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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2008-0103]

Privacy Act of 1974: Implementation of Exemptions; Immigration and Customs Enforcement (ICE) Student and Exchange Visitor Information System (SEVIS) of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a new system of records entitled the "Immigration and Customs Enforcement Student and Exchange Visitor Information System" (SEVIS) from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the SEVIS system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective October 23, 2008.

FOR FURTHER INFORMATION CONTACT: Lyn Rahilly, Privacy Officer, U.S. Immigration and Customs Enforcement, 425 I Street, NW., Washington, DC 20536, e-mail: ICEPrivacy@dhs.gov, or 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) published a notice of proposed rulemaking in the **Federal Register**, 70 FR 14427, Mar. 22, 2005, 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. The system of records is the ICE Student and Exchange Visitor Information System (SEVIS). The SEVIS system of records notice (SORN) was published concurrently in the **Federal Register**, 70 FR 14477, Mar. 22, 2005, and comments were invited on both the proposed rule and SORN. No comments were received from the public regarding either the SORN or the proposed rule. Therefore, no changes have been made to the rule or the SORN, and DHS is implementing the final rule as published.

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.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, DHS certifies that these regulations will not significantly affect a substantial number of small entities. The final rule imposes no duties or obligations on small entities. Further, in accordance with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, DHS has determined that this final rule would not impose new recordkeeping,

application, reporting, or other types of information collection requirements.

Regulatory Requirements

A. Regulatory Impact Analyses

Changes to Federal regulations must undergo several analyses. In conducting these analyses, DHS has determined:

1. Executive Order 12866 Assessment

This rule is not a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review" (as amended). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB). Nevertheless, DHS has reviewed this rulemaking, and concluded that there will not be any significant economic impact.

2. Regulatory Flexibility Act Assessment

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), DHS certifies that this rule will not have a significant impact on a substantial number of small entities. The rule would impose no duties or obligations on small entities. Further, the exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the RFA.

3. International Trade Impact Assessment

This rulemaking will not constitute a barrier to international trade. The exemptions relate to civil or criminal investigations and agency documentation and, therefore, do not create any new costs or barriers to trade.

4. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104-4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This rulemaking will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the

public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DHS has determined that there are no current or new information collection requirements associated with this rule.

C. Executive Order 13132, Federalism

This action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore will not have federalism implications.

D. Environmental Analysis

DHS has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

E. Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). This rulemaking is not a major regulatory action under the provisions of the EPCA.

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.

■ 2. At the end of Appendix C to Part 5, add the following new paragraph 10 to read as follows:

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

* * * * *

10. DHS–ICE–001, The Immigration and Customs Enforcement (ICE) Student and Exchange Visitor Information System (SEVIS) collects and maintains pertinent information on nonimmigrant students and exchange visitors and the schools and exchange visitor program sponsors that host them while 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).

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2008–0104]

Privacy Act of 1974: Implementation of Exemptions; Immigration and Customs Enforcement (ICE) General Counsel Electronic Management System (GEMS)

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a new system of records entitled the “Immigration and Customs Enforcement General Counsel Electronic Management System” (GEMS) from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the GEMS system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective October 23, 2008.

FOR FURTHER INFORMATION CONTACT: Lyn Rahilly, Privacy Officer, U.S. Immigration and Customs Enforcement, 425 I Street, NW., Washington, DC 20536, e-mail: ICEPrivacy@dhs.gov, or 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) published a notice of proposed rulemaking in the **Federal Register**, 71 FR 16519, April 3, 2006, 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. The system of records is the ICE General Counsel Electronic Management System (GEMS). The GEMS system of records notice (SORN) was published in the **Federal Register**, 71 FR 16326, March 31, 2006. Comments were invited on both the proposed rule and SORN. No comments were received from the public regarding either the SORN or the proposed rule. Therefore, no changes have been made to the rule or the SORN, and DHS is implementing the final rule as published.

DHS is claiming exemption from certain requirements of the Privacy Act