

by U.S. Customs and Border Protection to track, control, and process all commercial goods imported into the United States. ACS is a sophisticated and integrated large-scale business-oriented system which employs multiple modules to perform discrete aspects of its functionality: including receiving data transmissions from a variety of parties involved in international commercial transactions, and providing CBP with the capability to track both the transport transactions and the financial transactions associated with the movement of merchandise through international commerce. Through the use of Electronic Data Interchange (EDI), ACS facilitates merchandise processing, significantly cuts costs, and reduces paperwork requirements for both Customs and the importing community.

ACS has two principal methods for electronic data interchange, the Automated Broker Interface (ABI) and the Automated Manifest System (AMS). Under the "10 + 2" program, importers who submit the Importer Security Filing (ISF), will use either ABI or Vessel AMS to provide their information to CBP. ACS, upon receipt of the ISF, will transfer the data to the Automated Targeting System (ATS) for screening and targeting purposes. Once screened the ISF data will be returned with embedded targeting links to ACS to be maintained in accordance with the ACS stated retention policy.

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, nor shall an exemption be asserted with respect to the resulting determination (authorized to travel, not authorized to travel, pending).

This system may contain records or information pertaining to the accounting of disclosures made from ACS to other law enforcement agencies (Federal, State, local, foreign, international, or tribal) in accordance with the published routine uses. For the accounting of these disclosures only, in accordance with 5 U.S.C. 552a(j)(2) and (k)(2), DHS will claim the original exemptions for these records or information from subsection (c)(3), (e)(8), and (g) of the Privacy Act of 1974, as amended, as necessary and appropriate to protect such information. Moreover, DHS will add this exemption to Appendix C to 6 CFR part 5, DHS Systems of Records Exempt from the Privacy Act. Such exempt records or information may be law enforcement or national security investigation records, law enforcement activity and encounter records, or terrorist screening records.

DHS needs these exemptions in order to protect information relating to law enforcement investigations from disclosure to subjects of investigations and others who could interfere with investigatory and law enforcement activities. Specifically, the exemptions are required to: Preclude subjects of investigations from frustrating the investigative process; avoid disclosure of investigative techniques; protect the identities and physical safety of confidential informants and of law enforcement personnel; ensure DHS's and other federal agencies' ability to obtain information from third parties and other sources; protect the privacy of third parties; and safeguard sensitive information.

Nonetheless, DHS will examine each request on a case-by-case basis, and, after conferring with the appropriate component or agency, may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement or national security investigation.

Again, DHS will not assert any exemption with respect to information maintained in the system that is collected from a person and submitted by that person's air or vessel carrier, if that person, or his or her agent, seeks access or amendment of such information.

#### 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:** Public Law 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.

2. At the end of Appendix C to Part 5, add the following new paragraph "14":

#### Appendix C to Part 5—DHS Systems of Records Exempt from the Privacy Act

\* \* \* \* \*

14. DHS/CBP–015, Automated Commercial System (ACS). A portion of the following system of records is exempt from 5 U.S.C. 552a(c)(3), (e)(8), and (g) pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). Further, 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 (approval or denial). After conferring with the appropriate component or agency, DHS may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement purposes of the systems from which the information is recompiled or in which it is contained. Exemptions from the above particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, when information in this system of records may impede a law enforcement or national security investigation:

(a) From subsection (c)(3) (Accounting for Disclosure) because making available to a record subject the accounting of disclosures from records concerning him or her would specifically reveal any investigative interest in the individual. Revealing this information could reasonably be expected to compromise ongoing efforts to investigate a violation of U.S. law, including investigations of a known or suspected terrorist, by notifying the record subject that he or she is under investigation. This information could also permit the record subject to take measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(b) From subsection (e)(8) (Notice on Individuals) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on DHS and other agencies and could alert the subjects of counterterrorism or law enforcement investigations to the fact of those investigations when not previously known.

(c) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: December 10, 2008.

