

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 Inspector General

6 CFR Part 5

[DHS-2005-0065]

Privacy Act of 1974: Implementation of Exemptions

AGENCY: Office of Investigations, Office of Inspector General, Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving notice of a revised and updated system of records pursuant to the Privacy Act of 1974 for the Office of Inspector General, Office of Investigations. In this proposed rulemaking, the Department proposes to exempt portions of this 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 December 9, 2005.

ADDRESSES: You may submit comments, identified by docket number DHS-2005-0065, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Fax: (202) 254-4285 (This is not a toll-free number).

Mail: Richard N. Reback, DHS, Office of Inspector General/STOP 2600, 245 Murray Drive, SW., Building 410, Washington, DC 20528.

Hand Delivery / Courier: Richard N. Reback, DHS, Office of Inspector General/STOP 2600, 245 Murray Drive, SW., Building 410, 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.

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Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Richard N. Reback, Department of Homeland Security, Office of Inspector General/STOP 2600, 245 Murray Drive, SW., Building 410, Washington, DC 20528 by telephone (202) 254-4100 or facsimile (202) 254-4285; Maureen Cooney, Acting Chief Privacy Officer, Department of Homeland Security, 601 South 12th Street, Arlington, VA 22202-4220 by telephone (571) 227-3813 or facsimile (571) 227-4171.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 2005, the Department of Homeland Security (DHS) updated and republished under the Privacy Act of 1974, 5 U.S.C. 552a, a system of records within Office of Inspector General (OIG), United States Department of Homeland Security (DHS) Headquarters for its investigative files. (See 70 FR 58448.) Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107-296, sec. 1512, 116 Stat. 2310 (Nov. 25, 2002) (6 U.S.C. 552), DHS components and offices could continue to rely on completed administrative actions after creation of the Department until those actions were amended, modified, superseded, terminated, set aside, or revoked. Two system notices previously supported the collection of investigation information by the DHS OIG—FEMA/IG-1 (General Investigative Files) and Treasury/DO .190 (Investigation Data Management System). In its **Federal Register** notice of October 6, 2005, the DHS OIG updated and republished under its own nomenclature, the system notice to cover these records. The system is the DHS OIG “Investigations Data Management System” (IDMS). In this notice of proposed rulemaking, DHS now is proposing to exempt this system, in part, from certain provisions of the Privacy Act and to add that exemption to its proposed Appendix C to Part 5, DHS Systems of Records Exempt from the Privacy Act.

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 record keeping 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 OIG is claiming exemption from certain requirements of the Privacy Act for IDMS. Information in this system relates to official OIG investigations and law enforcement activities. These exemptions are needed to protect information relating to OIG investigations from disclosure to subjects of investigations and others who could interfere with OIG’s law enforcement activities. Specifically, the exemptions are required to preclude subjects of investigations from frustrating the investigative process; to avoid disclosure of investigative techniques; protect the identities and physical safety of confidential informants and of law enforcement personnel; ensure OIG’s ability to obtain information from third parties and other sources; protect the privacy of third parties; and safeguard classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

In addition, because OIG investigations arise out of DHS programs and activities, information in this records system may pertain to national security and related law enforcement matters. In such cases, allowing access to such information could alert subjects of OIG investigations into actual or potential criminal, civil, or regulatory violations, and could reveal in an untimely manner, OIG's and other agencies' investigative interests in law enforcement efforts to preserve national security.

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. At the end of Appendix C to Part 5, which was proposed to be added at 70 FR 14428, March 22, 2005, add the following new paragraph “2” to read as follows:

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

* * * * *

2. DHS–OIG–2005–002, the Office of Inspector General Investigations Data Management System (IDMS) consists of records and information collected and maintained to receive and process allegations of violations of criminal, civil, and administrative laws and regulations relating to DHS programs, operations, and employees, as well as contractors and other individuals and entities associated with the DHS. The system allows the DHS Office of Inspector General to monitor case assignments, disposition, status, and results; manage investigations and information provided during the course of such investigations; track actions taken by management regarding

misconduct; track legal actions taken following referrals to the United States Department of Justice for prosecution or litigation; provide information relating to any adverse action or other proceeding that may occur as a result of the findings of an investigation; retrieve investigation results; provide a system for creating and reporting statistical information; and to provide a system to track Office of Inspector General investigators' firearms qualification records and property records. Pursuant to exemptions 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)(2) through (5); and (g). Pursuant to 5 U.S.C. 552a (k)(1), (k)(2) and (k)(5), 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) (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, tamper with witnesses or evidence, and 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, tamper with witnesses or evidence, and 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 as 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 the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G) and (H) (Agency Requirements), (f) (Agency Rules), and (g) (Civil Remedies) because portions of this system are exempt from the individual access provisions of subsection (d).

