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[Notices]
[Pages 39266-39271]
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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2009-0112]

Privacy Act of 1974; Department of Homeland Security/ALL-029
Civil Rights and Civil Liberties Records 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 proposes to update and reissue a Department of Homeland Security system of records titled, ``Department of Homeland Security Office for Civil Rights and Civil Liberties-001 Matters System of Records,' ' January 6, 2004. The system name is being changed to, ``Department of Homeland Security/ALL-029 Civil Rights and Civil Liberties Records

[[Page 39267]]

System of Records.' ' This name change, along with other changes to the system, are made to capture the expansion of the overall system of records to include both the Department Office for Civil Rights and Civil Liberties, as well as all component offices that perform civil rights and civil liberties functions, and staff of components who do not have a designated civil rights and civil liberties office but who do perform related civil rights and civil liberties functions (collectively referred to as ``civil rights and civil liberties staff'). The Department's civil rights and civil liberties staff advise Departmental and/or component leadership, personnel, and partners about civil rights and civil liberties issues, ensuring respect for civil rights and civil liberties in policy decisions and implementation of those decisions. Civil rights and civil liberties staff also review and assess information concerning abuses of civil rights, civil liberties, such as profiling on the basis of race, ethnicity, or religion, by employees and officials of the Department of Homeland Security. The Department's civil rights and civil liberties staff also ensure that all Federally-assisted and Federally-conducted programs or activities of the Department comply with the provisions of Title VI of the Civil Rights Act of 1964. The Department's civil rights and civil liberties staff investigate complaints, including:

Allegations that individuals acted under color of law or otherwise abused their authority; discrimination; profiling; violations of the confidentiality provisions of the Violence Against Women Act; conditions of detention; treatment; due process; and watch list issues.

As a result of the biennial review of this system, updates have been made to change the system name to ``Department of Homeland Security/ALL-029 Civil Rights and Civil Liberties Records System of Records'' to reflect that the system is a Department-wide system of records, as well as updates to the: Categories of records; routine uses; retention and disposal; and Privacy Act exemptions.

Exclusion is made from this system for Office of Inspector General records relating to civil rights and civil liberties. Office of Inspector General records are covered by Department of Homeland Security/Office of Inspector General-002 Investigative Records System of Records, October 28, 2009.

This updated system will continue to be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before August 9, 2010. This new system will be effective August 9, 2010.

ADDRESSES: You may submit comments, identified by docket number [DHS-2009-0112] by one of the following methods:

Federal e-Rulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

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://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: For Headquarters: Complaints Manager (202-357-8178), Office for Civil Rights and Civil Liberties, Department of Homeland Security, 1201 New York Avenue, NW., Washington, DC 20528. For components of DHS, the System Manager can be found at <http://www.dhs.gov/foia> under ``contacts.'' For privacy issues please contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Homeland Security's (DHS) civil rights and civil liberties staff, including components, as well as staff of components who do not have a designated civil rights and civil liberties office, but who do perform related functions (civil rights and civil liberties staff), rely on the DHS/Civil Rights and Civil Liberties (CRCL)-001 Matters System of Records (69 FR 70464, December 6, 2004) and other component specific systems of records, for the collection and maintenance of records that concern the Department's civil rights and civil liberties records. The system name is being changed to ``DHS/ALL-

029 Civil Rights and Civil Liberties Records System of Records'' to reflect that the system is a Department-wide system of records and that all DHS civil rights and civil liberties records will now be covered by the DHS/ALL-029 Civil Rights and Civil Liberties Records System of Records. This name change, along with other changes to the system, are made to capture the expansion of the overall system of records including the Department's CRCL Office, as well as component civil rights and civil liberties staff, staff of components who do not have a designated civil rights and civil liberties office but who do perform related functions, and to meet investigative and reporting responsibilities related to civil rights and civil liberties. The DHS/ALL-029 Civil Rights and Civil Liberties Records System of Records is the baseline system for civil rights and civil liberties activities, as led by the DHS Officer for Civil Rights and Civil Liberties, for the Department.

