

personal residence and, if not timely reinvested, the steps that will or have been taken to comply with paragraph (d)(1)(i) of this section, if applicable; and

(D) If the personal residence ceases to be used, or held for use, as a personal residence by the surviving spouse during the taxable year (or during the calendar year if the QDOT does not have a taxable year), the written statement must describe the steps that will or have been taken to comply with paragraph (d)(1)(i) of this section, if applicable.

(4) *Request for alternate arrangement or waiver.* If the Commissioner provides guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) pursuant to which a testator, executor, or the U.S. Trustee may adopt an alternate plan or arrangement to assure collection of the section 2056A estate tax, and if the alternate plan or arrangement is adopted in accordance with the published guidance, then the QDOT will be treated, subject to paragraph (d)(1)(v) of this section, as meeting the requirements of paragraph (d)(1) of this section. Until this guidance is published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), taxpayers may submit a request for a private letter ruling for the approval of an alternate plan or arrangement proposed to be adopted to assure collection of the section 2056A estate tax in lieu of the requirements prescribed in this paragraph (d)(4).

(5) *Adjustment of dollar threshold and exclusion.* The Commissioner may increase or decrease the dollar amounts referred to in paragraph (d)(1)(i), (ii) or (iv) of this section in accordance with guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(6) *Effective date and special rules.* (i) This paragraph (d) is effective for estates of decedents dying after February 19, 1996.

(ii) *Special rule in the case of incompetency.* A revocable trust or a trust created under the terms of a will is deemed to meet the governing instrument requirements of this paragraph (d) notwithstanding that the requirements are not contained in the governing instrument (or otherwise incorporated by reference) if the trust instrument (or will) was executed on or before November 20, 1995, and—

(A) The testator or settlor dies after February 19, 1996;

(B) The testator or settlor is, on November 20, 1995, and at all times thereafter, under a legal disability to amend the will or trust instrument;

(C) The will or trust instrument does not provide the executor or the U.S. Trustee with a power to amend the instrument in order to meet the requirements of section 2056A; and

(D) The U.S. Trustee provides a written statement with the federal estate tax return (Form 706 or 706NA) that the trust is being administered (or will be administered) so as to be in actual compliance with the requirements of this paragraph (d) and will continue to be administered so as to be in actual compliance with this paragraph (d) for the duration of the trust. This statement must be binding on all successor trustees.

(iii) *Special rule in the case of certain irrevocable trusts.* An irrevocable trust is deemed to meet the governing instrument requirements of this paragraph (d) notwithstanding that the requirements are not contained in the governing instrument (or otherwise incorporated by reference) if the trust was executed on or before November 20, 1995, and:

(A) The settlor dies after February 19, 1996;

(B) The trust instrument does not provide the U.S. Trustee with a power to amend the trust instrument in order to meet the requirements of section 2056A; and

(C) The U.S. Trustee provides a written statement with the decedent's federal estate tax return (Form 706 or 706NA) that the trust is being administered in actual compliance with the requirements of this paragraph (d) and will continue to be administered so as to be in actual compliance with this paragraph (d) for the duration of the trust. This statement must be binding on all successor trustees.

§ 20.2056A-2T [Removed]

Par. 3a. Section 20.2056A-2T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (c) is amended by:

1. Removing the following entry from the table:

§ 602.101 OMB Control numbers.

* * * * *
(c) * * *

| CFR part or section where identified and described | Current OMB control No. |
|--|-------------------------|
| * * * | * * * |
| 20.2056A-2T(d) | 1545-1443 |
| * * * | * * * |

2. Adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *
(c) * * *

| CFR part or section where identified and described | Current OMB control No. |
|--|-------------------------|
| * * * | * * * |
| 20.2056A-2 | 1545-1443 |
| * * * | * * * |

Approved: September 19, 1996.
Margaret Milner Richardson,
Commissioner of Internal Revenue.
Donald C. Lubick,
Acting Assistant Secretary of the Treasury.
[FR Doc. 96-29827 Filed 11-27-96; 8:45 am]
BILLING CODE 4830-01-U

Customs Service

31 CFR Part 1

Privacy Act of 1974, as Amended; Exemption of System of Records From Certain Provisions

AGENCY: Customs Service, Treasury.
ACTION: Final Rule; determination.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, Customs has determined to exempt a system of records, the Pacific Basin Reporting Network (Treasury/ Customs .171) from certain provisions of the Privacy Act. The exemptions are intended to increase the value of the system of records for law enforcement purposes, to comply with legal prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records.

