

further provides that the Bureau will retain its identity as a separate entity within the Department of Justice known as the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). The transfer takes effect January 24, 2003.

In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, ATF is publishing its Privacy Act systems of records and converting certain ATF systems of records from Department of the Treasury systems to Department of Justice systems pursuant to the reorganization and transfer of ATF to the Department of Justice. (The publication of these systems of records as Justice systems does not rescind the Treasury/ATF systems of records, as they govern the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury.) There has been no change in the maintenance or operations of the systems of records by ATF, nor has there been a change in the exemptions claimed. Rather, these systems notices are being published to reflect the transfer of ATF to the Department of Justice.

Because the transfer of ATF to the Department of Justice is effective on January 24, 2003, it is necessary to immediately establish all appropriate exemptions to the Privacy Act in order to protect law enforcement and investigatory information and functions of ATF. These exemptions must be effective on January 24, 2003, the date of the transfer. It would be contrary to the public interest to allow the disclosure of information that could compromise ongoing investigations and law enforcement activities of the ATF. Accordingly, pursuant to the good cause exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3), the Department finds that notice and public procedure on this rule are impracticable and contrary to the public interest.

After considering the comments received, the Department will issue a final rule.

Regulatory Flexibility Act

This interim rule relates to individuals, as opposed to small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act 5 U.S.C. 601–612, the interim 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 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 793–78, it is proposed to amend 28 CFR part 16 as follows:

PART 16—[AMENDED]

Subpart E—Exemption of Records Systems under the Privacy Act

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.

2. Section 16.106 is added to subpart E to read as follows:

Subpart E—Exemptions of Records Systems Under the Privacy Act

§ 16.106 Exemption of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)—Limited Access.

(a) 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).

(1) Criminal Investigation Report System (JUSTICE/ATF–003).

(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)(2). Where compliance would not appear to interfere with or adversely affect the overall law enforcement process, ATF may waive the applicable exemption.

(b) 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 reveal investigative interest not only of ATF, but also of the recipient agency. This would permit the record subject to take measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses or flee the area to avoid the thrust of the investigation.

(2) From subsection (c)(4) because an exemption being claimed for subsection (d) makes this subsection inapplicable.

(3) From subsections (d)(1), (e)(4)(G) and (H), (f) and (g) because these provisions concern individual access to investigative records, compliance with which could compromise sensitive information, interfere with the overall law enforcement process by revealing a pending sensitive investigation, possibly identify a confidential source or disclose information, including actual or potential tax information, which would constitute an unwarranted invasion of another individual's personal privacy, reveal a sensitive investigative technique, or constitute a

potential danger to the health or safety of law enforcement personnel.

(4) From subsection (d)(2) because, due to the nature of the information collected and the essential length of time it is maintained, to require ATF to amend information thought to be incorrect, irrelevant or untimely, would create an impossible administrative and investigative burden by forcing the agency to continuously retrograde its investigations attempting to resolve questions of accuracy, etc.

(5) From subsections (d)(3) and (4) because these subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) From subsection (e)(1) because: (i) It is not possible in all instances to determine relevancy or necessity of specific information in the early stages of a criminal or other investigation.

(ii) Relevancy and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after the information is assessed that its relevancy and necessity in a specific investigative activity can be established.

(iii) In any investigation, ATF might obtain information concerning violations of law not under its jurisdiction, but in the interest of effective law enforcement, dissemination will be made to the agency charged with enforcing such law.

(iv) In interviewing individuals or obtaining other forms of evidence during an investigation, information could be obtained, the nature of which would leave in doubt its relevancy and necessity. Such information, however, could be relevant to another investigation or to an investigative activity under the jurisdiction of another agency.

(7) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual can only be obtained 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.

(8) From subsection (e)(3) because disclosure would provide the subject with substantial information that could impede or compromise the investigation. The individual could seriously interfere with undercover investigative activities and could take steps to evade the investigation or flee a specific area.