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[Notices]

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-2006-0001]

RIN 1660-ZA13

Privacy Act of 1974; The National Flood Insurance Program (NFIP)
Claims Appeals System of Records

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice of Privacy Act system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the Department of Homeland Security gives notice that the Federal Emergency Management Agency is establishing a new system of records entitled ``The National Flood Insurance Program Claims Appeals Process.'' This appeals process is mandated by section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004.

DATES: The new system of records will be effective July 3, 2006, unless comments are received that result in a contrary determination.

ADDRESSES: You may submit comments, identified by DHS DOCKET NUMBER: FEMA-2006-0001 by one of the following methods:

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

E-mail: FEMA-RULES@dhs.gov. Include Docket Number FEMA-2006-0001 in the subject line of the message.

Fax: (202) 646-4536.

Mail: Rules Docket Clerk, Federal Emergency Management Agency, Office of General Counsel, Room 406, 500 C Street SW., Washington, DC 20472; Maureen Cooney, Acting Chief Privacy Officer, 601 S. 12th Street, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Rena Y. Kim, Privacy Act Officer, Room 406, 500 C Street, SW., Washington, DC 20472; (telephone) (202) 646-3949; Maureen Cooney, Acting Chief Privacy Office, 601 S. 12th Street, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, the Department of Homeland Security (DHS) is establishing a new system of records to be maintained by the Federal Emergency Management Agency (FEMA). The new system of records is entitled the ``National Flood Insurance Program (NFIP) Claims Appeals Process.''

Congress created the NFIP (42 U.S.C. 4001) in 1968 to reduce future

flood losses through flood hazard identification, floodplain management (i.e., land use controls and building codes), and insurance protection. NFIP coverage is available to all owners and occupants of insurable property in a participating community upon payment of a premium.

FEMA was designated by Congress to be the administrator of the NFIP. In 1983, FEMA partnered with the private insurance industry in its efforts to expand the NFIP policy base. This partnership between FEMA and the private sector property insurance companies is termed the Write Your Own (WYO) program. Under the WYO program, private insurers agree to issue flood policies in their own name and take responsibility for policy administration, claims processing, marketing, and sales. Private insurers handle all claims issued in their name, and adjust and settle flood loss claims consistent with their general claims practices. Over 95 percent of flood policies in force are maintained by WYO Companies.

Because the WYO Companies are responsible for all administrative activities associated with the flood insurance policies they write, they also maintain policyholder information for

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the policies they write. FEMA, however, has access to these records as part of its oversight role. Once FEMA obtains the WYO Company's records of an individual policyholder, the records become a part of FEMA's system of records.

The remaining policies in force are written and maintained directly by FEMA via a contractor known as the NFIP Servicing Agent, and are considered part of FEMA's system of records. The NFIP Servicing Agent serves as a private insurance company and writes NFIP flood insurance policies on behalf of the Federal government.

FEMA also utilizes a contractor to support program management and oversight activities. This contractor is responsible for the administration of FEMA's system of records for the NFIP insurance policy information.

Section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (FIRA), 42 U.S.C. 4011, requires that FEMA establish an appeal process for flood insurance policyholders who wish to dispute decisions made by any insurance agent or adjuster, insurance company, or by a FEMA employer or contractor with respect to:

Claims (request for payment associated with losses from floods);

Proofs of Loss (statement of the amount claimed, sworn, and signed by the policyholder); and

Loss estimates relating to the flood insurance policy.

The NFIP Appeals Procedure provides the policyholder a voluntary option for resolving problems relating to flood insurance without proceeding to a lawsuit. Because this appeals process is completely voluntary, a policyholder still has the option of instituting a lawsuit without utilizing this process. In other words, the appeals process is not an administrative prerequisite to the policyholder's option of proceeding directly to litigation.

When a policyholder opts to appeal, FEMA will request information relevant to their appeal that includes the following personally identifying information:

Individual Policyholder Name: The name of the person requesting an appeal.

Policyholder Address: Policyholder address/place where the loss occurred, which may be a home address.

Policyholder Telephone Number: Policyholder telephone, where the individual can be reached, which may be a home phone number.

Personal Property Claimed: A list of personal property claimed as damaged and the subject of the appeal and relevant information.

Policyholder statement of facts: The policyholder's statement of why he is contesting the claim's disposition and supporting proof or records to document the policyholder's position.

Appeal letter from the policyholder. May include any of the ``individually identifying'' information already described above.

Appeal decision letter from FEMA--This decision letter will include FEMA's appeal decision and inform the policyholder of further recourse with respect to the disposition of the claim.

The appeals process authorized by FIRA is intended to resolve claim issues and is not intended to grant coverage or limits that are not provided by the policy contract. Filing an appeal does not waive any of the policyholder's requirements for perfecting a claim, nor does it extend any of the time limitations established in the policy insurance contract. Participating in the appeals process is completely voluntary on the part of the individual policyholder. The appeal process is not an administrative prerequisite to litigation, but is an additional remedy available to policyholders. Therefore, only the information required to resolve the dispute will be requested.

