

# 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

### Office of the Secretary

#### 6 CFR Part 5

[Docket No. DHS-2010-0051]

#### Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security Office of Operations Coordination and Planning—002 National Operations Center Tracker and Senior Watch Officer Logs 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 Office of Operations Coordination and Planning—002 National Operations Center Tracker and Senior Watch Officer Logs System of Records and this proposed rulemaking. The National Operations Center and Senior Watch Officer tracking functions were previously covered by Department of Homeland Security/Information Analysis and Infrastructure Protection—001 Homeland Security Operations Center Database, April 18, 2005. 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 April 7, 2011.

**ADDRESSES:** You may submit comments, identified by docket number DHS-2010-0051, 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 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 please contact: Michael Page (202-357-7626), Privacy Point of Contact, Office of Operations Coordination and Planning, Department of Homeland Security, Washington, DC 20528. 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:* In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) Office of Operations Coordination and Planning (OPS) proposes to establish a new DHS system of records titled, “DHS/OPS—002 National Operations Center Tracker and Senior Watch Officer Logs System of Records.”

The primary role of the Senior Watch Officer (SWO) and the Watch Officer Desks, is to provide technical assistance directly in support of the DHS core missions to provide situational awareness and establish a common operating picture for Federal, State, local, Tribal, and territorial agencies and organizations; foreign governments and international organizations; domestic security and emergency management officials; and private sector entities or individuals as it relates to all-threats and all-hazards, man-made disasters and acts of terrorism, and natural disasters, and ensure that information reaches government decision-makers.

The SWO Log is a synopsis, in the form of a word document, that records all significant information received and actions taken during a shift. The NOC Tracker Log is the underlying cumulative repository of all NOC responses to threats, incidents, significant activities and Requests for Information (RFI) that require a NOC tracking number. The NOC Tracker Log contains a copy of all documents and

information that is requested, shared, and/or researched between all NOC watch stander desks.

The purpose of this system is to tie together the high volume of information, requests and responses for information, and data collection relevant to discreet events and issues as they arise, and making that information easily accessible in an organized form should a future event benefit from previously gathered information. The tracker numbers are used in a wide variety of products originated by the DHS/OPS NOC. They are shared inside and outside of DHS and serve as shorthand for typing data, use in internal and external reports, and agency actions to the event that caused them. DHS is authorized to implement this program primarily through 5 U.S.C. 301, 552, 552a; 44 U.S.C. 3101; 6 U.S.C. 121; Sections 201 and 514 of the Homeland Security Act of 2002, as amended; Section 520 of the Post Katrina Emergency Management Reform Act; 44 U.S.C. 3101; Executive Order (E.O.) 12958; E.O. 9397; E.O. 12333; E.O. 13356; E.O. 13388; and Homeland Security Presidential Directive 5. This system has an effect on individual privacy that is balanced by the need to fuse information together and tracking homeland security information coming into and going out of OPS, including the NOC. 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 appropriate Federal, State, Tribal, local, international, foreign agency, or other appropriate entity including the privacy sector in their role aiding OPS in their mission; to agencies, organizations or individuals for the purpose of audit; to agencies, entities, or persons during a security or information compromise or risk; to an agency, organization, or individual when there could potentially be a risk to an individual; and to the news media in the interest of the public. None of the information collected by this system is done so under the Paperwork Reduction Act (PRA).

Consistent with DHS's information sharing mission, information stored in

the DHS/OPS—002 National Operations Center Tracker and Senior Watch Officer Logs System of Records may be shared with other DHS components, as well as appropriate Federal, State, local, Tribal, and territorial agencies and organizations; foreign governments and international organizations; domestic security and emergency management officials; and private sector entities or individuals. This sharing will only take place after DHS determines that the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice. DHS has issued a Notice of Proposed Rulemaking consistent with this system of records elsewhere in the **Federal Register**. This newly established system will be included in DHS's inventory of record systems.

The NOC and SWO tracking functions were previously covered by DHS/ Information Analysis and Infrastructure Protection (IAIP)—001 Homeland Security Operations Center Database (April 18, 2005, 70 FR 20061).

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 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. Individuals may request 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 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 recordkeeping 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.

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/OPS—002 National Operations Center Tracker and Senior Watch Officer Logs System of Records. Some information in DHS/OPS—002 National Operations Center Tracker and Senior Watch Officer Logs System of Records relates to official DHS national security, law enforcement, immigration, and intelligence 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; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS' ability to obtain information from third parties and other sources; to protect the privacy of third parties; and to safeguard classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

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/OPS—002 National Operations Center Tracker and Senior Watch Officer Logs 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. Add at the end of Appendix C to Part 5, the following new paragraph 54:

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

\* \* \* \* \*

54. The DHS/OPS—002 National Operations Center Tracker and Senior Watch Officer Logs System of Records consists of electronic and paper records and will be used by DHS/OPS. The DHS/OPS—002 National Operations Center Tracker and Senior Watch Officer Logs 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. The DHS/OPS—002 National Operations Center Tracker and Senior Watch Officer Logs 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 is exempting 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), (e)(4)(I); and (f) pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(3). 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 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 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.

