

**List of Subjects in 40 CFR Part 180**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 28, 2011.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

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**BILLING CODE 6560-50-P**

**DEPARTMENT OF JUSTICE****41 CFR Part 128-1**

[Docket No. FBI 151]

RIN 1110-AA32

**Federal Bureau of Investigation Anti-Piracy Warning Seal Program**

**AGENCY:** Federal Bureau of Investigation (FBI), Justice.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Bureau of Investigation (FBI) is proposing a new regulation providing a general authorization for use of the FBI Anti-Piracy Warning Seal (APW Seal). The proposed rule will provide access to the APW Seal to all copyright holders, subject to specific conditions of use.

**DATES:** Written comments must be postmarked and electronic comments must be submitted on or before November 7, 2011. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

**ADDRESSES:** Comments may be mailed to the Access Integrity Unit, *Attn:* Lori L. Bokey c/o Federal Bureau of Investigation, CJIS Division, Module C-3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306. To ensure proper handling, please reference Docket No. FBI 151 on your correspondence. You may submit comments electronically or view an electronic version of this proposed rule at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** John C. Allender, FBI Office of the General Counsel, telephone number 202-324-8088.

**SUPPLEMENTARY INFORMATION:**

*Posting of Public Comments.* Please note that all comments received are considered part of the public record and made available for public inspection

online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name and address) voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment on this rule. Nevertheless, if you want to submit personal identifying information (such as your name and address) as part of your comment but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on <http://www.regulations.gov>.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the paragraph above entitled **FOR FURTHER INFORMATION CONTACT**.

The reason the Department is requesting electronic comments before Midnight Eastern Time at the end of the day the comment period closes is that the inter-agency Regulations.gov/Federal Docket Management System (FDMS), which receives electronic comments, terminates the public's ability to submit comments at that time. Commenters in time zones other than Eastern may want to take this fact into account so that their electronic comments can be received. The constraints imposed by the Regulations.gov/FDMS system do not apply to U.S. postal comments which, as stated above, will be considered as timely filed if they are postmarked before midnight on the day the comment period closes.

*Discussion.* The FBI's Anti-Piracy Warning (APW) Seal is a modified image of the FBI's Official Seal with the words "FBI Anti-Piracy Warning"

superimposed on it. On November 17, 2003, the Attorney General approved the APW Seal, then referred to as the "FBI Intellectual Property Rights Seal," as an official insignia of the FBI to be used by the FBI and FBI-authorized entities as part of a copyright anti-piracy awareness campaign. This approval brought the APW Seal within the protection of Title 18 U.S. Code, Section 701, which provides criminal sanctions for the unauthorized uses of such insignia.

The APW Seal was designed to graphically enhance the impact of language warning users of copyrighted media about the potential consequences of intellectual property crime, and the FBI's role in investigating such crime. It serves as a vivid and widely recognizable reminder of the FBI's authority and mission with respect to the protection of intellectual property rights.

Beginning in December 2003, the FBI implemented a pilot program in which the FBI entered into separate Memoranda of Understanding with each of five entertainment and software industry associations. Members of these associations were able to request approval to use the APW Seal from the association, and the association administered the process and record-keeping. Largely as a result of this program, the APW Seal and its anti-piracy message have reached a large segment of the public. Unfortunately, the pilot program also had the effect of excluding non-members of these five associations from being able to use the APW Seal on their works.

In order to enhance the availability, use, and effectiveness of the APW Seal on lawful, copyright-protected works, this rule proposes to replace the pilot program with a regulation governing the use of the APW Seal. The image of the APW Seal will be made available on the FBI's website, and it may be downloaded for use on eligible works as specified in the text of the proposed regulation below. There will be no fee associated with using the APW Seal. This regulation will be a significant improvement over the current program, which has tended to limit the use of the APW Seal and requires each user to enter into a written agreement governing the use.

**Regulatory Certifications***Regulatory Flexibility Act*

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and, by approving it, certifies that this rule will not have a

significant economic impact on a substantial number of small entities. Subject to the terms and conditions set forth, this rule merely allows copyright holders to use the APW Seal on copyrighted works to help detect and deter criminal violations of United States intellectual property laws by educating the public about the existence of these laws and the authority of the FBI to enforce them.

