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## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

#### 9 CFR Part 390

[Docket Number FSIS–2019–0012]

RIN 0583–AD82

#### Privacy Act Exemption for AssuranceNet

**AGENCY:** Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA).

**ACTION:** Final rule.

**SUMMARY:** FSIS is amending its regulations to exempt certain records maintained by its AssuranceNet (ANet) system of records from the notification and access provisions of the Privacy Act of 1974 (Privacy Act). FSIS is taking this action because ANet contains information directly associated with investigations conducted by FSIS for law enforcement purposes.

**DATES:** *Effective date:* April 22, 2024.

**FOR FURTHER INFORMATION CONTACT:** Valerie Neris, AssuranceNet System Owner/Manager, Litigation and Enforcement Programs Staff, Office of Investigation, Enforcement and Audit; Telephone (202) 550–3562.

*For Privacy Questions:* Timothy Poe, Government Information Specialist/Mission Area Privacy Officer, Freedom of Information Act Staff, Office of Public Affairs and Consumer Education; Telephone (202) 937–4207.

**SUPPLEMENTARY INFORMATION:** FSIS is the public health regulatory agency in the USDA that is responsible for ensuring that the nation's commercial supply of meat, poultry, and egg products is safe, wholesome, and accurately labeled. FSIS uses ANet, a management control and performance monitoring system that gathers information from electronic and paper-based sources, to track, measure, and monitor the performance of its and its state partners' critical public health functions and to alert FSIS management

to areas of vulnerability or concern. ANet tracks, measures, and monitors the performance of the key public health functions of inspection, verification, surveillance, enforcement, and sampling by FSIS and state meat and poultry inspection program employees. The data and tools of ANet are used to analyze the effectiveness of policies and procedures in meeting public health goals and objectives and to help ensure that methods, evaluations, and enforcement are standardized and traceable nationwide. The Agency also uses data analysis in and through ANet to discern trends; to develop objectives for regulatory food safety functions; to identify and focus on areas of high-risk; and to help determine strategies to combat threats to food safety and defense.

On March 22, 2022, FSIS published a system of records notice (SORN) for USDA/FSIS–0005, ANet (87 FR 16163). In the same **Federal Register**, FSIS published a proposed rule to exempt certain investigatory records maintained by the ANet system of records from the notification and access provisions of the Privacy Act under 5 U.S.C. 552a(c)(3), (d)(1)–(4), (e)(1) (e)(4)(G)–(I), and (f) (87 FR 16105). FSIS explained in the proposed rule that ANet includes investigatory material compiled for law enforcement, which fall under the Privacy Act exemptions in 5 U.S.C. 552a(k). FSIS also explained that the proposed exemptions were necessary to protect information on the methods used in law enforcement activities from those individuals who are subjects to the investigation and the identities and physical safety of witnesses and others who aid in investigations. Moreover, FSIS explained that the exemptions would ensure FSIS' ability to obtain information from third parties and safeguard those investigatory records that are needed for litigation (87 FR 16105–16106).

The comment period for the proposed rule ended on April 21, 2022. After carefully considering the comments, discussed below, FSIS is finalizing the proposal without changes.

#### Summary of Comments and Responses

FSIS received two comments from individuals on the proposed rule.

*Comment:* One commenter asked if the exempted information in ANet will be made available once the investigation has ended.

*Response:* Investigative and law enforcement information in ANet may still be exempted from release after an investigation has concluded, because it may provide information on investigative methods and techniques, allow violators to revise their methods to go undetected to circumvent the law, or disclose confidential informants or sources. Whether certain information may be releasable after an investigation has ended will be addressed on a case-by-case basis, consistent with the Privacy Act and the Freedom of Information Act (5 U.S.C. 552).

*Comment:* The other commenter argued that FSIS should withdraw the proposal because the Agency did not define “SORN” in the proposed rule.

*Response:* FSIS is not withdrawing the proposal. On page 16105 of the proposed rule (87 FR 16105), the Agency explained that a SORN is a system of records notice that informs the public of the existence of a system of records and describes the type of information collected, why it is being collected, what it may be used for, when it may be disclosed to third parties, how it will be safeguarded, and how and when it will be destroyed.

#### Executive Orders 12866, as Amended by 14094, and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated as a “non-significant” regulatory action under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB) under E.O. 12866. While this final rule may benefit law enforcement efforts, FSIS does not anticipate quantifiable costs or benefits accruing from this rule.

#### Regulatory Flexibility Act

The FSIS Administrator certifies that, for the purposes of the Regulatory Flexibility Act (5 U.S.C. *et seq.*), this final rule will not have a significant

economic impact on a substantial number of small entities in the United States. This final rule is not expected to increase costs to industry.

#### **Paperwork Reduction Act**

There are no new paperwork or recordkeeping requirements associated with this final rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### **Executive Order 12988, Civil Justice Reform**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings will be required before parties may file suit in court challenging this rule.

#### **Environmental Impact**

Each USDA agency is required to comply with 7 CFR part 1b of the Departmental regulations, which supplements the National Environmental Policy Act regulations published by the Council on Environmental Quality. Under these regulations, actions of certain USDA agencies and agency units are categorically excluded from the preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) unless the agency head determines that an action may have a significant environmental effect (7 CFR 1b.4(b)). FSIS is among the agencies categorically excluded from the preparation of an EA or EIS (7 CFR 1b.4(b)(6)).

