Federal Register: October 28, 2009 (Volume 74, Number 207)]

[Notices]

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2009-0039]

Privacy Act of 1974; Department of Homeland Security/ALL--001

Freedom of Information Act and Privacy Act Records System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

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SUMMARY: In accordance with the Privacy Act of 1974 the Department of

Homeland Security proposes to update and reissue a Department of

Homeland Security system of records notice titled, Department of

Homeland Security/ALL--001 Freedom of Information Act and Privacy Act

Records System of Records. The updated system of records consists of

information that is created and used by the Department's Freedom of

Information Act and Privacy Act staff to process requests as well as to

manage the Freedom of Information Act and Privacy Act programs. As a

result of the biennial review of this system, the Privacy Office has:

Updated the system classification to include unclassified information;

updated the categories of individuals and records to include

individuals who are the subjects of requests, Department of Justice and

other government litigators and/or DHS personnel assigned to handle

such requests or appeals; revised the routine uses to conform with the

needs of the Freedom of Information Act and Privacy Act program; and

updated the Privacy Act exemptions for this system of records to

include the addition of 5 U.S.C. 552a(k)(3) and (k)(6) of the Privacy

Act. A Notice of Proposed Rulemaking is published elsewhere in the

Federal Register further exempting these records from 5 U.S.C.

552a(k)(3) and (k)(6) of the Privacy Act. The initial Privacy Act

exemptions published with this system of records (December 6, 2004),

will remain in place until this rule is finalized with the addition of

5 U.S.C. 552a(k)(3) and (k)(6). This updated system will be included in

the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before November 27, 2009. This system will

be effective November 27, 2009.

ADDRESSES: You may submit comments, identified by docket number DHS-

2009-0039 by one of the following methods:

 Federal e-Rulemaking Portal: <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.regulations.gov>.

Follow the instructions for submitting comments.

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 Fax: 703-483-2999.

 Mail: Mary Ellen Callahan, Chief Privacy Officer, Privacy

Office, Department of Homeland Security, Washington, DC 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://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&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://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions and privacy

issues please contact: Mary Ellen Callahan (703-235-0780), Chief

Privacy Officer and Chief Freedom of Information Act Officer, Privacy

Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

 The Department of Homeland Security (DHS) and its components and

offices rely on the system of records, DHS/ALL--001 Freedom of

Information Act and Privacy Act Records System of Records (69 FR 70460,

December 6, 2004) for the collection and maintenance of records that

concern the Department's Freedom of Information Act (FOIA) and Privacy

Act (PA) records.

 As part of its efforts to maintain its Privacy Act records systems,

DHS is updating and reissuing a Department-wide system of records under

the Privacy Act (5 U.S.C. Sec. 552a) for DHS FOIA and PA records. This

will ensure that all components of DHS follow the same privacy rules

for collecting and handling FOIA and PA records. The collection and

maintenance of this information will assist DHS in managing the

Department's FOIA and PA records.

 Consistent with DHS' information sharing mission, information

stored in the DHS/ALL--001 Freedom of Information Act and Privacy Act

Records System of Records may be shared within DHS, as well as with

appropriate other Federal, State, local, tribal, foreign, or

international government agencies. Disclosure of the information in any

record of this system to officers and employees of DHS is permitted

when requested by, or with the prior consent of, the individual to whom

the record pertains, or when those officers and employees otherwise

have a need for the record in the performance of their duties.

Disclosure of most personally identifiable information contained in

this system outside of DHS will only take place when requested by or

with the prior consent of the individual to whom the record pertains,

unless DHS determines, consistent with the routine uses set forth in

this system of records notice, that the receiving component, agency or

entity has a need to know the information to carry out valid national

security, law enforcement, immigration, intelligence, or other

functions. Certain information about FOIA requestors, including the

name of the requestor and a description of the requested records is not

exempt under the Freedom of Information Act and is released to outside

entities who request such information in accordance with 5 U.S.C.

552a(b)(2).