Dated: February 25, 2011.

**Mary Ellen Callahan,**

*Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. 2011-5094 Filed 3-7-11; 8:45 am]

**BILLING CODE 9110-9A-P**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

#### 12 CFR Part 567

[Docket No. OTS-2011-0002]

RIN 1550-AC41

#### **Risk-Based Capital Standards: Advanced Capital Adequacy Framework—Basel II; Establishment of a Risk-Based Capital Floor**

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of Thrift Supervision (OTS) proposes to: Amend its advanced risk-based capital adequacy standards (advanced approaches rules)<sup>1</sup> to be consistent with certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act)<sup>2</sup> and amend the general risk-based capital rules<sup>3</sup> to provide limited flexibility consistent with section 171(b) of the Act for recognizing the relative risk of certain

assets generally not held by depository institutions.

**DATES:** Comments on this notice of proposed rulemaking must be received by May 9, 2011.

**ADDRESSES:** Comments should be directed to:

*OTS:* You may submit comments, identified by OTS-2011-0002 by any of the following methods:

*Federal eRulemaking Portal:* “Regulations.gov”: Go to <http://www.regulations.gov> and follow the instructions for submitting comments.

- *Mail:* Regulation Comments, Chief Counsel’s Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS-2011-0002.

- *Fax:* (202) 906-6518.

- *Hand Delivery/Courier:* Guard’s Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel’s Office, Attention: OTS-2011-0002.

- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change, including any personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

- *Viewing Comments Electronically:* Go to <http://www.regulations.gov> and follow the instructions for reading comments.

- *Viewing Comments On-Site:* You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to [public.info@ots.treas.gov](mailto:public.info@ots.treas.gov), or send a facsimile transmission to (202) 906-6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

**FOR FURTHER INFORMATION CONTACT:**

Sonja White, Director, Capital Policy, (202) 906-7857, Teresa A. Scott, Senior Policy Analyst, Capital Policy, (202) 906-6478, or Marvin Shaw, Senior Attorney, Regulations and Legislation Division, (202) 906-6639, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

## SUPPLEMENTARY INFORMATION:

### I. Background

#### *A. The Dodd-Frank Wall Street Reform and Consumer Protection Act*

Section 171(b)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act)<sup>4</sup> states that the Federal banking agencies<sup>5</sup> shall establish minimum risk-based capital requirements<sup>6</sup> applicable to insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Federal Reserve (covered institutions). In particular, and as described in more detail below, sections 171(b)(1) and (2) specify that the minimum leverage and risk-based capital requirements established under section 171 shall not be less than “generally applicable” capital requirements, which shall serve as a floor for any capital requirements the agencies may require. Moreover, sections 171(b)(1) and (2) specify that the Federal banking agencies may not establish leverage or risk-based capital requirements for covered institutions that are quantitatively lower than the generally applicable leverage or risk-based capital requirements in effect for insured depository institutions as of the date of enactment of the Act.

<sup>4</sup> Public Law 111-203, § 171, 124 Stat. 1376, 1435-38 (2010).

<sup>5</sup> The Office of Thrift Supervision (OTS), the Office of Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) are considered Federal banking agencies. Section 312 of the Act provides for the transfer of OTS functions to the FDIC, OCC, and Board, on the transfer date, which is July 21, 2011 (unless the Secretary of the Treasury designates a later date, but not later than January 21, 2012). More specifically, the Act transfers authority over Federal savings associations to the OCC, authority over State savings associations to the FDIC, and authority over savings and loan holding companies to the Board. OTS rulemaking authority relating to savings associations and savings and loan holding companies will be transferred to the OCC and Board, respectively. 12 U.S.C. 5412.

<sup>6</sup> OTS’s capital regulations applicable to savings associations are set forth at 12 CFR part 567. Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803) directs the agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. Accordingly, the banking agencies generally issue capital standards whose substance is as similar as possible, thereby minimizing interagency differences. Due to timing considerations, the OCC, Board, and FDIC published a notice of proposed rulemaking (Joint NPR) in the **Federal Register** which addressed section 171 of the Dodd-Frank Act (75 FR 82317, December 30, 2010). OTS is issuing today’s NPR which essentially parallels the substance of the joint proposal.

<sup>1</sup> 12 CFR part 567, Appendix C.

<sup>2</sup> Public Law 111-203, § 171, 124 Stat. 1376, 1435-38 (2010).

<sup>3</sup> 12 CFR part 567.