



DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2016-0027]

Privacy Act of 1974; Department of Homeland Security, U.S. Customs and Border Protection, DHS/CBP-014 Regulatory Audit Archive System (RAAS) System of Records

AGENCY: Department of Homeland Security, Privacy Office.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to update and reissue a current DHS system of records titled, “DHS/U.S. Customs and Border Protection (CBP)-014 Regulatory Audit Archive System (RAAS) System of Records” (73 FR 77807, December 19, 2008). This system of records allows DHS/CBP to collect and maintain records on individuals subject to regulatory audits of customs brokers, importers, and other parties involved in international trade activities. CBP is updating this system of records notice to reflect changes to its authorities, category of records, and routine uses. Specifically, these changes include expanding the category of records to permit the collection of Employer Identification Numbers (EINs) or Social Security numbers (SSNs), also known as a Federal Taxpayer Identifying Number, and business records associated with the audit from customs brokers, importers, and other parties via merchandise entry documentation. CBP is clarifying the authorities section to include updated and more

narrowly tailored authorities to permit the collection of EIN or SSN. CBP is making non-substantive edits to the Routine Uses A-G to align with previously published Departmental Systems of Records Notices (SORNs). Lastly, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice.

Additionally, DHS is issuing a Notice of Proposed Rulemaking to reduce the current exemptions for this system of records from certain provisions of the Privacy Act elsewhere in the Federal Register. The previously issued Final Rule for DHS/CBP-014 RAAS (Aug. 31, 2009, 74 FR 45076) remains in effect until a new Final Rule is issued. This updated system will be included in the DHS inventory of record systems.

DATES: Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This updated system will be effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number DHS-2016-0027 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 rulemaking. 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, please visit <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: John Connors, (202) 344-1610, Privacy Officer, U.S. Customs and Border Protection, Privacy and Diversity Office, 1300 Pennsylvania Ave, NW, Washington, D.C. 20229. For privacy questions, 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 update and reissue a current DHS system of records titled, “DHS/CBP-014 Regulatory Audit Archive System (RAAS) System of Records.”

DHS/CBP conducts regulatory audits in support of its oversight of customs brokers licensed by DHS/CBP pursuant to 19 U.S.C. 1641 to act as agents for importers in the entry of merchandise and payment of duties and fees. This system of records covers records about importers and other parties engaged in international trade activities that are the subject of a regulatory audit or are identified in and related to the scope of an audit report.

As a result of a biennial review of this SORN, DHS/CBP is updating the categories

of records to include the collection of EINs or SSNs, also known as Federal Taxpayer Identifying Number, pursuant to 19 CFR 24.5, 19 CFR 149.3, and E.O. 9397, as amended by E.O. 13478. DHS/CBP collects this additional data to align RAAS with information provided by importers through the DHS/CBP Automated Commercial Environment System (ACE) data-source. DHS/CBP is also clarifying the category of records to include business and audit records collected or created as part of the audit process.

DHS/CBP is clarifying the authorities section to include updated and more narrowly tailored authorities to permit the collection of EIN or SSN. 19 CFR 24.5 and 19 CFR 149.3 require that DHS/CBP collect Federal Taxpayer Identifying Numbers in association with services resulting in issuance of a bill or refund check upon adjustment of a cash collection or to document entities that are liable for payment of all duties and responsible for meeting all statutory or regulatory requirements incurred as a result of importation. Individuals or entities that do not have a SSN may submit an EIN in lieu of the SSN for merchandise entry purposes.

DHS/CBP is making non-substantive edits to the Routine Uses A-G to align with previously published Departmental SORNs. This notice also includes non-substantive changes to simplify the formatting and texts of the previously published notice.

Consistent with DHS's information sharing mission, information stored in DHS/CBP-014 RAAS 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, DHS/CBP may share information with appropriate Federal, State, local, tribal, territorial, foreign,

or international government agencies consistent with the routine uses set forth in this system of records notice.

Additionally, DHS is issuing a Notice of Proposed Rulemaking to reduce the current exemptions for this system of records from certain provisions of the Privacy Act elsewhere in the Federal Register. The previously issued Final Rule for DHS/CBP-014 RAAS (Aug. 31, 2009; 74 FR 45076) remains in effect until a new Final Rule is issued. This updated system will be included in the DHS inventory of record 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 individuals' records. 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 an 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 individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/CBP-014 Regulatory Audit Archive System (RAAS) System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system

of records to the Office of Management and Budget and to Congress.

System of Records:

Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)-014.

System name:

DHS/CBP-014 Regulatory Audit Archive System (RAAS).

Security classification:

Unclassified.