EFFECTIVE DATE: November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Marvin M. Amernick, Acting Chief, Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service, (202) 482-6970.

SUPPLEMENTARY INFORMATION: As a law enforcement agency, the U.S. Customs Service has a wide variety of

investigatory responsibilities including, for example, investigations of smuggling, narcotics trafficking, the importation of prohibited or restricted merchandise, violations of the Neutrality Act, investigations of organized crime activities, commercial fraud investigations and many others. Among the activities in which Customs is involved is the clearance of aircraft and vessels and their crews into the customs territory of the United States. The purpose of the Pacific Basin Reporting Network system of records is to collect and store information with respect to potential violations of Customs and other domestic and international laws and where appropriate to disclose this information to other law enforcement agencies which have an interest in this information. Authority for the system is provided by 5 U.S.C. 301; 19 U.S.C. 1433, 1459; 19 U.S.C. 1644(a); Treasury Department Order No. 165, Revised, as amended.

Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury published in the Federal Register of November 9, 1995 (60 FR 56648), all of its systems of records including the Pacific Basin Reporting Network—Treasury/Customs .171. This system of records assists Customs in the proper performance of its functions under the statutes and Treasury Department Order No. 165 cited above.

Under 5 U.S.C. 552a(j)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of: (a) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release and parole and probation status; (b) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (c) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

In addition, under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is investigatory material compiled for law enforcement purposes other than material within the scope of subsection (j)(2) set forth above.

Accordingly, pursuant to the authority contained in section 1.23(c) of the regulations of the Department of the Treasury (31 CFR 1.23(c)), the Commissioner of Customs has determined to exempt the Pacific Basin Reporting Network from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(2) and 31 CFR 1.23(c). The proposed rule announcing the determination was published in the Federal Register on November 19, 1992, at 57 FR 54539. No comments were received in response to the proposed rule. The specific provisions and the reasons for exempting the system of records from each specific provision of 5 U.S.C. 552a are set forth below as required by 5 U.S.C. 552a(j)(2) and (k)(2).

General Exemption Under 5 U.S.C. 552a(j)(2)

Pursuant to 5 U.S.C. 552a(j)(2), the Commissioner of Customs exempts the Pacific Basin Reporting Network from the following provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), (3), (4)(G), (H) and (I); (e)(5) and (8); (f) and (g).

Specific Exemptions Under 5 U.S.C. 552a(k)(2)

To the extent the exemption under 5 U.S.C. 552a(j) does not apply to the Pacific Basin Reporting Network, the Commissioner of Customs exempts the Pacific Basin Reporting Network from the following provisions of 5 U.S.C. 552a pursuant to 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3); (d)(1), (2), (3) and (4); (e)(1), (e)(4)(G), (H) and (I); and (f).

Reasons for Exemption Under 5 U.S.C. 552a(j)(2) and (k)(2)

Although more specific explanations are contained in 31 CFR 1.36 under the heading United States Customs Service, the following explanations for exemptions will be helpful.

(1) Pursuant to 5 U.S.C. 552a(e)(4)(G) and (f)(1), individuals may inquire whether a system of records contains records pertaining to them. Application of these provisions to the Pacific Basin Reporting Network would give individuals an opportunity to learn whether they have been identified as either suspects or subjects of investigation. As further described in

the following subsection, access to such knowledge would impair the ability of the Office of Investigations to carry out its mission, since individuals could take steps to avoid detection, inform associates that an investigation is in progress: learn whether they are only suspects or identified as law violators; begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or destroy evidence needed to prove the violation.

(2) Pursuant to 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5), individuals may gain access to records pertaining to them. The application of these provisions to the Pacific Basin Reporting Network would compromise the ability of the Office of Investigations to provide useful tactical and strategic information to law enforcement agencies. Permitting access to records contained in the Pacific Basin Reporting Network would provide individuals with information concerning the nature of any current investigations concerning them and would enable them to avoid detection or apprehension. By discovering the collection of facts which would form the basis of their arrest, by enabling them to destroy or alter evidence of criminal conduct that would form the basis for their arrest, and by learning that criminal investigators had reason to believe that a crime was about to be committed, they could delay the commission of the crime or change the scene of the crime to a location which might not be under surveillance.

