as a Passive Foreign Investment Company."

(4) *Time and manner of making late election*—(i) *Time for making a late purging election.* A shareholder may make a late purging election in the manner provided in paragraph (e)(4)(ii) of this section at any time. The date the election is filed with the IRS will determine the amount of interest due under paragraph (e)(3) of this section.

(ii) *Manner of making a late purging election.* A shareholder makes a late purging election by completing Form 8621-A in the manner required by that form and this section and filing that form with the Internal Revenue Service, DP 8621-A, Ogden, UT 84201.

(5) *Multiple late elections.* For rules regarding the circumstances under which a shareholder of a foreign corporation may make multiple late purging elections under this paragraph (e) or § 1.1297-3(e), see § 1.1297-3(e)(5).

(f) *Effective/applicability date.* The rules of this section are applicable as of December 8, 2005.

#### § 1.1298-3T [Removed]

■ **Par. 11.** Section 1.1298-3T is removed.

### PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 12.** The authority citation of part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

■ **Par. 13.** In § 602.101, paragraph (b) is amended by removing the entry for "1.1297-3T" from the table.

**Kevin M. Brown,**  
*Deputy Commissioner for Services and Enforcement.*

Approved: September 17, 2007.

**Eric Solomon,**  
*Assistant Secretary of the Treasury (Tax Policy).*  
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### DEPARTMENT OF JUSTICE

#### Drug Enforcement Administration

#### 28 CFR PART 16

[AAG/A Order No. 032-2007]

#### Privacy Act of 1974: Implementation

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Justice (DOJ), Drug Enforcement Administration (DEA), is exempting a Privacy Act system of records from the following subsections of the Privacy Act: (c)(3) and (4), (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g), pursuant to 5 U.S.C. 552a (j) and (k). The Privacy Act system of records is the "El Paso Intelligence Center (EPIC) Seizure System, (JUSTICE/DEA-022)." The exemptions are necessary to prevent the compromise of ongoing investigative efforts, to help ensure the integrity of law enforcement and investigatory information, to ensure third party privacy, and to protect the physical safety of sources of information and law enforcement personnel.

**DATES:** *Effective Date:* This final rule is effective September 27, 2007.

**FOR FURTHER INFORMATION CONTACT:** Joo Chung, Counsel, Privacy and Civil Liberties Office, 202-514-4921.

**SUPPLEMENTARY INFORMATION:** On June 26, 2006 (71 FR 36294), a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received. This final rule contains corrections to typographic errors appearing in the proposed rule and a revised justification for the

exemption claimed from subsection (e)(3), found at (h)(6). The revised justification more specifically addresses the Privacy Act's notice requirement of subsection (e)(3) and, therefore, increases the accuracy and clarity of the final rule.

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

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

Administrative Practices and Procedure, Freedom of Information Act, Government in the Sunshine Act, and 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 No. 793-78, 28 CFR part 16 is amended 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) 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 16.98 is amended by adding 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): El Paso Intelligence Center (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 potentially 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, of 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) because the requirements thereof would constitute a serious impediment to law enforcement in that they could compromise the existence of an actual or potential confidential investigation and/or permit the record subject to speculate on the identity of a potential confidential source, and endanger the life, health or physical safety of either actual or potential confidential informants and witnesses, and of investigators/law enforcement personnel. In addition, the notification requirement of subsection (e)(3) could impede collection of that information from the record subject, making it necessary to collect the information solely from third party sources and thereby inhibiting law enforcement efforts.

(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. 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: September 20, 2007.

**Lee J. Lofthus,**

*Assistant Attorney General for Administration.*

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Part 1926

[Docket No. OSHA-2007-0068]

RIN 1218-AC18

#### Notice of Availability of the Regulatory Flexibility Act Review of the Occupational Safety Standard for Lead in Construction

**AGENCY:** Occupational Safety and Health Administration, Department of Labor.

**ACTION:** Notice of availability.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) has completed a review of its Lead in Construction Standard pursuant to section 610 of the Regulatory Flexibility Act and Section 5 of Executive Order 12866 on Regulatory Planning and Review. OSHA issued its Lead in Construction Standard in 1993 pursuant to a statutory directive to protect construction workers from lead related