

# Proposed Rules

Federal Register

Vol. 75, No. 219

Monday, November 15, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

#### 6 CFR Part 5

[Docket No. DHS-2010-0085]

### Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security National Protection and Programs Directorate—001 National Infrastructure Coordinating Center Records System of Records

**AGENCY:** Privacy Office, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the Department of Homeland Security National Protection and Programs Directorate—001 National Infrastructure Coordinating Center Records System of Records and this proposed rulemaking. In this proposed rulemaking, the Department proposes 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.

**DATES:** Comments must be received on or before December 15, 2010.

**ADDRESSES:** You may submit comments, identified by docket number DHS-2010-0085, by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 703-483-2999.

- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

*Instructions:* All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to <http://www.regulations.gov>.

[www.regulations.gov](http://www.regulations.gov), including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For general questions please contact: Emily Andrew (703-235-2182), Privacy Officer, National Protection and Programs Directorate, Department of Homeland Security, Washington, DC 20528. For privacy issues please contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

#### SUPPLEMENTARY INFORMATION:

##### Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) National Protection and Programs Directorate (NPPD) proposes to establish a new DHS system of records titled, “DHS/NPPD—001 National Infrastructure Coordinating Center (NICC) Records System of Records.”

This system of records will allow DHS/NPPD, including the NICC (an extension of the National Operations Center (NOC)) to collect, plan, coordinate, report, analyze, and fuse infrastructure information related to all-threats and all-hazards, law enforcement activities, intelligence activities, man-made disasters and acts of terrorism, natural disasters, and other information collected or received from Federal, State, local, tribal, and territorial agencies and organizations; foreign governments and international organizations; domestic security and emergency management officials; and private sector entities or individuals into the NICC.

The NICC provides the mission and capabilities to assess the operational status of the Nation’s 18 critical infrastructures and key resources (CIKR) sectors during normal operations and incident management activities, supports information sharing with National Infrastructure Protection Plan (NIPP) partners, and owners and operators of critical infrastructure facilities, and facilitates information sharing across and between the 18 national sectors.

The NICC is both an operational component of the NPPD Office of

Infrastructure Protection (IP) and a watch operations element of the DHS NOC. The NICC operates 24 hours a day, 7 days a week, 365 days a year to facilitate coordination and information sharing with the CIKR sectors. The NICC produces consolidated CIKR reports for incorporation into situational awareness reports and for inclusion into the common operating picture.

DHS is authorized to implement this program primarily through the Homeland Security Act of 2002 as codified within 6 U.S.C. 321d(b)(1), 515. This system has an effect on individual privacy that is balanced by the need to collect, plan, coordinate, report, analyze, and fuse CIKR information coming into and going out of the NICC as well as the NOC. Routine uses contained in this notice include sharing with the Department of Justice (DOJ) for legal advice and representation; to a congressional office at the request of an individual; to the National Archives and Records Administration (NARA) for records management; to contractors in support of their contract assignment to DHS; to appropriate Federal, State, tribal, local, international, foreign agency, or other appropriate entity including the private sector in their role aiding the NICC in their mission; to agencies, organizations or individuals for the purpose of an audit; to agencies, entities, or persons during a security or information compromise or breach; to an agency, organization, or individual when there could potentially be a risk of harm to an individual; and to the news media in the interest of the public. A review of this system is being conducted to determine if the system of records collects information under the Paperwork Reduction Act (PRA).

Based on the information contained within this system of records, the NICC develops reports that are shared both within DHS and with the CIKR sectors. The NICC creates two reports, one with PII and one without. The one without PII is what is shared broadly with the CIKR sectors as well as the State and local fusion centers. Consistent with DHS’s information sharing mission, information contained in the DHS/NPPD—001 NICC Records System of Records may be shared with other DHS components, as well as appropriate Federal, State, local, tribal, territorial, foreign, or international government agencies. This sharing will only take

place after DHS determines that the receiving component or agency has a verifiable need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

The information within this system that meets the functional standard of the National Suspicious Activity Reporting Initiative will be placed into the DHS/ALL—031 Information Sharing Environment Suspicious Activity Reporting Initiative (September 10, 2010, 75 FR 55335).

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

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend 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 “52”:

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

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52. The DHS/NPPD—001NICC Records System of Records consists of electronic and paper records and will be used by DHS/NPPD/NICC. The DHS/NPPD—001NICC Records System of 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 thereunder; national security and intelligence activities. The DHS/NPPD—001NICC Records System of 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 is exempting this system from the following provisions of the Privacy Act, subject to 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)(1), (k)(2), and (k)(3). 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 that 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 that 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 unreasonable administrative burden by requiring investigations to be continually 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), (e)(4)(H), and (e)(4)(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: November 5, 2010.

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

[FR Doc. 2010–28569 Filed 11–12–10; 8:45 am]

**BILLING CODE 9110–9A–P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

#### 6 CFR Part 5

[Docket No. DHS–2010–0053]

#### Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security Office of Operations Coordination and Planning—003 Operations Collection, Planning, Coordination, Reporting, Analysis, and Fusion System of Records

**AGENCY:** Privacy Office, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the Department of Homeland Security Office of Operations Coordination and Planning—003 Operations Collection, Planning, Coordination, Reporting, Analysis, and Fusion System of Records and this proposed rulemaking. In this proposed rulemaking, the Department proposes 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.

**DATES:** Comments must be received on or before December 15, 2010.

**ADDRESSES:** You may submit comments, identified by docket number DHS–2010–0053, by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

*Instructions:* All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For general questions please contact: Michael Page (202–357–7626), Privacy Point of Contact, Office of Operations Coordination and Planning, Department of Homeland Security, Washington, DC 20528. For privacy issues please contact: Mary Ellen Callahan (703–235–