

[Federal Register: December 19, 2008 (Volume 73, Number 245)]
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[DOCID:fr19de08-126]

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2008-0155]

Privacy Act of 1974; U.S. Customs and Border Protection--010
Persons Engaged in International Trade in Customs and Border Protection
Licensed/Regulated Activities System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to consolidate eight legacy record systems into a U.S. Customs and Border Protection system of records notice titled, U.S. Customs and Border Protection Persons Engaged in International Trade in Customs and Border Protection Licensed/Regulated Activities: Treasury/CS.040 Carrier File, October 18, 2001; Treasury/CS.041 Cartmen or Lightermen, October 18, 2001; Treasury/CS.057 Container Station Operator Files, October 18, 2001; Treasury/CS.069 Customs Brokers File, October 18, 2001; Treasury/CS.137 List of Vessel Agents Employees, October 18, 2001; Treasury/CS.260 Warehouse Proprietor Files, October 18, 2001; Treasury/CS.271 Cargo Security Record System, October 18, 2001; and Treasury/CS.274 Importers, Brokers, Carriers, Individuals and Sureties Master Files, October 18, 2001. Categories of individuals, categories of records, and the routine uses have been consolidated and updated to better reflect the U.S. Customs and Border Protection record systems that collect and maintain information on persons engaged in international trade in Customs and Border Protection licensed/regulated activities. The Department of Homeland Security is

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issuing a Notice of Proposed Rulemaking concurrent with this SORN in the Federal Register. The exemptions for the legacy system of records notices will continue to be applicable until the final rule for this system of records notice is completed. This system will be included in the Department's inventory of record systems.

DATES: Written comments must be submitted on or before January 20, 2009. This new system will be effective January 20, 2009.

ADDRESSES: You may submit comments, identified by docket number DHS-2008-0155 by one of the following methods:

Federal e-Rulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

Fax: 1-866-466-5370.

Mail: Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change and may be read at <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: Laurence E. Castelli (202-325-0280), Chief, Privacy Act Policy and Procedures Branch, U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Mint Annex, 1300 Pennsylvania Ave., NW., Washington, DC 20229. For privacy issues contact: Hugo Teufel III (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107-296, Section 1512, 116 Stat. 2310 (November 25, 2002), the Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP) have relied on preexisting Privacy Act systems of records notices for the collection and maintenance of records pertaining to persons engaged in international trade in CBP licensed/regulated activities.

As part of its efforts to streamline and consolidate its record systems, DHS is establishing a component system of records under the Privacy Act (5 U.S.C. 552a) for DHS/CBP that deals with persons engaged in international trade in CBP licensed/regulated activities. This record system is titled, U.S. Customs and Border Protection Persons Engaged in International Trade in CBP Licensed/Regulated Activities. This system will be used by DHS/CBP to collect and maintain records on persons engaged in international trade in CBP licensed/regulated activities.

In accordance with the Privacy Act of 1974, DHS is giving notice that it proposes to consolidate eight legacy record systems into a DHS/CBP system of records notice titled, U.S. Customs and Border Protection Persons Engaged in International Trade in Customs and Border Protection Licensed/Regulated Activities: Treasury/CS.040 Carrier File (66 FR 52984 October 18, 2001); Treasury/CS.041 Cartmen or Lightermen (66 FR 52984 October 18, 2001); Treasury/CS.057 Container Station Operator Files (66 FR 52984 October 18, 2001); Treasury/CS.069 Customs Brokers File (66 FR 52984 October 18, 2001); Treasury/CS.137 List of Vessel Agents Employees (66 FR 52984 October 18, 2001); Treasury/CS.260 Warehouse Proprietor Files (66 FR 52984 October 18, 2001); Treasury/CS.271 Cargo Security Record System (66 FR 52984 October 18, 2001); and