FSIS has determined that this final rule, which exempts certain records maintained by its ANet system of records from the notification and access provisions of the Privacy Act, will not create any extraordinary circumstances that will result in this normally excluded action having a significant effect on the human environment. Therefore, this action is appropriately subject to the categorical exclusion for FSIS programs and activities under 7 CFR 1b.4.

#### **E-Government Act**

FSIS and the USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601 *et seq.*) by, among other things, promoting the use of the internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

#### **Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication online through the FSIS web page located at: <https://www.fsis.usda.gov/federal-register>.

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Constituent Update is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: <https://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

#### **Executive Order 13175**

This rule has been reviewed in accordance with the requirements of E.O. 13175, “Consultation and Coordination with Indian Tribal Governments.” E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FSIS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a tribe requests consultation, FSIS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

#### **USDA Non-Discrimination Statement**

In accordance with Federal civil rights law and USDA civil rights

regulations and policies, USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form, AD–3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.usda.gov/forms/electronic-forms>, from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant’s name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) Fax: (833) 256–1665 or (202) 690–7442; or (3) Email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

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#### **List of Subjects in 9 CFR Part 390**

Freedom of information, Privacy.

For the reasons stated in the preamble, FSIS amends 9 CFR part 390 as follows:

#### **PART 390—FREEDOM OF INFORMATION AND PUBLIC INFORMATION**

■ 1. The authority citation for part 390 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a; 21 U.S.C. 451–472, 601–695; 7 CFR 1.3, 2.7.

■ 2. Add § 390.11 to read as follows:

**§ 390.11 FSIS systems of records exempt from the Privacy Act.**

(a) USDA/FSIS–0005, AssuranceNet system of records, is exempt from subsections (c)(3), (d)(1)–(4), (e)(1), (e)(4)(G)–(I), and (f) of the Privacy Act, 5 U.S.C. 552a, to the extent it contains investigatory material compiled for law enforcement purposes in accordance with 5 U.S.C. 552a(k)(2). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (d)(1) because the records contained in this system relate to official Federal investigations and matters of law enforcement. Individual access to these records might compromise ongoing or impending investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation.

(3) From section (d)(2) because amendment of the records would interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(4) From subsections (d)(3) and (4) because these subsections are inapplicable to the extent exemption is claimed from subsections (d)(1) and (2).

(5) From subsection (e)(1) because it is often impossible to determine in advance if investigatory information contained in this system is accurate, relevant, timely and complete, but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness, and completeness of all information obtained.

(6) From subsections (e)(4)(G) and (H) since an exemption being claimed for subsection (d) makes these subsections inapplicable.

(7) From subsection (e)(4)(I) because the categories of sources of the records in this system have been published in the **Federal Register** in broad generic terms in the belief that this is all that subsection (e)(4)(I) requires. In the event, however, that subsection (e)(4)(I) should be interpreted to require more detail as to the identity of sources of the records in the system, exemption from this provision is necessary in order to protect the confidentiality of the sources of enforcement information and of witnesses and informants.

(8) From subsection (f) to the extent that the system is exempt from other specific subsections of the Privacy Act.

(b) [Reserved]

Done in Washington, DC.

**Theresa Nintemann,**

*Deputy Administrator.*

[FR Doc. 2024–03343 Filed 2–16–24; 8:45 am]

**BILLING CODE 3410–DM–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket Number USCG–2024–0145]

RIN 1625–AA00

**Safety Zone; Laguna Madre, South Padre Island, TX**

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain navigable waters in the Laguna Madre. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a firework display launched from a stationary barge in the Laguna Madre, South Padre Island, Texas. Entry of vessels or persons into this zone or remaining in the zone when it is in effect is prohibited unless specifically authorized by the Captain of the Port, Sector Corpus Christi or a designated representative.

**DATES:** This rule is effective from 6 p.m. on February 14, 2024 through 1 a.m. on February 15, 2024.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0145 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rule, call or email Lieutenant Commander Anthony Garofalo, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email [CCWaterways@uscg.mil](mailto:CCWaterways@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

COTP Captain of the Port, Sector Corpus Christi  
CFR Code of Federal Regulations  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
§ Section  
U.S.C. United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone to protect personnel, vessels, and the marine environment from potential hazards created by the fireworks display, and we lack sufficient time to provide a reasonable comment period and consider any comments submitted before issuing the rule.

Under 5 U.S.C. 553(d)(3), and for the same reason provided above, the Coast Guard finds that good cause also exists for making this rule effective less than 30 days after publication in the **Federal Register**.

**III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port, Sector Corpus Christi (COTP) has determined that potential hazards associated with the fireworks displays occurring from 6 p.m. on February 14, 2024 through 1 a.m. on February 15, 2024 will be a safety concern for anyone in the waters of the Laguna Madre area within a 700 yard radius of the following point; 26°6′5.05″ N, 97°10′12.46″ W. The purpose of this rule is to ensure safety of vessels and persons on these navigable waters in the safety zone while the display of the fireworks takes place in the Laguna Madre.