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9110-06

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2011-0103]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security
U.S. Customs and Border Protection DHS/CBP – 003 Credit/Debit Card Data 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/U.S. Customs and Border Protection – 003 Credit/Debit Card Data 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 [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number DHS-2011-0103, 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, D.C. 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: Laurence E. Castelli (202-325-0280), CBP Privacy Officer, Office of International Trade, U.S. Customs and Border Protection, Mint Annex, 799 Ninth Street, NW, Washington, DC 20229. For privacy issues please contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, D.C. 20528.

SUPPLEMENTARY INFORMATION:

I. Background:

In accordance with the Privacy Act of 1974, 5 U.S.C. § 552a, the Department of Homeland Security (DHS) U.S. Customs and Border Protection (CBP) proposes to

establish a new DHS system of records notice titled, “DHS/CBP-003 Credit/Debit Card Data System of Records.”

This system collects, uses, and maintains records related to any credit and debit card transactions with CBP. CBP is providing notice to the public regarding the collection, use, and dissemination of any credit and debit card transaction information provided to CBP. Many programs administered by CBP require an individual or business to provide payment for various purposes, including services, applications, fees, and duties, among others. As CBP expands methods of payment, many of these transactions will permit use of credit and debit cards, which will require the collection of the card data, disseminating that data to process the transaction, and maintaining the data for recordkeeping purposes. Information from this system will be shared with the Department of Treasury, banks, and credit and debit card processors as necessary. The data will not be used for law enforcement or intelligence purposes unless the individual’s underlying transaction becomes associated with a law enforcement or intelligence action.

The purpose of this system is to provide payment processing and recordkeeping of credit and debit card transactions with CBP. Authority for maintenance of this system is given by The Homeland Security Act of 2002, Public Law 107-296; 5 U.S.C. § 301; 8 U.S.C. § 1101, et seq.; 19 U.S.C. § 1, et seq.; Section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), (Pub. L. 110-53); and the Travel Promotion Act (Pub. L. 111-145). This newly established system will allow CBP to collect credit and/or debit card payment information from individuals providing payment to CBP for services, applications, fees, duties, and other official activities. Records in this system are safeguarded in accordance with applicable rules and policies,

including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. All routine uses proposed are compatible with the purpose for which the information was collected and CBP's mission.

Consistent with DHS's information sharing mission, information stored in the Credit/Debit Card Data system of record may be shared with other DHS components, as well as appropriate federal, state, local, foreign, or international or tribal government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a 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.

Additionally, the Department of Homeland Security is issuing a Notice of Proposed Rulemaking to exempt this system of records from certain provisions of the Privacy Act, concurrent with this system of records elsewhere in the Federal Register. DHS is not exempting any data in the system regarding an individual's credit or debit card transaction. This system, however, may contain records or information pertaining to the accounting of disclosures made from this system to other law enforcement or intelligence agencies (federal, state, local, foreign, international or tribal) in accordance with the published routine uses or statutory basis for disclosure under 5 U.S.C. § 552a(b).

For the accounting of these disclosures only, in accordance with 5 U.S.C. §§ 552a(j)(2), and (k)(2), DHS will claim exemptions for these records or information.

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/CBP – 003 CDCDS System of Records. Some information in DHS/CBP – 003 CDCDS System of Records relates to official DHS law enforcement and immigration activities; specifically, records or information pertaining to the accounting of disclosures made from this system to other law enforcement or intelligence agencies (federal, state, local, foreign, international or tribal) in accordance with the published routine uses or

statutory basis for disclosure under 5 U.S.C. § 552a(b). These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes and to avoid disclosure of activity techniques. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A notice of system of records for DHS/CBP -0 CDCDS 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 “1”:

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

Act

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63. The DHS/CBP – 003 CDCDS System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/CBP – 003 CDCDS 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 there under; national security and intelligence activities.. The DHS/CBP – 003 CDCDS 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) and (4), (e)(8), and (g) pursuant to 5 U.S.C. §§ 552a(j)(2) and (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) 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 (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.

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

Dated: October 3, 2011

Mary Ellen Callahan

Chief Privacy Officer,

Department of Homeland Security.

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