

Rules and Regulations

Federal Register

Vol. 81, No. 52

Thursday, March 17, 2016

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2016-0020]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/U.S. Customs and Border Protection-001 Import Information System, System of Records

AGENCY: Privacy Office, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is issuing a final rule to amend its regulations to exempt portions of newly established system of records titled, "Department of Homeland Security/U.S. Customs and Border Protection, DHS/CBP-001, Import Information System [IIS] System of Records" from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the DHS/CBP-001 IIS system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: This final rule is effective March 17, 2016.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: John Connors, (202) 344-1610, CBP Privacy Officer, Privacy and Diversity Office, 1300 Pennsylvania Ave. NW., Washington, DC 20229. For privacy questions, please contact: Karen L. Neuman, (202) 343-1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) U.S. Customs and Border Protection (CBP) published a notice of proposed rulemaking in the **Federal Register**, 80 FR 49175, August 17, 2015, 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. DHS issued the "Department of Homeland Security, U.S. Customs and Border Protection, DHS/CBP-001, Import Information System, System of Records" in the **Federal Register** at 80 FR 49256 on August 17, 2015, to provide notice to the public that DHS/CBP was consolidating, updating, and renaming as one SORN the information previously contained in two DHS SORNs titled, "Privacy Act of 1974; Systems of Records [Department of Homeland Security/U.S. Customs and Border Protection, DHS/CBP-001 Automated Commercial Environment/International Trade Data System (ACE/ITDS) System of Records]" (71 FR 3109, January 19, 2006) and "Privacy Act of 1974; U.S. Customs and Border Protection—015 Automated Commercial System, [ACS] System of Records" (73 FR 77759, December 19, 2008). DHS/CBP invited comments on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

Public Comments

DHS received no comments on the NPRM for the DHS/CBP-001 IIS System of Records and will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

For the reasons stated in the preamble, DHS amends 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: Pub. L. 107-296, 116 Stat. 2135; (6 U.S.C. 101 *et seq.*); 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. In appendix C to part 5, revise paragraph 26 to read as follows:

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

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26. DHS/CBP-001, Import Information System (IIS). A portion of the following system of records is exempt from 5 U.S.C. 552a(c)(3), (e)(8), and (g)(1) pursuant to 5 U.S.C. 552a(j)(2), and from 5 U.S.C. 552a(c)(3) pursuant to 5 U.S.C. 552a(k)(2). Further, no exemption shall be asserted with respect to information maintained in the system as it relates to data submitted by or on behalf of a person who travels to visit the United States and crosses the border, nor shall an exemption be asserted with respect to the resulting determination (approval or denial). After conferring with the appropriate component or agency, DHS may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement purposes of the systems from which the information is recompiled or in which it is contained. Exemptions from the above particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, when information in this system of records is may impede a law enforcement, intelligence activities and national security investigation:

(a) From subsection (c)(3) (Accounting for Disclosure) because making available to a record subject the accounting of disclosures from records concerning him or her would specifically reveal any investigative interest in the individual. Revealing this information could reasonably be expected to compromise ongoing efforts to investigate a violation of U.S. law, including investigations of a known or suspected terrorist, by notifying the record subject that he or 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.

(b) From subsection (e)(8) (Notice on Individuals) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on DHS and other agencies and could alert the subjects of counterterrorism or law enforcement investigations to the fact of those investigations when not previously known.

(c) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

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Dated: March 2, 2016.

Karen L. Neuman,
Chief Privacy Officer, Department of
Homeland Security.

[FR Doc. 2016-05962 Filed 3-16-16; 8:45 am]

BILLING CODE 9111-14-P