



This document is scheduled to be published in the Federal Register on 11/02/2011 and available online at <http://federalregister.gov/a/2011-28405>.

9110-06

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2011-0104]

Privacy Act of 1974; Department of Homeland Security, U.S. Customs and Border Protection, DHS/CBP- 009 - Electronic System for Travel Authorization (ESTA) System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update an existing Department of Homeland Security system of records notice titled “Department of Homeland Security/U.S. Customs and Border Protection -009 Electronic System for Travel Authorization System of Records.” This system collects and maintains a record of nonimmigrant aliens who want to travel to the United States under the Visa Waiver Program, and is used to determine whether the applicant is eligible to travel to the United States under the Visa Waiver Program by screening his or her information against various security and law enforcement databases. DHS/CBP is updating this system of records notice to reflect: 1) updated categories of records to include payment information, including credit card number, Pay.gov tracking number, billing name, billing address, and the applicant’s country of birth (to reduce the number of false matches); 2) updated routine uses to allow DHS/CBP to share payment information with Department of Treasury’s Pay.gov for processing; and 3) updated routine uses to allow sharing of the ESTA application data (which excludes payment

information) with federal, state, local, tribal, foreign, or international government agencies (including intelligence agencies) once they have established that they will use the information for a purpose which is compatible with the purpose of the original collection. This newly updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This new system will be effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number DHS-2011-0104 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, D.C. 20528.
- Instructions: All submissions received must include the agency name and docket number for this rulemaking. 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: Laurence E. Castelli (202-325-0280), CBP Privacy Officer, Office of International Trade, U.S. Customs and Border Protection, Mint Annex, 799 Ninth Street, NW, Washington,

DC 20229. For privacy issues please contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. 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 proposes to update an existing Department of Homeland Security system of records notice titled, DHS/CBP-009 - Electronic System for Travel Authorization (ESTA) June 10, 2008, 73 FR 32720. This system collects and maintains records of nonimmigrant aliens who want to travel to the United States under VWP and is used to determine whether the applicant is eligible to travel to the United States by screening his or her information against various security and law enforcement databases.

In 2008, a web-based system called the Electronic System for Travel Authorization (ESTA) was developed to determine the eligibility of visitors to travel to the United States by air or sea under the Visa Waiver Program (VWP), prior to boarding a carrier en route to the United States, and whether such travel poses a law enforcement or security risk by screening the information provided against selected security and law enforcement databases.

Pursuant to Section 711(d)(1)(E) of the *Implementing the Recommendations of the 9/11 Commission Act*, CBP amended its regulations to include the collection of an application fee for each application submitted as required by the Travel Promotion Act (TPA), which was signed into law on March 4, 2010.

In addition to the application fee, TPA also mandates that CBP collect \$10 from

each approved applicant, effective six months from the date the legislation was signed. CBP must transfer these funds quarterly to the Travel Promotion Fund for use by the Corporation for Travel Promotion. CBP published regulations instituting the fee on August, 9, 2010 (75 FR 47701).

Through the ESTA web-based interface, the user will be prompted through several screens to capture the required application information. Once the applicant has entered all required application information, ESTA will take the applicant through a series of screens where he/she enters his/her billing name, billing address, and credit card information. ESTA forwards all of this payment information to Pay.gov for payment processing and the applicant name and an ESTA tracking number to the DHS/CBP-018 Credit/Debit Card Data System (CDCDS) System of Records for payment reconciliation. Pay.gov sends a nightly activity file, including the last four digits of the credit card, authorization number, billing name, billing address, ESTA tracking number, and Pay.gov tracking numbers, to CDCDS. Pay.gov also sends a daily batch file with the necessary payment information to Fifth Third Bank for settlement processing. After processing, Fifth Third Bank sends a settlement file, including the full credit card number, authorization number, card type, transaction date, amount, and ESTA tracking number to CDCDS. Once ESTA receives confirmation from Pay.gov that the payment has been processed successfully, ESTA will retain the Pay.gov tracking number for payment reconciliation purposes.