Civil rights and civil liberties complaints are initially reviewed to determine if the Department has jurisdiction over the alleged complaint. If the Department has jurisdiction and accepts the complaint, basic information about the case is maintained and processed within the DHS/ALL-029 Civil Rights and Civil Liberties Records System of Records. Information in this system may include, but is not limited to: Name; Social Security number or other identifier; address; phone number; alien registration number and other identifying data as may be necessary to review the complaint. If the complainant provides more personally identifiable information (PII) than is necessary, the information is not captured, but may remain in the paper file as information provided by the complainant.

Civil rights and civil liberties records may be referred to the Office of Inspector General (OIG) for handling under the Inspector General Act of 1978, as amended. The OIG decides whether it will pursue the case, or decline to investigate it and refer it back to CRCL or component civil rights and civil liberties office, staff of components who do not have a designated civil rights and civil liberties office, but who do perform related functions, for appropriate action. Any resulting OIG records are excluded from this system and are part of the DHS/OIG-002 Investigative Records System of Records (74 FR 55569, October 28, 2009).

The data collected in component civil rights and civil liberties offices or by staff of components who do not have a designated civil rights and civil liberties office, but who do perform related functions, are part of this system of records and are managed on a component by component basis and may or may not be reviewed or maintained by the CRCL Office. Component civil rights and civil liberties offices, and staff of components

[[Page 39268]]

who do not have a designated civil rights and civil liberties office, but who do perform related functions, may consult and advise the CRCL Office on civil rights and civil liberties issues within the component, but are handled at the component level unless formally elevated to the CRCL Office.

The purpose of this system is to allow the DHS Officer for Civil Rights and Civil Liberties, component civil rights and civil liberties staff, and staff of components who do not have a designated civil rights and civil liberties office but who do perform related functions, to maintain relevant information necessary to review complaints or

comments about alleged civil rights or civil liberties violations, or racial, ethnic, or religious profiling related to the Department's activities. The system will also track and maintain investigative files and records of complaint resolution and other issues, and facilitate oversight and accountability of the Department's civil rights and civil liberties complaint resolution mechanisms. DHS is authorized to implement this program primarily through 6 U.S.C. 345; 5 U.S.C. 301; 49 U.S.C. 114; 44 U.S.C. 3101; section 803 of Public Law 110-53; E.O. 12958, as amended. This system has an effect on individual privacy that is balanced by the need to address civil rights and civil liberties issues and matters within the Department. Risk is mitigated by limiting access to civil rights and civil liberties staff and other officials who need the information in the course of performing their duties. Routine uses contained in this notice include sharing with the Department of Justice (DOJ) for legal advice and representation; to a congressional office at the request of an individual; to the National Archives and Records Administration (NARA) for records management; to contractors in support of their contract assignment to DHS; to Federal, State, local and other governmental partners to enforce and prosecute laws and regulations; to agencies, organizations or individuals for the purpose of audit; to agencies, entities, or persons during a security or information compromise or risk, to another Federal agency for labor and employment relations; to an agency, organization, or individual when there could potentially be a risk to an individual; to former employees of the Department while responding to inquiries; to the Office of Management and Budget (OMB), DOJ or other agencies for advice; to other agencies or organizations for redress; to the Department of Transportation (DOT) and its operating administrations for Transportation Security Administration (TSA) records and functions; and to the news media in the interest of the public. A review of this system is being conducted to determine if the system of records collects information under the Paperwork Reduction Act.

As a result of the biennial review of this system, updates have been made to change the system name to ``Department of Homeland Security/ALL-029 Civil Rights and Civil Liberties Records System of Records'' to reflect that the system is a Department-wide system of records; categories of records to reflect the addition of Social Security number; routine uses to reflect the addition of sharing with the DOT for legacy TSA records; retention and disposal to reflect the NARA retention and disposal policy and description; and the addition of exemption (k)(3) under the Privacy Act to include records at the U.S. Secret Service in conjunction with the protection of the President of the United States.

Exclusion is made from this system for Office of Inspector General records relating to civil rights and civil liberties. Office of Inspector General records are covered by DHS/OIG-002 Investigative Records System of Records, October 28, 2009.