Treasury/CS.274 Importers, Brokers, Carriers, Individuals and Sureties Master Files (66 FR 52984 October 18, 2001). Categories of individuals, categories of records, and the routine uses have been consolidated and updated to better reflect DHS/CBP record systems that collect and maintain information on persons engaged in international trade in CBP licensed/regulated activities. Additionally, DHS is issuing a Notice of Proposed Rulemaking (NPRM) concurrent with this system of records notice (SORN) in the Federal Register. The exemptions for the legacy system of records notices will continue to be applicable until the final rule for this SORN is completed. This system will be included in the Department's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses, and disseminates 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 for 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 where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to 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 Privacy Act requires each agency to publish in the Federal Register a description denoting 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 record keeping practices transparent, to notify individuals regarding the uses of their records, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/CBP Persons Engaged in International Trade in CBP Licensed/Regulated Activities 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 (OMB) and to Congress.

System of Records: DHS/CBP-010

System name:

U.S. Customs and Border Protection Persons Engaged in International Trade in Customs and Border Protection Licensed/Regulated Activities.

Security classification:

Unclassified.

System location:

Records are maintained at the U.S. Customs and Border Protection Headquarters in Washington, DC and in field offices.

Categories of individuals covered by the system:

Categories of individuals covered by this system include importers, brokers, carriers, sureties; officers/owners, employees, associates of

customs bonded carriers, drivers of motor vehicles, licensed cartmen, licensed lightermen, individuals and firms who have applied for or hold a license as a bonded cartman or lighterman, individuals employed by cartmen or lightermen, present and past container station operators and warehouse proprietors and their employees, including those who require an

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investigation, licensed customs brokers, employees of customs brokers, individuals or firms who have applied for a broker's license, airport and airline employees with access to the CBP controlled area of a terminal, and employees of vessel agents.

Categories of records in the system:

Categories of records in this system may include:

- Individual's name;
- Social security number;
- Date and place of birth;
- Addresses and notification of change of address;
- Personal characteristics;
- Photograph or other biometrics;
- History of past employment;
- Previous five years residences,
- Alias;
- Citizenship;
- Military records;
- Criminal record other than traffic violations;
- Use of narcotic drugs;
- Organization's name;
- Copies of bonds, entries, bills, and data center listings;
- Location of business records;
- Status reports of individuals' application including issuance, denial or renewal;
- Copies of incoming and outgoing correspondence relating to persons engaged in international trade in CBP licensed/regulated activities;
- Requests for written approval to employ persons who have been convicted of a felony;
- Applications for cartmen/lightermen licenses and identification cards;
- Applications and approvals/denials of bonds to act as container station operator or warehouse proprietor;
- Reports of investigations;
- Fingerprint cards;
- Information regarding proposed administrative disciplinary action against customs brokers for violation of the regulations governing the conduct of their business; and
- Determinations as to whether CBP issued or did not issue a particular license or permit and the type of license or permit.

Authority for maintenance of the system:

5 U.S.C. 301; the Federal Records Act, 44 U.S.C. 3101; Executive Order 9373; 19 U.S.C. 1484, 1485, 1498, 1499, 1509, 1551, 1551a, 1555, 1556, 1565, 1624, and 1641; 19 CFR parts 19, 111, 112, 113, 141, 142, 148, and 163..

Purpose(s):

The purpose of this system is to collect and maintain records on persons engaged in international trade in CBP licensed/regulated activities. These records include identifying information as well as the results of background checks or official vetting performed to ensure that CBP's approval of the individuals' right to perform the licensed or regulated activity is appropriate.

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 of 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 or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is 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 of DHS or any component in his/her official capacity;
3. Any employee of DHS or any component in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or
4. The U.S. or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS or CBP determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS or CBP collected the records.

B. To a congressional office 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 or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual 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 or CBP suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;
2. DHS or CBP has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS, CBP, or another agency or entity) or harm to the individual who relies upon the compromised information; and
3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS or CBP'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 or CBP, 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/CBP officers and employees.

