

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 subsections (e)(4)(G) and (e)(4)(H) (Agency Requirements) because portions of this system are exempt from the individual access provisions of subsection (d) which exempts providing access because it could alert a subject to the nature or existence of an investigation, and thus there could be no procedures for that particular data. Procedures do exist for access for those portions of the system that are not exempted.

(e) From subsection (e)(4)(I) (Agency Requirements) because providing such source information would impede law enforcement or intelligence by compromising the nature or existence of a confidential investigation.

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

Dated: August 20, 2009.

**Mary Ellen Callahan,**

*Chief Privacy Officer, Department of Homeland Security.*

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**BILLING CODE 9111-97-P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

#### 6 CFR Part 5

[Docket No. DHS-2009-0075]

### Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Coast Guard—028 Family Advocacy Program 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 Department of Homeland Security U.S. Coast Guard system of records entitled the “Department of Homeland Security U.S. Coast Guard—028 Family Advocacy Program System of Records” from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security U.S. Coast Guard—028 Family Advocacy Program 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 August 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** For general questions please contact: David Roberts (202-475-3521), Privacy Officer, United States Coast Guard. For privacy issues contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 77553, December 19, 2008, 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/U.S. Coast Guard (USCG)—028 Family Advocacy Program system. The DHS/USCG—028 Family Advocacy Program system of records notice was published concurrently in the **Federal Register**, 73 FR 77782, December 19, 2008. Comments were invited on both the notice of proposed rulemaking and the system of records notice. No comments were received.

## Public Comments

DHS received no comments on the notice of proposed rulemaking or the system of records notice. DHS 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:** 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 “33”:

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

\* \* \* \* \*

33. The DHS/USCG—028 Family Advocacy Case Records system of records consists of electronic and paper records and will be used by DHS and its components. The DHS/USCG—028 Family Advocacy Case 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. The DHS/USCG—028 Family Advocacy Case 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 the 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)(2). 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) (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 subsections (e)(4)(G), (H), and (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.

Dated: August 20, 2009.

**Mary Ellen Callahan,**  
Chief Privacy Officer, Department of  
Homeland Security.

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## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

#### 6 CFR Part 5

[Docket No. DHS-2009-0076]

### Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security; U.S. Coast Guard—029 Notice of Arrival and Departure System

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 Department of Homeland Security U.S. Coast Guard system of records entitled the “Department of Homeland Security U.S. Coast Guard—029 Notice of Arrival and Departure System of Records” from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security U.S. Coast Guard—029 Notice of Arrival and Departure 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 September 30, 2009.

**FOR FURTHER INFORMATION CONTACT:** For general questions please contact: David Roberts (202-475-3521), Privacy Officer, United States Coast Guard. For privacy issues contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 75373, December 11, 2008, 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/U.S. Coast Guard (USCG)—029 Notice of Arrival and Departure system. The DHS/USCG—029 Notice of Arrival and Departure system of records notice was published concurrently in the **Federal Register**, 73 FR 75442, December 11, 2008, and comments were invited on both the notice of proposed rulemaking and system of records notice. No comments were received.

##### Public Comments

DHS received no comments on the notice of proposed rulemaking or system of records notice. DHS will implement the rulemaking as proposed.

##### List of Subjects in 6 CFR Part 5

Privacy, Freedom of information.

■ For the reasons stated in the preamble, DHS amends 6 CFR chapter I as follows:

## PART 5—DISCLOSURE OF RECORDS AND INFORMATION

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

**Authority:** Public Law 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. At the end of Appendix C to Part 5, add the following new paragraph “34”:

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

\* \* \* \* \*

34. The DHS/USCG—029 Notice of Arrival and Departure system consists of electronic and paper records and will be used by DHS and its components. The DHS/USCG—029 Notice of Arrival and Departure system 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 thereunder. The DHS/USCG—029 Notice of Arrival and Departure system 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, as well as private corporate or other entities. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f), and (g) 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 the 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)(2). However, these exemptions apply only to the extent that information in this system of records is recompiled or is created from information contained in other systems 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 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 recompiled or is created from information contained in other systems of records subject to exemptions 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