

# 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

[Docket No. DHS-2009-0013]

### Privacy Act of 1974: Implementation of Exemptions; U.S. Citizenship and Immigration Services 009 Compliance Tracking and Management System (CTMS)

**AGENCY:** Privacy Office, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security (DHS) is amending its regulations to exempt portions of a system of records from certain provisions of the Privacy Act of 1974. Specifically, DHS proposes to exempt portions of the Compliance Tracking and Management System (CTMS) from one or more provisions of the Privacy Act because of criminal, civil and administrative enforcement requirements. CTMS is a system of records that DHS will use to support the Verification Division of U.S. Citizenship and Immigration Services (USCIS). CTMS collects and uses information necessary for DHS to support monitoring and compliance activities for researching and managing misuse, abuse, discrimination, breach of privacy, and fraudulent use of information obtained through two USCIS Verification Division programs: Systematic Alien Verification for Entitlements (SAVE); and E-Verify.

**DATES:** Comments must be received on or before June 22, 2009.

**ADDRESSES:** You may submit comments, identified by docket number [DHS-2009-0013] by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 703-483-2999.
- *Mail:* Mary Ellen Callahan, 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 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: Claire Stapleton (202-358-7777), Verification Division Privacy Branch Chief, or Donald K. Hawkins (202-272-1400), Citizenship and Immigration Services Privacy Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529. U.S. Citizenship and Immigration Services, Department of Homeland Security, Washington, DC 20529. For privacy issues please contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

**SUPPLEMENTARY INFORMATION:**

*Background:* The Department of Homeland Security (DHS), elsewhere in this edition of the **Federal Register**, published a Privacy Act system of records notice describing records in the Compliance Tracking and Management System (CTMS). This system of records is owned and operated by U.S. Citizenship and Immigration Services (USCIS). CTMS collects and uses information necessary to support monitoring and compliance for researching and managing misuse, abuse, discrimination, breach of privacy, and fraudulent use of USCIS Verification Division's verification programs: (1) Systematic Alien Verification for Entitlements (SAVE); and (2) E-Verify. SAVE and E-Verify are both congressionally mandated programs for the verification of information about an individual based on documents presented to either a government agency or employer. E-Verify, formerly known as the Basic Pilot Program, was established under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208 section 401, 8 U.S.C. 1324a note. SAVE was established under the Immigration and Control Act of 1986, Public Law 100-

360 section 121(c). The specifics of the SAVE and E-Verify Program can be found on the DHS Web site and in the Verification Information System (VIS) System of Records Notice (SORN) and Privacy Impact Assessments (PIA). Congress further required that DHS provide reasonable safeguards to prevent these programs from misuse, abuse, discrimination, breach of privacy, and fraudulent use.

The Verification Division of USCIS has established a Monitoring and Compliance Branch to monitor and research potential cases of misuse, abuse, discrimination, breach of privacy, and fraudulent use. CTMS is the system that supports this effort. DHS proposes to exempt portions of the Compliance Tracking and Management System (CTMS) from one or more provisions of the Privacy Act because of criminal, civil and administrative enforcement requirements. 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 (NPRM) to make clear to the public the reasons why a particular exemption is claimed.

In this NPRM, DHS now is proposing to exempt CTMS, in part, from certain provisions of the Privacy Act. Some information in CTMS is shared with and contributes to law enforcement activities of DHS components and other Federal agencies. 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 to preclude subjects of these activities from frustrating USCIS monitoring and compliance processes and to avoid disclosure of research techniques, as these processes and techniques may inform law enforcement investigations. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of Federal law enforcement and intelligence agencies. 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.

#### 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 at the end of Appendix C to Part 5, Exemption of Record Systems under the Privacy Act, the following new paragraph 14:

#### Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

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14. The Department of Homeland Security Compliance Tracking and Management System (CTMS) consists of electronic and paper files that will be used by DHS and its components. This system of records will be used to perform a range of information management and analytic functions involving minimizing misuse, abuse, discrimination, breach of privacy, and fraudulent use of SAVE and E-Verify. Pursuant to 5 U.S.C. 552a(k)(2) of the Privacy Act, this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f). 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 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, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(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, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information 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 interest of effective law enforcement, 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 individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

Dated: May 15, 2009.

**Mary Ellen Callahan,**

*Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. E9–11966 Filed 5–21–09; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Part 945

[Doc. No. AMS–FV–08–0062; FV08–945–1 PR]

#### Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, OR and Imported Irish Potatoes; Relaxation of Size Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would relax the size requirements for potatoes handled under the marketing order for Idaho-Eastern Oregon potatoes and for

long type potatoes imported into the United States. This rule would revise the size requirements to allow: Creamer size ( $\frac{3}{4}$  inch to  $1\frac{1}{8}$  inches diameter) for all varieties of potatoes to be handled if the potatoes otherwise meet U.S. No. 1 grade; and round type potatoes to be handled without regard to size so long as the size is specified on the container in connection with the grade. The proposed changes are intended to improve the handling and marketing of Idaho-Eastern Oregon potatoes and increase returns to producers. The proposed changes would also allow the importation of Creamer size long type potatoes under regulations as authorized by section 8e of the Agricultural Marketing Agreement Act of 1937.

**DATES:** Comments must be received by July 21, 2009.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments should be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours, or can be viewed at <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

#### FOR FURTHER INFORMATION CONTACT:

Barry Broadbent or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: [Barry.Broadbent@usda.gov](mailto:Barry.Broadbent@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).