[Federal Register: December 19, 2008 (Volume 73, Number 245)]

[Notices]

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2008-0150]

Privacy Act of 1974; U.S. Customs and Border Protection--015

Automated Commercial System, 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 and as part of the

Department of Homeland Security's ongoing effort to review and update

legacy system of record notices, the Department of Homeland Security

proposes to update and reissue the following legacy record system,

Treasury/CS.278 Automated

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Commercial System (October 18, 2001) as a Department of Homeland

Security system of records notice titled, U.S. Customs and Border

Protection Automated Commercial System. The Customs and Border

Protection Automated Commercial System is a comprehensive system used

by Department of Homeland Security, U.S. Customs and Border Protection

to track, control, and process all commercial goods imported into the

United States. This legacy system will now also collect additional data

via its Automated Broker Interface and Vessel Automated Manifest

System. Categories of individuals, categories of records, and the

routine uses of this legacy system of records notice have been reviewed

and updated to better reflect the U.S. Customs and Border Protection--

015 Automated Commercial System record system. This reissued system

will be included in the Department of Homeland Security's inventory of

record systems.

DATES: The established system of records will be effective January 20,

2009. Written comments must be submitted on or before January 20, 2009.

ADDRESSES: You may submit comments, identified by DHS-2008-0150 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.

 Fax: 1-866-466-5370.

 Mail: Hugo Teufel III, 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 please contact:

Laurence E. Castelli (202-325-0280), Chief, Privacy Act Policy and

Procedures Branch, U.S. Customs and Border Protection, Office of

International Trade, Regulations & Rulings, Mint Annex, 799 Ninth

Street, NW., Washington, DC 20001-4501. For privacy issues please

contact: Hugo Teufel III (703-235-0780), Chief Privacy Officer, Privacy

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

SUPPLEMENTARY INFORMATION:

I. Background

 The priority mission of U.S. Customs and Border Protection (CBP) is

to prevent terrorists and terrorist weapons from entering the country

while facilitating legitimate travel and trade. The Automated

Commercial System (ACS) is the comprehensive system used by U.S.

Customs and Border Protection to track, control, and process all

commercial goods imported into the United States. ACS is a

sophisticated and integrated large-scale business-oriented system which

employs multiple modules to perform discrete aspects of its

functionality, including receiving data transmissions from a variety of

parties involved in international commercial transactions and providing

CBP with the capability to track both the transport transactions and

the financial transactions associated with the movement of merchandise

through international commerce. Through the use of Electronic Data

Interchange (EDI), ACS facilitates merchandise processing,

significantly cuts costs, and reduces paperwork requirements for both

Customs and the importing community.

 ACS also provides the following:

A. Cargo Selectivity

 CBP uses the ACS Cargo Selectivity System to sort high risk cargo

from low risk cargo and to determine the type of examination required.

Cargo selectivity accepts data transmitted through ABI and compares it

against established criteria. CBP uses the Cargo Selectivity System, a

module of ACS, to process manifests and National In-bond entries in

order to identify the CBP inspection and examination status of specific

bills of lading for imported merchandise. Cargo Selectivity facilitates

more efficient and effective cargo processing by ensuring cargo that

requires additional screening receives it and that which is lower risk

does not.

B. Entry Summary Selectivity

 The Entry Summary Selectivity system of ACS screens the review of

entry summary data. Using line item data transmitted through ABI, the

system matches national and local selectivity criteria against entry

summary data to assess risk by importer, tariff number, country of

origin, manufacturer, and value. The system captures paperless summary

activity, discrepant summary findings, and line item team assignment

data.

C. Border Cargo

 The Border Cargo Selectivity system of ACS determines risk

assessment and examination requirements for high volume borders (i.e.,

ports of entry). The system uses the same screening process as the

Cargo Selectivity system. The Border Cargo Selectivity system will soon

be enhanced to allow ABI filers to transmit manifest information.

D. Quota

 The ACS Quota system tracks quantity controls on imported

merchandise. It also tracks visas from other countries. (Visas

determine the amount of exports allowed for certain countries.) The

Quota system checks the quantities against the visas and transmits this

information to the country of origin. The ACS quota and visa controls

simplify reconciliation of imports and exports.

E. Paperless Entry

 Paperless entry processing eliminates the need for ABI participants

to file a Customs Form 3461, Entry/Immediate Delivery, if certain

criteria are met and the merchandise does not require examination.

Carriers who participate in AMS will receive electronic notifications

when merchandise is available for release.

