

NOTICES

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[DHS-2004-0015]

Privacy Act of 1974; System of Records

Tuesday, March 22, 2005

AGENCY: United States Immigration and Customs Enforcement, Directorate for Border and Transportation Security, Department of Homeland Security.

\*14477 ACTION: Notice of Privacy Act systems of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Bureau of Immigration and Customs Enforcement, a component agency within the Directorate for Border and Transportation Security of the Department of Homeland Security is giving notice that it proposes to add a new system of records to the Department's inventory of record systems. The system of records is the Student and Exchange Visitor Information System.

DATES: Comments must be received on or before April 21, 2005.

ADDRESSES: You may submit comments, identified by Docket Number DHS-2004-0015, by one of the following methods:

- EPA Federal Partner EDOCKET Web Site: <http://www.epa.gov/feddoCKET>. Follow instructions for submitting comments on the web site.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: (202) 772-5036 (This is not a toll-free number).
- Mail: Nuala O'Connor Kelly, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528; Susan Geary, SEVIS Program Manager, Immigration and Customs Enforcement, 800 K Street, NW., Suite 1000, Washington, DC 20536.
- Hand Delivery/Courier: Nuala O'Connor Kelly, Chief Privacy Officer, 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.epa.gov/feddoCKET>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received go to <http://www.epa.gov/feddocket>. You may also access the Federal eRulemaking Portal at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Nuala O'Connor Kelly, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528; Student and Exchange Visitor Information System Program Manager, 800 K Street, NW., Suite 1000, Washington DC 20536 by telephone (202) 305-2346 or by facsimile (202) 353-3723.

SUPPLEMENTARY INFORMATION: Pursuant to Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208, 110 Stat. 3009, as amended, and other statutes, Congress has mandated that the Department of Homeland Security (DHS), in consultation with the Departments of State (DoS) and Education, develop a national system to collect and maintain pertinent information on nonimmigrant students and exchange visitors, and the schools and exchange visitor program sponsors that host these individuals in the United States. In accordance with that mandate, the predecessor to the Bureau of Immigration and Customs Enforcement (ICE), a component agency within the Directorate for Border and Transportation Security of DHS, developed the Student and Exchange Visitor Information System (SEVIS). SEVIS is an Internet-based system that allows DHS to collect, maintain and use biographical information relating to students and exchange visitors and the approved schools and designated exchange visitor program sponsors that host nonimmigrant (F&M) students and (J) exchange visitors. In order to maintain these records, ICE proposes to establish a system of records under the Privacy Act, 5 U.S.C. 552a, DHS/ICE-001. 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 requires each agency to publish in the Federal \*14478 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 recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist the individual to more easily find such files within the Agency. DHS/ICE is here publishing the description of a new system of records governing the information collected and maintained in SEVIS. In accordance with 5 U.S.C. 552a(r), a report of this new system of records has been provided to the Office of Management and Budget (OMB) and to the Congress.

DHS/ICE 001

SYSTEM NAME:

Department of Homeland Security (DHS), United States Immigration and Customs Enforcement (ICE), Student and Exchange Visitor Information System (SEVIS).

SYSTEM LOCATION:

SEVIS is an electronic system. The hardware for the system is physically housed in a government-secured facility located in Rockville, Maryland and at a contingency site. The system is accessible via Internet or Intranet by DHS offices at Headquarters, Regional and District offices, Service Centers, sub-offices, Ports-of-Entry and foreign offices. The system is also accessible via Internet by designated school officials and responsible officers of exchange visitor programs that input information on students and exchange visitors into the system. Additionally, the system is accessed directly by DHS approved elements of Department of State (DoS) and by the Federal Bureau of Investigation (FBI).

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SEVIS contains information on nonimmigrants who have applied for and been granted F-1, M-1 and J-1 visas to enter the United States as students or exchange visitors and their dependents who have been granted F-2, M-2, and J-2 visas. [FN1] Some of the individuals whose information is contained in SEVIS may become United States citizens or legal permanent residents. SEVIS also contains records relating to the certified schools, designated sponsors, as well as individual hosts of students and exchange visitors in the United States.

