

# Proposed Rules

Federal Register

Vol. 76, No. 113

Monday, June 13, 2011

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 LABOR

### 5 CFR Chapter XLII

### 20 CFR Chapters IV, V, VI, VII, and IX

### 29 CFR Subtitle A and Chapters II, IV, V, VII, and XXV

### 30 CFR Chapter I

### 41 CFR Chapters 50, 60, and 61

### 48 CFR Chapter 29

### Reducing Regulatory Burden; Retrospective Review Under E.O. 13563

**AGENCY:** Office of the Secretary, Labor.  
**ACTION:** Request for Information.

**SUMMARY:** In response to the President's Executive Order 13563 on improving regulation and regulatory review, the Department of Labor (DOL or the Department) prepared a preliminary plan to review its existing significant regulations. The purpose of this notice is to invite public comment on the Department's preliminary plan.

**DATES:** Comments must be received on or before 11:59 p.m. (EDST) on July 1, 2011.

**ADDRESSES:** You may submit comments through the Department's Regulations Portal at <http://dolregs.ideascale.com>. All comments will be available for public inspection at <http://dolregs.ideascale.com>.

**FOR FURTHER INFORMATION CONTACT:** e. christi cunningham, Associate Assistant Secretary for Regulatory Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-2312, Washington, DC 20210, [cunningham.christi@dol.gov](mailto:cunningham.christi@dol.gov), (202) 693-5959 (this is not a toll-free number). Individuals with hearing impairments may call 1-800-877-8339 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:** On January 18, 2011, President Obama issued Executive Order 13563, "Improving Regulation and Regulatory

Review." The Order explains the Administration's goal of creating a regulatory system that protects "public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation" while using "the best, most innovative, and least burdensome tools to achieve regulatory ends." The Executive Order requires agencies to develop and submit a preliminary plan within 120 days from the January 18 issuance date that explains how each agency will review existing significant regulations to identify whether any regulations may be made more effective or less burdensome.

On May 26, 2011, the Department published its preliminary plan (<http://www.whitehouse.gov/21stcenturygov/actions/21st-century-regulatory-system>). To ensure that the plan meets the objectives of the Executive Order and to benefit from the expertise of the Department's regulated communities, academia and the public, the Department is now requesting public comments on the preliminary plan.

To facilitate receipt of public comments, the Department has established an Internet portal specifically designed to capture your input and suggestions, <http://dolregs.ideascale.com>. By visiting the portal, you can review the Department's preliminary plan; provide input; and review suggestions and comments submitted by other interested parties. The Department is specifically seeking comments in the following areas:

- Rules currently under consideration for retrospective analysis.
- Development of a strong, ongoing culture of retrospective analysis and strengthening internal review expertise.
- Factors and processes that will be used in setting priorities.
- Plans for retrospective analysis, revisiting and revising rules and coordinating with other Federal agencies.
- Metrics used to evaluate regulations, ensuring availability of data and incorporation of experimental design.

The portal will be open to receive comments from June 2, 2011 through July 1, 2011.

When providing input, the Department requests that commenters provide as much detail as possible and provide empirical evidence and data to

support responses, whenever possible. The Department will consider public comments as it finalizes its plan for Retrospective Analysis of Existing Rules. The Department is issuing this request solely to seek useful information as it develops its review plan. While responses to this request do not bind the Department to any further actions related to the response, all submissions will be made available to the public on <http://dolregs.ideascale.com>.

**Authority:** E.O. 13653, 76 FR 3821, Jan. 21, 2011; E.O. 12866, 58 FR 51735, Oct. 4, 1993.

Dated: June 7, 2011.

**e. christi cunningham,**

*Associate Assistant Secretary for Regulatory Affairs.*

[FR Doc. 2011-14585 Filed 6-10-11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### 6 CFR Part 5

[Docket No. DHS-2011-0047]

### Privacy Act of 1974: Implementation of Exemptions; U.S. Citizenship and Immigration Services, Immigration and Customs Enforcement, Customs and Border Protection—001 Alien File, Index, and National File Tracking System of Records

**AGENCY:** Privacy Office, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security is giving concurrent notice of an updated system of records pursuant to the Privacy Act of 1974 for the Department of Homeland Security United States Citizenship and Immigration Services, Immigration and Customs Enforcement, and Customs and Border Protection—001 Alien File, Index, and National File Tracking 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. The legacy final rule (28 CFR 16.99) exempting the Immigration and Naturalization Service A-File and Central Index System, JUSTICE/INS-

001A legacy system of records from certain portions of the Privacy Act remains in effect until publication of a final rule for this system by the Department.

