Guidelines to Ensure that the Information Privacy and Other Legal Rights of Americans are Protected in the Development and Use of the Information Sharing Environment

1. Background and Applicability.

a. *Background.* Section 1016(d) of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) calls for the issuance of guidelines to protect privacy and civil liberties in the development and use of the "information sharing environment" (ISE). Section 1 of Executive Order 13388, Further Strengthening the Sharing of Terrorism Information to Protect Americans, provides that, "[t]o the maximum extent consistent with applicable law, agencies shall … give the highest priority to … the interchange of terrorism information among agencies … [and shall] protect the freedom, information privacy, and other legal rights of Americans in the conduct of [such] activities …." These Guidelines implement the requirements under the IRTPA and EO 13388 to protect information privacy rights and provide other legal protections relating to civil liberties and the legal rights of Americans in the development and use of the ISE.

b. *Applicability.* These Guidelines apply to information about United States citizens and lawful permanent residents that is subject to information privacy or other legal protections under the Constitution and Federal laws of the United States ("protected information"). For the intelligence community, protected information includes information about "United States persons" as defined in Executive Order 12333. Protected information may also include other information that the U.S. Government expressly determines by Executive Order, international agreement, or other similar instrument, should be covered by these Guidelines.

2. Compliance with Laws.

a. *General.* In the development and use of the ISE, all agencies shall, without exception, comply with the Constitution and all applicable laws and Executive Orders relating to protected information.

b. *Rules Assessment.* Each agency shall implement an ongoing process for identifying and assessing the laws, Executive Orders, policies, and procedures that apply to the protected information that it will make available or access through the ISE. Each agency shall identify, document, and comply with any legal restrictions applicable to such information. Each agency shall adopt internal policies and procedures requiring it to:

(i) only seek or retain protected information that is legally permissible for the agency to seek or retain under the laws, regulations, policies, and executive orders applicable to the agency; and

(ii) ensure that the protected information that the agency makes available through the ISE has been lawfully obtained by the agency and may be lawfully made available through the ISE.

c. Changes. If, as part of its rules assessment process, an agency:

(i) identifies an issue that poses a significant risk to information privacy rights or other legal protections, it shall as appropriate develop policies and procedures to provide protections that address that issue;

(ii) identifies a restriction on sharing protected information imposed by internal agency policy, that significantly impedes the sharing of terrorism information, homeland security information, or law enforcement information (as defined in Section 13 below) in a manner that does not appear to be required by applicable laws or to protect information privacy rights or provide other legal protections, it shall review the advisability of maintaining such restriction;

(iii) identifies a restriction on sharing protected information, other than one imposed by internal agency policy, that significantly impedes the sharing of information in a manner that does not appear to be required to protect information privacy rights or provide other legal protections, it shall review such restriction with the ISE Privacy Guidelines Committee (described in Section 12 below), and if an appropriate internal resolution cannot be developed, bring such restriction to the attention of the Attorney General and the Director of National Intelligence (DNI). The Attorney General and the DNI shall review any such restriction and jointly submit any recommendations for changes to such restriction to the Assistant to the President for Homeland Security and Counterterrorism, the Assistant to the President for National Security Affairs, and the Director of the Office of Management and Budget for further review.

3. Purpose Specification.

Protected information should be shared through the ISE only if it is terrorism information, homeland security information, or law enforcement information (as defined in Section 13 below). Each agency shall adopt internal policies and procedures requiring it to ensure that the agency's access to and use of protected

information available through the ISE is consistent with the authorized purpose of the ISE.

4. Identification of Protected Information to be Shared through the ISE.

a. *Identification and Prior Review.* In order to facilitate compliance with these Guidelines, particularly Section 2 (Compliance with Laws) and Section 3 (Purpose Specification), each agency shall identify its data holdings that contain protected information to be shared through the ISE, and shall put in place such mechanisms as may be reasonably feasible to ensure that protected information has been reviewed pursuant to these Guidelines before it is made available to the ISE.

b. *Notice Mechanisms.* Consistent with guidance and standards to be issued for the ISE, each agency shall put in place a mechanism for enabling ISE participants to determine the nature of the protected information that the agency is making available to the ISE, so that such participants can handle the information in accordance with applicable legal requirements. Specifically, such a mechanism will, to the extent reasonably feasible and consistent with the agency's legal authorities and mission requirements, allow for ISE participants to determine whether:

(i) the information pertains to a United States citizen or lawful permanent resident;

(ii) the information is subject to specific information privacy or other similar restrictions on access, use or disclosure, and if so, the nature of such restrictions; and

(iii) there are limitations on the reliability or accuracy of the information.