This proposed new system of records developed for the NFIP Claims Appeals Process will be used for this appeals process only.

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 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 such as property address, or mailing address symbol, assigned to the individual. The NFIP Claims Appeals Process System is such a system of records.

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 which personally identifiable information is put, and to assist individuals to more easily find such files within the agency. Below is the description of the NFIP Claims Appeals Process system of records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget and to Congress.

DHS/FEMA/Mitigation/Mitigation-1

System name:

NFIP Claims Appeals Process.

Security classification:

Unclassified.

System location:

The database will be maintained at FEMA Headquarters at 500 C Street, SW., Washington, DC 20472.

Categories of individuals covered by the system:

The system covers the individual NFIP policyholders who are appealing decisions on their flood insurance claim.

Categories of records in the system:

Information is collected from individual NFIP policyholders, who have voluntarily opted to appeal the disposition of their flood insurance claim. In addition, FEMA collects individual policyholder information from the WYO Companies that service the policies which are the subject of appeals in order to make a determination on these appeals. The ``individually identifying information'' collected includes the policyholders name, address where the loss occurred, telephone number, a list of personal property that is claimed to be damaged and is the subject of the appeal, the policyholder's statement of facts about the claim, the policyholder's statement why the claim's disposition is being disputed and supporting proof or records to document the policyholder's position, correspondence pertaining to the appeal which may include the foregoing individually identifying information, and FEMA's appeal decision.

Authority for maintenance of the system:

Section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act (FIRA) of 2004, 42 U.S.C. 4011.

Purpose(s):

These records are collected for the purpose of FEMA's review and determination on NFIP flood insurance individual policyholder's claim appeals, so that FEMA may determine whether additional payment to the individual policyholder is warranted.

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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 Government Accountability Office (GAO), DHS Office of the Inspector General (OIG), or other organization for the purposes of performing authorized audits or oversight of the NFIP program.

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 FEMA contractors as necessary to provide an appeal resolution.

D. To the Department of Justice (DOJ), the United States Attorney's Office, or a consumer-reporting agency for further collection action on any debt in relation to the appeals process, when circumstances warrant.

E. Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law--criminal, civil or regulatory--the relevant records may be referred to an appropriate Federal, State, territorial, tribal, local, international, or foreign agency law enforcement authority or other appropriate agency charged with investigating or prosecuting such a violation or enforcing or implementing such law.

F. To DOJ or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (1) FEMA, or (2) any employee of FEMA in his/her official capacity, or (3) any employee of FEMA in his/her individual capacity where DOJ or FEMA have 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 when the records are determined

by FEMA to be arguably relevant to the proceeding.

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:

The hard copy files and the electronically scanned document files will be maintained at FEMA Headquarters at 500 C Street, SW., Washington, DC 20472.

Retrievability:

Hard copy files and the electronically scanned document files are retrieved by the individual flood insurance policyholder's name or property address.

Safeguards:

Information in this system is safeguarded in accordance with applicable laws, rules and policies, including the DHS Information Technology Security Program Handbook. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know, using locks, and password protection identification features. DHS file areas are locked after normal duty hours and the facilities are protected from the outside by security personnel.

Each authorized individual working on the NFIP appeals procedure will have access only to information necessary to perform his or her official duties. Activity logs (audit trails) are maintained for all operating systems, applications, and middleware. A periodic review is conducted to monitor all user access. Incident response procedures are established to address reported security incidents as quickly as possible. Use of the access database will be carefully monitored and reviewed on a periodic basis by the system administrator.

Retention and disposal:

The paper copy of the appeal letter and supporting documentation that are sent to FEMA by the individual with the appeal letter, and FEMA's response letter reflecting its appeal decision constitute the official copy of the records. Electronically scanned copies will be kept as back up. FEMA will retain both the paper and electronic copies for six years and three months. This retention schedule has been approved by the National Archives and Records Administration (NARA). The NARA authority is N1-311-86-1 2A12 (a)(2) FIA File 12-2.

System Manager and address:

Director of Claims, Mitigation Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Notification procedure:

A request for access to records in this system may be made in writing to the System Manager identified above, or to the Privacy Act Officer, DHS/FEMA, Office of General Counsel (GL), Room 406, 500 C Street, SW., Washington, DC 20472, in conformance with 6 CFR part 5, subpart B and 44 CFR part 6, which provide the rules for requesting access to Privacy Act records.

Record access procedures:

See Notification procedure above. Request for access must comply with DHS and FEMA regulations for Privacy Act requests.

Contesting record procedures:

Policyholders typically contest their records with their service provider (WYO or NFIP Servicing Agent). Virtually all of these disputes are successfully handled through that mechanism. However, policyholders may also contest their records using the process outlined in the Notification procedures section above. State clearly and concisely the information being contested, the reasons for contesting it and the proposed amendment to the information sought.

Record source categories:

The ``individually identifying'' information may come from the individual NFIP policyholder and/or the entity servicing the policy.

Exemptions claimed for the system:

None.

Dated: May 25, 2006.

Maureen Cooney,
Acting Chief Privacy Officer, Department of Homeland Security.
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