

proper context. The information 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.

Pursuant to exemptions 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f)(2) through (5); and (g). Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), and (e)(4)(H). 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 the 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 the 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 impossible administrative burden by requiring investigations to be continuously 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 an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G) and (H) (Agency Requirements), and (f)(2) through (5) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) and thereby would not require DHS to establish requirements or rules for records which are exempted from access.

(g) From subsection (e)(5) (Collection of Information) because in 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 (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' 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 (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: July 5, 2007.

Hugo Teufel III,
Chief Privacy Officer.

[FR Doc. E7-13576 Filed 7-13-07; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket Number DHS-2007-0047]

Privacy Act of 1974: Implementation of Exemptions; Redress and Response Records System

AGENCY: Privacy Office, Office of the Secretary, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a new system of records entitled the Redress and Response Records System from certain provisions of the Privacy Act. Specifically, the Department proposes to exempt portions of the Redress and Response Records System

from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective July 16, 2007.

FOR FURTHER INFORMATION CONTACT: Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528; telephone 703-235-0780; facsimile: 866-466-5370.

SUPPLEMENTARY INFORMATION:

Background

On January 18, 2007, DHS published notice of a new Privacy Act system of records entitled "Redress and Response Records System, DHS/ALL-005."¹ The DHS Redress and Response Records System maintains records for the DHS Traveler Redress Inquiry Program (TRIP), which is the traveler redress mechanism established by DHS in connection with the Rice-Chertoff Initiative, as well as in accordance with other policy and law. DHS TRIP will facilitate the public's ability to provide appropriate information to DHS for redress requests when they believe they have been denied entry, refused boarding for transportation, or identified for additional screening by DHS components or programs at their operational locations. Such locations include airports, seaports, train stations, and land borders. DHS TRIP will create a cohesive process to address these redress requests across DHS.

DHS TRIP will serve as a mechanism to share redress-related information and facilitate communication of redress results across DHS components. It will also facilitate efficient adjudication of redress requests. Once the information intake is complete, DHS TRIP will facilitate the transfer of or access to this information for the DHS components or other agencies that will address the redress request.

This system contains records pertaining to various categories of individuals, including: Individuals seeking redress or individuals on whose behalf redress is sought from DHS; individuals applying for redress on behalf of another individual; and DHS employees and contractors assigned to interact with the redress process.

No exemption shall be asserted with respect to information submitted by and collected from individuals or their representatives in the course of any redress process associated with this System of Records.

¹ 72 FR 2296 (January 18, 2007).

In conjunction with publication of the DHS Redress and Response Records System system of records notice, DHS initiated a rulemaking to exempt this system of records from a number of provisions of the Privacy Act,² because this system may contain records or information recompiled from or created from information contained in other systems of records, which are exempt from certain provisions of the Privacy Act. For these records or information only, in accordance with 5 U.S.C.

552a(j)(2), (k)(1), (k)(2), and (k)(5), DHS will also claim the original exemptions for these records or information from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f), and (g) of the Privacy Act of 1974, as amended, as necessary and appropriate to protect such information. Such exempt records or information may be law enforcement or national security investigation records, law enforcement activity and encounter records, or terrorist screening records.

Public Comments

DHS received four comments on the proposed rule and two on the DHS Redress and Response Records System system of records notice.

With regard to the comments received on the proposed rule, two of the four comments received via the docket did not address this particular proposed rule and appear to be mistaken submissions. One comment received did not specifically provide comments, but posed a number of questions. The remaining comment provided observations with regard to the DHS Traveler Redress Inquiry Program (DHS TRIP) and watchlists, and comments regarding the system of records notice and the proposed rule.

With regard to the two comments received on the system of records notice, one comment was a duplicate of the last noted comment on the proposed rule. The remaining comment was a general comment regarding the DHS TRIP program and did not address issues concerning the system or records notice or the proposed rule.

A discussion for response to the applicable comments received is below.

The comments received questioned the use of exemptions to provisions of the Privacy Act of 1974 as proposed. Generally, DHS proposed to use the exemptions in order to protect information relating to law enforcement investigations from disclosure to subjects of investigations and others who could interfere with investigatory and law enforcement activities.

Specifically, the exemptions are required to: Preclude subjects of investigations from frustrating the investigative process; avoid disclosure of investigative techniques; protect the identities and physical safety of confidential informants and of law enforcement personnel; ensure DHS's and other federal agencies' ability to obtain information from third parties and other sources; protect the privacy of third parties; and safeguard sensitive information.

Nevertheless, under the proposed rule, these exemptions will only be claimed for information coming into this system of records from systems that already claim exemptions on such information, and no exemptions would be claimed over information collected directly from an individual for input into this system of records. In fact, both the system of records notice and the proposed rule indicate that as part of the process for responding to requests, if information about an individual contained in this system of records comes from a system claiming exemptions, a review will occur to determine if the need to claim exemption from provisions of the Privacy Act with regard to a particular individual's information continues to be necessary. This approach to claiming exemptions will not only provide better access to information and directly resolve the concerns raised in the comments received, but it will also serve to enhance the redress process by ensuring the accuracy and relevancy of information in underlying systems of records.

