

# 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 Number DHS–2008–0024]

#### Privacy Act of 1974: Implementation of Exemptions; Border Crossing Information

**AGENCY:** Privacy Office, Department of Homeland Security.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security is proposing to amend its regulations to exempt portions of a system of records from certain provisions of the Privacy Act. Specifically, the Department proposes to exempt portions of the Border Crossing Information from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. This document is a republication of the Treasury Department exemption regulation (title 31, Code of Federal Regulations, part 1) which previously covered the Border Crossing Information as part of the Treasury Enforcement Communications System (TECS) System of Records Notice.

**DATES:** Written comments must be submitted on or before August 25, 2008.

**ADDRESSES:** You may submit comments, identified by docket number DHS–2008–0024 by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 1–866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

**FOR FURTHER INFORMATION CONTACT:** For general questions please contact: Laurence E. Castelli (202–572–8790), Chief, Privacy Act Policy and Procedures Branch, U.S. Customs and

Border Protection, Regulations and Rulings, Office of International Trade, Mint Annex, 1300 Pennsylvania Ave., NW., Washington, DC 20229. For privacy issues please contact: Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Department of Homeland Security (DHS), elsewhere in this edition of the **Federal Register**, published a Privacy Act system of records notice describing records in the Border Crossing Information (BCI). U.S. Customs and Border Protection (CBP) is the agency responsible for collecting and reviewing border crossing information from travelers entering and departing the United States. This is consistent with CBP's overall border security and enforcement missions. Upon arrival in the United States, all individuals crossing the border are required to clear CBP. As part of this clearance process, CBP reserves the right to verify the identity, nationality, and admissibility of any person crossing the border. Additionally, CBP creates a record of the fact that the individual has entered the United States at a particular time and port of entry.

BCI collects and maintains border crossing information on travelers crossing the United States border, which includes: certain biographical information; a photograph; certain itinerary information provided by air, sea, and eventually rail carriers; and the time and location of the border crossing; and, as necessary, the status of a secondary examination.

BCI contains records pertaining to various categories of individuals, including: Passengers and crew who arrive, transit through or depart the United States by air, rail, or sea (and includes the U.S. domestic portions of international travel for passengers and crew flying into or out of the United States) and crew members on aircraft that overfly the United States; and persons crossing the land border at ports of entry.

No exemption shall be asserted with respect to information maintained in the system that is collected from a person's travel documents or submitted by a government computer system in support

of a proffered travel document, if that person, or his or her agent, seeks access or amendment of such information.

This system, however, may contain records or information pertaining to the accounting of disclosures made from BCI to other law enforcement agencies (Federal, State, Local, Foreign, International or Tribal) in accordance with the published routine uses and 5 U.S.C. 552a(b)(7). For the accounting of these disclosures only, in accordance with 5 U.S.C. 552a(j)(2), and (k)(2), DHS will claim the original exemptions for these records or information from subsection (c)(3), (e)(8), and (g) of the Privacy Act of 1974, as amended, as necessary and appropriate to protect such information.

DHS needs these exemptions in order to protect information relating to law enforcement investigations from disclosure to subjects of investigations and others who could interfere with investigatory and law enforcement activities. Specifically, the exemptions are required to: preclude subjects of investigations from frustrating the investigative process; avoid disclosure of investigative techniques; protect the identities and physical safety of confidential informants and of law enforcement personnel; ensure DHS's and other federal agencies' ability to obtain information from third parties and other sources; protect the privacy of third parties; and safeguard sensitive information.

Nonetheless, DHS will examine each request on a case-by-case basis, and, after conferring with the appropriate component or agency, may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement purposes of the systems from which the information is recompiled or in which it is contained.

Again, DHS will not assert any exemption with respect to information maintained in the system that is collected from a person and submitted by that person's air or vessel carrier, if that person, or his or her agent, seeks access or amendment of such information.

## Regulatory Requirements

### A. Regulatory Impact Analyses

Changes to Federal regulations must undergo several analyses. In conducting these analyses, DHS has determined:

#### 1. Executive Order 12866 Assessment

This rule is not a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review" (as amended). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB). Nevertheless, DHS has reviewed this rulemaking, and concluded that there will not be any significant economic impact.

#### 2. Regulatory Flexibility Act Assessment

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), DHS certifies that this rule will not have a significant impact on a substantial number of small entities. The rule would impose no duties or obligations on small entities. Further, the exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the RFA.

#### 3. International Trade Impact Assessment

This rulemaking will not constitute a barrier to international trade. The exemptions relate to criminal investigations and agency documentation and, therefore, do not create any new costs or barriers to trade.

#### 4. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104-4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This rulemaking will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

### B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DHS has determined that there are no current or

new information collection requirements associated with this rule.

### C. Executive Order 13132, Federalism

This action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore will not have federalism implications.

### D. Environmental Analysis

DHS has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4347) and has determined that this action will not have a significant effect on the human environment.

### E. Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94-163, as amended (42 U.S.C. 6362). This rulemaking is not a major regulatory action under the provisions of the EPCA.

### 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.

2. At the end of Appendix C to Part 5, add new paragraph 6 to read as follows:

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

\* \* \* \* \*

6. DHS/CBP-007, Border Crossing Information. This system may contain records or information pertaining to the accounting of disclosures made from BCI to other law enforcement and counterterrorism agencies (Federal, State, Local, Foreign, International or Tribal) in accordance with the published routine uses. For the accounting of these disclosures only, in accordance with 5 U.S.C. 552a (j)(2), and (k)(2), DHS will claim the original exemptions for these records or information from subsection (c)(3), (e)(8), and (g) of the Privacy Act of 1974, as amended, as necessary and appropriate to protect such information. Further, no exemption shall be asserted with respect to biographical or travel information submitted by, and collected from, a person's travel documents or

submitted from a government computer system to support or to validate those travel documents. After conferring with the appropriate component or agency, DHS may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement purposes of the systems from which the information is recompiled or in which it is contained. *Exemptions from the above particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, when information in this system of records is recompiled or is created from information contained in other systems of records subject to exemptions for the following reasons:*

(a) From subsection (c)(3) (Accounting for Disclosure) because making available to a record subject the accounting of disclosures from records concerning him or her would specifically reveal any investigative interest in the individual. Revealing this information could reasonably be expected to compromise ongoing efforts to investigate a violation of U.S. law, including investigations of a known or suspected terrorist, by notifying the record subject that he or she is under investigation. This information could also permit the record subject to take measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(b) From subsection (e)(8) (Notice on Individuals) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on DHS and other agencies and could alert the subjects of counterterrorism or law enforcement investigations to the fact of those investigations when not previously known.

(c) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: July 18, 2008.

**Hugo Teufel III,**

*Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. E8-17122 Filed 7-24-08; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 948

[Docket No. AMS-FV-08-0048; FV08-948-2 PR]

### Irish Potatoes Grown in Colorado; Reinstatement of the Continuing Assessment Rate

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would reinstate the continuing assessment rate established for the Area No. 3 Colorado Potato