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**DEPARTMENT OF HOMELAND SECURITY**

Office of the Secretary

6 CFR Part 5

[Docket No. DHS-2015-0053]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security  
U.S. Customs and Border Protection - DHS/CBP-020 Export Information System (EIS)  
System of Records System of Records

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security is giving concurrent notice for the newly established “Department of Homeland Security/ U.S. Customs and Border Protection - DHS/CBP-020, Export Information System, System of Records” and this proposed rulemaking. This system of records will collect and maintain records on cargo exported from the United States, as well as information pertaining to the filer, transmitter, exporter, U.S. Principal Party in Interest (USPPI), freight forwarder, shipper, consignee, other U.S. authorized agent filing for the USPPI, and individuals related to the specific cargo that is the subject of the export transaction. In accordance with the Privacy Act of 1974 and this proposed rulemaking, the Department of Homeland Security concurrently 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 [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by docket number DHS-2015-0053, by one of the following methods:

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: 202-343-4010.
- Mail: Karen L. Neuman, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, D.C. 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 please contact: John Connors (202-344-1610), CBP Privacy Officer, U.S. Customs and Border Protection, Department of Homeland Security, Washington, D.C. 20229. For privacy issues please contact: Karen L. Neuman, (202-343-1717), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, D.C. 20528.

**SUPPLEMENTARY INFORMATION:**

I. Background:

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) proposes to

establish a new DHS system of records titled, “DHS/CBP-020 Export Information System (EIS) System of Records.” The system of records is used by DHS/CBP to collect, use, and maintain paper and electronic records required to track, control, and process cargo exported from the United States. EIS allows CBP to enhance national security, enforce U.S. law, and facilitate legitimate international trade.

DHS is issuing this Notice of Proposed Rulemaking to exempt this system of records from certain provisions of the Privacy Act. This system will be included in DHS’s inventory of record systems. Elsewhere in the Federal Register, CBP is publishing a system of records notice (SORN) for EIS because the exporting community must report export data that contains personally identifiable information (PII) to CBP.

Subsection (a) of Section 343 of the Trade Act of 2002 (19 U.S.C. 2071) mandates that the Secretary of Homeland Security (formerly the Secretary of Treasury) collect cargo information “through an electronic data interchange system,” prior to the departure of the cargo from the United States by any mode of commercial transportation (*see* 19 U.S.C. 2071 note.) Pursuant to statute, CBP promulgated a regulation requiring pre-departure filing of electronic information to allow CBP to examine the data before cargo leaves the United States (*see Electronic Information for Outward Cargo Required in Advance of Departure* (19 CFR 192.14)). CBP required exporters to provide electronic cargo information through the Automated Export System (AES) to avoid redundancy as specifically mandated by Congress (*see Mandatory Pre-Departure Filing of Export Cargo Information Through the Automated Export System*, 73 FR 32466 (June 9, 2008)).

To comply with the regulation, exporters must file the Electronic Export

Information (EEI), formerly the Shipper's Export Declaration (SED)<sup>1</sup> when the value of the commodity classified under each individual Schedule B number is over \$2,500 or if a validated export license is required to export the commodity. The exporter is responsible for preparing the EEI and the carrier files it with CBP through the AES or AES Direct (operated by the U.S. Census Bureau). Cargo information collected by CBP includes PII such as a shipper's name, address, and Taxpayer Identification Number (TIN).

According to the U.S. Census Bureau, in a standard export transaction, it is the U.S. Principal Party In Interest's (USPPI) responsibility to prepare the EEI. However, the USPPI can give the freight forwarder a power of attorney (POA) or written statement (WA) authorizing them to prepare and file the EEI on their behalf. In a routed export transaction, however, the Foreign Principal Party in Interest (FPPI) must provide a POA or WA to prepare the EEI to either the USPPI or a U.S. Authorized Agent.

The Internal Transaction Number (ITN) or exemption citation must be provided by the EEI filer to the carrier when the goods are presented for export. The carrier is

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<sup>1</sup> 13 U.S.C. 301 (The Census Bureau root authority to collect the SED, now EEI); pursuant to section 303, CBP (then U.S. Customs Service, Dept. of Treasury) is required to develop an automated system for collecting this export data. Through title 13, the Census Bureau holds stewardship of export data. Under the Trade Act of 2002 (19 U.S.C. 2071 note), CBP is required to collect an export manifest containing a declaration identifying the parties to the transaction, a physical description of the commodity, its quantity, mode of conveyance, and ports of origin and destination. Through title 19, CBP, similarly, holds stewardship of export data.

responsible for providing the ITN or exemption citation to CBP. CBP Officers will verify that the ITN or exemption citations clearly stated on export documents and provided to the carrier(s) within the prescribed timeframes. The procedures for filing vary by cargo type (vessel, truck, air, or rail). The timeframes for filing varies according to the method of transportation for pre-departure filing (State Department United States Munitions List (USML) shipments, and non-USML shipments).

DHS/CBP is publishing this system of records notice to provide notice of the records maintained by CBP concerning individuals who participate in exporting goods from the United States. CBP previously published a Privacy Impact Assessment (PIA) for EIS last year.<sup>2</sup>

Consistent with DHS's information-sharing mission, information stored in the DHS/CBP-020 EIS System of Records may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, information may be shared with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies or other parties consistent with the routine uses set forth in this SORN. In particular, information may be shared with the Department of Commerce, Bureau of Industry and Science, and the Department of State, Office of Defense Trade Controls, relating to compliance and enforcement of licenses issued by these respective agencies concerning the controlled nature or sensitive technology present in the exported commodities (e.g., certain central processing unit designs, weapons

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<sup>2</sup> <http://www.dhs.gov/publication/export-information-system-eis>

systems).

## II. Privacy Act:

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate 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. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all persons where systems of records maintain information on U.S. citizens, lawful permanent residents, and non-immigrant aliens.

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 DHS/CBP-020 Export Information System, System of Records.

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

Some information in DHS/CBP - 020 EIS System of Records relates to official DHS national security, law enforcement, and intelligence activities. 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 for information pertaining to the accounting of disclosures made from this system to other law enforcement or intelligence agencies (federal, state, local, foreign, international, or tribal) in accordance with the published routine uses or statutory basis for disclosure pursuant to 5 U.S.C. 552a(b). The exemptions will preclude subjects from frustrating official national security, law enforcement, or intelligence processes. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A notice of system of records for DHS/CBP - 020 EIS System of Records is also published in this issue of the Federal Register.

#### **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:** 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, at the end of appendix C to part 5, 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. **DHS/CBP-020** Export Information System (EIS). A portion of the following system of records is exempt from 5 U.S.C. 552a(c)(3), (e)(8), and (g)(1) pursuant to 5 U.S.C. 552a(j)(2), and from 5 U.S.C. 552a(c)(3) pursuant to 5 U.S.C. 552a(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 from 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 is may impede a law enforcement, intelligence activities and national security investigation:

- (a) From subsection (c)(3) (Accounting for Disclosures) 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)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: August 19, 2015.

Karen L. Neuman

Chief Privacy Officer,

Department of Homeland Security.

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