This updated system will continue to be included in the Department of Homeland Security'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 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 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 their records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/ALL-029 Civil Rights and Civil Liberties Records System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to OMB and to Congress.
System of Records

DHS/ALL-029

SYSTEM NAME:

Department of Homeland Security/ALL-029 Civil Rights and Civil Liberties Records System of Records.

SECURITY CLASSIFICATION:

Unclassified, sensitive, and classified.

SYSTEM LOCATION:

Records are maintained at the Department Office for Civil Rights and Civil Liberties (CRCL), component civil rights and civil liberties offices, and within offices of a component that does not have a designated civil rights and civil liberties office, but these functions are dispersed within other offices of the component, in Washington, DC and field locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include:

Persons who contact the CRCL or component civil rights and civil liberties staff, to allege abuses of civil rights and civil liberties, or to allege racial, ethnic, or religious profiling by DHS, its employees, contractors, grantees, or others acting under the authority of the Department; persons alleged to be involved in civil rights or civil liberties abuses or racial, ethnic, or religious profiling, victims or witnesses to such abuse; third parties not directly involved in the alleged incident, but identified as relevant persons to an investigation; and DHS employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in the system include:

Information relating to allegations of abuses of civil rights, civil liberties, and racial, ethnic, and religious profiling by

[[Page 39269]]

Department employees and officials will be collected, as well as similar allegations relating to persons or entities under Department control (such as contractors or programs). Basic information about complainants will be collected, including, but not limited to:

- Complainant's name;
- Complainant's home and work mailing address;
- Complainant's home, cell and work telephone and fax numbers;
- Complainant's home and work e-mail address;
- Complainant's social security number or alien registration number, if necessary and appropriate;
- Name of representative filing a claim on behalf of a complainant;
- Allegation occurrence date and time;
- Allegation facility name and location;
- DHS component referenced;
- Information on a complainant's country of origin/race/religion (CRCL does not solicit this information, it is tracked if individuals provide it);
- Allegation details, primary and secondary issues, and primary and secondary basis;
- Other information that may appear in the system or in the file folder on a case-by-case basis might include:
 - [cir] Photographic facial images;
 - [cir] Bank account numbers;
 - [cir] Vehicle license plate information; and
 - [cir] Civil or criminal history information.

Paper investigative files and documents depending on the particular investigation, but may include:

- [cir] Letters, memoranda, and other documents alleging abuses of civil rights, civil liberties, and profiling from complainants;
- [cir] Internal letters, memoranda, and other communications within DHS;
- [cir] Results of an investigation of allegations;
- [cir] Transcripts, interview notes, investigative notes;
- [cir] Documentation concerning requests for additional information needed to complete the investigation;
- [cir] Medical records;
- [cir] Copy of passport;
- [cir] Evidentiary documents and material, comments, and reports relating to the alleged abuses and to the resolution of the complaint; and
- [cir] Similar information regarding witnesses, persons involved in the alleged incident, or any other persons with relevant information regarding the alleged abuses may also be collected.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 U.S.C. 345; 5 U.S.C. 301; 49 U.S.C. 114; 44 U.S.C. 3101; section 803 of Public Law 110-53; E.O. 12958, as amended.

PURPOSE(S):

The purpose of this system is to allow CRCL, component civil rights and civil liberties staff, and staff of components who do not have a designated civil rights and civil liberties office, but who do perform related functions, to maintain relevant information necessary to review

complaints or comments about alleged civil rights or civil liberties violations, including racial, ethnic, or religious profiling related to the Department's activities. The system will also track and maintain investigative files and records of complaint resolution and other issues, and facilitate oversight and accountability of the Department's civil rights and civil liberties complaint resolution mechanisms.

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 (DOJ), (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 (NARA) 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 is 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 another Federal agency with responsibility for labor or employment relations or other issues, including Equal Employment Opportunity issues, when that agency has jurisdiction over issues reported to CRCL, or component civil rights and civil liberties staff, and staff of components who do not have a designated civil rights and civil liberties office, but who do perform related functions.

