

# Proposed Rules

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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 ENERGY

### 5 CFR Chapters XXIII and XXIV

### 10 CFR Chapters II, III, and X

### 18 CFR Chapter I

### 41 CFR Chapter 109

### 48 CFR Chapter 9

#### Reducing Regulatory Burden; Retrospective Review Under E.O. 13563

**AGENCY:** Office of the General Counsel, Department of Energy.

**ACTION:** Request for information; extension of public comment period.

**SUMMARY:** On February 3, 2011, the Department of Energy (DOE) published a request for information (RFI) issued as part of its implementation of Executive Order 13563, "Improving Regulation and Regulatory Review." This document announces that the period for submitting reply comments is extended to April 15, 2011. The February 3 document incorrectly published in the Notices section of the **Federal Register**.

**DATES:** DOE will accept comments, data, and information regarding the RFI received no later than April 15, 2011.

**ADDRESSES:** Interested persons are encouraged to submit comments, identified by "Regulatory Burden RFI," by any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.  
*E-mail:*

[Regulatory.Review@hq.doe.gov](mailto:Regulatory.Review@hq.doe.gov). Include "Regulatory Burden RFI" in the subject line of the message.

*Mail:* U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue, SW., Room 6A245, Washington, DC 20585.

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

#### FOR FURTHER INFORMATION CONTACT:

Daniel Cohen, Assistant General Counsel for Legislation, Regulation, and Energy Efficiency, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue, SW., Washington, DC 20585. E-mail: [Regulatory.Review@hq.doe.gov](mailto:Regulatory.Review@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** On January 18, 2011, the President issued Executive Order 13563, "Improving Regulation and Regulatory Review," to ensure that Federal regulations seek more affordable, less intrusive means to achieve policy goals, and that agencies give careful consideration to the benefits and costs of those regulations. Additionally, the Executive Order directs agencies to consider how best to promote retrospective analyses of existing rules. Specifically, Agencies must develop a preliminary plan under which the agency will periodically review existing regulations to determine which should be maintained, modified, strengthened, or repealed to increase the effectiveness and decrease the burdens of the agency's regulatory program.

DOE took a number of steps to implement the Executive Order, including issuance of an RFI seeking public comment on how best to review its existing regulations and to identify whether any of its existing regulations should be modified, streamlined, expanded, or repealed. (76 FR 6123, Feb. 3, 2011) DOE sought comment on the RFI until March 21, 2011, and allowed for reply comments to be filed until April 4, 2011. DOE posted comments received during the initial comment period on its Web site: <http://www.gc.energy.gov/1705.htm>, but encountered technical difficulties and was unable to post all of the comments until March 30, 2011. DOE also received a request from a member of the public to extend the reply comment period given these technical difficulties. As a result, in this notice, DOE extends the reply comment period until April 15, 2011. While the intent of the reply comment period is to foster constructive dialogue on DOE's regulatory review process, DOE notes that it is not necessary to have filed comments during the initial comment period to file reply comments, and that the substance of comments filed during the reply comment period need not relate to comments filed during the initial comment period. DOE will consider any

comments received by April 15, 2011 and deems any comments received between March 21, 2011 and April 15, 2011 to be timely submitted.

Issued in Washington, DC, on March 31, 2011.

**Sean A. Lev,**

*Acting General Counsel.*

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**BILLING CODE 6450-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### 6 CFR Part 5

[Docket No. DHS-2011-0016]

#### Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security Federal Emergency Management Agency DHS/FEMA-011 Training and Exercise Program 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 Federal Emergency Management Agency—011 Training and Exercise Program Records System of Records" and this proposed rulemaking. In this proposed and consolidating rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act in order to preserve the objectivity and fairness of testing and examination material.

**DATES:** Comments must be received on or before May 6, 2011.

**ADDRESSES:** You may submit comments, identified by docket number DHS-2011-0016, 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 rulemaking. 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>.

*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: Thomas R. McQuillan (202-646-3323), Privacy Officer, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC 20478. 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:**

**I. Background**

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) Federal Emergency Management Agency (FEMA) proposes to establish a new DHS system of records titled, "DHS/FEMA—011 Training and Exercise Program Records System of Records."

In support of its mission, components within FEMA such as the Protection and National Preparedness Bureau, the National Processing Service Centers (NPSCs), the United States Fire Administration (USFA), the and the FEMA Emergency Management Institute (FEMA/EMI) sponsor a wide range of training and exercise programs for FEMA's employees and contractors and its partners in the first responder and emergency management communities.

