



**DEPARTMENT OF HOMELAND SECURITY**

**Office of the Secretary**

**6 CFR Part 5**

**[Docket No. DHS-2016-0026]**

**Privacy Act of 1974; Implementation of Exemptions; Department of Homeland Security/U.S. Customs and Border Protection-014 Regulatory Audit Archive System (RAAS) 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 of an updated and reissued system of records pursuant to the Privacy Act of 1974 for the “Department of Homeland Security/U.S. Customs and Border Protection-014 Regulatory Audit Archive System of Records” and this proposed rulemaking. This system of records will continue to manage audits that are part of DHS/CBP’s continuing oversight of customs brokers, 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.

In this proposed rulemaking, the Department proposes to reduce the number of exemptions 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-2016-0026 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 Avenue, NW, Washington, DC 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) is giving notice of a proposed rule to accompany an updated system of records notice 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.

Concurrent with this NPRM, elsewhere in the Federal Register, DHS/CBP is updating the “DHS/CBP-014 Regulatory Audit Archive System (RAAS) System of Records” categories of records, authorities, and routine uses. DHS/CBP is updating the categories of records to include the collection of Employer Identification Numbers (EINs) or Social Security numbers (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. 13748. 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.

DHS/CBP previously published a Final Rule in the Federal Register to exempt this system of records from certain provisions of the Privacy Act at 74 FR 45076 (August 31, 2009). DHS/CBP proposes to reduce the number of exemptions

of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The existing Final Rule for Privacy Act exemptions continues to apply until the new Final Rule is published. This updated system will be included in DHS's 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.

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 revising the previously claimed exemptions from certain

requirements of the Privacy Act for DHS/CBP-014 Regulatory Audit Archive System (RAAS) System of Records. 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. The Privacy Act requires DHS to maintain an accounting of the disclosures made pursuant to all routine 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.

Some information in DHS/CBP-014 Regulatory Audit Archive System (RAAS) System of Records relates to official DHS law enforcement activities. These exemptions are needed to protect information relating to DHS law enforcement 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; and to safeguard classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

The exemption proposed here is a standard law enforcement exemption exercised by a large number of Federal law enforcement agencies. In appropriate

circumstances, when 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 system of records notice for DHS/CBP-014 Regulatory Audit Archive System (RAAS) 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. In appendix C to part 5, revise paragraph 25 to read as follows:

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

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25. The Department of Homeland Security/U.S. Customs and Border Protection-014 Regulatory Audit Archive System (RAAS) System of Records

consists of electronic and paper records and will be used by DHS and its Components. The DHS/CBP-014 RAAS System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under. The DHS/CBP-014 RAAS System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its Components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3). Exemptions from these 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 subsec. (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 that 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, to

(b) tamper with witnesses or evidence, and to avoid detection or apprehension,  
which would undermine the entire investigative process.

\* \* \* \* \*

Dated: March 22, 2016.

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

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