

DEPARTMENT OF HOMELAND SECURITY**Office of the Secretary****6 CFR Part 5**

[Docket No. DHS-2011-0091]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security Federal Emergency Management Agency-012 Suspicious Activity Reporting System of Records**AGENCY:** Privacy Office, DHS.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the “Department of Homeland Security/Federal Emergency Management Agency-012 Suspicious Activity Reporting 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 31, 2011.**ADDRESSES:** You may submit comments, identified by docket number DHS-2011-0091, 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>.

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: Dr. Lesia Banks, (202-646-3323), Acting Privacy Officer, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC 20478. For privacy issues please contact: Mary Ellen Callahan (703-235-0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:**I. Background**

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) Federal Emergency Management Agency (FEMA) proposes to establish a new DHS/FEMA system of records titled, “DHS/FEMA-012 Suspicious Activity Reporting System of Records.”

FEMA’s mission is to “support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards.” FEMA will collect, maintain, and retrieve records on individuals who report suspicious activities, individuals reported as being involved in suspicious activities, and individuals charged with the analysis and appropriate handling of suspicious activity reports. FEMA’s Office of the Chief Security Officer (OCSO), Fraud and Investigations Unit, manages this process. To reduce any risk of unauthorized access, FEMA SARs are secured in a room monitored by FEMA OCSO special agents and analysts.

FEMA SARs may be shared with federal, state, local, and tribal jurisdictions that hold the responsibility of investigating suspicious activities within their jurisdictions. FEMA SARs that do not have a nexus to terrorism or hazards to homeland security, as determined by FEMA OCSO special agents or analysts, are forwarded to the appropriate jurisdiction, such as sheriff offices, county/city police, and state police. FEMA SARs that have a nexus to terrorism or hazards to homeland security, as determined by FEMA OCSO special agents or analysts, are shared with the Federal Bureau of Investigation (FBI) Joint Terrorism Task Force (JTTF), Federal Protective Service, and/or other federal agencies required to investigate and respond to terrorist threats or hazards to homeland security.

FEMA’s SAR process is authorized and governed by 44 CFR Chapter 2 “Delegation of Authority,” 42 U.S.C. 5196(d); Executive Orders 12333 and 13388; 40 U.S.C. 1315(b)(2)(F); 6 U.S.C. 314; The Homeland Security Act of

2002, as amended; the Intelligence Reform and Terrorism Prevention Act of 2004, as amended; the National Security Act of 1947, as amended; and FEMA Manual 1010-1 “Federal Emergency Management Agency Missions and Functions.”

Consistent with DHS’s information sharing mission, information stored in the DHS/FEMA-012 Suspicious Activity Reporting System of Records may be shared with other DHS components, as well as appropriate federal, state, local, tribal, territorial, foreign, or international government 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.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the U.S. 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. 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.

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 the DHS/FEMA-012 Suspicious Activity Reporting System of Records. Some information in the DHS/FEMA-012 Suspicious Activity Reporting System of Records relates to official DHS national security, law enforcement, 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 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' 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/FEMA-012 Suspicious Activity Reporting 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. Add at the end of Appendix C to Part 5, the following new paragraph "60":

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

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60. The DHS/FEMA-012 Suspicious Activity Reporting System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/FEMA-012 Suspicious Activity Reporting 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; and national security and intelligence activities. The DHS/FEMA-012

Suspicious Activity Reporting 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 has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) pursuant to 5 U.S.C. 552a (k)(2). 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 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 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 that 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 unreasonable administrative burden by requiring investigations to be continually 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.

(f) 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 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 9, 2011.

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

[FR Doc. 2011-24935 Filed 9-28-11; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 27

[Doc. #AMS-CN-10-0073; CN-10-005]

RIN 0581-AD16

Revision of Cotton Futures Classification Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to update the procedures for cotton futures quality classification services by using Smith-Doxey classification data in the cotton futures classification process. In addition, references to a separate and optional review of cotton futures certification would be eliminated to reflect current industry practices. These proposed changes in procedures for cotton futures quality classification services, as well as proposed conforming changes, reflect advances in cotton fiber quality measurement and data processing made since the regulations were last updated in 1992.

DATES: Comments must be received on or before October 31, 2011.

ADDRESSES: Interested persons may comment on the proposed rule using the following procedures:

• **Internet:** <http://www.regulations.gov>.

• **Mail:** Darryl Earnest, Deputy Administrator, Cotton & Tobacco Programs, AMS, USDA, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250-0224.

Comments should be submitted in triplicate. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

All comments will be available for public inspection at Cotton & Tobacco