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## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

#### 6 CFR Part 5

[Docket No. DHS-2009-0070]

### Privacy Act of 1974: Implementation of Exemptions; U.S. Immigration and Customs Enforcement—006 Intelligence Records 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 U.S. Immigration and Customs Enforcement system of records entitled the “U.S. Immigration and Customs Enforcement—006 Intelligence Records System” from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Immigration and Customs Enforcement Intelligence 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 March 16, 2010.

**FOR FURTHER INFORMATION CONTACT:** For general questions please contact Lyn Rahilly (202-732-3300), Privacy Officer, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Washington, DC 20536, *e-mail:* ICEPrivacy@dhs.gov. For privacy issues please 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 74633, December 9, 2008, proposing to exempt portions of U.S. Immigration and Customs Enforcement—006 Intelligence Records system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The Immigration and Customs Enforcement Intelligence Records system of records notice was published concurrently in the **Federal Register**, 73 FR 74735, December 9, 2008, and comments were invited on both the notice of proposed rulemaking and system of records notice. The notice of proposed rulemaking did not receive public comments. The system of records notice received one public comment.

#### Public Comments

The notice of proposed rulemaking did not receive public comments. The system of records notice received one public comment. The public comment was an expression of an individual’s personal opinions and unrelated to 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:** 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. At the end of Appendix C to Part 5, add the following new paragraph 50 to read as follows:

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

\* \* \* \* \*

50. The Immigration and Customs Enforcement (ICE)—006 Intelligence Records System (IIRS) consists of electronic and paper records and will be used by the Department of Homeland Security (DHS). IIRS 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; and national security and intelligence activities. IIRS contains information that is collected by other federal and foreign government agencies and may contain personally identifiable information. Pursuant to exemption 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), 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), (e)(4)(H), and (f). 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 investigations by: revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G) and (H) (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 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 relating to individuals' rights to access and amend their records contained in the system. Therefore

DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

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

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA-2009-1090; Directorate Identifier 2009-SW-31-AD; Amendment 39-16227; AD 2010-06-03]**

**RIN 2120-AA64**

#### **Airworthiness Directives; Eurocopter France Model AS355E, AS355F, AS355F1, AS355F2, and AS355N Helicopters**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters. This AD results from a mandatory continuing airworthiness information (MCAI) AD issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI AD states that a metallurgical non-conformity was discovered on a flange of the forward shaft section of the tail rotor drive shaft (drive shaft). The MCAI AD also states that stress analysis has shown that this non-conformity can significantly reduce the strength of the drive shaft and thereby its service life. The AD actions are intended to remove non-conforming drive shafts from service and prevent failure of the drive shaft and subsequent loss of control of the helicopter.

**DATES:** This AD becomes effective on April 20, 2010.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://regulations.gov> or in person at the Docket Operations office, U.S. Department of Transportation, M-30, West Building Ground Floor, Room

W12-140, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053-4005, telephone (800) 232-0323, fax (972) 641-3710, or at <http://www.eurocopter.com>.

**EXAMINING THE AD DOCKET:** The AD docket contains the Notice of proposed rulemaking (NPRM), the economic evaluation, any comments received, and other information. The street address and operating hours for the Docket Operations office (telephone (800) 647-5527) are in the **ADDRESSES** section of this AD. Comments will be available in the AD docket shortly after they are received.

**FOR FURTHER INFORMATION CONTACT:** Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222-5123; fax (817) 222-5961.

#### **SUPPLEMENTARY INFORMATION:**

##### **Discussion**

We issued an NPRM on November 23, 2009 to amend 14 CFR part 39 to include an AD that would apply to the Eurocopter Model AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters. That NPRM was published in the **Federal Register** on December 10, 2009 (74 FR 65492). That NPRM proposed to remove non-conforming drive shafts from service to prevent failure of the drive shaft and subsequent loss of control of the helicopter. You may obtain further information by examining the MCAI AD and any related service information in the AD docket.

##### **Comments**

By publishing the NPRM, we gave the public an opportunity to participate in developing this AD. However, we received no comment on the NPRM or on our determination of the cost to the public. Therefore, based on our review and evaluation of the available data, we have determined that air safety and the public interest require adopting the AD as proposed.

##### **Relevant Service Information**

Eurocopter has issued Alert Service Bulletin No. 01.00.51, Revision 1, dated February 9, 2006. The actions described in the MCAI AD are intended to correct the same unsafe condition as that identified in the service information.