

# **Exhibit 2**

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### 5 CFR Chapter XXI

### 12 CFR Chapters I, V, XV, and XVIII

### 17 CFR Chapter IV

### 19 CFR Chapter I

### 26 CFR Chapter I

### 27 CFR Chapter I

### 31 CFR Subtitle A and Chapters I, II, IV Through VIII, IX, and X

### 48 CFR Chapter 10

#### Preliminary Plan for Retrospective Analysis of Existing Rules; Notice of Availability

**AGENCY:** Department of the Treasury.  
**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of the Treasury announces the availability of its Preliminary Plan for Retrospective Analysis of Existing Rules and invites interested members of the public to submit comments on the plan. Issued pursuant to Executive Order 13563, "Improving Regulation and Regulatory Review," Treasury developed its preliminary plan to facilitate the review of existing regulations through the use of retrospective review.

**DATES:** *Comment due date:* July 25, 2011.

**ADDRESSES:** Interested persons are invited to submit comments on all aspects of the preliminary plan. You may submit comments, identified by docket number TREAS-DO-2011-0003 through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Electronic Submission of Comments.* Interested persons must submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. Electronic submission of comments allows the

commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Department to make them available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public.

*Public Inspection of Comments.* Properly submitted comments will be available for inspection and downloading at <http://www.regulations.gov>.

*Additional Instructions.* In general, comments received, including attachments and other supporting materials, are part of the public record and are immediately available to the public. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

**FOR FURTHER INFORMATION CONTACT:** Office of the Assistant General Counsel for General Law, Ethics, and Regulation at [guidance@treasury.gov](mailto:guidance@treasury.gov).

**SUPPLEMENTARY INFORMATION:** On January 18, 2011, the President issued Executive Order 13563, "Improving Regulation and Regulatory Review," to ensure that federal regulations seek less burdensome means to achieve policy goals and that agencies give careful consideration to the benefits and costs of those regulations. The Executive Order requires each agency to develop a preliminary plan to periodically review its existing significant regulations to determine whether any regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving its regulatory objectives.

On March 30, 2011 (76 FR 17572), the Department published a notice and request for comment in the **Federal Register** that invited input from the public in developing Treasury's preliminary plan and eleven comments were received. On June 1, 2011, the Department posted the preliminary plan on its Open Government Web site, <http://www.treasury.gov/open> and on <http://www.regulations.gov>, and is requesting public comments on the plan. Comments may be submitted on or before July 15, 2011.

Dated: June 28, 2011.

**George W. Madison,**  
*General Counsel.*

[FR Doc. 2011-16865 Filed 7-5-11; 8:45 am]

**BILLING CODE 4810-25-P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### 6 CFR Part 5

[Docket No. DHS-2011-0060]

#### Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/ALL-030 Use of the Terrorist Screening Database System of Records

**AGENCY:** Privacy Office, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the "Department of Homeland Security/ALL-030 Use of the Terrorist Screening Database System of Records" and this proposed rulemaking. In this proposed rulemaking, the Department proposes 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.

**DATES:** Comments must be received on or before August 5, 2011.

**ADDRESSES:** You may submit comments, identified by docket number DHS-2011-0060, 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>.

*Instructions:* All submissions received must include the agency name and docket number for this notice. 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 and 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**

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) proposes to establish a new system of records titled, "DHS/ALL—030 Use of the Terrorist Screening Database (TSDB) System of Records." DHS is maintaining a mirror copy of the Department of Justice (DOJ)/Federal Bureau of Investigation (FBI)—019 Terrorist Screening Records System of Records (August 22, 2007, 72 FR 47073) in order to automate and simplify the current method for transmitting the TSDB to DHS and its components.

Homeland Security Presidential Directive 6 (HSPD-6), issued in September 2003, called for the establishment and use of a single consolidated watchlist to improve the identification, screening, and tracking of known or suspected terrorists and their supporters. The FBI/TSC maintains and distributes the TSDB as the U.S. government's consolidated terrorist watchlist. DHS and the FBI/TSC, working together, have developed the DHS Watchlist Service (WLS) in order to automate and simplify the current method for transmitting TSDB records from the FBI/TSC to DHS and its components.

