

# 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-2010-0068]

### Privacy Act of 1974: Implementation of Exemptions United States Citizenship and Immigration Services-012 Citizenship and Immigration Data Repository System of Records

**AGENCY:** Privacy Office, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security (DHS) is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the United States Citizenship and Immigration Services-012 Citizenship and Immigration Data Repository System of Records system of records and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions 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 October 8, 2010.

**ADDRESSES:** You may submit comments, identified by docket number DHS-2010-0068, 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:* Donald K. Hawkins (202-272-8000), Privacy Officer, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue, NW., Washington, DC 20529; or 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 notice. 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 Donald K. Hawkins (202-272-8000), Privacy Officer, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue, NW., Washington, DC 20529; for privacy issues please contact Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

#### SUPPLEMENTARY INFORMATION:

*Background:* USCIS collects personally identifiable information (PII) directly from and about immigrants and nonimmigrants through applications and petitions for the purposes of adjudicating and bestowing immigration benefits. USCIS maintains a number of systems to facilitate these purposes including: the Computer Linked Application Information Management System (CLAIMS 3), CLAIMS 4, the Refugees, Asylum, and Parole System (RAPS), Asylum Pre-screen System (APSS), Re-engineered Naturalization Application Casework System (RNACS), Central Index System (CIS) and the Fraud Detection and National Security Data System (FDNS-DS). As part of the adjudication process, USCIS personnel engage in a number of steps to ensure that an individual is eligible for a requested benefit. One of these steps is the performance of background checks to make certain that an individual is not attempting to obtain the requested benefit by fraudulent means, has not committed a Crime Involving Moral Turpitude and/or does not pose a public safety threat or a threat to national security.

USCIS developed CIDR, hosted on DHS classified networks, in order to make information from these USCIS systems available to authorized USCIS personnel for the purposes of: (1) Vetting USCIS application information for indications of possible immigration fraud and national security concerns; (2) detecting possible fraud and misuse of immigration information or position by USCIS employees, for personal gain or by coercion; and (3) responding to requests for information (RFI) from the

DHS Office of Intelligence and Analysis (I&A) and/or federal intelligence and law enforcement community members that are based on classified criteria. CIDR enables authorized USCIS users to more efficiently search multiple USCIS systems from a single entry point, the results of which will be retained in CIDR. CIDR's position on DHS classified networks allows USCIS to securely conduct searches based on classified parameters and searches based on possible fraud and national security concerns.

There are occasions when USCIS receives RFIs from members of the Intelligence Community (IC) and Law Enforcement (LE) that are classified. In order to assist with classified investigatory leads and respond to I&A requests, USCIS must conduct searches whose parameters are classified on unclassified data sets. To facilitate a more efficient and secure environment in which to conduct these queries and to store the results, DHS determined that creating mirror copies of its unclassified data sets on the classified side would be the most appropriate solution. CIDR provides the capability to properly conduct and protect classified searches and maintain detailed audit trails of search activities and results. Copying unclassified data from the unclassified systems to a classified site does not render this information classified, only the search parameters and results. CIDR will enable USCIS personnel to perform searches of its non classified data sets in a classified environment, ensuring that the integrity of the classified RFI process is maintained. Based on the results of the searches performed in CIDR, USCIS will produce a response to the RFI, which will include the content of the RFI, information from CIDR that is responsive to the RFI, and any necessary explanations to provide proper context and interpretations of the information provided. These responses will contain PII when de-identified or statistical data cannot satisfy the RFI. These responses will be produced by USCIS personnel as separate electronic documents and sent to I&A in the same manner that the RFI was received; usually via e-mail over the classified e-mail network.

USCIS is proposing to exempt classified information in CIDR from disclosure to a requestor to preserve the

integrity of ongoing counterterrorism, intelligence, or other homeland security activities, pursuant to the Privacy Act. 5 U.S.C. 552a(k)(1) and (2).

Consistent with DHS's information sharing mission, information stored in CIDR may be shared with other DHS components, as well as appropriate Federal, State, local, tribal, foreign, or international governmental agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

In accordance with the Privacy Act of 1974 the Department of Homeland Security proposes to establish a new Department of Homeland Security (DHS) system of records notice titled DHS U.S. Citizenship and Immigration Services—012 Citizenship and Immigration Data Repository (CIDR).