Permitting access to either on-going or closed investigations files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning crimes to structure their operations in such a way as to avoid detection or apprehension and thereby neutralize law enforcement officers' established investigative tools and procedures.

Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informers and the nature of the information supplied and thereby endanger the physical safety of sources of information by exposing them to reprisals for having provided the information. Confidential sources and informers might refuse to provide criminal investigators with valuable information if they could not be secure in the knowledge that their identities would not be revealed through disclosure of either their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the ability of the Office

of Investigations to carry out its mandate.

Furthermore, providing access to records contained in the Pacific Basin Reporting Network could reveal the identities of undercover law enforcement officials who compiled information regarding the individual's criminal activities and thereby endanger the physical safety of those undercover officers or their families by exposing them to possible reprisals.

By compromising the law enforcement value of the Pacific Basin Reporting Network for the reasons outlined above, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with the Office of Investigations and thus would restrict the Office's access to information necessary to accomplish its mission most effectively.

(3) Pursuant to 5 U.S.C. 552a(d)(2), (3), and (4), (e)(4)(H), and (f)(4) an individual may request amendment of a record pertaining to him or her and the agency must either amend the record, or note the disputed portion of the record and provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual's having access to his or her records, and since these rules exempt the Pacific Basin Reporting Network from provisions of 5 U.S.C. 552a, as amended, relating to access to records, for the reasons set out in (2) above, these provisions should not apply to the Pacific Basin Reporting Network.

(4) Under 5 U.S.C. 552a(c)(4) an agency must inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to him or her, and since these rules exempt the Pacific Basin Reporting Network from the provisions of 5 U.S.C. 552a relating to access to and amendment of records, for the reasons set out in paragraph (3) above, this provision ought not apply to the Pacific Basin Reporting Network.

(5) Under 5 U.S.C. 552a(c)(3) an agency is required to make an accounting of disclosure of records available to the individual named in the record upon his or her request. The

accounting must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

The application of this provision would impair the ability of enforcement agencies outside the Department of the Treasury to make effective use of information provided by the Pacific Basin Reporting Network. Making an accounting of disclosure available to the subjects of an investigation would alert those individuals to the fact that another agency is conducting an investigation into their criminal activities and could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and dates on which that investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for arrest.

Moreover, providing accounting to the subjects of investigations would alert them to the fact that the Pacific Basin Reporting Network has information regarding their criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of the Office of Investigation's information gathering and analysis systems and permit violators to take steps to avoid detection or apprehension.

(6) Under 5 U.S.C. 552a(e)(4)(1) an agency is required to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the Pacific Basin Reporting Network could compromise its ability to provide useful information to law enforcement agencies, since revealing sources for the information could disclose investigative techniques and procedures, result in threats or reprisals against informers by the subjects of investigations, and cause informers to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(7) 5 U.S.C. 552a(e)(1) requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term "maintain" as defined in 5 U.S.C. 552a(a)(3) includes "collect" and "disseminate." At the time that information is collected by the Customs Service, there is often insufficient time

to determine whether the information is relevant and necessary to accomplish a purpose of the Customs Service; in many cases information collected may not be immediately susceptible to a determination of whether the information is relevant and necessary, particularly in the early stages of investigation, and in many cases information which initially appears to be irrelevant and unnecessary may, upon further evaluation or upon continuation of the investigation, prove to have particular relevance to an enforcement program of the Customs Service. Further, not all violations of law discovered during a Customs Service criminal investigation fall within the investigative jurisdiction of the Customs Service; in order to promote effective law enforcement, it often becomes necessary and desirable to disseminate information pertaining to such violations to other law enforcement agencies which have jurisdiction over the offense to which the information relates. The Customs Service should not be placed in a position of having to ignore information relating to violations of law not within its jurisdiction where that information comes to the attention of the Customs Service through the conduct of a lawful Customs Service investigation. The Customs Service therefore believes that it is appropriate to exempt the above-listed systems of records from the provisions of 5 U.S.C. 552a(e)(1).

(8) Under 5 U.S.C. 552a(e)(2) an agency is requested to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision to the Pacific Basin Reporting Network would impair the ability to collate, analyze, and disseminate investigative intelligence and enforcement information.

