

DEPARTMENT OF JUSTICE

28 CFR PART 16

[AAG/A Order No. 270-2002]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice, Foreign Terrorist Tracking Task Force (FTTTF).

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to exempt a Privacy Act system of records from subsections (c)(3), (d)(1), (2), (3) and (4), and (e)(1) and (4)(I) of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(1). The system of records to be exempted is the "Flight Training Candidates File System, JUSTICE/FTTTF-001."

The Flight Training Candidates File System is a system of records established pursuant to section 113 of the Aviation and Transportation Security Act (ATSA), Public Law 107-71, 49 U.S.C. 44939 to support the administration of the required risk assessment of candidates for flight instruction who are aliens or persons designated by the Under Secretary of Transportation for Security, U.S. Department of Transportation. Subsequent to the terrorist hijacking and crashing of aircraft on September 11, 2001, Congress determined that aliens seeking training in the operation of aircraft with a takeoff weight of 12,500 pounds or more should be subject to closer scrutiny. Pursuant to section 113 of ATSA, persons who wish to provide such training to aliens or others designated by the Under Secretary of Transportation for Security must first notify the Attorney General, and provide identifying information with regard to the prospective trainee, so that the Attorney General may determine whether the prospective trainee poses a risk to aviation or national security.

The exemption is necessary as explained in the accompanying proposed rule.

DATES: Submit any comments by July 10, 2002.

ADDRESSES: Address all comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307-1823.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register**, the Department of Justice provides a description of the "Flight Training Candidates File System, JUSTICE/FTTTF-001."

This order relates to individuals as well as small business entities. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601-602, the Attorney General, by approving this regulation, certifies that 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 Procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, and the 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, it is proposed to amend part 16 of Title 28 of the Code of Federal Regulations 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, 524; 31 U.S.C. 3717, 9701.

2. Section 16.105 is added to subpart E to read as follows:

§ 16.105 Exemption of Foreign Terrorist Tracking Task Force System.

(a) The following system of records is exempt from 5 U.S.C. 552a, subsections (c)(3), (d)(1), (2), (3) and (4), and (e)(1) and (4)(I): Flight Training Candidates File System (JUSTICE/FTTTF-001). This exemption applies only to the extent that information is subject to exemption pursuant to 5 U.S.C. 552a(k)(1).

(b) Exemption from the particular subsections is justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures could reveal information that is classified in the interest of national security.

(2) From subsection (d)(1), (2), (3) and (4) because access to and amendment of certain portions of records within the system would tend to reveal or compromise information classified in the interest of national security.

(3) From subsection (e)(1) because it is often impossible to determine in advance if information obtained will be relevant for the purposes of conducting the risk analysis for flight training candidates.

(4) From subsection (e)(4)(I) to the extent that this subsection is interpreted to require more detail regarding the record sources in this system than have been published in the **Federal Register**. Should the subsection be so interpreted, exemption from this provision is necessary because greater specificity concerning the sources of these records could compromise national security.

Dated: June 5, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

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