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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2010-<XXXX>]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security

<Component Name> - <SORN Number> <Title of System> System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a <newly established or updated and reissued> system of records titled, “Department of Homeland Security/<Component Name> - <SORN Number> <Insert Title of System> System of Records” from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the “Department of Homeland Security/<Component Name> - <SORN Number> <Insert Title of System> System of Records” from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

EFFECTIVE DATE: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For general questions please contact:

<Component Privacy Officer or PPOC Name, (Phone), Privacy Officer or Privacy Point of Contact, Component, and Address Information.> For privacy issues please contact:

Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, D.C. 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) <Component Name (Acronym)> published a notice of proposed rulemaking in the Federal Register, <Insert Federal Register Cite, Date>, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the <DHS/Component Acronym> - <SORN Number> <Title of System> System of Records. The <DHS/Component Acronym> - <SORN Number> <Title of System> system of records notice was published concurrently in the Federal Register, <Insert Federal Register Cite, Date>, and comments were invited on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

Public Comments

DHS received <Insert Number of Comments> on the NPRM and <Insert Number of Comments> on the SORN.

NPRM

<Address NPRM comments here.>

SORN

<Address SORN comments here.>

<After consideration of public comments, the Department will implement the rulemaking as proposed.> OR <After consideration of public comments, the Department has decided to make the following changes to the SORN and NPRM.>

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5--DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. §101 et seq.; Pub. L. 107-296, 116 Stat. 2135; 5 U.S.C. §301.

Subpart A also issued under 5 U.S.C. §552. Subpart B also issued under 5 U.S.C. §552a.

2. Add at the end of Appendix C to Part 5, the following new paragraph “1”:

Appendix C to Part 5 – DHS Systems of Records Exempt From the Privacy

Act

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1. The DHS/<Component Name> - <SORN Number> <Insert Title of System> System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/<Component Name> - <SORN Number> <Insert Title of System> System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; national security and intelligence activities; and protection of the President of the

U.S. or other individuals pursuant to Section 3056 and 3056A of Title 18. The DHS/<Component Name> - <SORN Number> <Insert Title of System> System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. § 552a(c)(3) and (c)(4): (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (e)(12); (f); (g)(1); and (h) pursuant to 5 U.S.C. § 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. § 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) pursuant to 5 U.S.C. § 552a(k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6) and (k)(7).> Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

- (a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or

evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

- (b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.
- (c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.
- (d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would

alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

- (e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.
- (f) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.
- (g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.
- (h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and

other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

- (i) From subsection (e)(12) (Computer Matching) if the agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.
- (j) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.
- (k) From subsection (h) (Legal Guardians) the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

Dated:

Mary Ellen Callahan

Chief Privacy Officer,

Department of Homeland Security.