



## DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2016-0064]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security

U.S. Customs and Border Protection (DHS/CBP)-022 Electronic Visa Update System

(EVUS) 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 (DHS)/ U.S. Customs and Border Protection (CBP)-022 Electronic Visa Update System (EVUS) 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 **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by docket number DHS- DHS-2016-0064, by one of the following methods:

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Fax: 202-343-4010.
- Mail: Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office,  
Department of Homeland Security, Washington, D.C. 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: Debra L. Danisek, (202) 344-1610, Acting CBP Privacy Officer, Privacy and Diversity Office, 1300 Pennsylvania Ave., NW, Washington, D.C. 20229. For privacy questions, please contact: Jonathan R. Cantor, (202) 343-1717, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, D.C. 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 DHS system of records titled, “Department of Homeland Security (DHS) /U.S. Customs and Border Protection (CBP) – DHS/CBP-022 Electronic Visa Update System (EVUS) System of Records.” This system of records will allow DHS/CBP to collect and maintain records on nonimmigrant aliens who 1) hold a passport that was issued by an identified country approved for inclusion in the EVUS program and 2) have been issued a U.S. nonimmigrant visa of a designated category seeking to travel to the United States. The system of records will also cover

records of other persons, including U.S. citizens and lawful permanent residents, whose name is provided to DHS as part of a nonimmigrant alien's EVUS enrollment. Requiring aliens holding passports of identified countries containing U.S. nonimmigrant visas of a designated category with multiple year validity will allow DHS/CBP to collect updated information. The system is used to ensure visa holder's information remains current. The information is also used to separately determine whether any admissibility issues may need to be addressed outside the EVUS enrollment process by vetting the information against selected security and law enforcement databases at DHS, including the use of CBP's TECS (not an acronym) (DHS/CBP-011 U.S. Customs and Border Protection TECS, December 19, 2008, 73 FR 77778) and the Automated Targeting System (ATS) (DHS/CBP-006 Automated Targeting System, May 22, 2012, 77 FR 30297). In addition, ATS retains a copy of EVUS enrollment data to identify EVUS enrollees who may pose a security risk to the United States. The Automated Targeting System maintains copies of key elements of certain databases in order to minimize the impact of processing searches on the operational systems and to act as a backup for certain operational systems. DHS may also vet EVUS enrollment information against security and law enforcement databases at other federal agencies to enhance DHS's ability to determine whether the enrollee poses a security risk to the United States or, although addressed through a separate process, is admissible to the United States. The results of this vetting may inform DHS's assessment of whether the enrollee's travel poses a law enforcement or security risk and whether the proposed travel should be permitted.

DHS is issuing this Notice of Proposed Rulemaking to exempt portions of DHS/CBP-022 Electronic Visa Update System (EVUS) System of Records from certain

provisions of the Privacy Act. Pursuant to 5 U.S.C. 552a(j)(2), DHS will claim exemption from secs. (c)(3), (e)(8), and (g) of the Privacy Act of 1974, as amended, as is necessary and appropriate to protect this information. Further, DHS will claim exemption from sec. (c)(3) of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(k)(2) as is necessary and appropriate to protect this information.

## II. Privacy Act:

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate 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 when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/CBP-022 Electronic Visa Update System (EVUS) System of Records. Some information in DHS/CBP-022 Electronic Visa Update System (EVUS) 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. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

In appropriate circumstances, when 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/CBP-022 Electronic Visa Update System (EVUS) 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:** 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. In appendix C, add paragraph 74 to read as follows:

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

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74. The DHS/CBP-022 Electronic Visa Update System (EVUS) System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/CBP-022 Electronic Visa Update System (EVUS) 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/CBP-022 Electronic Visa Update System (EVUS) 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, pursuant to 5 U.S.C. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (e)(8), and (g). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(2) has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(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 (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.
- (c) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: August 29, 2016.

Jonathan R. Cantor,  
Acting Chief Privacy Officer,  
Department of Homeland Security.

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