**Hugo Teufel III,**

*Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. E8–29839 Filed 12–18–08; 8:45 am]

**BILLING CODE 4410–10–P**

#### DEPARTMENT OF HOMELAND SECURITY

#### Office of the Secretary

#### 6 CFR Part 5

[Docket No. DHS–2008–0171]

#### Privacy Act of 1974: Implementation of Exemptions; DHS/CBP–009 Nonimmigrant Inspection System

**AGENCY:** Privacy Office, Department of Homeland Security.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security is amending its regulations to exempt portions of a system of records from certain provisions of the Privacy Act. Specifically, the Department

proposes to exempt portions of the Nonimmigrant Inspection System from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

**DATES:** Written comments must be submitted on or before January 20, 2009.

**ADDRESSES:** You may submit comments, identified by docket number DHS–2008–0171 by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 1–866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

**FOR FURTHER INFORMATION CONTACT:** For general questions please contact: Laurence E. Castelli (202–325–0280), Chief, Privacy Act Policy and Procedures Branch, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, Mint Annex, 1300 Pennsylvania Ave., NW., Washington, DC 20229. For privacy issues please contact: Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

**SUPPLEMENTARY INFORMATION:**

*Background:* The Department of Homeland Security (DHS), elsewhere in this edition of the **Federal Register**, published a Privacy Act system of records notice describing records in the Nonimmigrant Inspection System (NIIS). Pursuant to 6 U.S.C. 552(a)(1) DHS and Customs and Border Protection (CBP) have maintained the Nonimmigrant Information System (NIIS) in conformance with the terms of the previous NIIS SORN, 68 FR 5048.

As part of its efforts to streamline and consolidate its record systems, DHS is updating and reissuing a DHS/CBP system of records under the Privacy Act (5 U.S.C. 552a) to reflect CBP's current and future practices regarding the processing of foreign nationals entering the U.S. CBP inspects all persons applying for admission to the U.S. As part of this inspection process, CBP establishes the identity, nationality, and admissibility of persons crossing the border and may create a border crossing record, which would be covered by DHS/CBP–007 Border Crossing Information System of Records Notice (73 FR 43457 published on July 25, 2008), or additional CBP records, which would be covered by the TECS System of Records Notice (re-published

concurrently with this notice) during this process. Similarly, CBP has authority to keep records of departures from the U.S.

In addition to information collected from the alien during the inspection process, CBP primarily uses two immigration forms to collect information from nonimmigrant aliens as they arrive in the U.S.: The I–94, Arrival/Departure Record and, for aliens applying for admission under the visa waiver program, the I–94W Nonimmigrant Visa Waiver Arrival/Departure Form. Separately, Canadian nationals, who travel to the U.S. as tourists or for business, and Mexican nationals, who possess a nonresident alien Mexican Border Crossing Card, are not required to complete an I–94 upon arrival, but their information will be maintained in this system. Additionally, DHS/CBP has been implementing an Electronic System for Travel Authorization (ESTA) to permit nationals of VWP countries to submit their biographic and admissibility information online in advance of their travel to the U.S. Applicants under this program will have access to their accounts so that they may check the status of their ESTA and make limited amendments. ESTA is covered by privacy documentation including a SORN published on June 10, 2008, 73 FR 32720.

No exemption shall be asserted with respect to information maintained in the system that is collected from a person's travel documents or submitted by a government computer system in support of a proffered travel document, if that person, or his or her agent, seeks access or amendment of such information.

This system, however, may contain records or information pertaining to the accounting of disclosures made from NIIS to other law enforcement agencies (Federal, State, Local, Foreign, International or Tribal) in accordance with the published routine uses and 5 U.S.C. 552a (b)(7). For the accounting of these disclosures only, in accordance with 5 U.S.C. 552a (j)(2), and (k)(2), DHS will claim the original exemptions for these records or information from subsection (c)(3), (e)(8), and (g) of the Privacy Act of 1974, as amended, as necessary and appropriate to protect such information.

DHS needs these exemptions in order to protect information relating to law enforcement investigations from disclosure to subjects of investigations and others who could interfere with investigatory and law enforcement activities. Specifically, the exemptions are required to: Preclude subjects of investigations from frustrating the

investigative process; avoid disclosure of investigative techniques; protect the identities and physical safety of confidential informants and of law enforcement personnel; ensure DHS's and other federal agencies' ability to obtain information from third parties and other sources; protect the privacy of third parties; and safeguard sensitive information.

