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 HOMELAND SECURITY

United States Immigration and Customs Enforcement

6 CFR Part 5

[DHS–2006–0012]

Privacy Act of 1974: Implementation of Exemptions

AGENCY: Office of the Principal Legal Advisor, United States Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security, Bureau of Immigration and Customs Enforcement, is giving notice of a new system of records pursuant to the Privacy Act of 1974 for the Office of the Principal Legal Advisor, the General Counsel Electronic Management System. In this proposed rulemaking, the Department proposes to exempt portions of this 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 May 3, 2006.

ADDRESSES: You may submit comments, identified by docket number DHS–2006–0012, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Fax: 202–514–0455.

Mail: William C. Birkett, Chief, Knowledge Management Division, Office of the Principal Legal Advisor, Immigration and Customs Enforcement, 425 I Street, NW., Washington, DC 20536 Hand Delivery. Courier: William C. Birkett, Chief, Knowledge Management Division, Office of the Principal Legal Advisor, Immigration and Customs Enforcement, 425 I Street, NW., Washington, DC 20536.

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: William C. Birkett, Chief, Knowledge Management Division, Office of the Principal Legal Advisor, Immigration and Customs Enforcement, 425 I Street, NW., Washington, DC 20536; Maureen Cooney, Acting Chief Privacy Officer, Department of Homeland Security, 601 South 12th Street, Arlington, VA 22202 by telephone (571) 227–3813 or facsimile (571) 227–4171.

SUPPLEMENTARY INFORMATION:

Background

The Privacy Act requires each agency to publish in the **Federal Register** a description of 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 in finding such files within the agency. That description appears elsewhere in today's **Federal Register**.

The Privacy Act allows government agencies to exempt certain records from its access and amendment and certain other 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.

The Bureau of Immigration and Customs Enforcement (ICE) of the Department of Homeland Security (DHS) is publishing a new system of records under the Privacy Act of 1974, 5 U.S.C. 552a. This system, the General Counsel Electronic Management System (GEMS), will consist of information that is created or acquired and used by attorneys working in ICE in the preparation and presentation of cases for a court or adjudicative body before which ICE or DHS is authorized or required to appear. Attorneys for the Department of Justice will also be able to access the system if they have a need for the information in the performance of their official duties.

ICE attorneys work closely with investigators throughout the process of adjudicating immigration cases. ICE attorneys must have access to investigative documents and related materials in order to inform their decisions about how to handle particular cases. Additionally, of course, ICE attorneys create attorney work product associated with immigration proceedings. The GEMS system will facilitate the collection and maintenance of materials used by ICE attorneys in immigration adjudications. It will supplement and ultimately replace the current attorney work product paper files that are primarily stored and managed in the hardcopy alien file commonly known as the ''A-file.''

In this notice of proposed rulemaking, DHS is proposing to exempt this system, in part, from certain provisions of the Privacy Act and to add that exemption to Appendix C to Part 5, DHS Systems of Records Exempt from the Privacy Act. Given the nature and purpose of the proposed system of records, a significant portion of the records are likely to be exempt from disclosure under the Privacy Act pursuant to 5 U.S.C. 552a(d)(5). This record system, however, will also derive information or incorporate investigative materials from Privacy Act exempt files. In order to ensure that the exemptions applicable to such investigative materials carry over when those materials are incorporated into the GEMS system, DHS is claiming those exemptions in this notice of proposed rulemaking. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the litigation-related purposes of this system and the overall law enforcement process, the applicable exemptions may be waived.

List of Subjects in 6 CFR Part 5

Privacy; Freedom of information.

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: Pub. L. 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. At the end of Appendix C to Part 5, which was proposed to be added at 70 FR 14428, March 22, 2005, add the following new paragraph ''4'':

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

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4. The General Counsel Electronic Management System (GEMS) consists of records and information created or collected by attorneys for the Bureau of Immigration and Customs Enforcement, which will be used in the preparation and presentation of cases before a court or other adjudicative body. ICE attorneys work closely with their investigators throughout the process of adjudicating immigration cases. GEMS allows ICE attorneys to store all the materials pertaining to immigration adjudications, including documents related to investigations, case notes and other hearing related information, and briefs and memoranda of law related to cases. Having this information in one system should not only facilitate the work of the ICE attorneys involved in the particular case, but also will provide a legal resource for other attorneys who are adjudicating similar cases. The system will also provide management capabilities for tracking time and effort expended in the preparation and presentation of cases.

Pursuant to exemptions 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), (e)(4)(H), (e)(5) and (e)(8); (f)(2) through (5); and (g). Pursuant to 5 U.S.C. 552a (k)(1) and (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). 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) (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 the investigation, which in some cases may be classified, and reveal investigative interest on the part of DHS or ICE. 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, tamper with witnesses or evidence, and 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 pertaining to an immigration matter, which in some cases may be classified, and prematurely 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, tamper with witnesses or evidence, and avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously 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 immigration 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 and for the protection of national security, 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 of the nature or existence of an investigation, which could cause interference with the investigation, a related inquiry or other law enforcement activities, some of which may be classified.

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

(f) From subsections (e)(4)(G) and (H) (Agency Requirements), (f) (Agency Rules), and (g) (Civil Remedies) because portions of this system are exempt from the individual access provisions of subsection (d).

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with ICE'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 (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: March 23, 2006.

Maureen Cooney,

Acting Chief Privacy Officer.

[FR Doc. E6–4693 Filed 3–31–06; 8:45 am]

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

[BOP Docket No. 1135–P]

RIN 1120-AB35

Limited Communication for Terrorist Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes a new regulation that allows for limiting the communication opportunities of inmates charged with, convicted of, or detained in relation to, an offense under Title 18 U.S.C. chapters 113B or 115; or are charged with having engaged in, have engaged in, are detained in relation to, or who have an identifiable link to terrorist-related activity. The Warden may only impose communication restrictions under this regulation, when the Federal Bureau of Investigation (FBI), or other Federal law enforcement agency, makes a request to the Bureau to have an individual inmate's communications limited, unless Bureau of Prisons information indicates a similar need to impose the communication restriction. Once this request by the FBI or other Federal law enforcement agency is made, the Warden of the facility where the inmate is housed will consider whether such a limitation is necessary to ensure the