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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2016–0091]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security DHS/U.S. Customs and Border Protection (CBP)–023 Border Patrol Enforcement Records (BPER) System of Records

AGENCY: Department of Homeland Security, Privacy Office.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a newly established system of records titled, ''Department of Homeland Security U.S. Customs and Border Protection (DHS/CBP)–023 Border Patrol Enforcement Records (BPER) System of Records'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the ''DHS/CBP–023 BPER System of Records'' from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: This final rule is effective December 20, 2016.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Debra Danisek (202–344–1191), CBP Privacy Officer, Privacy and Diversity Office, 1300 Pennsylvania Avenue NW., Washington, DC 20229. For privacy issues please contact: Jonathan R. Cantor (202–343–1717), Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Homeland Security (DHS) U.S. Customs and Border Protection (CBP) published a notice of proposed rulemaking in the **Federal Register**, (81 FR 72551, October 20, 2016) 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. DHS issued the ''DHS/CBP–023 Border Patrol Enforcement (BPER) Records System of Records'' in the **Federal Register** at 81 FR 72601 on October 20, 2016, to provide notice to the public that DHS/CBP will collect and maintain enforcement records to secure the U.S. border between Ports of Entry (POE), furthering its enforcement and immigration mission. DHS previously maintained these records under the DHS/ICE–011 Criminal Arrest Records and Immigration Enforcement Records (CARIER) (81 FR 72080, October 19, 2016) and the DHS/USVISIT–004 DHS Automated Biometric Identification System (IDENT) (72 FR 31080, June 5, 2007) System of Records Notices. DHS/CBP issued this new system of records to claim ownership of records created as a result of CBP interactions between POE.

DHS/CBP invited comments on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

II. Public Comments

DHS/CBP received one positive comment on the NPRM and no comments on the SORN for the DHS/CBP–023 BPER System of Records. After consideration of the public comment, 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. Add paragraph 76 to appendix C to part 5 to read as follows::

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

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76. The DHS/CBP–023 Border Patrol Enforcement Records (BPER) System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/CBP–023 BPER System of Records is a repository of information held by DHS/CBP 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; and national security and intelligence activities. The DHS/CBP–023 BPER 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, pursuant to 5 U.S.C. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a (c)(3), (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8); and (g). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a (c)(3); (d); (e)(1), (e)(4)(G), and (e)(4)(H). 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) and (e)(4)(H) (Agency Requirements) 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 (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: December 13, 2016.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2016–30457 Filed 12–19–16; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 251, 271, 272 and 277

[FNS–2016–0028]

RIN: 0584–AE44

Supplemental Nutrition Assistance Program Promotion

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule.

SUMMARY: This final rule implements Section 4018 of the Agricultural Act of 2014. Section 4018 created new limitations on the use of Federal funds authorized in the Food and Nutrition Act of 2008, as amended (FNA), for the Supplemental Nutrition Assistance Program (SNAP) promotion and outreach activities. Specifically, Section 4018 of the 2014 Farm Bill prohibits the use of Federal funds appropriated in the FNA from being used for: recruitment activities designed to persuade an individual to apply for SNAP benefits; television, radio, or billboard advertisements that are designed to promote SNAP benefits and enrollment; or agreements with foreign governments designed to promote SNAP benefits and enrollment. The prohibition on using funds appropriated under the FNA for television, radio, or billboard advertisements does not apply to Disaster SNAP.

Section 4018 also prohibits any entity that receives funds under the FNA from compensating any person engaged in outreach or recruitment activities based on the number of individuals who apply to receive SNAP benefits. Lastly, Section 4018 modifies Section 16(a)(4) of the FNA to prohibit the Federal government from paying administrative costs associated with recruitment activities designed to persuade an individual to apply for program benefits or that promote the program through television, radio, or billboard advertisements.

This final rule also impacts the Food Distribution Program on Indian Reservations (FDPIR) and The Emergency Food Assistance Program (TEFAP), both of which receive funding and/or foods authorized under the FNA.

DATES: This final rule is effective January 19, 2017.

FOR FURTHER INFORMATION CONTACT: Mary Rose Conroy, Chief, Program Development Division, Program Design Branch, Food and Nutrition Services, U.S. Department of Agriculture, 3101 Park Center Drive, Room 810, Alexandria, VA 22302, or by phone at (703) 305–2803, or by email at *Maryrose.conroy@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Comments and the Final Rule
III. Procedural Matters

I. Background

This rule implements Section 4018 of the Agricultural Act of 2014 (Pub L. 113–79, 2014 Farm Bill). Section 4018 of the 2014 Farm Bill creates new limitations on the use of Federal funds authorized in the Food and Nutrition Act of 2008 (FNA) for Supplemental Nutrition Assistance Program (SNAP) promotion and recruitment activities. Specifically, Section 4018:

- Amends Section 16(a)(4) of the FNA to prohibit Federal reimbursement for activities that are designed to persuade an individual to apply for program benefits or that promote the program through television, radio, or billboard advertisements.
- Amends the end of Section 18 of the FNA to prohibit the use of Federal funds authorized to be appropriated under the FNA from being used for:

(1) Recruitment activities designed to persuade an individual to apply for SNAP benefits;

(2) Television, radio, or billboard advertisements that are designed to promote SNAP benefits and enrollment. This provision does not apply to Disaster SNAP; or

(3) Any agreements with foreign governments designed to promote SNAP benefits and enrollment.

- Amends the end of Section 18 of the FNA to require the Secretary of Agriculture to issue regulations that prohibit entities that receive funds under the FNA from compensating any person engaged in outreach or recruitment activities based on the number of individuals who apply to receive SNAP benefits.

II. Discussion of Comments and the Final Rule

General Comments

On March 14, 2016, the Department published a proposed rule to implement the changes made by Section 4018. *See* Supplemental Nutrition Assistance Program Promotion, 81 FR 13290 (Mar.