Through its training and exercise programs, FEMA brings together partners from State, local, Tribal, regional, international, and nongovernmental/volunteer organizations, as well as the private sector, including firefighters, emergency medical services, emergency management agencies, law enforcement, and public officials. These programs provide FEMA's employees, contractors and partners with the opportunity to develop the situational awareness and skills necessary to quickly prevent,

respond to, or mitigate all hazards affecting the people of the United States.

This system of records notice is being published because FEMA collects and maintains personally identifiable information (PII) about the individuals who register or apply for its training and exercise programs and the organization employing or sponsoring these individuals, as well as information used to grant access to IT systems that support these programs. FEMA's training and exercise programs also maintain information about the trainings and exercise events, such as rosters and reports, which may be shared among participants. The type and amount of PII FEMA collects from individuals to facilitate their participation may vary among programs.

The purpose of this system is to facilitate registration for, participation in, and the completion and documentation of, training and exercise programs sponsored by FEMA in support of its mission.

FEMA collects, uses, and maintains the records within this system under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act; the Federal Fire Prevention and Control Act of 1974, as amended; 44 U.S.C. 3101-3106; 6 U.S.C. 748; Homeland Security Presidential Directives, and several Executive Orders, as described in this notice. This updated system of records strengthens privacy protections and provides greater transparency regarding FEMA's training and exercise records by encompassing the full range of the agency's training and exercise programs into a single system of records. To further safeguard individuals' privacy, FEMA limits access to the information in this system by verifying the status and "need to know" of individuals registering for and participating in the agency's training and exercise programs.

The proposed routine uses are compatible with the purpose of the original collection as they ensure that the information within this system is shared in association with individuals' registration and participation in FEMA's training and exercise programs, and otherwise ensure that the sharing of information in this system is consistent with that of other DHS systems.

FEMA collects, uses, and maintains information about the individuals who register or apply for its training and exercise programs, including DHS employees and contractors, other Federal employees, volunteers and members of the first responder and emergency management communities, to foster the development of mission critical skills among them through

participation in these training and exercise programs. FEMA's training and exercise programs may share information with State, local, Tribal, international, nongovernmental/volunteer organizations, and private sector organizations. FEMA shares this information to facilitate the development of training and exercise programs, coordinate, facilitate, and track participation in training and exercise programs, and for statistical FEMA's sharing of information with education institutions for transcript purposes will only take place upon the request of the student.

In accordance with the Privacy Act of 1974 the Department of Homeland Security is giving notice that it proposes to consolidate the Privacy Act system of records notice titled, Department of Homeland Security/Federal Emergency Management Agency/National Emergency Training Center-017 Student Application and Registration Records system of records [October 5, 2004, 69 FR 192] into the this system of records. This newly established system will be included in DHS's inventory of record systems.

**II. Privacy Act**

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/FEMA-011 Training and Exercise Program Records System of Records. Some information in DHS/FEMA-011 Training and Exercise

Program Records System of Records relates to official DHS testing and examination activities. DHS is claiming an exemption for certain records in this new record system pursuant to 5 U.S.C. 552a(k)(6). These exemptions are needed to protect information relating to DHS testing and examination activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required since its training records will include testing and examination materials. DHS is claiming an exemption for these records in order to preserve the integrity, objectivity and fairness of the testing and examination process.

A notice of system of records for DHS/FEMA-011 Training and Exercise Program Records System of Records is also published in this issue of the **Federal Register**.

#### 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 54:

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

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54. The DHS/FEMA-011 Training and Exercise Program Records System of Records consists of electronic and paper records and will be used by FEMA. The DHS/FEMA-011 Training and Exercise Program Records System of Records consists of electronic and paper records and will be used by DHS and its components and offices to maintain records about individual training, including enrollment and participation information, information pertaining to class schedules, programs, and instructors, training trends and needs, testing and examination materials, and assessments of training efficacy. The data will be collected by employee name or other unique identifier. The collection and maintenance of this information will assist DHS in meeting its obligation to train its personnel and contractors in order to ensure that the agency mission can be successfully accomplished. The DHS/FEMA-011 General Training and Exercise Program 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 has exempted 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)(6), where it states for: "testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process." 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 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 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 the investigation, thereby interfering with that investigation and related law enforcement activities.

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

(f) 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.

(g) From subsection (e)(5) (Collection of Information) because with 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 subsection (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's 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 (e)(12) (Computer Matching) if the agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the **Federal Register** notice of such establishment or revision.

(j) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

(k) From subsection (h) (Legal Guardians) the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

Dated: March 30, 2011.

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

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**BILLING CODE 9111-17-P**