*Executive Orders 12866 and 13563—Regulatory Review*

This regulation has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review” section 1(b), Principles of Regulation and in accordance with Executive Order 13563 “Improving Regulation and Regulatory Review” section 1(b) General Principles of Regulation.

The Department of Justice has determined that this rule is not a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Further, both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits.

*Executive Order 12988—Civil Justice Reform*

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

*Executive Order 13132—Federalism*

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications

to warrant the preparation of a Federalism Assessment.

*Unfunded Mandates Reform Act of 1995*

This proposed rule will not result in the expenditure by State, local, and tribal governments (in the aggregate) or by the private sector of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not result in an annual effect on the U.S. economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets. Subject to the terms and conditions set forth, this rule merely allows copyright holders to use the APW Seal on copyrighted works to help detect and deter criminal violations of United States intellectual property laws by educating the public about the existence of these laws and the authority of the FBI to enforce them.

**List of Subjects in 41 CFR Part 128–1**

Government property, Seals and insignia, Copyright, Intellectual property.

Accordingly, for the reasons set forth in the preamble, part 128–1 of chapter 128 of Title 41 of the Code of Federal Regulations is amended as follows:

**PART 128–1—[AMENDED]**

1. The authority citation for part 128–1 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 40 U.S.C. 486(c), 41 CFR 101–1.108, and 28 CFR 0.75(j), unless otherwise noted.

2. A new § 128–1.5009 is added to read as follows:

**§ 128–1.5009 Authorization for Use of the Federal Bureau of Investigation Anti-Piracy Warning Seal.**

(a) *Purpose.* The Federal Bureau of Investigation (FBI) Anti-Piracy Warning Seal (“APW Seal”) is an official insignia of the FBI and the United States Department of Justice. The purpose of the APW Seal is to help detect and deter criminal violations of United States

intellectual property laws by educating the public about the existence of these laws and the authority of the FBI to enforce them.

(b) The “APW Seal” is a modified image of the Official FBI Seal with the words “FBI ANTI-PIRACY WARNING” displayed horizontally across its center in an enclosed border, whether rendered in color, black and white, outline, or otherwise.

(c) The APW Seal has been approved by the Attorney General as an official insignia of the FBI within the meaning of Title 18 United States Code, Section 701, which provides criminal sanctions for unauthorized uses of such insignia.

(d)(1) The regulations in this section authorize use of the APW Seal by copyright holders on copyrighted works including, but not limited to films, audio recordings, electronic media, software, books, photographs, etc., subject to the terms and conditions set forth in this paragraph.

(2) Use of the APW Seal or of the authorized warning language in a manner not authorized under this section may be punishable under Title 18 United States Code, Sections 701, 709, or other applicable law.

(e) Conditions regarding use of the APW Seal.

(1) The APW Seal may only be used on works subject to protection as intellectual property under U.S. Criminal Code provisions such as those in Title 18 U.S. Code, Sections 2319, 2319A, and 2319B.

(2) The APW Seal may only be used immediately adjacent to the authorized warning language. “Authorized warning language” refers to the language set forth in paragraph (e)(2)(A) of this section, or alternative language specifically authorized in writing for this purpose by the Director of the FBI or his or her designee and posted on the FBI’s official public Internet Web site (<http://www.fbi.gov>).

(A) “The unauthorized reproduction or distribution of a copyrighted work is illegal. Criminal copyright infringement, including infringement without monetary gain, is investigated by the FBI and is punishable by fines and federal imprisonment.”

(3) The APW Seal image must be obtained from the FBI’s official public Internet Web site (<http://www.fbi.gov>). The APW Seal image may not be animated or altered except that it may be rendered in outline, black and white, or grayscale.

(4) In programming or reproducing the APW Seal in or on a work, users are encouraged to employ industry-recognized copyright anti-circumvention or copy protection

techniques to discourage copying of the FBI APW Seal, except that such techniques need not be used if no other content or advertising programmed into the same work on the same media utilizes such copyright anti-circumvention or copy protection techniques.

(f) Prohibitions regarding use of the APW Seal.