II. Privacy Act

 The Privacy Act embodies fair information principles in a statutory

framework governing the means by which the United States Government

collects, maintains, uses, and disseminates 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 for which information is retrieved by the name of

an 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 United States 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. Individuals may request access to their own records that are

maintained in a DHS system of records by complying with DHS Privacy Act

regulations, 6 CFR part 5.

 The Privacy Act requires each agency to publish in the Federal

Register a description denoting the type and character of each system

of records that the agency maintains, and the routine uses that are

contained in each system in order to make agency record keeping

practices transparent, to notify individuals regarding the uses to

their records, and to assist individuals to more easily find such files

within the agency. Below is the description of the DHS/ALL--001 Freedom

of Information Act and Privacy Act Records System of Records.

 In accordance with 5 U.S.C. 552a(r), DHS has provided a report of

this system of records to the Office of Management and Budget and to

Congress.

System of Records

DHS/ALL--001

System name:

 Department of Homeland Security Freedom of Information Act and

Privacy Act Records System of Records.

Security classification:

 Classified, sensitive, and unclassified.

System location:

 Records are maintained at Department and Component Headquarters in

Washington, DC and field locations.

Categories of individuals covered by the system:

 Categories of individuals covered by this system include:

Individuals who submit FOIA and/or PA requests to DHS; individuals who

appeal DHS denial of their FOIA and/or PA requests; individuals whose

requests, appeals, and/or records have been referred to DHS by other

agencies; and, in some instances, attorneys or other persons

representing individuals submitting such requests and appeals,

individuals who are the subjects of such requests, Department of

Justice and other government litigators and/or DHS personnel assigned

to handle such requests or appeals.

Categories of records in the system:

 Categories of records in this system include:

 Records received, created, or compiled in processing FOIA

and PA requests or appeals, including:

 [cir] Original requests and administrative appeals;

 [cir] Intra or interagency memoranda, correspondence, notes and

other documentation related to the processing of the FOIA and PA

request;

 [cir] Correspondence with the individuals or entities that

submitted the requested records and copies of the requested records,

including when those records might contain confidential business

information or personal information.

 Types of information in the records may include:

 [cir] Requesters' and their attorneys' or representatives' names,

addresses, e-mail, telephone numbers, and FOIA and PA case numbers;

office telephone numbers, and office routing symbols of DHS employees

and contractors;

 [cir] Names, telephone numbers, and addresses of the submitter of

the information requested;

 [cir] Unique case identifier;

 [cir] Social security number;

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 [cir] Alien identification number of the requester/appellant or the

attorney or other individual representing the requester, or other

identifier assigned to the request or appeal.

 The system also contains copies of all documents relevant

to appeals and lawsuits under the FOIA and PA including from Department

of Justice and other government litigators.

Authority for maintenance of the system:

 5 U.S.C. 301, 552 (Freedom of Information Act), 552a (Privacy Act);

44 U.S.C. 3101 (Records Management by Federal Agencies); E.O. 12958

(Classified National Security Information, as amended).

Purpose(s):

 The purpose of this system is to process record requests and

administrative appeals under the FOIA and PA as well as access,

notification, and amendment requests and appeals under the PA. Also,

for participating in litigation arising from such requests and appeals;

and in assisting DHS in carrying out any other responsibilities under

the FOIA or PA.

Routine uses of records maintained in the system, including categories

of users and the purposes of such uses:

 In addition to those disclosures generally permitted under 5 U.S.C.

552a(b) of the Privacy Act, all or a portion of the records or

information contained in this system may be disclosed outside DHS as a

routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

 A. To the Department of Justice (including United States Attorney

Offices) or other Federal agency conducting litigation or in

proceedings before any court, adjudicative or administrative body, when

it is necessary to the litigation and one of the following is a party

to the litigation or has an interest in such litigation:

 1. DHS or any component thereof;

 2. Any employee of DHS in his/her official capacity;

 3. Any employee of DHS in his/her individual capacity where DOJ or

DHS has agreed to represent the employee; or

 4. The United States or any agency thereof, is a party to the

litigation or has an interest in such litigation, and DHS determines

that the records are both relevant and necessary to the litigation and

the use of such records is compatible with the purpose for which DHS

collected the records.

