

# 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 No. DHS–2010–0076]

### Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/ALL–031 Information Sharing Environment Suspicious Activity Reporting Initiative System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the “Department of Homeland Security/ALL–031 Information Sharing Environment Suspicious Activity Reporting Initiative 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.

**DATES:** Comments must be received on or before October 12, 2010.

**ADDRESSES:** You may submit comments, identified by docket number DHS–2010–0076, 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>.

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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:** For general questions please contact: Ronald Athmann (202–447–4332), Office of Intelligence and Analysis, Department of Homeland Security, Washington, DC 20528. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) proposes to establish a new DHS system of records titled, “DHS/ALL–031 Information Sharing Environment (ISE) Suspicious Activity Reporting (SAR) Initiative System of Records.”

This system of records will allow DHS components that produce, receive, and store suspicious activity reports (SARs) pursuant to their existing authorities, responsibilities, platforms, and programs to compile and share report data that also meet the ISE–SAR Functional Standard with authorized participants in the Nationwide SAR Initiative (NSI) including, federal departments and agencies, state, local and tribal law enforcement agencies, and the private sector. The NSI is one of a number of government-wide efforts designed to implement guidelines first issued by the President on December 16, 2005, for establishing the ISE pursuant to section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), as amended. The NSI establishes a nationwide capability to gather, document, process, analyze and share information about suspicious activity, incidents, or behavior reasonably indicative of terrorist activities (hereafter collectively referred to as suspicious activity or activities) to

enable rapid identification and mitigation of potential terrorist threats.

There is a long history of documenting of suspicious activity, particularly in the law enforcement community; these reports are sometimes referred to as suspicious activity reports, tips and leads, or other similar terms. Federal, state, local and tribal agencies, and private sector currently collect and document suspicious activities in support of their responsibilities to investigate and prevent potential crimes, protect citizens, and apprehend and prosecute criminals. Since some of these documented activities may bear a nexus to terrorism, the Program Manager for the Information Sharing Environment (PM–ISE) has developed a standardized process for identifying, documenting, and sharing terrorism-related SAR data (hereinafter referred to as “ISE–SAR”), which meet the definition and criteria set forth in the ISE Functional Standard Suspicious Activity Reporting, (Version 1.5, May 2009) to the maximum extent possible consistent with the protection of individual privacy, civil rights, and civil liberties. The Functional Standard defines an ISE–SAR as official documentation of observed behavior determined to have a potential nexus to terrorism (*i.e.*, to be reasonably indicative of criminal activity associated with terrorism).

Several operational components within DHS regularly observe or otherwise encounter suspicious activities while executing their authorized missions and performing operational duties. Components document those observations or encounters in SARs. Across the Department the operational setting or context for activities reported in SARs are as varied as the Department’s mission responsibilities. Engagement with the NSI will alter neither those underlying mission functions nor upset the current methodologies employed by DHS components collecting information on suspicious activities and issuing SARs. Rather, the NSI will facilitate the more effective sharing and discovery—both internally and between DHS and external NSI participants—by incorporating a standardized technological and functional approach for recording and storing ISE–SARs throughout DHS. Once training in the NSI program and the application of

these technical and functional standards, DHS personnel will review component SARs and submit the data only from those that meet the ISE-SAR Functional Standard into the NSI Shared Space.

## 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/ALL-031 ISE SAR Program System of Records. Some information in the DHS/ALL-031 ISE SAR Program System of Records relates to official DHS national security, law enforcement, immigration, intelligence activities, and protective services to the President of the U.S. or other individuals pursuant to Section 3056 and 3056A of Title 18. 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; to safeguard classified information; and to safeguard records in connection with providing protective services to the President of the U.S. or other individuals pursuant to

Section 3056 and 3056A of Title 18. 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 notice of system of records for DHS/ALL-031 ISE SAR Initiative 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 "52":

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

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52. The DHS/ALL-031 ISE SAR Initiative System of Records consists of electronic records and will be used by DHS and its components. The DHS/ALL-031 ISE SAR Initiative 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 there under; national security and intelligence activities; and protection of the President of the U.S. or other individuals pursuant to Section 3056 and 3056A of Title 18. The DHS/ALL-031 ISE SAR Initiative System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS, its components, as well as other federal, state, local, tribal, or foreign agencies or private sector organization and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act,

subject to the limitations set forth in 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), and (e)(12); (f); (g)(1); and (h) of the Privacy Act 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 the limitation set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2), and (k)(3). 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 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 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: September 7, 2010.

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

[FR Doc. 2010-22639 Filed 9-9-10; 8:45 am]

**BILLING CODE 9110-9B-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1250

[Doc. No. AMS-PY-08-0032]

#### Amendment to Egg Research and Promotion Order and Regulations To Increase the Rate of Assessment and Referendum Order

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

**ACTION:** Proposed rule and notice of referendum.

**SUMMARY:** This proposed rule would amend the Egg Research and Promotion Order (Order) to increase the assessment rate on egg producers paying assessments to the American Egg Board (AEB) from 10 cents to 15 cents per 30-dozen case of commercial eggs, provided the increase is approved by egg producers voting in a referendum. This proposal would also make a conforming amendment to the regulations. Notice also is hereby given that the Agricultural Marketing Service (AMS) will conduct a referendum to determine whether egg producers favor the increase in the assessment rate.

**DATES:** For the purpose of determining voter eligibility, the representative production period is the period January 1, 2009, through December 31, 2009. The referendum will be held during the period October 29 through November 19, 2010.

**FOR FURTHER INFORMATION CONTACT:** Angela C. Snyder, Research and Promotion; Standards, Promotion & Technology Branch; Poultry Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 3932-S, Washington, DC 20250-0256; *telephone:* (202) 720-4476; *fax:* (202) 720-2930; or *e-mail:* Angie.Snyder@ams.usda.gov.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

##### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have a retroactive effect.

The Egg Research and Consumer Information Act (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Section 14 of the Act allows those subject to the Order to file a written

petition with the Secretary of Agriculture (Secretary) if they believe that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with the law. In any petition, the person may request a modification of the Order or an exemption from the Order. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's ruling, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of the Secretary. If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

#### Initial Regulatory Flexibility Act Analysis and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601-612], AMS has considered the economic impact of this action on the small producers that would be affected by this rule. The purpose of the RFA is to fit regulatory action to scale on businesses subject to such action so that small businesses will not be disproportionately burdened.

According to AEB, approximately 245 producers are subject to the provisions of the Order, including paying assessments. Under the current Order, producers in the 48 contiguous United States and the District of Columbia who own more than 75,000 laying hens each currently pay a mandatory assessment of 10 cents per 30-dozen case of eggs. Handlers are responsible for collecting and remitting assessments to AEB. There are approximately 160 egg handlers who collect assessments. Assessments under the program are used by AEB to finance promotion, research, and consumer information programs designed to increase consumer demand for eggs in domestic and international markets. At the current rate of 10 cents per 30-dozen case, assessments generate about \$20 million in annual revenues. The Order is administered by AEB under supervision of the U.S. Department of Agriculture.

In 13 CFR part 121, the Small Business Administration (SBA) defines small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms as those having annual receipts of no more than \$7 million. Under this definition, the vast majority of the egg producers that would be affected by this rule would not be considered small