



DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS 2015-0079]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/United States Coast Guard-029 Notice of Arrival and Departure System of Records

AGENCY: Department of Homeland Security, Privacy Office.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of an updated and reissued system of records pursuant to the Privacy Act of 1974 for the “Department of Homeland Security/United States Coast Guard-029 Notice of Arrival and Departure 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 2015-0079, 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: Karen L. Neuman, 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 document. 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: Marilyn Scott-Perez, (202) 475-3515, Privacy Officer, Commandant (CG-61), United States Coast Guard, 2703 Martin Luther King Jr. Ave SE, Mail Stop 7710, Washington, D.C. 20593. For privacy questions, please contact: Karen L. Neuman, (202) 343-1717, 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), United States Coast Guard (USCG) is giving notice of a proposed rulemaking that DHS/USCG intends to update its regulations to exempt portions of a system of records from certain provisions of the Privacy Act. Specifically, DHS/USCG proposes to exempt portions of the “DHS/USCG-029 Notice of Arrival and Departure System of Records” from one of more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. DHS/USCG is issuing an

updated notice and proposed rule for proposed exemptions for these new categories of records pursuant to 5 U.S.C. 552a(j)(2) and 5 U.S.C. 552 a(k)(2). Furthermore, to the extent certain categories of records are ingested from other systems, the exemptions applicable to the source systems will remain in effect.

Concurrent with this document, DHS/USCG is updating and reissuing a current DHS system of records titled, “DHS/USCG-029 Notice of Arrival and Departure (NOAD) System of Records.” The collection and maintenance of this information assists DHS/USCG in meeting its statutory obligation to assign priorities while conducting maritime safety and security missions in accordance with international and U.S. regulations. In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) United States Coast Guard (USCG) proposes to update and reissue a current DHS system of records titled, “DHS/USCG-029 Notice of Arrival and Departure (NOAD) System of Records.” The collection and maintenance of this information assists DHS/USCG in meeting its statutory obligation to assign priorities while conducting maritime safety and security missions in accordance with international and U.S. regulations. DHS/USCG is updating this system of records to (1) clarify the authority for the maintenance of the system to align with the recently published *Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System* Final Rule (January 30, 2015, 80 FR 5281); (2) update the security classification; (3) change the system location to clarify that NOAD records may be stored on information technology (IT) systems connected to classified networks; (4) update the purpose(s) to align with the updated authorities for collection, pursuant to the newly issued *Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System*

Final Rule and to allow for replication of data for analysis and vetting as part of the DHS Data Framework; (5) update categories of individuals and categories of records to clarify that individuals considered “non-crew” for the purposes of this system may include passenger records, as well as organizations; (6) remove routine use (M) because it is not compatible with the original purpose for collection of the records (7) update the retention period and disposal standards to reflect that records will follow the same retention schedule despite their storage in a classified environment; (8) modify the notification procedures to confirm that regardless of record storage on a classified environment, DHS/USCG will review all replicated records; and (9) update the system manager and mailing address to reflect the new mail stop.

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 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/USCG-029 Notice of Arrival and Departure System of Records. Some information in DHS/USCG-029 Notice of Arrival and Departure System of Records may be used to support official DHS national security or law enforcement 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 protect information relating to DHS law enforcement investigations from disclosure to subjects of investigations and others who could interfere with investigatory and law enforcement activities. The exemptions are required to preclude subjects of these activities from frustrating the investigative process; to avoid disclosure of investigative techniques; protect the identities and physical safety of confidential informants and of law enforcement personnel; ensure DHS's and other federal agencies' ability to obtain information from third parties and other sources; protect the privacy of third parties; and safeguard sensitive information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

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.

DHS will not assert any exemption with respect to information maintained in the system that is collected from a person at the time of arrival or departure, if that person, or his or her agent, seeks access or amendment of such information. The DHS/USCG-029

Notice of Arrival and Departure System of Records Notice 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. Revise the authority citation for part 5 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. In appendix C to part 5, revise paragraph 34 to read as follows:

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

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34. The DHS/USCG-029 Notice of Arrival and Departure System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/USCG-029 Notice of Arrival and Departure 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. The DHS/USCG-029 Notice of Arrival and Departure 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), exempted this system from the following provisions of the Privacy Act: Sections (c)(3), (e)(8), and (g) of the Privacy Act of 1974, as amended, as is necessary and appropriate to protect this information. Further, DHS has exempted section (c)(3) of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(k)(2) as is necessary and appropriate to protect this information.

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 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.

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Karen L. Neuman,

Chief Privacy Officer,

Department of Homeland Security.

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