As CBP enhances and updates ESTA, CBP anticipates amending its application to include the applicant's country of birth, which will assist in reducing false matches during the vetting process.

DHS is updating the categories of records and routine uses for this system of records notice to permit the collection and use of a Pay.gov tracking number associated with the applicant's payment information, including billing name, billing address, and credit card information for the newly-required application fee, and the applicant's country of birth, which will assist in reducing false matches during the vetting process. Additionally, this update includes a routine use permitting the sharing of payment information with the Department of Treasury's Pay.gov website.

DHS changed the order of routine uses to be consistent across all DHS SORNs and for ease of use by DHS personnel. This change impacts the following uses, which were not substantially changed. Former routine use G, which addressed certain governmental agencies responsibility for, in part, investigating and enforcing civil or criminal laws, was eliminated because of redundancy. Former routine use L is now routine use K, which clarifies the sharing that takes place with the intelligence community. The TPA requires CBP to include the collection of an application fee for each application submitted. Accordingly, routine use P was added to explicitly allow for payment processing and reconciliation activities. Routine use Q was also added.

The Department of Homeland Security issued a Final Rule for this system of records in the Federal Register (74 F.R. 45069) on August 31, 2009. This SORN update does not change the nature of reasons for this system of records or the need for the exemptions to certain aspects of the Privacy Act. This newly-updated system will be included in the Department of Homeland Security's inventory of record systems.

The purpose of this system of records is to determine the eligibility of aliens to travel to the U.S. by air or sea under the VWP. DHS/CBP has authority to operate this

system under the Homeland Security Act of 2002, Public Law 107-296; 5 U.S.C. § 301 and Section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), (Pub. L. 110-53); and the Travel Promotion Act, (Pub. L. 111-145). Updates to this system include the collection of additional information, and DHS/CBP has set in place processes and agreements to safeguard the additional data collected. New routine uses included in this update primarily relate to the addition of payment information and allow for processing of such information, which is directly compatible with the purpose for which the information was collected. Additional routine uses were edited to align with standards across DHS SORNs for ease of use and understanding by DHS personnel.

Consistent with DHS's information sharing mission, information stored in ESTA may be shared with other DHS components, as well as appropriate federal, state, local, tribal, foreign, or international government agencies. 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.

II. Privacy Act

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 individuals' records. 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 for which information is retrieved by the name of an 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 United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to 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 denoting 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 their records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the Department of Homeland Security, U.S. Customs and Border Protection, DHS/CBP- 009 - Electronic System for Travel Authorization (ESTA) system of records.

In accordance with 5 U.S.C. § 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

Department of Homeland Security (DHS)/Customs and Border Protection (CBP) - 009

System name:

DHS/CBP – 009 Electronic System for Travel Authorization (ESTA).

Security classification:

Unclassified.

System location:

Records are maintained in the ESTA system at the U.S. Customs and Border Protection (CBP) Headquarters in Washington, D.C. and field offices.

Categories of individuals covered by the system:

Categories of individuals covered by this system include foreign nationals from VWP countries who are seeking to enter the United States by air or sea under the VWP. Under the Immigration and Nationality Act (INA), title 8 of the United States Code, these persons are required to report their arrival and departure to and from the United States. This system only collects information pertaining to persons in nonimmigrant status, that is, persons who are not covered by the protections of the Privacy Act at the time they provide their information. However, given the importance of providing privacy protections to international travelers, DHS has decided to apply the privacy protections and safeguards outlined in this notice to all international travelers subject to ESTA.