F. Automated Invoice Interface (AII)

 AII allows filers to send electronic invoice information to

Customs. This information is transmitted to Customs using either ABI

record formats or the EDIFACT CUSDEC (Customs declaration). When

EDIFACT is used, the filer also transmits data that is normally on the

CF-3461 for cargo release, as well as the entry summary CF-7501,

invoice data, and other government agency data.

G. Drawback

 Filers can submit a drawback claim to Customs on a diskette or

through ABI. This ensures that the data is quickly and accurately

recorded in ACS and results in faster claim processing and issuance of

the drawback payment. Immediate acceptance or rejection of data is

available.

H. Protest

 The ABI electronic protest system allows ABI participants to file,

amend, and query the following types of actions:

 Protests against decisions of the Customs Service under 19

U.S. C. 1514.

 Petitions for refunds of Customs duties or corrections of

errors requiring reliquidation pursuant to 19 U.S.C. 1520(c) and (d).

 Interventions in an importer's protest by an exporter or

producer of merchandise from a country that is a party to the North

American Free Trade

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Agreement under Section 181.115 of the Customs Regulations.

 Once filed, protests can be amended and additional arguments

submitted to:

 Apply for further review (when not requested at time of

filing).

 Assert additional claims or challenge an additional

decision.

 Submit alternative claims and additional grounds or

arguments.

 Request review of denial of further review.

 Request denial of the protest be voided.

 The protest, petition, or intervention can be transmitted remotely

from any location. Customs views and processes the protest on-line. An

automatic notification routine keeps the filer informed of any change

in status, including final disposition.

I. Remote Location Filing

 Remote Location Filing (RLF) is a pilot program which allows an

approved participant to electronically file a formal or informal entry

of merchandise with Customs from a location within the United States

other than the port of arrival (POA) or the designated examination site

(DES). Such merchandise, upon clearance by CBP, may enter the commerce

of the United States.

J. National In-bond

 The National In-bond system tracks cargo en route in the United

States. Using departure, arrival, and closure data, the In-bond system

tracks cargo from the point of unlading to the port of entry or

exportation. The In-bond system is incorporated within AMS. AMS retains

control over all sea in-bond movements (both conventional and

paperless) that are associated with automated bills of lading.

K. Paperless Master In-bond

 The Paperless Master In-bond program controls the movement and

disposition of master in-bond (MIB) shipments from the carrier's

custody at the port of unlading to the same carrier's custody at the

port of destination. This program utilizes the data already available

in AMS, eliminating the need for paper documentation.

 To help prevent terrorist weapons from being transported to the

United States, vessel carriers bringing cargo to the United States are

required to transmit certain information to Customs and Border

Protection (CBP) about the cargo they are transporting prior to lading

that cargo at foreign ports of entry. CBP is issuing an interim final

rule that requires both importers and carriers to submit additional

information pertaining to cargo to CBP before the cargo is brought into

the United States by vessel. This information must be submitted to CBP

by way of a CBP-approved electronic data interchange system. The

required information is necessary to improve CBP's ability to identify

high-risk shipments so as to prevent smuggling and ensure cargo safety

and security, as required by section 203 of the Security and

Accountability for Every (SAFE) Port Act of 2006 and section 343(a) of

the Trade Act of 2002, as amended by the Maritime Transportation

Security Act of 2002.

 The proposed rule was known to the trade as both the ``Importer

Security Filing proposal'' and the ``10 + 2 proposal.'' The name ``10 +

2'' is shorthand for the number of advance data elements CBP was

proposing to collect. Carriers would be generally required to submit

two additional data elements--a vessel stow plan and container status

messages regarding certain events relating to containers loaded on

vessels destined to the United States--to the elements they are already

required to electronically transmit in advance (the ``2'' of ``10+2'');

and importers, as defined in the proposed regulations, would be

required to submit ten data elements--an Importer Security Filing

containing ten data elements (the ``10'' of ``10+2'').

 ACS has two principal methods for electronic data interchange: The

Automated Broker Interface (ABI) and the Automated Manifest System

(AMS). Under the ``10+2'' program, importers, who submit the Importer

Security Filing (ISF), will use either ABI or Vessel AMS to provide

their information to CBP. ACS, upon receipt of the ISF, will transfer

the data to the Automated Targeting System (ATS) for screening and

targeting purposes. Once screened the ISF data will be returned with

embedded targeting links to ACS to be maintained in accordance with the

ACS stated retention policy.

 Pursuant to the savings clause in the Homeland Security Act of

2002, Public Law 107-296, Section 1512, 116 Stat. 2310 (November 25,

2002), the Department of Homeland Security (DHS) and its components and

offices have relied on preexisting Privacy Act systems of records

notices for the maintenance of records that concern the tracking,

controlling, and processing of all commercial goods imported into the

United States.