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. 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 the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request 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 of 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 recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals in finding such files within the agency.

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 claiming exemptions from certain requirements of the Privacy Act

for DHS/USCIS—012 CIDR. Some information in DHS/USCIS—012 CIDR relates to official DHS national security, law enforcement, immigration, and intelligence activities. 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 law enforcement, immigration, and intelligence processes; to avoid disclosure of means and methods; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS' 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 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 on a case by case basis.

A notice of system of records for DHS/USCIS—012 CIDR 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:** 6 U.S.C. 101 *et seq.*; Pub. L. 107-296, 116 Stat. 2135; 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, the following new paragraph "52":

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

\* \* \* \* \*

52. United States Citizenship and Immigration Services—012 Citizenship and Immigration Data Repository system of records consists of electronic and paper records and will be used by USCIS. United

States Citizenship and Immigration Services—012 Citizenship and Immigration Data Repository 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 thereunder; national security and intelligence activities. United States Citizenship and Immigration Services—012 Citizenship and Immigration Data Repository 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. Pursuant to 5 U.S.C. 552a(k)(1) and (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), (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 could 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 subsections (e)(4)(G), (e)(4)(H), and (e)(4)(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 the 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: September 1, 2010.

**Mary Ellen Callahan,**  
Chief Privacy Officer, Department of  
Homeland Security.

[FR Doc. 2010-22307 Filed 9-7-10; 8:45 am]

BILLING CODE 9111-97-P

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 253

[FNS-2008-001]

RIN 0584-AD85

#### Food Distribution Program on Indian Reservations: Administrative Funding Allocations

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to establish the requirements regarding the allocation of administrative funds for the Food Distribution Program on Indian Reservations and the Food Distribution Program for Indian Households in Oklahoma, both of which are referred to as "FDPIR" in this rulemaking. The rulemaking would propose amendments to FDPIR regulations to ensure that administrative funding is allocated in a fair and equitable manner. The proposed rule would also revise FDPIR regulations to clarify current program requirements relative to the distribution of administrative funds to Indian Tribal Organizations (ITOs) and State agencies.

**DATES:** To be assured of consideration, comments must be received on or before December 7, 2010.

**ADDRESSES:** FNS invites interested persons to submit comments on this proposed rule. You may submit

comments, identified by Regulatory Identifier Number (RIN) number 0584-AD85, by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Preferred method; follow the online instructions for submitting comments on "FNS-2008-001."

- **Fax:** Submit comments by facsimile transmission to Laura Castro at (703) 305-2420.

- **Mail:** Send comments to Laura Castro, Branch Chief, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 500, 3101 Park Center Drive, Alexandria, Virginia 22302-1594.

- **Hand Delivery or Courier:** Deliver comments to the above address during regular business hours.

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 substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Laura Castro at the above address or telephone (703) 305-2662. You may also contact Dana Rasmussen at (703) 305-1628, or via e-mail at [Dana.Rasmussen@fns.usda.gov](mailto:Dana.Rasmussen@fns.usda.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Procedural Matters
- III. Background and Discussion of the Proposed Rule

#### I. Public Comment Procedures

Your written comments on this proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain your reason(s) for any change you recommend or proposal(s) you oppose. Where possible, you should reference the specific section or paragraph of the proposal you are addressing. Comments received after the close of the comment period (*see DATES*) will not be considered or included in the Administrative Record for the final rule.

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these regulations easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (*e.g.*, grouping and order of sections, use of headings, and paragraphs) make it clearer or less clear?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the preamble section entitled "Background and Discussion of the Proposed Rule" helpful in understanding the rule? How could this description be more helpful in making the rule easier to understand?

#### II. Procedural Matters

In the following discussion and regulatory text, the term "State agency," as defined at 7 CFR 253.2, is used to include ITOs authorized to operate FDPIR in accordance with 7 CFR parts 253 and 254.

##### A. Executive Order 12866, "Regulatory Planning and Review"

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. Therefore it was not reviewed by the Office of Management and Budget (OMB).

##### B. Title 5, United States Code 601-612, "Regulatory Flexibility Act"

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). It has been certified that this action will not have a significant impact on a substantial number of small entities. While State agencies that administer FDPIR will be affected by this rulemaking, the economic effect will not be significant.

##### C. Public Law 104-4, "Unfunded Mandates Reform Act of 1995" (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-