Categories of records in the system:

Categories of records in this system include:

- Full Name (First, Middle, and Last)
- Date of birth
- Gender
- E-mail Address
- Phone Number
- Travel document type (e.g., passport), number, issuance date, expiration date and issuing country
- Country of Citizenship

- ESTA Application Number
- Pay.gov Payment Tracking Number (i.e., confirmation of payment; absence of payment confirmation will result in a “not cleared” determination)
- Country of Birth
- Date of Anticipated Crossing
- Airline and Flight Number
- City of Embarkation
- Address while visiting the United States (Number, Street, City, State)
- Whether the individual has a communicable disease, physical or mental disorder, or is a drug abuser or addict
- Whether the individual has been arrested or convicted for a moral turpitude crime, drug possession or use, or has been sentenced for a period longer than five years
- Whether the individual has engaged in espionage, sabotage, terrorism or Nazi activity between 1933 and 1945
- Whether the individual is seeking work in the U.S.
- Whether the individual has been excluded or deported, or attempted to obtain a visa or enter U.S. by fraud or misrepresentation
- Whether the individual has ever detained, retained, or withheld custody of a child from a U.S. citizen granted custody of the child
- Whether the individual has ever been denied a U.S. visa or entry into the U.S., or had a visa cancelled. (If yes, when and where)
- Whether the individual has ever asserted immunity from prosecution
- Any change of address while in the U.S.

Authority for maintenance of the system:

The Homeland Security Act of 2002, Public Law 107-296; 5 U.S.C. § 301 and Section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), (Pub. L. 110-53); and the Travel Promotion Act (Pub. L. 111-145).

Purpose(s):

The purpose of this system is to collect and maintain a record of nonimmigrant aliens who want to travel to the United States under the Visa Waiver Program, and to determine whether applicants are eligible to travel to the United States under the VWP by screening their information against various security and law enforcement databases. The Pay.gov tracking number (associated with the payment information provided to Pay.gov and stored in CDCDS) will be used to process ESTA and TPA fees and to reconcile issues regarding payment between ESTA, CDCDS, and Pay.gov. Payment information will not be used for vetting purposes and is stored in a separate system (CDCDS) from the ESTA application data.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. § 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. § 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the

following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. any employee of DHS in his/her official capacity;
3. any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or
4. the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. §§ 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;
2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity

theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations for the purpose of protecting the vital health interests of a data subject or other persons (e.g.; to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or

to combat other significant public health threats; appropriate notice will be provided of any identified health threat or risk);

I. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure;

J. To a federal, state, tribal, local, international, or foreign government agency or entity for the purpose of consulting with that agency or entity: (1) To assist in making a determination regarding redress for an individual in connection with the operations of a DHS component or program; (2) for the purpose of verifying the identity of an individual seeking redress in connection with the operations of a DHS component or program; or (3) for the purpose of verifying the accuracy of information submitted by an individual who has requested such redress on behalf of another individual;

K. To federal and foreign government intelligence or counterterrorism agencies when DHS reasonably believes such use is to assist in counterterrorism efforts, and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure;

L. To the Department of State in the processing of petitions or applications for benefits under the Immigration and Nationality Act, and all other immigration and nationality laws including treaties and reciprocal agreements;

M. To an organization or individual in either the public or private sector, either foreign or domestic, where there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the

information is relevant to the protection of life or property and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure;

N. To the carrier transporting an individual to the United States, but only to the extent that CBP provides information that the ESTA status is not applicable to the traveler, or, if applicable, that the individual is authorized to travel, not authorized to travel, pending, or has not applied.

O. To Pay.gov, for payment processing and payment reconciliation purposes.

P. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Disclosure to consumer reporting agencies:

None.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD-ROM.

Retrievability:

These records may be retrieved by any of the data elements supplied by the applicant. The payment information and Pay.gov payment tracking number may be used to track the amount of payment associated with an ESTA application and to reconcile payment discrepancies. As CBP updates and enhances ESTA, applicants will be able to access their ESTA information to view and amend their applications by providing their ESTA number and passport number. Once they have provided their ESTA number and passport number, applicants may view their ESTA status (authorized to travel, not authorized to travel, pending) and submit limited updates to their travel itinerary information. If an applicant does not know his/her application number, he/she can provide his or her passport number, date of birth, and passport issuing country to retrieve his/her application number.