(1) The APW Seal may not be used in a manner indicating FBI approval, authorization, or endorsement of any communication other than the authorized warning language. No other text or image that appears on the same screen, page, package, etc., as the APW Seal or authorized warning language shall reference, contradict, or be displayed in a manner that appears to be associated with, the APW Seal or authorized warning language, except as authorized in writing by the Director of the FBI or his or her designee and posted on the FBI's official public Internet Web site (<http://www.fbi.gov>).

(2) The APW Seal may not be used on any work whose production, sale, distribution by United States mail or in interstate commerce, or public presentation would violate the laws of the United States including, but not limited to, those protecting intellectual property and those prohibiting child pornography and obscenity.

(3) The APW Seal may not be forwarded or copied except as necessary to display it on an eligible work.

(4) The APW Seal shall not be used in any manner:

(A) Indicating that the FBI has approved, authorized, or endorsed any work, product, production, or private entity, including the work on which it appears;

(B) Indicating that the FBI has determined that a particular work or portion thereof is entitled to protection of the law; or,

(C) Indicating that any item or communication, except as provided herein, originated from, on behalf of, or in coordination with the FBI, whether for enforcement purposes, education, or otherwise.

Dated: August 29, 2011.

Lee J. Lofthus,

Assistant Attorney General for Administration.

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Part 10

[Docket No. OST-1996-1437]

RIN 2105-AD11

### Maintenance of and Access to Records Pertaining to Individuals; Proposed Exemption

**AGENCY:** Department of Transportation (DOT), Office of the Secretary.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** DOT proposes to add a system of records relating to suspicious activity reporting to the list of DOT Privacy Act Systems of Records that are exempt from one or more provisions of the Privacy Act. Public comment is invited.

**DATES:** Comments are due October 7, 2011. If no comments are received by the due date, the proposal will take effect as proposed and comments addressed accordingly. If comments are received by the due date, the proposal will still take effect as proposed and the comments addressed accordingly.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number [OST-1996-1437] by any of the following methods:

*Web site:* <http://www.regulations.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.

**ADDRESSES:** You may submit comments and reply comments using any one of the following methods:

Initial comments will be made available promptly electronically, online on <http://www.regulations.gov>, or for public inspection in room W12-140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. In order to allow sufficient opportunity for interested parties to prepare and submit any reply comments, late-filed initial comments will not be considered. Reply comments must address only matters raised in initial comments and must not be used to present new arguments, contentions, or factual material that is not responsive to the initial comments.

**ADDRESSES:** You may submit comments and reply comments identified by docket number OST-1996-1437 using any one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.
- *Fax:* 202-493-2251.
- *Mail:* Docket Management Facility (M-30), U.S. Department of

Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

• *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., ET Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

#### FOR FURTHER INFORMATION CONTACT:

Claire Barrett, Departmental Chief Privacy Officer, Office of the Chief Information Officer, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590 at (202) 366-1835.

**SUPPLEMENTAL INFORMATION:** It is DOT practice to identify a Privacy Act system of records that is exempt from one or more provisions of the Privacy Act (pursuant to 5 U.S.C. 552a(j) or (k)) both in the system notice published in the **Federal Register** for public comment and in an Appendix to DOT's regulations implementing the Privacy Act (49 CFR part 10, Appendix A). This amendment proposes exemption from certain portions of the Privacy Act of a proposed record system—the Suspicious Activity Reporting (SAR) database—to be used to track observed behavior reasonably indicative of pre-operational planning related to terrorism or other criminal activity. To aid in the law enforcement aspects of SAR, DOT proposes to treat it as it treats other law enforcement systems, by exempting it from the following provisions of the Privacy Act: (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules), to the extent that SAR contains investigatory material compiled for law enforcement purposes, in accordance with 5 U.S.C. 552a(k)(2).<sup>1</sup>

<sup>1</sup> (c)(3)—An agency making disclosures of information that is covered by the Privacy Act must keep an accounting of those disclosures and, under (c)(3), make that accounting available to the subject upon the subject's request. The exemption from (c)(3) means that, although we still have to maintain the accounting, we do not have to provide it to the subject.

(d)—One of the essential elements of the Privacy Act is the subject's right of access to information in any file covered by the Privacy Act that is retrieved by the subject's name or other personal identifier, such as social security number. In this way, the subject can test the validity of the information. The exemption from (d) means that we do not have to grant the subject access to the information.

(e)(1)—Another essential element of the Privacy Act is to limit the collection and maintenance of