FN1 F nonimmigrants are foreign students pursuing a full course of study in a college, university, seminary, conservatory, academic high school, private elementary school, other academic institution, or language training program in the United States that has been approved to enroll foreign students. J nonimmigrants are foreign nationals who have been selected by a sponsor designated by the DoS to participate in an exchange visitor program in the United States. M nonimmigrants are foreign students who are pursuing a full course of study in a vocational school or other recognized nonacademic institution in the United States that has been certified to enroll foreign students.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

SEVIS contains biographical information relating to students and exchange visitors including name, date and place of birth, country of citizenship, current address where the student/exchange visitor and his or her dependents physically reside, current academic status, date of commencement of studies, degree program and field of study, whether the student has been certified for practical training, and the beginning and end dates of certification, termination date and reason, number of credits (if known) completed each semester, and information from the Certificate of Eligibility, Forms I-20 or DS-2019. SEVIS also maintains records on the DHS certified schools and DoS designated sponsors in the United States that host F, M and J nonimmigrants, which includes certified school/designated sponsor name, status, address, course of study or program costs, Designated School Official/Responsible Officer contact information, and programs and/or courses of study. Certified schools are those public/private educational institutions that have been approved by DHS to accept nonimmigrant F and M visa category students. Designated sponsors are those government and non-government

organizations/agencies/institutions that have been designated by DoS to administer one or more J visa category nonimmigrant exchange visitor programs.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 107-173, Enhanced Border Security and Visa Entry Reform Act of 2002; Public Law, 107-56, USA PATRIOT Act; Public Law 104-208, Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996; the Immigration and Nationality Act (INA), as amended; 8 CFR part 214 and 22 CFR part 514.

#### PURPOSE (S) OF THE SYSTEM:

SEVIS is a system of records tracking F, M and J nonimmigrants and their dependents during their stay in the United States. It enables the Secretary of Homeland Security to monitor the progress and status of lawfully admitted F, M, and J visa category nonimmigrants residing in the United States, and to analyze all the information gathered for purposes of homeland security, law enforcement, immigration control and other mission-related functions.

#### 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 appropriate Federal, State, local, foreign, international or tribal government agencies or organizations that are lawfully engaged in collecting law enforcement intelligence information (whether civil or criminal) and/or charged with investigating, prosecuting, enforcing or implementing civil and/or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities.

B. To an attorney or representative who is acting on behalf of an individual covered by this system of records for use in any proceeding before the Executive Office for Immigration Review.

C. 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.

D. 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. Sections 2904 and 2906.

E. To the Department of Justice or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (a) DHS, or (b) any employee of DHS in his/her official capacity, or (c) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation.

F. To contractors, grantees, experts, consultants, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government, when necessary to accomplish an agency function related to this system of records.

\*14479 G. To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

H. To an agency, organization, or individual for the purposes of performing authorized audit or oversight operations.

#### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

##### STORAGE:

The information in the system is maintained in an automated database in electronic format. A record, or any part thereof, may be printed and stored in the applicant's alien file (A-file.) [FN2]

FN2 The system notice for the A-file is JUSTICE/INS-001A, last published in the Federal Register on September 7, 2001 (66 FR 46812).

##### RETRIEVABILITY:

DHS indexes and will retrieve SEVIS records by a number of data elements relating to the students and exchange visitors contained in the system including the name, unique SEVIS identification number assigned to the subject, and date of birth. Records on DHS certified schools and DoS designated sponsors can be retrieved by similar data elements relating to the respective institution or organization.

##### SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules, and policies. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know, using locks, and password protection identification features. The system is also protected through a multi-layer security approach. The protective strategies are physical, technical, administrative and environmental in nature and provide access control to sensitive data, physical access control to DHS facilities, confidentiality of communications, authentication of sending parties, and personnel screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access

required to perform their duties. SEVIS was specifically designed to be accessed by non-government users (certified schools and designated sponsors) so they could create the records and populate the database. Specific safeguards have been put in place to ensure the integrity of the school certification, sponsor designation, and ID/password issuance/access processes.

#### RETENTION AND DISPOSAL:

The National Archives and Records Administration (NARA) approved a retention schedule for SEVIS records, N1-563-04-1, on February 11, 2004. Under this retention schedule, four types of data files are retained for SEVIS: (1) Batch data temporary files (containing student records) are retained for a period not to exceed one year. These files are held temporarily on a server within the DoJ data center; (2) student/ exchange visitor data files residing in SEVIS are backed-up daily and retained/archived for 75 years; (3) certified school and designated sponsor data files residing in SEVIS proper are backed-up daily and retained/archived for 75 years; and (4) beta test files are retained for 60 days on-line. For historical purposes, and because specific immigration law enforcement or benefit case file research can span decades, DHS/ICE maintains SEVIS records in accordance with the above disposition schedule for their entire 75-year retention period. If the data becomes too large it will be copied onto electronic media and stored at the DOJ Data Center in Rockville, MD or Dallas, TX. At the end of the retention period, files are electronically expunged from file servers and Compact Disks (CDs) through degaussing, a method of erasing magnetic media and the removal of remnants of previously recorded signals.

#### SYSTEM MANAGER(S) AND ADDRESS:

SEVIS Program Manager, Student and Exchange Visitor Program (SEVP), 800 K Street, NW., Suite 1000, Washington, DC 20536.

#### NOTIFICATION PROCEDURES:

To determine whether this system contains records relating to you, write to the System Manager identified above.

#### RECORD ACCESS PROCEDURES:

Requests for access must be in writing and should be addressed to the System Manager above, the ICE FOIA office, or DHS Privacy Office. Requests should conform to the requirements of 6 CFR part 5, Subpart B, which provides the rules for requesting access to Privacy Act records maintained by DHS. The envelope and letter should be clearly marked "Privacy Act Access Request." The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury. Some information may be exempt from access provisions as described in the section entitled "Systems Exempted from Certain Provisions of the Act." An

individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received.

**CONTESTING RECORD PROCEDURES:**

Same as "Notification Procedures" and "Record Access Procedures," above.

**RECORD SOURCE CATEGORIES:**

Information in this system is obtained from DHS certified schools and DOS designated exchange visitor program sponsors, which provide information on their nonimmigrant students and exchange visitors. The certified schools and designated sponsors collect the required information from individual applicants and enter that data into SEVIS. Additional information is collected on nonimmigrant students and exchange visitors when they enter or exit the United States. This information is provided to SEVIS via system interfaces. Throughout the individual's stay in the United States, Designated School Officials (DSOs) and Responsible Officials (ROs) at the certified schools and designated sponsors are required to update SEVIS with current information on the F, M, and J nonimmigrants.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Certain portions or all of these records may be exempt from disclosure pursuant to 5 U.S.C. 552a(k)(2).

Dated: March 15, 2005.

Nuala O'Connor Kelly,

Chief Privacy Officer.

[FR Doc. 05-5585 Filed 3-21-05; 8:45 am]

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70 FR 14477-01, 2005 WL 641541 (F.R.)

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70 FR 14477, \*14479

70 FR 14427-01, 2005 WL 641546 (F.R.)

PROPOSED RULES

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[DHS-2004-0016]

Privacy Act of 1974: Implementation of Exemptions

Tuesday, March 22, 2005

AGENCY: Privacy Office, Department of Homeland Security.

\*14427 ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is concurrently establishing a new system of records pursuant to the Privacy Act of 1974 for the Bureau of Immigration and Customs Enforcement, Student and Exchange Visitor Program. In this proposed rulemaking, the Department proposes to exempt portions of this 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 21, 2005.