Safeguards:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

Retention and disposal:

Application information submitted to ESTA generally expires and is deemed “inactive” two years after the initial submission of information by the applicant. In the event that a traveler’s passport remains valid for less than two years from the date of the ESTA approval, the ESTA will expire concurrently with the passport. Information in

ESTA will be retained for one year after the ESTA expires. After this period, the inactive account information will be purged from online access and archived for 12 years. Data linked at any time during the 15 year retention period (3 years active, 12 years archived), to active law enforcement lookout records, CBP matches to enforcement activities, and/or investigations or cases, including applications for ESTA that are denied, will remain accessible for the life of the law enforcement activities to which they may become related. NARA guidelines for retention and archiving of data will apply to ESTA and CBP is in negotiation with NARA for approval of the ESTA data retention and archiving plan.

Payment information is not stored in ESTA, but is forwarded to Pay.gov and stored in CBP's financial processing system, CDCDS, pursuant to the DHS/CBP-018 , CDCDS system of records notice.

The ESTA has allowed for the automation of the paper I-94W form in the air and sea environment. In those instances where a VWP traveler is admitted using the automated process, the corresponding admission record will be maintained in accordance with the retention schedule for I-94W, which is 75 years. I-94W and I-94 data are maintained for this period of time in order to ensure that the information related to a particular admission to the United States is available for providing any applicable benefits related to immigration or other enforcement purposes.

System Manager and address:

Director, Office of Automated Systems, U.S. Customs and Border Protection
Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

Notification procedure:

The Secretary of Homeland Security has exempted portions of this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, CBP will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters or component's FOIA Officer, whose contact information can be found at <http://www.dhs.gov/foia> under "contacts." If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive, S.W., Building 410, STOP-0655, Washington, D.C. 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. § 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, <http://www.dhs.gov> or 1-866-431-0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,

- Identify which component(s) of the Department you believe may have the information about you,
- Specify when you believe the records would have been created,
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records,
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

Record access procedures:

See “Notification procedure” above.

Contesting record procedures:

See “Notification procedure” above.

Record source categories:

The system obtains information from the online ESTA application submitted by the applicant. This information is processed by the Automated Targeting System (ATS) to screen for terrorists or threats to aviation and border security and TECS (for matches to persons identified to be of law enforcement interest), and result of “authorized to travel,” “not authorized to travel,” or “pending” is maintained in ESTA. “Pending” will be resolved to “authorized to travel” or “not authorized to travel” based on further research by CBP. Pay.gov provides the Pay.gov tracking number once payment information has

been forwarded to it and processed. It is used to reconcile payments between ESTA, CDCDS, and Pay.gov.

Exemptions claimed for the system:

No exemption shall be asserted with respect to information maintained in the system as it relates to data submitted by or on behalf of a person who travels to visit the United States and crosses the border, nor shall an exemption be asserted with respect to the resulting determination (authorized to travel, pending, or not authorized to travel). Information in the system may be shared with law enforcement and/or intelligence agencies pursuant to the above routine uses. The Privacy Act requires DHS to maintain an accounting of the disclosures made pursuant to all routine uses. Disclosing the fact that a law enforcement or intelligence agency has sought particular records may affect ongoing law enforcement or intelligence activity. As such, pursuant to 5 U.S.C. §§ 552a (j)(2) and (k)(2), DHS will claim exemption from (c)(3), (e)(8), and (g) of the Privacy Act of 1974, as amended, as is necessary and appropriate to protect this information.

Dated: October 3, 2011

Mary Ellen Callahan

Chief Privacy Officer,

Department of Homeland Security.

[FR Doc. 2011-28405 Filed 11/01/2011 at 8:45 am; Publication Date: 11/02/2011]