(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 OIG special 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 OIG'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.

Dated: October 28, 2005.

Maureen Cooney,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 05-21952 Filed 11-8-05; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 05-041-1]

Importation of Cattle From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations regarding the importation of cattle from Mexico by adding San Luis, AZ, as a port through which cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases may be imported into the United States. A new facility for the handling of animals is to be constructed on the Mexican side of the border at the port of San Luis, AZ, that will be equipped with facilities necessary for the proper chute inspection, dipping, and testing that are required for such cattle under the regulations. We would also amend the regulations to remove provisions that limit the admission of cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases to the State of Texas and that prohibit the movement of such cattle into areas of Texas quarantined because of fever ticks. The statutory requirement that limited the admission of those cattle to the State of Texas has been repealed, and we believe that the current provisions of our domestic fever tick quarantine regulations will effectively address any risk of the spread of tick-borne diseases associated with the subsequent movement of imported cattle from the quarantined area of Texas. These proposed changes would make an additional port of entry available and relieve restrictions on the movement of imported Mexican cattle within the United States.

DATES: We will consider all comments that we receive on or before January 9, 2006.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and, in the "Search for Open Regulations" box,

select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select APHIS-2005-0101 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the "Advanced Search" function in Regulations.gov.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 05-041-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 05-041-1.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Arnaldo Vaquer, Senior Staff Veterinarian, National Center for Import and Export, Technical Trade Services Team, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1231; (301) 734-8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 prohibit or restrict the importation of certain animals, birds, and poultry into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart D of part 93 (§§ 93.400 through 93.435, referred to below as the regulations) governs the importation of ruminants; within subpart D, §§ 93.424 through 93.429 specifically address the importation of various ruminants from Mexico into the United States.

In § 93.426, paragraph (a) states that all ruminants offered for entry into the United States from Mexico must be inspected at the port of entry and found to be free from communicable diseases and fever tick infestation and to not have been exposed to communicable diseases and fever tick infestation. Ruminants found to be affected with or

to have been exposed to a communicable disease, or infested with fever ticks, are to be refused entry except as provided in § 93.427(b)(2).

Under § 93.427(b)(2), cattle that have been exposed to splenetic, southern, or tick fever, or that have been infested with or exposed to fever ticks, may be imported from Mexico for admission into the State of Texas, except that portion of the State quarantined because of fever ticks, either at one of the land border ports in Texas listed in § 93.403(c) of the regulations, or at the port of Santa Teresa, NM, provided that certain conditions are met. Those conditions are spelled out in paragraphs (b)(2)(i) through (b)(2)(v) of § 93.427.

In this document, we are proposing to amend § 93.427(b)(2) by:

- Removing the limitation that allows the imported cattle admission only into the State of Texas;
- Removing the limitation that prohibits the imported cattle from being moved into areas in Texas quarantined because of fever ticks; and
- Adding San Luis, AZ, as an additional port through which the cattle may be imported into the United States.

Each of these proposed changes is explained in more detail below.

Admission Only Into the State of Texas

The limitation that allows the imported cattle admission only into the State of Texas originated in statutory language (21 U.S.C. 104) that, prior to 1993, authorized the Secretary of Agriculture to permit "the admission into the State of Texas of cattle which have been infested with or exposed to ticks upon being freed therefrom." However, in 1993, as part of the North American Free Trade Agreement (NAFTA) Implementation Act (Public Law 103-182), 21 U.S.C. 104 was amended to state more generally that the Secretary may permit the importation of cattle, sheep, or other ruminants, and swine from Canada and Mexico, effectively removing the restriction that prohibited cattle from moving into States other than Texas. The provisions of 21 U.S.C. 104 were subsequently repealed by the Animal Health Protection Act, which constitutes the Secretary's current authority and places no restrictions on the destination within the United States of cattle imported from Mexico.

Following the passage of the NAFTA Implementation Act, our permitting procedures were modified to allow cattle that had been infested with or exposed to fever ticks to be moved into States other than Texas under the conditions described in § 93.427(b)(2), but we did not make a corresponding