and potential witnesses, and confidential informants.

Dated: August 20, 2009.

Mary Ellen Callahan,
Chief Privacy Officer, Department of Homeland Security.
[FR Doc. E9–20751 Filed 8–28–09; 8:45 am]
BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2009–0051]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Customs and Border Protection—015 Automated Commercial System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department of Homeland Security U.S. Customs and Border Protection system of records entitled the ''Department of Homeland Security U.S. Customs and Border Protection—015 Automated Commercial System of Records'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security U.S. Customs and Border Protection—015 Automated Commercial System from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 31, 2009.

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 contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 77548, December 19,

2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/U.S. Customs and Border Protection (CBP)—015 Automated Commercial System. The DHS/CBP Automated Commercial system of records notice was published concurrently in the **Federal Register**, 73 FR 77759, December 19, 2008, and comments were invited on both the notice of proposed rulemaking and system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or the system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552.

■ 2. At the end of Appendix C to Part 5, add the following new paragraph ''26'':

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

*   *   *   *   *

26. The DHS/CBP—015 Automated Commercial System (ACS) system of records consists of electronic and paper records and will be used by DHS and its Components. The DHS/CBP—015 Automated Commercial System is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; and national security and intelligence activities. The DHS/CBP—015 Automated Commercial System contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3), (e)(8), and (g) pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). Further, no exemption shall be asserted with respect to information maintained in the system as it relates to data submitted by or on behalf of a person who

travels to visit the United States and crosses the border, nor shall an exemption be asserted with respect to the resulting determination (approval or denial). After conferring with the appropriate component or agency, DHS may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement purposes of the systems from which the information is recompiled or in which it is contained. Exemptions from the above particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, when information in this system of records may impede a law enforcement or national security investigation:

(a) From subsection (c)(3) (Accounting for Disclosure) because making available to a record subject the accounting of disclosures from records concerning him or her would specifically reveal any investigative interest in the individual. Revealing this information could reasonably be expected to compromise ongoing efforts to investigate a violation of U.S. law, including investigations of a known or suspected terrorist, by notifying the record subject that he or she is under investigation. This information could also permit the record subject to take measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(b) From subsection (e)(8) (Notice on Individuals) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on DHS and other agencies and could alert the subjects of counterterrorism or law enforcement investigations to the fact of those investigations when not previously known.

(c) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: August 20, 2009.

Mary Ellen Callahan,
Chief Privacy Officer, Department of Homeland Security.
[FR Doc. E9–20780 Filed 8–28–09; 8:45 am]
BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2009–0058]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Customs and Border Protection—016 Nonimmigrant Information System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend

its regulations to exempt portions of a Department of Homeland Security U.S. Customs and Border Protection system of records entitled the ''Department of Homeland Security U.S. Customs and Border Protection—016 Nonimmigrant Information System of Records'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security U.S. Customs and Border Protection—016 Nonimmigrant Information system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

Additionally, two administrative errors were made at the time of publishing and are corrected through this final rule. Two systems of records notices were issued the same system of records notice number. Both U.S. Customs and Border Protection system of records notices Nonimmigrant Information system of records and Electronic System for Travel Authorization system of records were published with number 009. Electronic System for Travel Authorization system of records will remain with number 009 and Nonimmigrant Information system of records will be reassigned number 016. Second, the notice of proposed rulemaking for the Nonimmigrant Information system of records was incorrectly published with the name ''Nonimmigrant Inspection System.'' The name of the proposed rule and this final rule will be Nonimmigrant Information System.

DATES: *Effective Date:* This final rule is effective August 31, 2009.

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 contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 77549, December 19, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system

of records is the DHS/U.S. Customs and Border Protection (CBP)—016 Nonimmigrant Information System. The DHS/CBP—016 Nonimmigrant Information system of records notice was published concurrently in the **Federal Register**, 73 FR 77739, December 19, 2008, and comments were invited on both the notice of proposed rulemaking and system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or the system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Privacy, Freedom of information.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, Exemption of Record Systems under the Privacy Act, the following new paragraph ''27'':

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

27. The DHS/CBP–009 Nonimmigrant Information system of records consists of electronic and paper records and will be used by DHS and it's Components. The DHS/CBP–009 Nonimmigrant Information System is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; Investigations, inquiries, and proceedings thereunder; and national security and intelligence activities. The DHS/CBP–009 Nonimmigrant Information System contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, Tribal, foreign, or international government agencies. This system may contain records or information pertaining to the accounting of disclosures made from the Nonimmigrant Information System to other law enforcement and counterterrorism agencies (Federal, State, Local, Foreign, International or Tribal) in accordance with the published routine uses. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 522(c)(3), (e)(8), and (g) of the Privacy Act of 1974, as

amended, as necessary and appropriate to protect accounting of these disclosures only, pursuant to 5 U.S.C. 552a (j)(2), and (k)(2). Further, no exemption shall be asserted with respect to biographical or travel information submitted by, and collected from, a person's travel documents or submitted from a government computer system to support or to validate those travel documents. After conferring with the appropriate component or agency, DHS may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement purposes of the systems from which the information is recompiled or in which it is contained. Exemptions from the above particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, when information in this system of records is recompiled or is created from information contained in other systems of records subject to exemptions for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosure) because making available to a record subject the accounting of disclosures from records concerning him or her would specifically reveal any investigative interest in the individual. Revealing this information could reasonably be expected to compromise ongoing efforts to investigate a violation of U.S. law, including investigations of a known or suspected terrorist, by notifying the record subject that he or she is under investigation. This information could also permit the record subject to take measures to impede the investigation, *e.g.*, destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(b) From subsection (e)(8) (Notice on Individuals) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on DHS and other agencies and could alert the subjects of counterterrorism or law enforcement investigations to the fact of those investigations when not previously known.

(c) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: August 20, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–20778 Filed 8–28–09; 8:45 am]

BILLING CODE 9110–06–P