 B. To a congressional office from the record of an individual in

response to an inquiry from that congressional office made at the

request of the individual to whom the record pertains.

 C. To the National Archives and Records Administration or other

Federal government agencies pursuant to records management inspections

being conducted under the authority of 44 U.S.C. 2904 and 2906.

 D. To an agency, organization, or individual for the purpose of

performing audit or oversight operations as authorized by law, but only

such information as is necessary and relevant to such audit or

oversight function.

 E. To appropriate agencies, entities, and persons when:

 1. DHS suspects or has confirmed that the security or

confidentiality of information in the system of records has been

compromised;

 2. The Department has determined that as a result of the suspected

or confirmed compromise there is a risk of harm to economic or property

interests, identity theft or fraud, or harm to the security or

integrity of this system or other systems or programs (whether

maintained by DHS or another agency or entity) or harm to the

individual that rely upon the compromised information; and

 3. The disclosure made to such agencies, entities, and persons is

reasonably necessary to assist in connection with DHS's efforts to

respond to the suspected or confirmed compromise and prevent, minimize,

or remedy such harm.

 F. To contractors and their agents, grantees, experts, consultants,

and others performing or working on a contract, service, grant,

cooperative agreement, or other assignment for DHS, when necessary to

accomplish an agency function related to this system of records.

Individuals provided information under this routine use are subject to

the same Privacy Act requirements and limitations on disclosure as are

applicable to DHS officers and employees.

 G. To an appropriate Federal, State, tribal, local, international,

or foreign agency, including law enforcement, or other appropriate

authority charged with investigating or prosecuting a violation or

enforcing or implementing a law, rule, regulation, or order, where a

record, either on its face or in conjunction with other information,

indicates a violation or potential violation of law, which includes

criminal, civil, or regulatory violations and such disclosure is proper

and consistent with the official duties of the person making the

disclosure.

 H. To a Federal, State, territorial, tribal, local, international,

or foreign agency or entity for the purpose of consulting with that

agency or entity:

 1.To assist in making a determination regarding access to or

amendment of information, or

 2. For the purpose of verifying the identity of an individual or

the accuracy of information submitted by an individual who has

requested access to or amendment of information.

 I. To a Federal agency or other Federal entity that furnished the

record or information for the purpose of permitting that agency or

entity to make a decision regarding access to or correction of the

record or information, or to a federal agency or entity for purposes of

providing guidance or advice regarding the handling of particular

requests.

 J. To the Department of Justice, including the United States

Attorney's Offices, or a consumer reporting agency for collection

action on any delinquent debt when circumstances warrant.

 K. To the Office of Management and Budget or the Department of

Justice to obtain advice regarding statutory and other requirements

under the Freedom of Information Act or the Privacy Act of 1974.

Disclosure to consumer reporting agencies:

 Privacy Act information may be reported to consumer reporting

agencies pursuant to 5 U.S.C. 552a(b)(12).

Policies and practices for storing, retrieving, accessing, retaining,

and disposing of records in the system:

Storage:

 Records in this system are stored electronically or on paper in

secure facilities in a locked drawer behind a locked door. The records

are stored on magnetic disc, tape, digital media, and CD-ROM.

Retrievability:

 Records may be retrieved by the name, unique case identifier,

social security number, or alien identification number of the

requester/appellant or the attorney or other individual representing

the requester, or other identifier assigned to the request or appeal.

Safeguards:

 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 stored.

Access to the computer system containing the records in this system is

limited to those individuals who have a need to know

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the information for the performance of their official duties and who

have appropriate clearances or permissions.

Retention and disposal:

 FOIA and PA records are retained in accordance with National

Archives and Records Administration's General Records Schedule 14.

 FOIA and PA records in litigation are retained for ten years after

the end of the fiscal year in which judgment was made or when all

appeals have been exhausted, whichever is later. This disposition is

temporary and is under review and approval by the National Archives and

Records Administration through pending schedule N1-563-08-33, Item 11.