 This collection satisfies the requirements of Section 203 of the

Security and Accountability for Every Port Act of 2006 (Pub. L. 109-

347, 120 Stat. 1884 (SAFE Port Act)).

 Consistent with DHS's information sharing mission, information

stored in the Automated Commercial System may be shared with other DHS

components, as well as appropriate Federal, State, local, tribal,

foreign, or international government agencies. This sharing will only

take place after DHS/CBP determines that the receiving component or

agency has a need to know the information to carry out national

security, law enforcement, immigration, intelligence, or other

functions consistent with the routine uses set forth in this system of

records notice.

 To provide notice and transparency to the public, the Department of

Homeland Security, U.S. Customs and Border Protection announces an

amendment to an existing legacy Privacy Act system of records, the

Automated Commercial System, a comprehensive system used by U.S.

Customs and Border Protection to track, control, and process all

commercial goods imported into the United States. This legacy system

will now also collect additional data via the Automated Broker

Interface and Vessel Automated Manifest System.

 In accordance with the Privacy Act of 1974 and as part of DHS's

ongoing effort to review and update legacy system of record notices,

DHS proposes to update and reissue the following legacy record system,

Treasury/CS.278 Automated Commercial System (66 FR 52984 October 18,

2001), as a DHS/CBP system of records notice titled, U.S. Customs and

Border Protection Automated Commercial System. Categories of

individuals and categories of records have been reviewed, and the

routine uses of this legacy system of records notice have been updated

to better reflect the DHS/CBP Automated Commercial System record

system. This reissued system will be included in DHS's inventory of

record systems.

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 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 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

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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 system of

records in the possession or under the control of DHS 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 recordkeeping

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 Automated Commercial System system of records.

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

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

and to Congress.

System of Records

DHS/CBP--015

System name:

 U.S. Customs and Border Protection--015 Automated Commercial System

Security classification:

 Unclassified.

System location:

 Records are maintained at the CBP Headquarters in Washington, DC

and field offices.

Categories of individuals covered by the system:

 Categories of individuals covered by this system include: CBP

employees and individuals involved in the import trade.

Categories of records in the system:

 Categories of records in this system include:

 Individual's name;

 Social Security Number (SSN), if collected;

 Address;

 CBP employee names;

 CBP employee SSN;

 Importer of record number, which can be the IRS Employer

Identification Number (EIN), SSN, or a Customs-assigned number;

 Importer name and address;

 Type of importation bond;

 Importation bond expiration date;

 Surety code;

 Violation statistics;

 Protest information;

 Customhouse broker number;

 Customhouse name;

 Customhouse address;

 Bond agent name;

 Bond agent SSN;

 Surety code (non-SSN);

 Surety name;

 Customs bond information;

 Liquidator identification (non-SSN);

 Foreign Manufacturer/Shipper identification code;

 Foreign Manufacturer/Shipper name;

 Foreign Manufacturer/Shipper address;

 Carrier names;

 Carrier codes (non SSN) (Standard Carrier Agent Code (SCA)

for vessel carriers, International Air Transport Association (IATA) for

air carriers);

 Manufacturer (or supplier) name;

 Seller name;

 Buyer name;

 Ship to party name;

 Container stuffing location;

 Consolidator (stuffer);

 Foreign trade zone applicant identification number;

 Consignee number(s);

 Country of origin;

 Commodity HTSUS number;

 Booking party;

 Foreign port of unlading;

 Place of delivery; and

 Ship to party.

Authority for maintenance of the system:

 19 U.S.C. 66, 1431, 1448, 1481, 1484, 1505, 1514 and 1624, section

203 of the Security and Accountability for Every (SAFE) Port Act of

2006 and section 343(a) of the Trade Act of 2002, as amended by the

Maritime Transportation Security Act of 2002.

Purpose(s):

 The purpose of this system is to track, control, and process all

commercial goods imported into the United States, and to improve CBP's

ability to identify high-risk shipments so as to prevent smuggling and

ensure cargo safety and security. As part of CBP identifying high risk

shipments for border security and counterterrorism purposes, the system

includes information relating to individuals and their relationship to

the merchandise as documented in the Importer Security Filing (ISF).

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 or other Federal agency conducting

litigation or in proceedings before any court, adjudicative or

administrative body, when:

 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/CBP

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/CBP 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) 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,

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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 a Federal, State, or local agency, or other appropriate

entity or individual, or through established liaison channels to

selected foreign governments, in order to provide intelligence,

counterintelligence, or other information for the purposes of

intelligence, counterintelligence, or antiterrorism activities

authorized by U.S. law, Executive Order, or other applicable national

security directive.