Nonetheless, DHS will examine each request on a case-by-case basis, and, after conferring with the appropriate component or agency, may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement purposes of the systems from which the information is recompiled or in which it is contained.

Again, DHS will not assert any exemption with respect to information maintained in the system that is collected from a person and submitted by that person's air or vessel carrier, if that person, or his or her agent, seeks access or amendment of such information.

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

Privacy, Freedom of information.

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:** Public Law 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.

2. At the end of Appendix C to Part 5, add the following new paragraph “14”:

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

\* \* \* \* \*

14. DHS/CBP–009, Nonimmigrant Inspection System (NIIS). This system may contain records or information pertaining to the accounting of disclosures made from NIIS to other law enforcement and counterterrorism agencies (Federal, State, Local, Foreign, International or Tribal) in accordance with the published routine uses. For the accounting of these disclosures only, in accordance with 5 U.S.C. 552a (j)(2), and (k)(2), DHS will claim the original exemptions for these records or information from subsection (c)(3), (e)(8), and (g) of the Privacy Act of 1974, as amended, as necessary and appropriate to protect such information. Further, no exemption shall be asserted with respect to biographical or travel information submitted by, and collected from, a person's travel documents or

submitted from a government computer system to support or to validate those travel documents. After conferring with the appropriate component or agency, DHS may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement purposes of the systems from which the information is recompiled or in which it is contained. Exemptions from the above particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, when information in this system of records is recompiled or is created from information contained in other systems of records subject to exemptions for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosure) because making available to a record subject the accounting of disclosures from records concerning him or her would specifically reveal any investigative interest in the individual. Revealing this information could reasonably be expected to compromise ongoing efforts to investigate a violation of U.S. law, including investigations of a known or suspected terrorist, by notifying the record subject that he or she is under investigation. This information could also permit the record subject to take measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(b) From subsection (e)(8) (Notice on Individuals) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on DHS and other agencies and could alert the subjects of counterterrorism or law enforcement investigations to the fact of those investigations when not previously known.

(c) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: December 10, 2008.

**Hugo Teufel III,**  
Chief Privacy Officer, Department of  
Homeland Security.

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## DEPARTMENT OF HOMELAND SECURITY

### Office of Security

#### 6 CFR Part 5

[Docket No. DHS-2008-0177]

### Privacy Act of 1974: Implementation of Exemptions; DHS/USSS-004 Protection Information System

**AGENCY:** Department of Homeland  
Security.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland  
Security (DHS) is giving concurrent  
notice of a revised and updated system

of records pursuant to the Privacy Act of 1974 for the United States Secret Service Protection Information System 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 January 20, 2009.

**ADDRESSES:** You may submit comments, identified by docket number DHS-2008-0177, by one of the following methods:

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

• **Fax:** 1-866-466-5370.

• **Mail:** Hugo Teufel III, 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.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 and privacy issues, please contact: Hugo Teufel III (703-235-0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

#### SUPPLEMENTARY INFORMATION:

**Background:** Pursuant to the savings clause in the Homeland Security Act of 2002, the Department of Homeland Security (DHS) and United States Secret Service (USSS) have relied on preexisting Privacy Act systems of records notices for the collection and maintenance of records that concern DHS/USSS protection records.

As part of its efforts to streamline and consolidate its Privacy Act record systems, DHS/USSS is updating and reissuing a DHS/USSS system of records under the Privacy Act (5 U.S.C. 552a) for DHS/USSS Protection Information System records. This will ensure that all organizational parts of USSS follow the same privacy rules for collecting and handling records regarding the protections of USSS protectees.

In this notice of proposed rulemaking, DHS is now proposing to exempt Protection Information 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 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 in finding 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 exemptions from certain requirements of the Privacy Act for Protection Information System. Some information in Protection Information System relates to official DHS national security, law enforcement, immigration, intelligence activities, and protective services to the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. 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; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS's ability to obtain information from third parties and other sources; to protect the privacy of third parties; to safeguard classified information; and to safeguard records in connection with providing protective services to the President of the United States or other individuals pursuant to