[[Page 39270]]

I. 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 information is relevant to the protection of life or property.

J. To a former employee of the Department for purposes of responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

K. To the Office of Management and Budget (OMB), the DOJ, or the Office of Special Counsel (OSC), to obtain advice regarding statutory and other requirements related to civil rights and civil liberties.

L. To a Federal, State, territorial, Tribal, local, international, or foreign government agency or entity for the purpose of consulting with that agency or entity: 1. To assist in making a determination regarding redress for an individual in connection with the operations of a DHS component or program; 2. for the purpose of verifying the identity of an individual seeking redress in connection with the operations of a DHS component or program; or 3. for the purpose of verifying the accuracy of information submitted by an individual who has requested such redress on behalf of another individual.

M. To a Federal agency or entity that furnished a 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 that has information relevant to the redress request for purposes of obtaining guidance, additional information, or advice from such Federal agency or entity regarding the handling of this particular redress request.

N. To third parties lawfully authorized in connection with a Federal government program, which is authorized by law, regulation, or rule, but only the information necessary and relevant to effectuate or to carry out a particular redress result for an individual and disclosure is appropriate to enable these third parties to carry out

their responsibilities related to the Federal government program, such as when the name and appropriate associated information about an individual who has been cleared and distinguished from a known or suspected threat to aviation security, is shared with the airlines to prevent future delays and disruptions for that individual while traveling.

O. To the Department of Transportation (DOT) and its operating administrations when relevant or necessary to (1) ensure safety and security in any mode of transportation; (2) enforce safety- and security-related regulations and requirements; (3) assess and distribute intelligence or law enforcement information related to transportation security; (4) assess and respond to threats to transportation; (5) oversee the implementation and ensure the adequacy of security measures at airports and other transportation facilities; (6) plan and coordinate any actions or activities that may affect transportation safety and security or the operations of transportation operators; or (7) the issuance, maintenance, or renewal of a license, certificate, contract, grant, or other benefit.

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 may be retrieved by name, incident code, social security number or other unique personal identifier.

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 the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Referred issues are sent to DHS components for resolution. Components will maintain the record copy in accordance with the component's related record disposition schedule. CRCL will maintain a reference copy containing the original complaint, all related and

relevant documents, and the component's memorandum of resolution in accordance with records schedule N1-563-07-6, b.1 and will destroy or delete seven years after resolution or closure of the case.

Retained issues are either maintained by CRCL because of the significance of the issue, which may result in policy change, or issues returned from the component for resolution in accordance with N1-563-07-6, b.2 and will destroy or delete seventy-five years after resolution or closure of the case.

Significant case files involve allegations made against senior DHS officials; attract national media or congressional attention; present significant or novel questions of law or policy; and result in substantive changes in DHS policies and procedures. Significant case files will be selected by the Headquarters and component civil rights and civil liberties offices based on these criteria. In accordance with N1-563-07-6, b.3 records are maintained through the end of fiscal year in which the significant case file is closed. Records are transferred to NARA five years after the case is closed according to NARA transfer guidance and regulations.

SYSTEM MANAGER AND ADDRESS:

For DHS: Complaints Manager (202-357-8178), Office for Civil Rights and Civil Liberties, Department of Homeland Security, 1201 New York Avenue, NW., Washington DC 20528.

For components of DHS, the System Manager can be found at <http://www.dhs.gov/foia> under ``contacts.''

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it

[[Page 39271]]

is a law enforcement system. However, CRCL, component civil rights and civil liberties offices, and staff of components who do not have a designated civil rights and civil liberties office but who do perform related functions, will consider individual requests to determine whether or not information may be released. Thus, 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 CRCL 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 and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP-0655, 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://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:

Information is collected from individuals who file complaints, eyewitnesses, third parties, DHS employees and/or contractors, illegal aliens involved in the circumstances that gave rise to the complaint, open sources such as non-fee Internet sources and newspapers, and other entities with information pertinent to the matter under investigation. The information is received via correspondence, telephone calls, e-mails, and facsimiles.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security proposes to exempt certain portions of this system relating to ongoing investigations and national security activities from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(3), and (k)(5).

Dated: June 30, 2010.

Mary Ellen Callahan,
Chief Privacy Officer, Department of Homeland Security.
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