

# Rules and Regulations

## Federal Register

Vol. 73, No. 20

Wednesday, January 30, 2008

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## DEPARTMENT OF HOMELAND SECURITY

### 6 CFR Part 5

[Docket No. DHS-2008-0004]

#### Privacy Act of 1974: Implementation of Exemptions

**AGENCY:** Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** The Department of Homeland Security is issuing a final rule exempting from certain provisions of the Privacy Act a revised and updated Privacy Act system of records maintained by the Office of Investigations in the Office of the Inspector General. The system of records is the "Investigative Data Management System."

**DATES: Effective Dates:** This final rule is effective January 30, 2008.

#### 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; or Hugo Teufel III, (703) 235-0780, Chief Privacy Officer, U.S. Department of Homeland Security, Washington, DC 20528; e-mail [privacy@dhs.gov](mailto:privacy@dhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

On November 9, 2005, the Department of Homeland Security (DHS) published a notice of proposed rulemaking (70 FR 67931), to exempt a Privacy Act system of records maintained by the Office of Investigations in the Office of the Inspector General (OIG) from certain provisions of the Privacy Act. The system of records is the DHS OIG Investigations Data Management System.

No comments were received on the proposed rulemaking. Accordingly, the Department is adopting the proposed rule as final.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, DHS certifies that these regulations will not significantly affect a substantial number of small entities. The final rule imposes no duties or obligations on small entities. Further, in accordance with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, DHS has determined that this final rule would not impose new record keeping, application, reporting, or other types of information collection requirements.

#### 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. Subpart B also issued under 5 U.S.C. 552a.

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

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

\* \* \* \* \*

5. DHS-OIG-2005-002, the Office of Inspector General Investigative Records System includes both paper investigative files and the "Investigation Data Management System" (IDMS)—an electronic case management and tracking information system, which also generates reports. The Investigative Records System 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); 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) and (c)(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, 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.

**Hugo Teufel III,**

*Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. E8-1553 Filed 1-29-08; 8:45 am]

**BILLING CODE 4410-10-P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 948**

**[Docket No. AMS-FV-07-0115; FV08-948-1 FR]**

#### **Irish Potatoes Grown in Colorado; Modification of the Handling Regulation for Area No. 2**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule modifies the minimum size requirements under the Colorado potato marketing order, Area No. 2. The marketing order regulates the handling of Irish potatoes grown in Colorado, and is administered locally by

the Colorado Potato Administrative Committee, Area No. 2 (Committee). The minimum size requirements for Area No. 2 potatoes specify that potatoes handled under the marketing order must be at least 2 inches in diameter or 4 ounces in weight, with exceptions allowing the handling of round potatoes of any weight, and Russet Burbank, Russet Norkotah, and Silverton Russet potato varieties with a minimum of 1 1/8 inches in diameter or 4 ounces in weight. This rule removes the exception that Russet Burbank, Russet Norkotah, and Silverton Russet potato varieties may be 1 1/8 inches in diameter, thus requiring these varieties to also meet the minimum requirements of 2 inches in diameter or 4 ounces in weight. This change is intended to facilitate the handling and marketing of Colorado Area No. 2 potatoes.

**DATES: Effective Date:** January 31, 2008.

#### **FOR FURTHER INFORMATION CONTACT:**

Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone: (503) 326-2724, Fax: (503) 326-7440, or e-mail: [Teresa.Hutchinson@usda.gov](mailto:Teresa.Hutchinson@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or e-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under

section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule modifies the minimum size requirements under the order. The minimum size requirements for Area No. 2 potatoes specify that potatoes handled under the marketing order must be at least 2 inches in diameter or 4 ounces in weight with exceptions allowing the handling of round potatoes of any weight, and Russet Burbank, Russet Norkotah, and Silverton Russet potato varieties with a minimum of 1 1/8 inches in diameter or 4 ounces in weight. This rule removes the exception that Russet Burbank, Russet Norkotah, and Silverton Russet potato varieties may be 1 1/8 inches in diameter. This rule was recommended by the Committee at a meeting on August 16, 2007.

Section 948.22 authorizes the issuance of grade, size, quality, maturity, pack, and container regulations for potatoes grown in the production area. Section 948.21 further authorizes the modification, suspension, or termination of requirements issued pursuant to § 948.22.

Section 948.40 provides that whenever the handling of potatoes is regulated pursuant to §§ 948.20 through 948.24, such potatoes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

Under the order, the State of Colorado is divided into three areas of regulation for marketing order purposes. These include: Area No. 1, commonly known as the Western Slope, includes and consists of the counties of Routt, Eagle, Pitkin, Gunnison, Hinsdale, La Plata, and all counties west thereof; Area No. 2, commonly known as the San Luis Valley, includes and consists of the counties of Saguache, Huerfano, Las Animas, Mineral, Archuleta, and all counties south thereof; and, Area No. 3 includes and consists of all the remaining counties in the State of Colorado which are not included in Area No. 1 or Area No. 2. The order