5. Data Quality.

a. *Accuracy.* Each agency shall adopt and implement procedures, as appropriate, to facilitate the prevention, identification, and correction of any errors in protected information with the objective of ensuring that such information is accurate and has not erroneously been shared through the ISE.

b. *Notice of Errors.* Each agency, consistent with its legal authorities and mission requirements, shall ensure that when it determines that protected information originating from another agency may be erroneous, includes incorrectly merged information, or lacks adequate context such that the rights of the individual may be affected, the potential error or deficiency will be communicated in writing to

the other agency's ISE privacy official (the ISE privacy officials are described in section 12 below).

c. *Procedures.* Each agency, consistent with its legal authorities and mission requirements, shall adopt and implement policies and procedures with respect to the ISE requiring the agency to:

(i) take appropriate steps, when merging protected information about an individual from two or more sources, to ensure that the information is about the same individual;

(ii) investigate in a timely manner alleged errors and deficiencies and correct, delete, or refrain from using protected information found to be erroneous or deficient; and

(iii) retain protected information only so long as it is relevant and timely for appropriate use by the agency, and update, delete, or refrain from using protected information that is outdated or otherwise irrelevant for such use.

6. Data Security.

Each agency shall use appropriate physical, technical, and administrative measures to safeguard protected information shared through the ISE from unauthorized access, disclosure, modification, use, or destruction.

7. Accountability, Enforcement and Audit.

a. *Procedures.* Each agency shall modify existing policies and procedures or adopt new ones as appropriate, requiring the agency to:

(i) have and enforce policies for reporting, investigating, and responding to violations of agency policies relating to protected information, including taking appropriate action when violations are found;

(ii) provide training to personnel authorized to share protected information through the ISE regarding the agency's requirements and policies for collection, use, and disclosure of protected information, and, as appropriate, for reporting violations of agency privacy-protection policies;

(iii) cooperate with audits and reviews by officials with responsibility for providing oversight with respect to the ISE; and

(iv) designate each agency's ISE privacy official to receive reports (or copies thereof if the agency already has a designated recipient of such reports) regarding alleged errors in protected information that originate from that agency.

b. Audit. Each agency shall implement adequate review and audit mechanisms to enable the agency's ISE privacy official and other authorized officials to verify that the agency and its personnel are complying with these Guidelines in the development and use of the ISE.

8. Redress.

To the extent consistent with its legal authorities and mission requirements, each agency shall, with respect to its participation in the development and use of the ISE, put in place internal procedures to address complaints from persons regarding protected information about them that is under the agency's control.

9. Execution, Training, and Technology.

a. Execution. The ISE privacy official shall be responsible for ensuring that protections are implemented as appropriate through efforts such as training, business process changes, and system designs.

b. Training. Each agency shall develop an ongoing training program in the implementation of these Guidelines, and shall provide such training to agency personnel participating in the development and use of the ISE.

c. Technology. Where reasonably feasible, and consistent with standards and procedures established for the ISE, each agency shall consider and implement, as appropriate, privacy enhancing technologies including, but not limited to, permissioning systems, hashing, data anonymization, immutable audit logs, and authentication.

10. Awareness.

Each agency shall take steps to facilitate appropriate public awareness of its policies and procedures for implementing these Guidelines.

11. Non-Federal Entities.

Consistent with any standards and procedures that may be issued to govern participation in the ISE by State, tribal, and local governments and private sector entities, the agencies and the PM-ISE will work with non-Federal entities seeking to access protected information through the ISE to ensure that such non-Federal entities

develop and implement appropriate policies and procedures that provide protections that are at least as comprehensive as those contained in these Guidelines.

12. Governance.

a. *ISE Privacy Officials.* Each agency's senior official with overall agency-wide responsibility for information privacy issues (as designated by statute or executive order, or as otherwise identified in response to OMB Memorandum M-05-08 dated February 11, 2005), shall directly oversee the agency's implementation of and compliance with these Guidelines (the "ISE privacy official"). If a different official would be better situated to perform this role, he or she may be so designated by the head of the agency. The ISE privacy official role may be delegated to separate components within an agency, such that there could be multiple ISE privacy officials within one executive department. The ISE privacy official shall be responsible for ensuring that (i) the agency's policies, procedures, and systems are appropriately designed and executed in compliance with these Guidelines, and (ii) changes are made as necessary. The ISE privacy official should be familiar with the agency's activities as they relate to the ISE, possess all necessary security clearances, and be granted the authority and resources, as appropriate, to identify and address privacy and other legal issues arising out of the agency's participation in the ISE. Such authority should be exercised in coordination with the agency's senior ISE official.