**DATES:** Comments must be received on or before July 13, 2011.

**ADDRESSES:** You may submit comments, identified by docket number DHS–2011–0047, 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 Donald K. Hawkins, Privacy Officer, U.S. Citizenship and Immigration Services, 20 Massachusetts Ave., NW., Washington, DC 20529. For privacy issues please contact Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Department of Homeland Security (DHS) implements U.S. immigration law and policy through the U.S. Citizenship and Immigration Service's (USCIS) processing and adjudication of applications and petitions submitted for citizenship, asylum, and other immigration benefits. USCIS also supports national security by preventing individuals from fraudulently obtaining immigration benefits and by denying applications from individuals who pose national security or public safety threats. U.S.

immigration policy and law is also implemented through U.S. Immigration and Customs Enforcement's (ICE) law enforcement activities and U.S. Customs and Border Protection's (CBP) inspection and border protection processes.

The Alien File (A-File), Index, and National File Tracking System of Records is the official record system that contains information regarding transactions involving an individual as he/she passes through the U.S. immigration and inspection process. The DHS/USCIS–ICE–CBP–001 Alien File, Index, and National File Tracking System of Records contains personally identifiable information (PII) such as the individual's name, Alien Registration Number (A-Number), receipt number, date and place of birth, date and port of entry, as well as the location of each official A-File. It may also contain other personal identifiers such as an individual's social security number. Some records contained in the DHS/USCIS–ICE–CBP–001 Alien File, Index, and National File Tracking System of Records are derived from separate systems of record, in which case the system of records notice pertaining to the originating system would govern the treatment of those records. Previously, the legacy agency Immigration and Naturalization Services (INS) collected and maintained information concerning all of these immigration and inspection interactions. Since the formation of DHS, however, immigration responsibilities have been divided among USCIS, ICE, and CBP. While USCIS is the custodian of the A-File, all three components create and use A-Files.

A notice detailing this system of records was last published in the **Federal Register** on January 16, 2007, as the DHS/USCIS–001 Alien File and Central Index System (CIS), (72 FR 1755).

DHS is updating the DHS/USCIS–001 Alien File and Central Index System of Records to be renamed DHS/USCIS–ICE–CBP–001 Alien File, Index, and National File Tracking System of Records to include the following substantive changes: (1) The addition of thirteen routine uses and updates to other routine uses to allow DHS to share information from the system; (2) an update to the classification level of the system and to provide notice that the system may contain classified records; and (3) a proposed exemption from certain provisions of the Privacy Act for records that are classified.

DHS is renaming this system in order to provide a better description of the types of records that are maintained in

this system of records. These records may be maintained in paper or electronic format, but the uses and protections outlined in the notice do not change because of the format or the specific IT system in which they are maintained. DHS has provided more explicit notice on the specific IT systems where these types of records may exist under "Location."

Routine Use changes (the letter in parentheses corresponds to the Routine Use): DHS has added thirteen new routine uses and modified others in order to allow DHS to release system information:

(A) Updated: To include DHS as an additional party for litigation in the release of information to the Department of Justice (DOJ);

(D) New: To an agency, organization, or individuals for the purpose of performing audits or oversight as authorized by law;

(F) Updated: To include interns and students working on assignments for DHS;

(I) New: To courts for immigration, civil, or criminal proceedings;

(K) New: To DOJ or other Federal agencies when conducting litigation to assist in development of the agency's legal and/or policy position;

(L) Updated: To include sharing with international organizations about an alien or an enforcement operation with transnational implications;

(P) New: To a government organization in regards to hiring or retention of an individual where failure to disclose information on an individual is likely to create a security risk;

(Q) Updated: Rewritten to provide better clarification on when information is released to current or prospective employers;

(T) New: To Congress during the private immigration relief legislation process;

(U) Updated: To government agencies to assist in the collection of debts;

(V) Updated: To third parties posting immigration bonds;

(BB) New: To third parties when an individual will be released from DHS custody to assist with arranging housing or medical care;

(CC) New: To domestic government agencies when an individual will be released from DHS custody and there are concerns related to health and safety;

(DD) New: To foreign governments to coordinate removal of individuals;

(EE) New: To law enforcement agencies for de-conflicting investigations and other coordination of law enforcement activities;

(FF) New: To custodial agencies to place an immigration detainer on an

individual or to facilitate the transfer of custody of the individual from DHS to that agency;

(GG) New: To government agencies to confirm the location, custodial status, removal or voluntary departure of an alien in order to facilitate the custody, care and/or legal rights of the individual's minor children;

(HH) New: To government agencies to assist in making determinations of redress;

(II) New: To share information from the system on a case-by-case basis with the news media or public.

The latter sharing, to the news media or public, would be done only with the approval of the DHS Chief Privacy Officer, who will weigh the public interest in receiving the information against the privacy interests of the individual to whom the information pertains, when the disclosure is necessary to preserve confidence in the integrity of DHS or demonstrate the accountability of DHS personnel.