System location:

Records are maintained in the Regulatory Audit Management Information System (RAMIS) located at the U.S. Customs and Border Protection Headquarters in Washington, D.C. and field offices.

Categories of individuals covered by the system:

Categories of individuals covered by this system include importers and other parties engaged in international trade activities that are the subject of a regulatory audit or are identified in and related to the scope of an audit report.

Categories of records in the system:

Categories of individuals covered by this system include:

- Individual's name, including names of officers of customs broker firms or other business entities engaged in international trade and identified as a subject of an audit or related to the scope of an audit;
- Importer of Record (IR) Number;

- Dun and Bradstreet, Inc. DUN numbers;
- Business records associated with the audit;
- Email address;
- Phone number;
- Employer Identification Number (EIN) or Social Security number (SSN), also known as Federal Taxpayer Identifying Number;
- Audit reports of subject accounts and records;
- Correspondence with the subject of the audits and related parties;
- Congressional inquiries concerning customs brokers or other audit subjects and disposition made of such inquiries; and
- License and permit numbers and dates issued and district or port covered.

Authority for maintenance of the system:

6 U.S.C. 115(a)(1) and 213(b)(2); 19 U.S.C. ch. 4; 19 U.S.C. 1508, 1509, 1592, and 1641; 19 CFR parts 24.5, 111, 143, 149.3, 163; 31 U.S.C. 3729; and E.O. 9397, as amended by E.O. 13478.

Purpose(s):

The purpose of this system is to collect and maintain records on the regulatory audits of customs brokers, licensed by CBP pursuant to 19 U.S.C. 1641, to act as agents for importers in the entry of merchandise and payment of duties and fees, and other persons or business entities engaged in international trade.

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 the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any Component thereof;
2. Any employee or former employee of DHS in his/her official capacity;
3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof.

B. 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.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or

oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or

order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To an appropriate Federal, State, local, tribal, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit and disclosure is appropriate to the proper performance of the official duties of the person making the request.

I. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena from a court of competent jurisdiction.

J. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of

a particular case would constitute an unwarranted invasion of personal privacy.

Disclosure to consumer reporting agencies:

None.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

DHS/CBP stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

Retrievability:

DHS/CBP may retrieve records by name or other (alphanumeric) personal identifier.

Safeguards:

DHS/CBP safeguards records in this system according in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS/CBP has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

Retention and disposal:

DHS/CBP maintains regulatory audit records in accordance with N1-36-86-1

approved by NARA on November 9, 1989. CBP maintains regulatory reports and company findings on-site for one year and then transfers the records to the Federal Records Center (FRC), which destroys the records after ten (10) years. CBP maintains regulatory audit subject records on-site for one year and transfers the files to the FRC, which destroys the records after three years.

System Manager and address:

Executive Director, Regulatory Audit, U.S. Customs and Border Protection, 1717 H Street – 6th Floor, Washington, D.C. 20229.

Notification procedure:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the DHS Chief Freedom of Information Act (FOIA) Officer or CBP's FOIA Officer, whose contact information can be found at <http://www.dhs.gov/foia> under "Contacts." If an individual believes more than one Component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW, Building 410, STOP-0655, Washington, D.C. 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under

28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Office at <http://www.dhs.gov/foia> or 1-866-431-0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which Component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS Component agency may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his or her records.

Without the above information, the Component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

Record access procedures:

See “Notification procedure” above.

Contesting record procedures:

See “Notification procedure” above.

Record source categories:

The information contained in this system of records originates in connection with customs broker audits and audits of other persons engaged in international commerce conducted by the regulatory audit staffs. The audits may be supplemented with information furnished by the Office of the Chief Counsel or its field offices, Office of International Trade - Regulations and Rulings, and the Office of Investigations, U.S. Immigration and Customs Enforcement. These audits include examination of records pertaining to brokers and importers (including their clients), and other persons engaged in international trade activities.

Exemptions claimed for the system:

DHS/CBP is not requesting an exemption with respect to information maintained in the system as it relates to data submitted by or on behalf of a subject of an audit. Information in the system may be shared pursuant to the exceptions under the Privacy Act (5 U.S.C. 552a(b)) and the above routine uses. The Privacy Act requires DHS to maintain an accounting of the disclosures made pursuant to all routines uses. Disclosing the fact that a law enforcement or intelligence agency has sought particular records may affect ongoing law enforcement activity. Therefore, pursuant to 5 U.S.C. 552a(k)(2), DHS will claim exemption from sec. (c)(3) of the Privacy Act of 1974, as amended, as is necessary and appropriate to protect this information.

Dated: March 22, 2016.

Karen L. Neuman,
Chief Privacy Officer,
Department of Homeland Security.

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