

are directed to clearly mark the envelope and letter "Privacy Act Request." Within the text of the request, the subject of the record must provide his/her account number and/or the full name, date and place of birth, and notarized signature, and any other information which may assist in identifying and locating the record, and a return address. For convenience, individuals may obtain Form G-639, FOIA/PA Request, from the nearest DHS office and used to submit a request for access. The procedures for making a request for access to one's records can also be found on the USCIS Web site, located at <http://www.uscis.gov>.

An individual who would like to file a FOIA/PA request to view their USCIS record may do so by sending the request to the following address: U.S. Citizenship and Immigration Services, National Records Center, FOIA/PA Office, P.O. Box 648010, Lee's Summit, MO 64064-8010.

#### CONTESTING RECORDS PROCEDURES:

Individuals have an opportunity to correct their data by submitting a redress request directly to the USCIS Privacy Officer who refers the redress request to the USCIS Office of Records. When a redress request is made, any appropriate change is added directly to the existing records stored in the underlying DHS system of records from which the information was obtained. Once the record is updated in the underlying DHS system of records, it is downloaded into VIS. If an applicant believes their file is incorrect but does not know which information is erroneous, the applicant may file a Privacy Act request to access their record as detailed in the section titled "Record access procedures" above.

#### RECORD SOURCE CATEGORIES:

Information contained comes from several sources: (A) Information derived from the following DHS systems of records, USCIS's CIS, CLAIMS3, CLAIMS4, RNACS, ISRS and/or BSS (when the latter system is deployed); CBP's TECS; and ICE's SEVIS, (B) Information derived from the SSA, (C) Information collected from agencies and employers about individuals seeking government benefits or employment with an employer using an employment verification program, (D) Information collected from system users at either the agency or the employer used to provide account access to the verification program, and (E) Information developed by VIS to identify possible issues of misuse or fraud.

#### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: December 2, 2008.

#### Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

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## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

[Docket No. DHS-2008-0131]

#### Privacy Act of 1974; United States Immigration and Customs Enforcement-009 External Investigations System of Records

**AGENCY:** Privacy Office, DHS.

**ACTION:** Notice of Privacy Act system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to consolidate two legacy record systems originally published by the legacy Customs Service: Treasury/CS.129 Investigations Record System, October 18, 2001, and Treasury/CS.285 Automated Index to Central Investigative Files, October 18, 2001, into a Immigration and Customs Enforcement system of records notice titled External Investigations. In addition, DHS will now cover those Immigration and Customs Enforcement records previously covered by the Treasury/CS.244 Treasury Enforcement Communications System with this new system of records. Categories of individuals, categories of records, and the routine uses of these legacy system of records notices have been consolidated and updated to better reflect the law enforcement investigatory records maintained by Immigration and Customs Enforcement. Additionally, DHS is issuing a Notice of Proposed Rulemaking (NPRM) concurrent with this SORN elsewhere in the **Federal Register**. The exemptions for the legacy system of records notices will continue to be applicable until the final rule for this SORN has been completed. This system will be included in the Department's inventory of record systems.

**DATES:** Written comments must be submitted on or before January 12, 2009. This new system will be effective January 12, 2009.

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

2008-0131 by one of the following methods:

- *Federal e-Rulemaking Portal:* <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 and may be read at <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 issues please contact Lyn Rahilly, Privacy Officer, (202-731-3300), Immigration and Customs Enforcement, 500 12th Street, SW., Washington, DC 20024, e-mail: [ICEPrivacy@dhs.gov](mailto:ICEPrivacy@dhs.gov). For privacy issues please contact Hugo Teufel III (703-235-0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Immigration and Customs Enforcement (ICE) is the largest investigative branch of the Department of Homeland Security (DHS). The agency was created after 9/11, by combining the law enforcement arms of the former Immigration and Naturalization Service (INS) and the former Customs Service, to more effectively enforce our immigration and customs laws and to protect the United States against terrorist attacks. ICE does this by targeting the people, money and materials that support terrorism and other criminal activities. ICE investigates on its own and in conjunction with other agencies a broad range of illegal activities, such as terrorism, organized crime, gangs, child exploitation, and intellectual property violations.

Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107-296, Section 1512, 116 Stat. 2310 (Nov. 25, 2002), DHS and ICE have relied on preexisting Privacy Act systems of records notices for the maintenance of records pertaining to law enforcement investigations performed by ICE. With the publication of the External Investigation Record System, DHS is consolidating and retiring two legacy U.S. Customs Service

system of records—Treasury/CS.129, Investigations Record System (66 FR 52984, October 18, 2001), and Treasury/CS.285, Automated Index to Central Investigative Files (66 FR 52984, October 18, 2001)—which ICE previously relied upon in maintaining its law enforcement investigatory records and information. The External Investigations Records System will also cover ICE records that are presently maintained in Treasury Enforcement Communications System (TECS) (66 FR 53029, October 18, 2001), a computerized information system. ICE uses an electronic case management component in TECS to store and manage law enforcement investigatory records. These records contain investigative case files and other information associated with ongoing and closed ICE investigations into suspected violations of laws and regulations governing the movement of people and goods into and out of the U.S. and other laws within ICE's jurisdiction. ICE's data in TECS was previously covered by another legacy U.S. Customs Service records system titled Treasury/CS.244, Treasury Enforcement Communications System (66 FR 53029, October 18, 2001). With the establishment of the ICE External Investigations records system, ICE will no longer rely on Treasury/CS.244 to cover the ICE investigatory case file information maintained in TECS.

Categories of individuals, categories of records, and the routine uses of these legacy system of records notices have been consolidated and updated to better reflect ICE's investigatory records. Additionally, DHS is issuing a Notice of Proposed Rulemaking (NPRM) concurrent with this SORN elsewhere in the **Federal Register**. The exemptions for the legacy system of records notices will continue to be applicable until the final rule for this SORN has been completed. This system will be included in the Department'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 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 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 DHS/ICE External Investigations 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 (OMB) and to Congress.

### System of Records: DHS/ICE-009

#### SYSTEM NAME:

External Investigations.

#### SECURITY CLASSIFICATION:

Unclassified. Law Enforcement Sensitive (LES).

#### SYSTEM LOCATION:

Records are maintained at Immigration and Customs Enforcement Headquarters in Washington, DC and in field offices.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include:

(1) Individuals who are the subjects of current or previous law enforcement investigations into violations of U.S. customs and immigration laws, as well as other laws and regulations within ICE's jurisdiction, including investigations led by other domestic or foreign agencies where ICE is providing support and assistance;

(2) Victims and witnesses in ICE law enforcement investigations described above;

(3) Fugitives with outstanding Federal or State warrants; and

(4) Operators of vehicles crossing the borders of the U.S. who are the subject of an ICE investigation, including but

not limited to drivers of automobiles, private yacht masters, and private pilots arriving in the U.S.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system may include: Subject Information:

- Name and Aliases;
- Addresses;
- Social Security Number;
- Armed Forces Number;
- Alien Registration number;
- Date and place of birth;
- Citizenship;
- Passport and visa information;
- License information for owners and operators of vehicles, aircraft, and vessels;

Information related to the subject's entry and exit of the United States; and

- Other biographical information.
- Victim and Witness Records:
- Name;
  - Contact information, including address and telephone numbers;
  - Sworn statements, reports of interview, and testimony; and
  - Other relevant biographical and background information, such as employment, and education.

Investigatory and Evidentiary Records:

- ICE case number;
- Incident reports;
- Reports and memoranda prepared by investigators during the course of the investigation or received from other agencies participating in or having information relevant to the investigation;
- Law enforcement intelligence reports;
- Electronic surveillance reports;
- Asset ownership information such as registration data and license data, for vehicles, vessels, merchandise, goods and other assets;
- Information about duties and penalties owed, assessed, and paid;
- Information about goods and merchandise, such as import and export forms and declarations filed, lab or analytical reports, valuation and classification of goods, and other relevant data;
- Correspondence and court filings;
- Information received from other governmental agencies, confidential sources, and other sources pertaining to the investigation;
- Any other evidence in any form, including papers, photographs, electronic recordings, electronic data, or video records that was obtained, seized, or otherwise lawfully acquired from any source during the course of the investigation.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 19 U.S.C. 66; 19 U.S.C. 1431; 19 U.S.C. 1603; 19 U.S.C. 2072; 40

U.S.C. 1315; Title 18, United States Code; Title 19, United States Code; 31 CFR part 103; Title 40 United States Code.