 If the FOIA or PA record deals with significant policy-making

issues, it is a permanent record.

 A FOIA or PA record may qualify as a permanent Federal Record. A

permanent record is one that has been determined by NARA to have

sufficient value to warrant its preservation in the National Archives

of the United States. Permanent records include all records accessioned

by NARA into the National Archives of the United States and later

increments of the same records, and those for which the disposition is

permanent on SF 115s, Request for Records Disposition Authority,

approved by NARA on or after May 14, 1973.

System Manager and address:

 Mary Ellen Callahan (703-235-0780), Chief Privacy Officer and Chief

Freedom of Information Act Officer, Privacy Office, Department of

Homeland Security, Washington, DC 20528.

 For components of DHS, the System Manager can be found at <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.dhs.gov/foia> under ``contacts.''

Notification procedure:

 Individuals seeking notification of and access to any record

contained in this system of records, or seeking to contest its content,

may submit a request in writing to the Headquarters' or component's

FOIA Officer, whose contact information can be found at <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.dhs.gov/foia> under ``contacts.'' If an individual believes more

than one component maintains Privacy Act records concerning him or her,

the individual may submit the request to the Chief Privacy Officer and

Chief Freedom of Information Act Officer, Department of Homeland

Security, 245 Murray Drive, SW., Building 410, STOP-0550, Washington,

DC 20528.

 When seeking records about yourself from this system of records or

any other Departmental system of records, your request must conform

with the Privacy Act regulations set forth in 6 CFR part 5. You must

first verify your identity, meaning that you must provide your full

name, current address and date and place of birth. You must sign your

request, and your signature must either be notarized or submitted under

28 U.S.C. 1746, a law that permits statements to be made under penalty

of perjury as a substitute for notarization. While no specific form is

required, you may obtain forms for this purpose from the Chief Privacy

Officer and Chief Freedom of Information Act Officer, <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.dhs.gov> or 1-866-431-0486. In addition you should provide the

following:

 An explanation of why you believe the Department would

have information on you;

 Identify which component(s) of the Department you believe

may have the information about you;

 Specify when you believe the records would have been

created;

 Provide any other information that will help the FOIA

staff determine which DHS component agency may have responsive records;

and

 If your request is seeking records pertaining to another

living individual, you must include a statement from that individual

certifying his/her agreement for you to access his/her records.

 Without this bulleted information the component(s) may not be able

to conduct an effective search, and your request may be denied due to

lack of specificity or lack of compliance with applicable regulations.

Record access procedures:

 See ``Notification procedure'' above.

Contesting record procedures:

 See ``Notification procedure'' above.

Record source categories:

 Records are obtained by those individuals who submit requests and

administrative appeals pursuant to the FOIA and the PA; the agency

records searched and identified as responsive in the process of

responding to such requests and appeals; Departmental personnel

assigned to handle such requests and appeals; other agencies or

entities that have referred to DHS requests concerning DHS records, or

that have consulted with DHS regarding handling of particular requests;

and submitters or subjects of records or information that have provided

assistance to DHS in making access or amendment determinations.

Exemptions claimed for the system:

 The Secretary of Homeland Security has exempted this system from

the following provisions of the Privacy Act, subject to the limitations

set forth in (c)(3) and (4): (d); (e)(1), (2), (3), (5), and (8); and

(g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Additionally,

The Secretary of Homeland Security has exempted this system from the

following provisions of the Privacy Act, subject to the limitations set

forth in (c)(3): (d), (e)(1), (e)(4)(G), (H), (I), and (f) of the

Privacy Act pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(3), (k)(5) and

(k)(6). When DHS is processing Privacy Act and/or FOIA requests,

responding to appeals, or participating in FOIA or Privacy Act

litigation, exempt materials from other systems of records may become

part of the records in this system. To the extent that copies of exempt

records from other systems of records are entered into this system, DHS

hereby claims the same exemptions for those records that are claimed

for the original primary systems of records from which they originated.

 Dated: October 20, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9-25938 Filed 10-27-09; 8:45 am]

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