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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2008–0169]

Privacy Act of 1974: Implementation of Exemptions; U.S. Immigration and Customs Enforcement–005 Trade Transparency Analysis and Research (TTAR) System

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a new U.S. Immigration and Customs Enforcement system of records entitled the ''U.S. ICE–005 Trade Transparency Analysis and Research (TTAR)'' system from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the TTAR system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 5, 2009.

FOR FURTHER INFORMATION CONTACT: Lyn Rahilly (202–732–3300), Privacy Officer, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Washington, DC 20024, *e-mail: ICEPrivacy@dhs.gov*, or 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) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 64890, Oct. 31, 2008 proposing to exempt portions of the U.S. ICE–005 Trade Transparency Analysis and Research (TTAR) system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The TTAR system of records notice (SORN) was published concurrently in the **Federal Register**, 73 FR 64967, Oct. 31, 2008. and comments were invited on both the proposed rule and SORN. No comments were received from the public regarding either the SORN or the proposed rule. Therefore, no changes have been made to the rule or the SORN, and DHS is implementing the final rule as published.

In this rule, DHS is claiming exemption from certain requirements of the Privacy Act for TTAR because certain information in the system may contain information about ongoing law enforcement investigations. The TTAR system of records is maintained for the purpose of enforcing criminal laws pertaining to trade by examining U.S. and foreign trade data to identify anomalies in patterns of trade that may indicate trade-based money laundering or other import-export crimes that ICE is responsible for investigating. TTAR contains trade data collected by other Federal agencies and foreign governments, and financial data collected by U.S. Customs and Border Protection (CBP) and the U.S. Department of the Treasury Financial Crimes Enforcement Network (FinCEN).

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 these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and of border management 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 exemptions published here are standard law enforcement and national security exemptions exercised by a large number of Federal law enforcement and intelligence agencies. The exemptions do not necessarily apply to all records described in the TTAR SORN. 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.

Regulatory Requirements

A. Regulatory Impact Analyses

Changes to Federal regulations must undergo several analyses. In conducting these analyses, DHS has determined:

1. Executive Order 12866 Assessment

This rule is not a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review'' (as amended). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB). Nevertheless, DHS has reviewed this rulemaking, and concluded that there will not be any significant economic impact.

2. Regulatory Flexibility Act Assessment

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), DHS certifies that this rule will not have a significant impact on a substantial number of small entities. The rule would impose no duties or obligations on small entities. Further, the exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the RFA.

3. International Trade Impact Assessment

This rulemaking will not constitute a barrier to international trade. The exemptions relate to civil or criminal investigations and agency documentation and, therefore, do not create any new costs or barriers to trade.

4. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This rulemaking will not impose an unfunded mandate on State, local, or

tribal governments, or on the private sector.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DHS has determined that there are no current or new information collection requirements associated with this rule.

C. Executive Order 13132, Federalism

This action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore will not have federalism implications.

D. Environmental Analysis

DHS has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

E. Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). This rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 6 CFR part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends 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.

■ 2. At the end of appendix C to part 5, add the following new paragraph 14 to read as follows:

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

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14. The U.S. ICE–005 Trade Transparency Analysis and Research (TTAR) System consists of electronic and paper records and will be used by the Department of Homeland Security (DHS). TTAR 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; and national security and intelligence activities. TTAR contains information that is collected by other federal and foreign government agencies and may contain personally identifiable information. 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)(5) and (e)(8); (f), and (g). Pursuant to 5 U.S.C. 552a(k)(2), 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), 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) and (4) (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 interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: Revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G) and (H) (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, potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals

may seek a civil remedy for the agency's: Refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant, timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: July 30, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–18620 Filed 8–4–09; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210

[FNS–2005–0009]

RIN 0584–AD83

Marketing and Sale of Fluid Milk in Schools

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final Rule.

SUMMARY: This rule finalizes the interim rule that implemented the statutory provision to prohibit direct or indirect restrictions on the sale or marketing of fluid milk on school premises or at school-sponsored events, at any time or in any place, in schools participating in the National School Lunch Program. This rule ensures that there are no policies or procedures in place that have the effect of restricting the sale or marketing of fluid milk.