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

or foreign law enforcement agency 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.

 I. To the Bureau of the Census to provide information on foreign

trade data.

 J. To a Federal agency, pursuant to the International Trade Data

System Memorandum of Understanding, consistent with the receiving

agency's legal authority to collect information pertaining to and/or

regulate transactions in international trade.

 K. To appropriate Federal, State, local, tribal, or foreign

governmental agencies or multilateral governmental organizations

responsible for investigating or prosecuting the violations of, or for

enforcing or implementing, a statute, rule, regulation, order, license,

or treaty where DHS determines that the information would assist in the

enforcement of civil or criminal laws.

 L. To a Federal, State, local, tribal, territorial, foreign, or

international agency, maintaining civil, criminal or other relevant

enforcement information or other pertinent information, which has

requested information relevant to or necessary to the requesting

agency's or the bureau's hiring or retention of an individual, or

issuance of a security clearance, license, contract, grant, or other

benefit;

 M. To a court, magistrate, or administrative tribunal in the course

of presenting evidence, including disclosures to opposing counsel or

witnesses in the course of civil discovery, litigation, or settlement

negotiations, in response to a subpoena, or in connection with criminal

law proceedings;

 N. To third parties during the course of an investigation to the

extent necessary to obtain information pertinent to the investigation;

 O. To the Department of Justice, the United States Attorney's

Office, or a consumer reporting agency for further collection action on

any delinquent debt when circumstances warrant;

 P. To appropriate Federal, State, local, tribal, or foreign

governmental agencies or multilateral governmental organizations where

DHS is aware of a need to utilize relevant data for purposes of testing

new technology and systems designed to enhance national security or

identify other violations of law;

 Q. To a former employee of DHS, in accordance with applicable

regulations, for purposes of responding to an official inquiry by a

Federal, State, or local government entity or professional licensing

authority; or facilitating communications with a former employee that

may be necessary for personnel-related or other official purposes where

the Department requires information or consultation assistance from the

former employee regarding a matter within that person's former area of

responsibility;

 R. To an organization or individual in either the public or private

sector, either foreign or domestic, where there is a reason to believe

that the recipient is or could become the target of a particular

terrorist activity or conspiracy, to the extent the of life or

property; and

 S. To a consumer reporting agency related to owing the U.S.

Government money in accordance with 15 U.S.C 1681 et seq.

Disclosure to consumer reporting agencies:

 Yes, in accordance with the provision of 15 U.S.C. 1681 et seq.

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

that are stored electronically are stored on magnetic disc, tape,

digital media, and CD-ROM.

Retrievability:

 Records may be retrieved by identification codes and/or name.

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 being

stored. Access to the computer system containing the records in this

system is limited to those individuals who have a need to know the

information for the performance of their official duties and who have

appropriate clearances or permissions. The system maintains a real-time

auditing function of individuals who access the system. Additional

safeguards may vary by component and program.

Retention and disposal:

 The Importer Security Filing is retained for fifteen years from

date of submission unless it becomes linked to active law enforcement

lookout records, CBP matches to enforcement activities, and/or

investigations or cases (i.e., specific and credible threats;

individuals, and routes of concern; or other defined sets of

circumstances) for which it will remain accessible for the life of the

law enforcement matter to support that activity and other enforcement

activities that may become related. All other records are maintained

for a period of six years from the date of entry.

System Manager and address:

 Director, Office of Automated Systems, CBP Headquarters, 1300

Pennsylvania Avenue, NW., Washington, DC 20229 is responsible for all

data maintained in the files.

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 CBP's FOIA Officer, 1300

Pennsylvania Avenue, NW., Washington, DC 20229. 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, 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

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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

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

required, you may obtain forms for this purpose from the Director,

Disclosure and FOIA, <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,

 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) will 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 authorized Customs forms or electronic

formats from individuals and/or companies incidental to the conduct of

foreign trade and required by CBP in administering the tariff laws and

regulations of the United States.

Exemptions claimed for the system:

 Information in the system may be shared with law enforcement and/or

intelligence agencies pursuant to the above routine uses. The Privacy

Act requires DHS to maintain an accounting of the disclosures made

pursuant to all routines uses. Disclosing the fact that a law

enforcement or intelligence agencies has sought particular records may

affect ongoing law enforcement or intelligence activity. As such

pursuant to 5 U.S.C. 552a(j)(2) and (k)(2), DHS will claim exemption

from (c)(3), (e)(8), and (g) of the Privacy Act of 1974, as amended, as

is necessary and appropriate to protect this information.

 Dated: December 10, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

 [FR Doc. E8-29801 Filed 12-18-08; 8:45 am]

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