One comment suggested that this provision is meaningless; however, due to the appropriate routine uses included in the system of records notice, because the routine uses regarding the sharing of information for law enforcement or counter-intelligence/counter-terrorism purposes work independently of whether or not information is disclosed back to the individual and therefore is not meaningless. As noted above, DHS seeks only to protect information from inappropriate disclosure that originates from systems already claiming exemptions; however, on a case-by-case basis, DHS will examine whether or not the exemptions continue to be necessary with regard to the particular individual's information.

Additionally, one comment suggests that the exemptions are unnecessary because, in the context of the information potentially held in this system of records, an individual will "know" that he or she is under investigation and therefore the underlying reason for needing the

exemptions is moot; however, an individual's mere belief that his or her perceived delay or inconvenience while traveling does not provide that individual with definitive knowledge of whether or not he or she was the subject of an investigation, even if that individual already sought resolution through the DHS TRIP.

The comments received questioned the general need for exempting some records of this system from the provisions of the Privacy Act. Because information in this system of records may be related to investigations that may arise out of DHS programs and activities, such information may pertain to national security and/or law enforcement matters. In such cases, allowing access to such information could alert subjects of such investigations of actual or potential criminal, civil, or regulatory violations, and could reveal, in an untimely manner, DHS's and other agencies' investigative interests in law enforcement efforts to preserve national security.

Additionally, DHS needs to have the ability to claim these exemptions in order to protect information relating to investigations from disclosure to subjects of investigations and others who could interfere with investigatory activities. Specifically, the exemptions are required to: Withhold information to the extent it identifies witnesses promised confidentiality as a condition of providing information during the course of an investigation; prevent subjects of investigations from frustrating the investigative process; avoid disclosure of investigative techniques; protect the privacy of third parties; ensure DHS' and other federal agencies' ability to obtain information from third parties and other sources; and safeguard sensitive information. The exemptions proposed here are standard law enforcement and national security exemptions exercised by federal law enforcement and intelligence agencies.

One comment asserts that this rule will create new exemptions for other systems of records. Nonetheless, this rule cannot exempt other existing systems of records from provisions of the Privacy Act. The purpose of this rule is to protect appropriately information coming into this system of records from systems that independently claim exemptions.

Further, the comment indicates that there is no "alternative venue" for individuals regarding their information; however, the DHS TRIP provides individuals with appropriate redress mechanisms in connection with travel-

² 72 FR 2209 (January 18, 2007).

related encounters or circumstances, including the correction or updating of an individual's information. Furthermore, when an individual requests access to his or her information, DHS will examine each request on a case-by-case basis, and, after conferring with the appropriate component or agency, may waive applicable exemptions in appropriate circumstances where it would not appear to interfere with or adversely affect the law enforcement or national security purposes of the systems from which the information is recompiled or in which it is contained.

Again, DHS shall not assert any exemption with respect to information submitted by and collected from the individual or the individual's representative in the course of any redress process associated with the underlying system of records.

Regulatory Requirements

A. Regulatory Impact Analyses

Changes to Federal regulations must undergo several analyses. In conducting these analyses, DHS has determined:

1. Executive Order 12866 Assessment

This rule is not a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review" (as amended). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB). Nevertheless, DHS has reviewed this rulemaking, and concluded that there will not be any significant economic impact.

2. Regulatory Flexibility Act Assessment

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), DHS certifies that this rule will not have a significant impact on a substantial number of small entities. The rule would impose no duties or obligations on small entities. Further, the exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the RFA.

3. International Trade Impact Assessment

This rulemaking will not constitute a barrier to international trade. The exemptions relate to criminal investigations and agency documentation and, therefore, do not create any new costs or barriers to trade.

4. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L.

104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This rulemaking will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DHS has determined that there are no current or new information collection requirements associated with this rule.

C. Executive Order 13132, Federalism

This action will not have a substantial direct effect 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, and therefore will not have federalism implications.

D. Environmental Analysis

DHS has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

E. Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). This rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 6 CFR Part 5

Sensitive information, Privacy, Freedom of information.

■ 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.