**PURPOSE(S):**

The purpose of this system is to document external investigations performed by ICE pertaining to suspected violations of laws regulating the movement of people and goods into and out of the United States in addition to other violations of other laws within ICE's jurisdiction; to facilitate communication between ICE and foreign and domestic law enforcement agencies for the purpose of enforcement and administration of laws, including immigration and customs laws; and to provide appropriate notification to victims in accordance with Federal victim protection laws.

**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 of 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 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) 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 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.

H. To an appropriate Federal, State, local, tribal, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit and disclosure is appropriate to the proper performance of the official duties of the person making the request.

I. 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 or in connection with criminal law proceedings or in response to a subpoena.

J. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

K. To Federal and foreign government intelligence or counterterrorism agencies or components where DHS becomes aware of an indication of a threat or potential threat to national or international security, or where such use is to assist in anti-terrorism efforts and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure.

L. Disclosure to victims regarding custodial information, such as release on bond, order of supervision, removal from the U.S., or death in custody, about an individual who is the subject of a criminal or immigration investigation, proceeding, or prosecution;

M. To any person or entity to the extent necessary to prevent immediate loss of life or serious bodily injury, *e.g.*, disclosure of custodial release information to witnesses who have received threats from individuals in custody;

N. To international and foreign governmental authorities in accordance with law and formal or informal international arrangements.

O. To a public or professional licensing organization when such information indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.

P. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an

unwarranted invasion of personal privacy.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**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 are retrieved by individual's name, date of birth, ICE investigative file number, Social Security Number, driver's license number, pilot's license number, vehicle license plate number, address, home telephone number, passport number, citizenship, country of birth, armed forces number, and date of entry into the United States.

**SAFEGUARDS:**

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated system security 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:**

Investigative files concerning munitions control cases are permanent records that are transferred to the Federal Records Center after one year, and then transferred to the National Archives and Records Administration (NARA) fifteen years after case closure. Records for other closed investigative cases are maintained in the investigating ICE field or headquarters office for either one year or five years after the end of the fiscal year in which the related investigative file is closed, depending on the category of the case. Those records are then transferred to the Federal Records Center where they are held for periods of time ranging from five to twenty five years, depending on the category of the case, after which they are destroyed. Destruction is by

burning or shredding. DHS is proposing to retain electronic records associated with law enforcement investigations for 75 years after case closure, after which they would be destroyed. An updated schedule for investigative records is under review and will be submitted to NARA for approval.

**SYSTEM MANAGER AND ADDRESS:**

Immigration and Customs Enforcement, Mission Support Division, Unit Chief, Executive Information Unit/ Program Management Oversight (EIU/ PMO), Potomac Center North, 500 12th St., SW., Washington, DC 20024.

**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 component's FOIA Officer, whose contact information can be found at <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, 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 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://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 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:**

ICE may receive information in the course of its law enforcement investigations from nearly any source. Sources of information include: domestic and foreign governmental and quasi-governmental agencies and data systems, public records, commercial data aggregators, import and export records systems, immigration and alien admission records systems, members of the public, subjects of investigation, victims, witnesses, confidential sources, and those with knowledge of the alleged activity.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), and (e)(4)(H), (e)(5) and (e)(8); (f), and (g). Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f). In addition, to the extent a record contains information from other exempt systems of records, ICE will rely on the exemptions claimed for those systems.

Dated: December 2, 2008.

**Hugo Teufel III,**

*Chief Privacy Officer, Department of Homeland Security.*

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**DEPARTMENT OF HOMELAND SECURITY**

**Office of the Secretary**

[Docket No. DHS-2008-0114]

**Privacy Act of 1974; United States Coast Guard—015 Legal Assistance Case Files System of Records**

**AGENCY:** Privacy Office; DHS.

**ACTION:** Notice of Privacy Act system of records.