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Export Import Bank of the United States

12 CFR Part 404

[EXIM-OIG-2012-0010]

RIN 3048-AA02

Privacy Act of 1974: Implementation of Exemptions; Export-Import Bank of the United States Office of Inspector General—EIB-35-Office of Inspector General Investigative Records

AGENCY: Office of the Inspector General, Export-Import Bank of the United States

ACTION: Final Rule

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SUMMARY: The Export-Import Bank of the United States (hereafter known as "Ex-Im Bank") is issuing a final rule to exempt portions of a system of records entitled "EIB-35-Office of Inspector General Investigative Records" from one or more

provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: The final rule is effective August 16, 2012.

FOR FURTHER INFORMATION CONTACT: Osvaldo Gratacos, Ex-Im Bank, Office of Inspector General, 811 Vermont Avenue NW., Rm. 976, Washington, DC 20571 or by telephone (202) 565-3908 or facsimile (202) 565-3988.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Ex-Im Bank published a notice of proposed rulemaking in the Federal Register, 77 Fed. Reg. 27140 (May 9, 2012), proposing to exempt portions of a system of records entitled "EIB-35-Office of Inspector General Investigative Records" and held by the Ex-Im Bank Office of Inspector General (OIG), from one or more provisions of the Privacy Act of 1974, 5 U.S.C. 552a. The exemptions are necessary in order for Ex-Im Bank OIG to carry out its investigative responsibilities pursuant to the Inspector General Act of 1978, as amended. The Ex-Im Bank OIG published the system of records notice in the Federal Register, 77 Fed.

Reg. 26755 (May 7, 2012), and comments were invited on both the Notice of Proposed Rulemaking (NPRM) and the System of Records Notice (SORN).

#### Public Comments

Ex-Im Bank did not receive any comments on the SORN or the NPRM. Ex-Im Bank will implement the rulemaking as proposed.

#### List of Subjects in 12 CFR Part 404

Information disclosure.

For the reasons stated in the preamble, Ex-Im Bank amends chapter IV of Title 12, Code of Federal Regulations, as follows:

#### PART 404—INFORMATION DISCLOSURE

1. The authority citation for part 404 continues to read as follows:

Authority: 5 U.S.C. 552 and 552a. Section 404.7 also issued

under E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

Section 404.21 also issued under 5 U.S.C. 552a note. Subpart C also issued under 5 U.S.C. 301, 12 U.S.C. 635.

2. Add §404.24 to Subpart B to read as follows:

404.24- Exemptions: EIB-35-Office of Inspector General  
Investigative Records

(a) *Criminal Law Enforcement.* (1) *Exemption.* Under the authority granted by 5 U.S.C. 552a(j)(2), Ex-Im Bank hereby exempts the system of records entitled "EIB-35- Office of Inspector General Investigative Records" from the provisions of 5 U.S.C.

552a(c)(3), (c)(4), (d)(1) through (4), (e)(1) through (3), (e)(4)(G) and (H), (e)(5), (e)(8), (f), and (g) because the system contains information pertaining to the enforcement of criminal laws. "EIB-35-Office of Inspector General Investigative Records" is maintained by the Ex-Im Bank Office of Inspector General ("OIG" or "Ex-Im Bank OIG.")

(2) *Reasons for exemption.* The reasons for asserting this exemption are:

(i) Disclosure to the individual named in the record pursuant to 5 U.S.C. 552a(c)(3), (c)(4), or (d)(1) through (4) could seriously impede or compromise the investigation by alerting the

target(s), subjecting a potential witness or witnesses to intimidation or improper influence, and leading to destruction of evidence. Disclosure could enable suspects to take action to prevent detection of criminal activities, conceal evidence, or escape prosecution.

(ii) Application of 5 U.S.C. 552a(e)(1) is impractical because the relevance of specific information might be established only after considerable analysis and as the investigation progresses. Effective law enforcement requires the OIG to keep information that may not be relevant to a specific OIG investigation, but which may provide leads for appropriate law enforcement and to establish patterns of activity that might relate to the jurisdiction of the OIG and/or other agencies.

(iii) Application of 5 U.S.C. 552a(e)(2) would be counterproductive to the performance of a criminal investigation because it would alert the individual to the existence of an investigation. In any investigation, it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation or prosecution.

(iv) Application of 5 U.S.C. 552a(e)(3) could discourage the free flow of information in a criminal law enforcement inquiry.

(v) The requirements of 5 U.S.C. 552a(e)(4)(G) and (H) and (f) would be counterproductive to the performance of a criminal investigation. To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual, or to grant access to an investigative file could interfere with investigative and enforcement proceedings, deprive co-defendants of a right to a fair trial or other impartial adjudication, constitute an unwarranted invasion of personal privacy of others, disclose the identity or confidential sources, reveal confidential information supplied by these sources and disclose investigative techniques and procedures. Nevertheless, Ex-Im Bank OIG has published notice of its notification, access, and contest procedures because access may be appropriate in some cases.

(vi) Although the OIG endeavors to maintain accurate records, application of 5 U.S.C. 552a(e)(5) is impractical because maintaining only those records that are accurate, relevant, timely, and complete and that assure fairness in determination is contrary to established investigative techniques. Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collated and analyzed with other available information, become more pertinent as an investigation progresses.

(vii) Application of 5 U.S.C. 552a(e)(8) could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(viii) The provisions of subsection (g) do not apply to this system if an exemption otherwise applies.

(b) *Other Law Enforcement.* (1) *Exemption.* Under the authority granted by 5 U.S.C. 552a(k)(2), Ex-Im Bank hereby exempts the system of records entitled "EIB-35- Office of Inspector General Investigative Records" from the provisions of 5 U.S.C.

552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) and (H), and (f) for the same reasons as stated in paragraph (a)(2) of this section, that is, because the system contains investigatory material compiled for law enforcement purposes other than material within the scope of subsection 552a(j)(2).

(2) *Reasons for exemption.* The reasons for asserting this exemption are because the disclosure and other requirements of the Privacy Act could substantially compromise the efficacy and integrity of OIG operations. Disclosure could invade the privacy of other individuals and disclose their identity when they were expressly promised confidentiality. Disclosure could interfere with the integrity of information which would otherwise be subject to privileges (see, e.g., 5 U.S.C. § 552(b)(5)), and

which could interfere with other important law enforcement concerns (see, e.g., 5 U.S.C. 552(b)(7)).

(c) *Federal Civilian or Contract Employment.* (1) Exemption.

Under the authority granted by 5 U.S.C. 552a(k)(5), Ex-Im Bank hereby exempts the system of records entitled "EIB-35- Office of Inspector General Investigative Records" from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) and (H), and (f) because the system contains investigatory material compiled for the purpose of determining eligibility or qualifications for federal civilian or contract employment.

(2) *Reasons for exemption.* The reasons for asserting this exemption are the same as described in paragraph (a)(2) of this section.

Sharon A. Whitt,  
Agency Clearance Officer.

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