



DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2016-0085]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)-022 Electronic Visa Update System (EVUS) System of Records

AGENCY: Department of Homeland Security, Privacy Office.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a newly established system of records titled, “Department of Homeland Security U.S. Customs and Border Protection (DHS/CBP)-022 Electronic Visa Update System (EVUS) System of Records” from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the “Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)-022 Electronic Visa Update System (EVUS) System of Records” from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Debra L. Danisek (202-344-1610), CBP Privacy Officer, Privacy and Diversity Office, 1300 Pennsylvania Ave. NW, Washington, D.C. 20229. For privacy issues 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:

The Department of Homeland Security (DHS) U.S. Customs and Border Protection (CBP) published a notice of proposed rulemaking in the Federal Register (81 FR 60297, September 1, 2016) 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. DHS issued the “DHS/CBP-022 Electronic Visa Update System (EVUS) System of Records” in the Federal Register at 81 FR 60371 on September 1, 2016, to provide notice to the public that DHS/CBP will collect and maintain records on nonimmigrant aliens who hold a passport that was issued by an identified country approved for inclusion in the EVUS program and 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 names are 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 a 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).

DHS/CBP invited comments on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

II. Public Comments:

DHS received no comments on the NPRM and one positive comment on the SORN for the DHS/CBP-022 EVUS System of Records. After consideration of the public comment, DHS 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: 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. Amend appendix C to part 5 by adding 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. EVUS is a repository of information held by DHS/CBP 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. EVUS 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: November 17, 2016.

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

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