Most information collected about an individual under criminal investigation is obtained from third parties, such as witnesses and informers. It is usually not feasible to rely upon the subject of the investigation as a source for information regarding his criminal activities. An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension. In certain instances, the subject of a criminal investigation is not required to supply

information to criminal investigators as a matter of legal duty. During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify information already obtained.

(9) Pursuant to 5 U.S.C. 552a(e)(3) an agency must inform each individual whom it asks to supply information, on the form that it uses to collect the information or on a separate form that the individual can retain, the agency's authority for soliciting the information; whether the disclosure of information is voluntary or mandatory; the principal purposes for which the agency will use the information and the effects on the individual of not providing all or part of the information. The Pacific Basin Reporting Network should be exempted from this provision to avoid impairing the ability of the Office of Investigation to collect and collate investigative intelligence and enforcement data.

Confidential sources or undercover law enforcement officers often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation or his or her associates know that a criminal investigation is in progress. If it became known that the undercover officer was assisting in a criminal investigation, the officer's physical safety could be endangered through reprisal, and that officer may not be able to continue working on the investigation.

Further, individuals for personal reasons often would feel inhibited in talking to a person representing a criminal law enforcement agency but would be willing to talk to a confidential source or undercover officer whom they believe not to be involved in law enforcement activities. Providing a confidential source of information with written evidence that he or she was a source, as required by this provision, could increase the likelihood that the source of information would be subject to retaliation by the subject of the investigation. Further, application of the provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, where further investigation reveals that the subject was not involved in any criminal activity.

(10) Pursuant to 5 U.S.C. 552a(e)(5) an agency must maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

Since 5 U.S.C. 552a(a)(3) defines "maintain" to include "collect" and "disseminate", application of this provision to the Pacific Basin Reporting Network would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. Similarly, application of this provision would seriously restrict the ability of Customs to disseminate information from the Pacific Basin Reporting Network pertaining to a possible violation of law to law enforcement and regulatory agencies. In collecting information during a criminal investigation, it is often impossible or unfeasible to determine accuracy, relevance, timeliness or completeness prior to collection of the information.

Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collected and analyzed with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting results obtained during criminal investigations.

(11) Under 5 U.S.C. 552a(e)(8) an agency must make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The Pacific Basin Reporting Network should be exempted from this provision to avoid revealing investigative techniques and procedures outlined in those records and to prevent revelation of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(12) Under 5 U.S.C. 552a(g) civil remedies are provided to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual.

The Pacific Basin Reporting Network is exempted from this provision to the extent that the civil remedies may relate to this provision of 5 U.S.C. 552a from which these rules exempt the Pacific Basin Reporting Network, since there are civil remedies for failure to comply

with provisions from which the Pacific Basin Reporting Network is exempted. Exemption from this provision will also protect the Pacific Basin Reporting Network from baseless civil court actions that might hamper its ability to collate, analyze, and disseminate investigative intelligence and law enforcement data.

A conforming amendment to 31 CFR 1.36 will be published at a later date in the Federal Register by the Department of the Treasury.

George J. Weise,
Commissioner of Customs.
Approved:

Dated: November 14, 1996.

John P. Simpson,
Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

Dated: November 18, 1996.

Alex Rodriguez,
Deputy Assistant Secretary (Administration).

[FR Doc. 96-30280 Filed 11-27-96; 8:45 am]

BILLING CODE 4820-02-F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 69

School Boards for Department of Defense Domestic Dependent Elementary and Secondary Schools

AGENCY: Office of the Secretary, DoD.
ACTION: Final rule.

SUMMARY: This final rule provides guidance to the Department of Defense (DoD) Domestic Dependent Elementary and Secondary Schools (DDESS) implementing the National Defense Authorization Act which provides for elected School Boards in DoD DDESS. Pursuant to this legislation, school boards in DoD DDESS may participate in the development and oversight of fiscal, personnel, and educational policies, procedures, and programs for these schools. This final rule provides guidance outlining the responsibilities, operating procedures, composition, electorate and election procedures for the DoD DDESS school boards.

EFFECTIVE DATE: November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Hector O. Nevarez, (703) 696-4373.

SUPPLEMENTARY INFORMATION: Because of the importance of providing guidance for elected school boards, this final rule is being issued. The Office of Management and Budget has determined that this is a significant regulatory action. However, since this