ADDRESSES: You may submit comments, identified by docket number DHS-2004-0016, by one of the following methods:

EPA Federal Partner EDOCKET Web site: <http://www.epa.gov/feddoCKET>.

Follow instructions for submitting comments on the Web site.

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

Fax: 202-772-5036 (This is not a toll-free number).

Mail: Department of Homeland Security, Attn: Privacy Office/Nuala O'Connor Kelly, Chief Privacy Officer/202-772-9848, Washington, DC 20528.

Hand Delivery/Courier: Department of Homeland Security, Attn: Privacy Office/Nuala O'Connor Kelly, Chief Privacy Officer/202-772-9848, Anacostia Naval Annex, 245 Murray Lane, SW, Building 410, Washington, DC 20528, 7:30 a.m. to 4 p.m.

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.epa.gov/feddoCKET>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.epa.gov/feddoCKET>. You may also access the Federal eRulemaking

Portal at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Nuala O'Connor Kelly, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528 by telephone 202-772-9848 or facsimile 202-772-5036.

#### SUPPLEMENTARY INFORMATION:

##### Background

Concurrently with the publication of this notice of proposed rulemaking, the Department of Homeland Security (DHS) is publishing a Notice establishing a new system of records that is subject to the Privacy Act of 1974, 5 U.S.C. 552a. This new system is the Student and Exchange Visitor Information System (SEVIS), maintained by the Student and Exchange Visitor Program. DHS is proposing to exempt this system, in part, from certain provisions of the 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 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 Homeland Security Act of 2002 requires the Secretary of DHS to appoint a senior official to oversee implementation of the Privacy Act and to undertake other privacy-related activities. Pub. L. 107-296, section 222, 116 Stat. 2135, 2155 (Nov. 25, 2002) (HSA). The system of records being published today helps to carry out the DHS Chief Privacy Officer's statutory activities.

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 to more easily find 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 exemption from certain requirements of the Privacy Act for SEVIS. Because the purpose of the SEVIS system is to collect and maintain pertinent information on nonimmigrant students and exchange visitors and the schools and exchange visitor program sponsors that host them while in the United States in order to ensure that these individuals comply with the requirements of their admission, it is possible that the information in the record system may pertain to national security or law enforcement

matters. In such cases, allowing access to such information could alert the subject of the information to an investigation of an actual or potential criminal, civil, or regulatory violation and reveal investigative interest on the part of DHS or another agency. Disclosure of the information would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the information would also permit the individual, who is the subject of a record, to impede the investigation and avoid detection or apprehension, which undermines the entire system. This exemption is a standard law enforcement and national security exemption utilized by numerous law enforcement and intelligence agencies.

#### List of Subjects in 6 CFR Part 5

Privacy; Freedom of information.

\*14428 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. Add Appendix C to Part 5 the following:

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

This Appendix implements provisions of the Privacy Act of 1974 that permit the Department of Homeland Security (DHS) to exempt its systems of records from provisions of the Act.

Portions of the following DHS systems of records are exempt from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552(j) and (k):

1. DHS/ICE 001, the Student and Exchange Visitor Information System, which allows DHS to collect and maintain information on nonimmigrant students and exchange visitors, and the schools and exchange program sponsors that host them in the United States. The system permits DHS to monitor compliance by these individuals with the terms of their admission into the United States. Pursuant to exemptions (j)(2), (k)(1), (k)(2) and (k)(5) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H) and (I). Exemptions from the 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 the 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 and avoid detection or apprehension, which undermines the entire system.

(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 the 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 and avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information also 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 enforcement of federal laws, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (H) and (I) (Agency Requirements), and (f) (Agency Rules), because portions of this system are exempt from the access provisions of subsection (d).

Dated: March 15, 2005.

Nuala O'Connor Kelly,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 05-5584 Filed 3-21-05; 8:45 am]

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70 FR 14427, \*14428