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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2010-0082]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security Office of the Inspector General-002 Investigative Records 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 an updated and reissued system of records titled, "Department of Homeland Security Office of the Inspector General-002 Investigative Records System of Records" 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 November 4, 2010.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Melinda D. Holliday McDonald, Esq. (202-254-4284), Privacy Officer, Office of the Inspector General, Mail Stop 2600, 245 Murray Drive, SW., Building 410, Washington, DC 20528; or by facsimile (202) 254-4299. 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:

Background

The Department of Homeland Security (DHS) Office of Inspector General (OIG) published a notice of proposed rulemaking in the **Federal**

Register, 74 FR 55482, October 28, 2009, 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/OIG-002 Investigative Records System of Records. The DHS/OIG-002 Investigative Records System of Records notice was published concurrently in the **Federal Register**, 74 FR 55569, October 28, 2009, and comments were invited on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

Public Comments

DHS received one comment on the NPRM and no comments on the SORN.

NPRM

The one comment received on the NPRM noted the inability to correct personal information contained within the DHS/OIG-002 Investigative Records System of Records and the inability to obtain legal and/or civil remedy to dispute incorrect information contained within the system of records. The commenter acknowledged that the overall exemptions DHS seeks from the Privacy Act are necessary and consistent with common exemptions sought by law enforcement agencies nationally. However, the commenter expressed concern with the exemptions in subsection (e)(5) of the Privacy Act (Collection of Information), coupled with exemption in subsection (g). The commenter stated that information contained in a file that is inaccurate should not be in that file when the effects could damage that individual. The commenter stated that on a case-by-case basis there must be an opportunity to remedy incomplete and irrelevant information to make that person's character whole.

DHS/OIG believes that there is a need for the exemptions provided for in this document. However, DHS/OIG recognizes that there may be instances where such exemptions can be waived as stated in the NPRM and implemented in the Final Rule. In appropriate circumstances, where compliance would not appear to interfere with, or adversely affect, the law enforcement and national security purposes of the system and the overall law enforcement and security process, the applicable exemptions may be waived.

In the case of access requests from the DHS/OIG-002 Investigative Records System of Records, each access request will be evaluated on a case-by-case basis and if no harm to law enforcement interests or national security would ensue from disclosure, the exemption may be waived and the records (or portions of the records) may be disclosed.

In the case of amendment requests from the DHS/OIG-002 Investigative Records System of Records, such requests would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated and could disclose security-sensitive information that could be detrimental to homeland security; therefore, the exemption from amendment requests is necessary.

SORN

No SORN comments were received.

After consideration of public comments, the Department 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: 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. In Appendix C to Part 5, revise paragraph "5" to read as follows:

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

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5. The DHS/OIG-002 Investigative Records System of Records consists of electronic and paper records used by the DHS/OIG. The DHS/OIG-002 Investigative Records 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; and national security and intelligence activities. The DHS/OIG-002 Investigative Records System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS 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 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)(5) and (e)(8); (f); and (g) 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 limitations set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H); and (f) pursuant to 5 U.S.C. 552a(k)(1), (k)(2) and (k)(5). 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 (c)(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 the 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, 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 of an actual or potential criminal, civil, or regulatory violation, to the existence of the 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, 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 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 as to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: revealing the existence of an otherwise confidential investigation and thereby providing an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; revealing the identity of witnesses in investigations thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or revealing the identity of confidential informants, which would negatively affect the informants' usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G) and (e)(4)(H) (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 rules or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in this 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, potential witnesses, and confidential informants.

(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. Compliance with (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' 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) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore, DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's refusals to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant, timely, and complete records; or failure to otherwise comply with an individual's right to access or amend records.

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Dated: October 6, 2010.

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

[FR Doc. 2010-27830 Filed 11-3-10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2010-0817; Airspace Docket No. 10-ASO-31]

Amendment of Class E Airspace; Charleston, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace at Charleston, SC, by removing the East Cooper Airport from the airspace description. The East Cooper Airport has been renamed Mt. Pleasant Regional Airport-Faison Field, Mt. Pleasant, SC, and established under separate rulemaking. This amendment is necessary for the safe navigation of our National Airspace System.

DATES: Effective 0901 UTC, December 6, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5610.

SUPPLEMENTARY INFORMATION:

History

The airspace description for Charleston, SC, is a combination of the Charleston AFB/International Airport, the Charleston Executive Airport, and the East Cooper Airport. The East Cooper Airport has been renamed Mt. Pleasant Regional Airport-Faison Field, Mt. Pleasant, SC, and separate rulemaking has been established for the airport (75 FR 16335). To eliminate confusion, all references to the East Cooper Airport is being removed from the legal description of Class E airspace, Charleston, SC.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71