G. To appropriate Federal, State, local, tribal, or foreign governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, license, or treaty where DHS determines that the information would assist in the enforcement of civil or criminal laws.

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 third parties during the course of a law enforcement investigation or

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background check to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

K. 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 or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined 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:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD-ROM.

Retrievability:

Records are retrieved by individual's name or organization's name.

Safeguards:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated system security access policies. Strict controls have been imposed 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:

Carrier records are retained by CBP for six years after the death of the licensee or revocation in accordance with the CBP, Records Control Manual, Schedule 6, Custody of Merchandise, Item 2.

Broker files and records of broker's employees are retained by CBP for six years after the death of the licensee or revocation in accordance with the CBP, Records Control Manual, Schedule 6, Custody of Merchandise, Item 2. These files are periodically updated and removed to an inactive file, as necessary.

Cartmen and lightermen files are reviewed annually at which time cancelled identification cards are removed. Closed CBP Form 3078s (Application for Identification Card) may also be removed, but normally are held for approximately three years in case a new application is received from the same company or transferred to another company after investigation.

Container station operator files are disposed of in accordance with the CBP Records Control Manual, Schedule 6, Custody of Merchandise Records, Item 10.

Records on warehouse proprietor and vessel agent employees are maintained by the organization for the duration of the individual's employment and retained by CBP for six years after the death of the licensee or revocation in accordance with the CBP, Records Control Manual, Schedule 6, Custody of Merchandise, Item 2.

Records on drivers are maintained in an active file until revoked or cancelled. After revocation or cancellation, the information folder is placed in an inactive file for five years, and then disposed of in accordance with the General Services Administration Disposal Manual.

Information on proprietor bonded warehouse operators and employees is retained on file until Customs bonded operations cease and are discontinued, and then maintained in an inactive file for three years. Final disposition is in accordance with the General Services Administration Disposal Manual.

Files on brokers, carriers, and sureties are maintained for six years after death of licensee or revocation in accordance with the CBP Records Control Manual. In accordance with the Records Control Manual, Schedule 9 Entry Processing, files on importers are maintained in connection with the respective entry of merchandise for eight years after liquidation of the entry, which is the final determination of classification and duty relating to the imported merchandise by CBP.

System Manager and address:

Executive Director, Commercial Targeting and Enforcement, Office of International Trade, U.S. Customs and Border Protection, Customs and Border Protection Headquarters, 1300 Pennsylvania Avenue, NW., Mint Annex, Washington, DC 20229.

Notification procedure:

The Secretary of Homeland Security has exempted this system from certain aspects of the notification, access, and amendment requirements of the Privacy Act. CBP will review each request to determine whether or not notification, access, or amendment should be provided. 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 CBP's FOIA Officer, 1300 Pennsylvania Avenue, NW., Mint Annex, Washington, DC 20229.

When seeking records about yourself from this system of records or any other CBP 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 Director, Disclosure and FOIA, <http://www.dhs.gov> or 1-866-431-0486. In addition you should provide the following:

An explanation of why you believe the Department would have information on you,

Specify when you believe the records would have been created,

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/her records.

Without this bulleted information CBP 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:

Records are obtained by authorized Customs forms or electronic formats from individuals and/or companies incidental to the conduct of foreign trade and required by the Customs Service in administering the tariff laws and regulations of the United States. Individuals; organizations; DHS/CBP; correspondence; investigation reports

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and supporting materials; applications for bonds and licenses, and other DHS/CBP memoranda.

Exemptions claimed for the system:

The Secretary of Homeland Security has exempted this system pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f), and (g). Additionally, the Secretary has exempted this system pursuant to 5 U.S.C. 552a(k)(2) of the Privacy Act from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

Dated: December 10, 2008.
Hugo Teufel III,
Chief Privacy Officer, Department of Homeland Security.
[FR Doc. E8-29799 Filed 12-18-08; 8:45 am]

BILLING CODE 4410-10-P