The WLS will allow the FBI/TSC and DHS to move away from a manual and cumbersome process of data transmission and management to an automated and centralized process. The WLS will replace multiple data feeds from the FBI/TSC to DHS and its components, as documented by information sharing agreements, with a single feed from the FBI/TSC to DHS and its components. The WLS is a system to system secure connection with no direct user interface.

DHS and its components are authorized to access TSDB records via the WLS pursuant to the terms of information sharing agreements with FBI/TSC. DHS is publishing this SORN and has published privacy impact assessments to provide additional transparency into how DHS has implemented WLS. DHS will review and update this SORN no less than biennially as new DHS systems come online with the WLS and are approved consistent with the terms of agreements with FBI/TSC. There are five DHS systems that currently receive TSDB data directly from the FBI/TSC and will use the WLS. These systems have existing SORNs that cover the use of the TSDB:

(1) Transportation Security Administration (TSA), Office of Transportation Threat Assessment and Credentialing; DHS/TSA—002 Transportation Security Threat Assessment System (May 19, 2010, 75 FR 28046);

(2) TSA, Secure Flight Program: DHS/TSA—019 Secure Flight Records System (November 9, 2007, 72 FR 63711);

(3) U.S. Customs and Border Protection (CBP), Passenger Systems Program Office for inclusion in TECS: DHS/CBP—011 TECS System (December 19, 2008 73 FR 77778);

(4) U.S. Visitor and Immigration Status Indicator Technology (US-VISIT) Program for inclusion into the DHS Enterprise Biometrics Service (IDENT): DHS/USVISIT—0012 DHS Automated Biometric Identification System (June 5, 2007, 72 FR 31080); and

In addition, two DHS components will receive TSDB data via the WLS in the form of a computer readable extract. The components' use of the TSDB data is covered by existing SORNs:

(1) Office of Intelligence and Analysis (I&A): DHS/IA—001 Enterprise Records System, (May 15, 2008 73 FR 28128), and

(2) U.S. Immigration and Customs Enforcement (ICE): DHS/ICE—009 External Investigations, (January 5, 2010 75 FR 404).

Information stored in the WLS will be shared back with the FBI/TSC in order to ensure that DHS and the FBI/TSC can reconcile any differences in the database and ensure DHS has the most up-to-date and accurate version of TSDB records. All other sharing will be conducted pursuant to the programmatic system of records notices and privacy impact assessments discussed in this SORN.

DHS is planning future enhancements to the WLS that will provide for a central mechanism to receive information from DHS components when they encounter a potential match

to the TSDB and send this information to the FBI/TSC. DHS will update this SORN to reflect such enhancements to the WLS, as part of its biennial reviews of this SORN once that capability is implemented.

DHS is publishing this SORN to cover the Department's use of the TSDB in order to provider greater transparency to the process.

Concurrent with the publication of this SORN, DHS is issuing a Notice of Proposed Rulemaking to exempt this system from specific sections of the Privacy Act.

**II. Privacy Act**

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. 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.

The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/ALL—030 Use of the Terrorist Screening Database System of Records. Some information in DHS/ALL—030 Use of the Terrorist Screening Database System of Records relates to official DHS national security and law enforcement activities. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension. In addition, as a recipient of a mirror copy of the

TSDB, which is maintained by the FBI/TSC, DHS is carrying forward the exemptions taken by the DOJ/FBI—019 Terrorist Screening Records System of Records (August 22, 2007, 72 FR 47073) in order to prevent these records from improper disclosure. The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A notice of system of records for DHS/ALL—030 Use of Terrorist Screening Database System of Records is also published in this issue of the **Federal Register**.

#### List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend 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:** 6 U.S.C. 101 et seq.; Pub. L. 107–296, 116 Stat. 2135; 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. At the end of Appendix C to Part 5, add paragraph 55 to read as follows:

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

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55. The DHS/ALL—030 Use of Terrorist Screening Database System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/ALL—030 Use of Terrorist Screening Database System of Records 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 there under; national security and intelligence activities; and protection of the President of the U.S. or other individuals pursuant to Section 3056 and 3056A of Title 18. The DHS/ALL—030 Use of Terrorist Screening Database System of Records 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) and (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (e)(12); (f); (g)(1); and (h) pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitation 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) and (k)(2). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (e)(12) (Computer Matching) if the agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(j) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

(k) From subsection (h) (Legal Guardians) the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

**Mary Ellen Callahan,**

*Chief Privacy Officer, Department of Homeland Security.*

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