■ 2. At the end of Appendix C to Part 5, add a new section 3 to read as follows:

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

* * * * *

3. DHS–ALL–005, Redress and Response Records System. A portion of 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), (3), (4)(G) through (I), (5), and (8); (f), and (g); however, these exemptions apply only to the extent that information in this system records is recompiled or is created from information contained in other systems of records subject to such exemptions pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5). Further, no exemption shall be asserted with respect to information submitted by and collected from the individual or the individual's representative in the course of any redress process associated with this system of records. 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 or national security 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 records is recompiled or is created from information contained in other systems of records subject to exemptions for the following reasons:

(a) From subsection (c)(3) 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 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 (c)(4) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(c) From subsections (d)(1), (2), (3), and (4) because these provisions concern individual access to and amendment of certain records contained in this system, including law enforcement counterterrorism, investigatory, and intelligence records. Compliance with these provisions could alert the subject of an investigation of the fact and nature of the investigation, and/or the investigative interest of intelligence or law enforcement agencies; compromise sensitive information related to national security; interfere with the overall law enforcement process by leading to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; could identify a confidential source or disclose information which would constitute an unwarranted invasion of another's personal

privacy; reveal a sensitive investigative or intelligence technique; or constitute a potential danger to the health or safety of law enforcement personnel, confidential informants, and witnesses. Amendment of these records would interfere with ongoing counterterrorism, law enforcement, or intelligence investigations and analysis activities and impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised.

(d) From subsection (e)(1) because it is not always possible for DHS or other agencies to know in advance what information is relevant and necessary for it to complete an identity comparison between the individual seeking redress and a known or suspected terrorist. Also, because DHS and other agencies may not always know what information about an encounter with a known or suspected terrorist will be relevant to law enforcement for the purpose of conducting an operational response.

(e) From subsection (e)(2) because application of this provision could present a serious impediment to counterterrorism, law enforcement, or intelligence efforts in that it would put the subject of an investigation, study, or analysis on notice of that fact, thereby permitting the subject to engage in conduct designed to frustrate or impede that activity. The nature of counterterrorism, law enforcement, or intelligence investigations is such that vital information about an individual frequently can be obtained only 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.

(f) From subsection (e)(3), to the extent that this subsection is interpreted to require DHS to provide notice to an individual if DHS or another agency receives or collects information about that individual during an investigation or from a third party. Should the subsection be so interpreted, exemption from this provision is necessary to avoid impeding counterterrorism, law enforcement, or intelligence efforts by putting the subject of an investigation, study, or analysis on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that activity.

(g) From subsections (e)(4)(G), (H) and (I) (Agency Requirements) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(h) From subsection (e)(5) because many of the records in this system coming from other system of records are derived from other domestic and foreign agency record systems and therefore it is not possible for DHS to vouch for their compliance with this provision; however, the DHS has implemented internal quality assurance procedures to ensure that data used in the redress process is as thorough, accurate, and current as possible. In addition, in the collection of information for law enforcement, counterterrorism, and intelligence purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly

irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by (e)(5) would limit the ability of those agencies' trained investigators and intelligence analysts to exercise their judgment in conducting investigations and impede the development of intelligence necessary for effective law enforcement and counterterrorism efforts. The DHS has, however, implemented internal quality assurance procedures to ensure that the data used in the redress process is as thorough, accurate, and current as possible.

(i) From subsection (e)(8) 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, law enforcement, or intelligence investigations to the fact of those investigations when not previously known.

(j) From subsection (f) (Agency Rules) because portions of this system are exempt from the access and amendment provisions of subsection (d).

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

Dated: July 5, 2007.

Hugo Teufel III,

Chief Privacy Officer.

[FR Doc. E7-13564 Filed 7-13-07; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 26

[Docket ID OCC-2007-0006]

RIN 1557-AD01

FEDERAL RESERVE SYSTEM

12 CFR Part 212

[Regulation L; Docket No. R-1272]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 348

RIN 3064-AD13

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563f

[Docket ID OTS-2007-0013]

RIN 1550-AC09

Management Official Interlocks

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of

Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are amending their rules regarding management interlocks to implement section 610 of the Financial Services Regulatory Relief Act of 2006 (FSRRA) and to correct inaccurate cross-references.

DATES: Effective on July 16, 2007, the interim rule as published on January 11, 2007, (72 FR 1274) is adopted as a final rule without change.

FOR FURTHER INFORMATION CONTACT:

OCC: Heidi M. Thomas, Special Counsel, Legislative and Regulatory Activities Division, (202) 874-4688; Sue Auerbach, Counsel, Bank Activities and Structure Division, (202) 874-5300; or Jan Kalmus, Senior Licensing Analyst, Licensing Activities Division, (202) 874-4608, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Andrew S. Baer, Counsel, (202) 452-2246, or Jennifer L. Sutton, Attorney, (202) 452-3564, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For users of Telecommunication Device for the Deaf (TDD) only, contact (202) 263-4869.

FDIC: Patricia A. Colohan, Senior Examination Specialist, Division of Supervision and Consumer Protection, (202) 898-7283, or Mark Mellon, Counsel, Legal Division, (202) 898-3884.

OTS: David J. Bristol, Senior Attorney, (202) 906-6461, Business Transactions Division, Office of Thrift Supervision, or Donald W. Dwyer, Director of Applications, Examinations and Supervision—Operations, (202) 906-6414, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The Depository Institution Management Interlocks Act (12 U.S.C. 3201 *et seq.*) (Interlocks Act or Act) prohibits individuals from simultaneously serving as a