



9112-FP

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2019-0062]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/ALL-045 Statistical Immigration Data Production and Reporting System of Records

AGENCY: Department of Homeland Security.

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/ALL-045 Statistical Immigration Data Production and Reporting 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<2019-0062, by one of the following methods:

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

- Fax: 202-343-4010.
- Mail: Jonathan R. Cantor, Acting 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 DHS-2019-0062. 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 and privacy questions, please contact: Jonathan R. Cantor, (202) 343-1717, Privacy@hq.dhs.gov, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, D.C. 20528-0655.

SUPPLEMENTARY INFORMATION:

I. Background:

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) proposes to establish a new DHS system of records titled, “Department of Homeland Security/ALL-045 Statistical Immigration Data Production and Reporting System of Records.” Federal statutes, including the Immigration and Nationality Act of 1965, as amended, and the Homeland Security Act of 2002, as amended, as well as Executive Orders and congressional mandates, require DHS’s Office of Immigration Statistics (OIS) to regularly prepare an extensive series of analytical and statistical reports on border security, immigration enforcement activities, refugee and asylum claims, and other immigration events. For instance, in December 2015,

Congress’s explanatory statement accompanying DHS’s 2016 appropriations legislation specifically directed the DHS Office of Strategy, Policy, and Plans (which includes OIS), to report on the “enforcement lifecycle,” defined as “the full scope of immigration enforcement activities, from encounter to final disposition, including the use of prosecutorial discretion.” Further, Congress directed that “[a]ll data necessary to support a better picture of this lifecycle and the Department’s effectiveness in enforcing immigration laws shall be considered and prioritized, including appropriate data collected by the [Executive Office for Immigration Review (EOIR)] at the Department of Justice [DOJ].”

Fulfilling these mandates requires OIS to collect data related to the granting of immigration benefits, such as nonimmigrant admissions, grants of lawful permanent residence, changes in legal status, naturalizations, and information related to the enforcement of immigration law, from across DHS and other federal immigration agencies. These data contain both personally identifiable information (PII) and sensitive PII (SPII). OIS is establishing this system of records notice (SORN) to inform the public of its collection and use of PII to create its statistical products.

DHS’s immigration Components and other federal immigration agencies initially collect this data for operational purposes in accordance to their own mission and authorities. While the data that is first collected for operational purposes are covered by their respective SORNs, OIS is developing its own SORN to cover the records it creates and has aggregated as they enter OIS’s analytical environment. Once in this environment, OIS processes the records in preparation for use in statistical analysis. Analyses may include merging of records from these distinct data systems to create new records.

Data within this system of records are intended only for analytical and statistical purposes, and are not intended for operational uses. This is reflected in the routine uses, which allow for the use of and sharing of data in this system of records solely for these purposes.

Consistent with DHS's information sharing mission, information stored in the DHS/ALL-045 Statistical Immigration Data Production and Reporting System of Records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions, except for data that the DHS Information Sharing and Safeguarding Governance Board (ISSGB) has granted a waiver from this requirement on behalf of the Secretary of Homeland Security. In addition, DHS/OIS may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

DHS is issuing this Notice of Proposed Rulemaking to exempt this system of records from certain requirements of the Privacy Act.

II. Privacy Act:

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. 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. Additionally, and similarly, the Judicial Redress Act (JRA) provides a statutory right to covered persons to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

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/ALL-045 Statistical Immigration Data Production and Reporting System of Records. Some information in DHS/ALL-045 Statistical Immigration Data Production and Reporting System of Records relates to official DHS national security, law enforcement, immigration, and intelligence activities. 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; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS's ability to obtain information from third parties and other sources; and to protect the privacy of third parties. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

In appropriate circumstances, when compliance would not appear to interfere with or adversely affect the law enforcement purposes of the source systems 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/ALL-045 Statistical Immigration Data Production and Reporting 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 general 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.

* * * * *

2. Add, at the end of Appendix C to Part 5, paragraph <“83”> to read as follows:

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

* * * * *

83. The DHS/ALL-045 Statistical Immigration Data Production and Reporting System of Records consists of electronic and paper records and will be used by DHS and its Components. The DHS/ALL-045 Statistical Immigration Data Production and Reporting 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; and national security and intelligence activities. The DHS/ALL-045 Statistical Immigration Data Production and Reporting 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.

For records created and aggregated by DHS OIS, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(4), 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), (e)(4)(H), (e)(4)(I); and (f). In addition to the reasons stated below, the reason for exempting the system of records is that disclosure of statistical records (including release of accounting for disclosures) would in most instances be of no benefit to a particular individual since the records do not have a direct effect on a given individual.

Where a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2) or (k)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

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 for records derived from DHS operational systems 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 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. When an investigation has been completed, information on disclosures made may continue to be exempted if the fact that an investigation occurred remains sensitive after completion.

- (b) From subsection (d) (Access and Amendment to Records) because access to the records contained in this system of records that are derived from records from DHS operational systems 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, including statistics records covered by this system that derived from records originating from DHS operational systems.
- (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.

Jonathan R. Cantor

Acting Chief Privacy Officer,

Department of Homeland Security

[FR Doc. 2020-04986 Filed: 3/10/2020 8:45 am; Publication Date: 3/11/2020]