*Classification level:* DHS has updated the SORN to indicate that both classified and unclassified information may be maintained in the A-File, as such DHS is providing a concurrent notice of proposed rulemaking pursuant to the Privacy Act of 1974 for the DHS/USCIS-ICE-CBP-001 Alien File, Index, and National File Tracking System of Records to include an exemption for classified information in addition to the existing law enforcement information exemption. The proposed rule extends the Privacy Act exemption to classified information and then re-publishes the existing exemptions claimed for the legacy JUSTICE/INS-001A A-File and CIS, (66 FR 46812). Generally, USCIS, ICE, and CBP are not the originators of the classified materials maintained in some A-Files. DHS, therefore, would rely upon the Privacy Act exemptions claimed by the system of records from which the classified material originated. By issuing this particular exemption, DHS is providing further transparency about the existence of classified material in this system of records. All of the exemptions DHS is proposing are standard law enforcement and national security exemptions exercised by a large number of Federal law enforcement and intelligence agencies. Until DHS publishes a final rule exempting the system from certain portions of the Privacy Act, the legacy final rule exempting the JUSTICE/INS-001A A-File and CIS, (66 FR 46812) legacy system of records from certain portions of the Privacy Act remains in effect for this system of records.

Pursuant to Public Law 107-296, Homeland Security Act of 2002, Section

804 Savings Provisions, and by reference 28 CFR Appendix C to part 16, subpart E, pertaining to the INS A-File and CIS, JUSTICE/INS-001A (66 FR 46812) system of records notice, the records and information in this system are exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(5) and (8), and (g) of the Privacy Act. These exemptions apply only to the extent that records in the system are subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

*Administrative changes:* In addition to the above mentioned substantive changes to this system of records notice, DHS has updated the categories of individuals and categories of records so that they are more clearly defined.

Consistent with DHS's statutory information sharing mission, information stored in the DHS/USCIS-ICE-CBP-001 Alien File, Index, and National File Tracking System of Records may be shared with other DHS components, as well as appropriate Federal, state, local, Tribal, foreign, or international government agencies. This sharing will take place only 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 purposes of this system of records and 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 DHS/USCIS-ICE-CBP-001 Alien File, Index, and National File Tracking System of Records. Some information in DHS/USCIS-ICE-CBP-001 Alien File, Index, and National File Tracking System of Records relates to official DHS national security, law enforcement, immigration, 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 System of Records Notice for DHS/USCIS-ICE-CBP-001 Alien File, Index, and National File Tracking 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:** 6 U.S.C. 101 *et seq.*; Pub. L. 107-296, 116 Stat. 2135; 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 "55":

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

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55. DHS/USCIS-ICE-CBP-001 Alien File, Index, and National File Tracking System of Records consists of electronic and paper records and will be used by USCIS, ICE, and CBP. DHS/USCIS-ICE-CBP-001 Alien File, Index, and National File Tracking 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 thereunder; and national security and intelligence activities. DHS/USCIS-ICE-CBP-001 Alien File, Index, and National File Tracking 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, territorial, 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) and (c)(4): (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (e)(12); (f); (g)(1); and (h) pursuant to 5 U.S.C. 552a(j)(2). Additionally, 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)(1) and (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) and (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 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.

(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 to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses, DHS employees' identities, or confidential informants.

(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.

(g) From subsection (e)(5) (Collection of Information) because with 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 subsection (e)(5) would preclude DHS 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 DHS'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 (e)(12) (Computer Matching) if the agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the **Federal**

**Register** notice of such establishment or revision.

(j) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

(k) From subsection (h) (Legal Guardians) the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

Dated: May 27, 2011.

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

[FR Doc. 2011-14486 Filed 6-10-11; 8:45 am]

**BILLING CODE 9111-97-P**

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 205

[Doc. AMS-NOP-11-0002; NOP-11-02]

### National Organic Program; Notice of Draft Guidance for Accredited Certifying Agents and Certified Operations

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

**ACTION:** Notice of Availability With Request For Comments.

**SUMMARY:** The National Organic Program (NOP) is announcing the availability of four draft guidance documents intended for use by accredited certifying agents and certified operations. The draft guidance documents are entitled as follows: "The Use of Kelp in Organic Livestock Feed (NOP 5027)"; "Responding to Results from Pesticide Residue Testing (NOP 5028)"; "Seeds, Annual Seedlings, and Planting Stock in Organic Crop Production (NOP 5029)"; and "Evaluating Allowed Ingredients and Sources of Vitamins and Minerals For Organic Livestock Feed, Feed Supplements, and Feed Additives (NOP 5030)".

These draft guidance documents are intended to inform the public of NOP's current thinking on these topics. A notice of availability of final guidance on these topics will be issued upon their final approval. Once finalized, these guidance documents will be available from the NOP through "The Program Handbook: Guidance and Instructions for Accredited Certifying Agents (ACAs) and Certified Operations.

**DATES:** To ensure that NOP considers your comment on this draft guidance before it begins work on the final