DATES: *Effective Date:* This action is effective September 4, 2009.

FOR FURTHER INFORMATION CONTACT: Melissa Rothstein, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302–1594; or (703) 305–2590; or *CNDINTERNET@fns.usda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 102 of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265) amended section 9(a)(2) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1758, by adding a provision that prohibits schools participating in the National School Lunch Program (NSLP), or any person approved by a school participating in the NSLP, from directly or indirectly restricting the sale or marketing of fluid milk products at any time or in any place on school premises or at school-sponsored events. The Food and Nutrition Service (FNS) published an interim rule on November 21, 2005 (70 FR 70031) to prohibit school food authorities (SFAs) from entering into contracts that restrict the sale or marketing of fluid milk.

Contracts between SFAs and vendors can be structured to restrict the variety or types of food choices a school may offer outside of the school meal programs. Prior to implementation of the interim rule, some exclusive vending contracts were found to have the potential to limit a school's ability to sell or market fluid milk on school premises outside of the school meal programs; however, very few if any were found to actually limit the sale or marketing of fluid milk.

The intent of this rule is to ensure no vending contract restricts a school's ability or discretion to provide children access to fluid milk outside of the school meal programs. This rule does not require that participating schools sell or market fluid milk outside of the NSLP, or make fluid milk available at school-sponsored events. Furthermore, this rule does not affect the requirements for offering fluid milk as part of a reimbursable lunch in the NSLP as described in 7 CFR 210.10(m).

For additional background information, please refer to the interim rule.

II. Discussion of Public Comments and FNS Response

FNS received a total of eight comments during the 180-day comment period that ended on May 22, 2006. The commenters included representatives from dairy industry trade associations (3), a school food authority (1), a State agency (1), and individuals (3).

Of the eight comments received, six of the commenters, including one individual and the representatives from a school food authority, a State agency, and the trade associations, were in support of finalizing the requirements as established by the interim rule to prohibit any restriction of the sale or marketing of fluid milk in participating schools.

One commenter in support of the provision also felt that the Department should extend the rulemaking to prohibit or restrict all exclusive beverage contracts in participating schools.

Under existing NSLP regulations at 7 CFR 210.21, SFAs must comply with requirements intended to ensure the integrity of procurement practices for the purchase of goods and services with funds from the nonprofit school foodservice account. Furthermore, NSLP regulations provide SFAs with the flexibility to enter into vending contracts that best meet their needs for foods and beverages sold outside of the school meal programs. This rulemaking is intended to ensure vending contracts do not directly or indirectly restrict the sale or marketing of fluid milk at any time or in any place on school premises or at school-sponsored events. Other procurement issues regarding vending contracts and agreements are outside the scope of this rulemaking.

Two of the individual commenters expressed opposition to implementing the rule as final because of concern that it favors dairy industry interests and inhibits schools' ability to choose whether to sell or market fluid milk. One commenter also disapproved of conventional dairy production practices.

This rulemaking does not require or promote the sale or marketing of fluid milk outside the school meal programs. SFAs retain the authority to establish procurement contracts in accordance with Program regulations for foods sold outside of the school meal programs that best meet the nutritional and operational needs of their students and schools.

Finally, discussion of conventional dairy production practices is outside the scope of this rulemaking.

FNS considered all comments received and determined that these comments did not warrant any changes to the requirements established by the interim rule, or were outside the scope of the interim rule. FNS is issuing the interim rule as final without revision.

III. Procedural Matters

Executive Order 12866

This rule has been determined to be non-significant and is not subject to review by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Implementation of this rule is not expected to impose a significant economic impact on a substantial number of small entities. No later than the beginning of School Year 2006–2007, SFAs were required by section 102 of Public Law 108–265 to ensure that any existing or new vending contracts did not include provisions that restrict the sale or marketing of fluid milk. Therefore, the number of SFAs expected to be impacted by this rule is minimal.