

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

#### 6 CFR Part 5

[DHS-2004-0016]

#### Privacy Act of 1974: Implementation of Exemptions

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

**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.

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]

**BILLING CODE 4410–10–P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

**[Docket No. FAA–2005–20661; Directorate Identifier 2004–NM–261–AD]**

**RIN 2120–AA64**

#### **Airworthiness Directives; Boeing Model 747–200B, 747–300, 747–400, and 747–400D Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747–200B, 747–300, 747–400, and 747–400D series airplanes. This proposed AD would require modifying the lateral shear beam for the Door 5 crew rest and, for certain airplanes, replacing Zone E tie rods and modifying the Zone E stowbin ladder. This proposed AD is prompted by a report indicating that the lateral shear beam for the Door 5 crew rest does not meet the 9G forward loading requirement. We are proposing this AD to prevent the structural support for the Door 5 crew rest and Zone E stowbins from failing during an emergency,

which could result in the crew rest or stowbins falling and consequent injury to crew and passengers.

**DATES:** We must receive comments on this proposed AD by May 6, 2005.

**ADDRESSES:** Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.

- By fax: (202) 493–2251.

- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20661; the directorate identifier for this docket is 2004–NM–261–AD.

**FOR FURTHER INFORMATION CONTACT:** Don Wren, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6451; fax (425) 917–6590.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA–2005–20661; Directorate Identifier 2004–NM–261–AD” in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://>