b. *ISE Privacy Guidelines Committee.* All agencies will abide by these Guidelines in their participation in the ISE. The PM shall establish a standing "ISE Privacy Guidelines Committee" to provide ongoing guidance on the implementation of these Guidelines, so that, among other things, agencies follow consistent interpretations of applicable legal requirements, avoid duplication of effort, share best practices, and have a forum for resolving issues on an inter-agency basis. The ISE Privacy Guidelines Committee is not intended to replace legal or policy guidance mechanisms established by law, executive order, or as part of the ISE, and will as appropriate work through or in consultation with such other mechanisms. The ISE Privacy Guidelines Committee shall be chaired by the PM or a senior official designated by the PM, and will consist of the ISE privacy officials of each member of the Information Sharing Council. If an issue cannot be resolved by the ISE Privacy Guidelines Committee, the PM will address the issue through the established ISE governance process. The ISE Privacy Guidelines Committee should request legal or policy guidance on questions relating to the implementation of these Guidelines from those agencies having responsibility or authorities for issuing guidance on such questions; any such requested guidance shall be provided promptly by the appropriate agencies. As the ISE governance process evolves, if a different entity is established or

identified that could more effectively perform the functions of the ISE Privacy Guidelines Committee, the ISE Privacy Guidelines Committee structure shall be modified by the PM through such consultation and coordination as may be required by the ISE governance process, to ensure the functions and responsibilities of the ISE Privacy Guidelines Committee remain priorities fully integrated into the overall ISE governance process.

c. *Privacy and Civil Liberties Oversight Board.* The Privacy and Civil Liberties Oversight Board (PCLOB) should be consulted for ongoing advice regarding the protection of privacy and civil liberties in agencies' development and use of the ISE. To facilitate the performance of the PCLOB's duties, the ISE Privacy Guidelines Committee will serve as a mechanism for the PCLOB to obtain information from agencies and to provide advice and guidance consistent with the PCLOB's statutory responsibilities. Accordingly, the ISE Privacy Guidelines Committee should work in consultation with the PCLOB, whose members may attend Committee meetings, provide advice, and review and comment on guidance as appropriate.

d. *ISE Privacy Protection Policy*. Each agency shall develop and implement a written ISE privacy protection policy that sets forth the mechanisms, policies, and procedures its personnel will follow in implementing these Guidelines. Agencies should consult with the ISE Privacy Guidelines Committee as appropriate in the development and implementation of such policy.

13. General Provisions.

a. Definitions.

(i) The term "agency" has the meaning set forth for the term "executive agency" in section 105 of title 5, United States Code, but includes the Postal Rate Commission and the United States Postal Service and excludes the Government Accountability Office.

(ii) The term "protected information" has the meaning set forth for such term in paragraph 1(b) of these Guidelines.

(iii) The terms "terrorism information," "homeland security information," and "law enforcement information" are defined as follows:

"Terrorism information," consistent with section 1016(a)(4) of IRTPA means all relating to (A) the existence, organization, capabilities, plans, intentions, vulnerabilities, means of finance or material support, or activities of foreign or international terrorist groups or individuals, or of

domestic groups or individuals involved in transnational terrorism, (B) threats posed by such groups or individuals to the United States, United States persons, or United States interests, or to those of other nations, (C) communications of or by such groups or individuals, or (D) groups or individuals reasonably believed to be assisting or associated with such groups or individuals.

"Homeland security information," as derived from section 482(f)(1) of the Homeland Security Act of 2002, means any information possessed by a Federal, State, local, or tribal agency that relates to (A) a threat of terrorist activity, (B) the ability to prevent, interdict, or disrupt terrorist activity, (C) the identification or investigation of a suspected terrorist or terrorist organization or any person, group, or entity associated with or assisting a suspected terrorist or terrorist organization, or (D) a planned or actual response to a terrorist act.

"Law enforcement information" for the purposes of the ISE means any information obtained by or of interest to a law enforcement agency or official that is (A) related to terrorism or the security of our homeland and (B) relevant to a law enforcement mission, including but not limited to information pertaining to an actual or potential criminal, civil, or administrative investigation or a foreign intelligence, counterintelligence, or counterterrorism investigation; assessment of or response to criminal threats and vulnerabilities; the existence, organization, capabilities, plans, intentions, vulnerabilities, means, methods, or activities of individuals or groups involved or suspected of involvement in criminal or unlawful conduct or assisting or associated with criminal or unlawful conduct; the existence, identification, detection, prevention, interdiction, or disruption of, or response to, criminal acts and violations of the law; identification, apprehension, prosecution, release, detention, adjudication, supervision, or rehabilitation of accused persons or criminal offenders; and victim/witness assistance.

b. The treatment of information as "protected information" under these Guidelines does not by itself establish that the individual or entity to which such information pertains does in fact have information privacy or other legal rights with respect to such information.

c. Heads of executive departments and agencies shall, to the extent permitted by law and subject to the availability of appropriations, provide the cooperation, assistance, and information necessary for the implementation of these Guidelines.

d. These Guidelines:

(i) shall be implemented in a manner consistent with applicable laws and executive orders, including Federal laws protecting the information privacy rights and other legal rights of Americans, and subject to the availability of appropriations;

(ii) shall be implemented in a manner consistent with the statutory authority of the principal officers of executive departments and agencies as heads of their respective departments or agencies;

(iii) shall not be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, and legislative proposals; and

(iv) are intended only to improve the internal management of the Federal Government and are not intended to, and do not, create any rights or benefits, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, or entities, its officers, employees, or agencies, or any other person.