

# Rules and Regulations

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## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

#### 6 CFR Part 5

[Docket No. DHS-2010-0088]

### Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/United States Citizenship and Immigration Services-012 Citizenship and Immigration Data Repository System of Records

**AGENCY:** Privacy Office, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a newly established system of records titled "Department of Homeland Security/United States Citizenship and Immigration Services-012 Citizenship and Immigration Data Repository System of Records" from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the "Department of Homeland Security/United States Citizenship and Immigration Services-012 Citizenship and Immigration Data Repository System of Records" from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

**DATES:** *Effective Date:* This final rule is effective December 28, 2010.

**FOR FURTHER INFORMATION CONTACT:** For general questions please contact: Donald K. Hawkins (202-272-8000), Privacy Officer, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue, 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:

### Background

The Department of Homeland Security (DHS) United States Citizenship and Immigration Service (USCIS) published a notice of proposed rulemaking in the **Federal Register**, 75 FR 54528, September 8, 2010, proposing 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 system of records is the DHS/USCIS-012 Citizenship and Immigration Data Repository (CIDR) System of Records. The DHS/USCIS-012 CIDR System of Records notice was published concurrently in the **Federal Register**, 75 FR 54642, September 8, 2010. Comments were invited on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

### Public Comments

DHS received six comments on the NPRM. Of the six comments, one was submitted in duplicate. No comments were received on the SORN.

Three of the five original comments received were generally in support of the proposed rule. Two commentors expressed opposition generally to DHS' collection and use of personally identifiable information (PII) for any reason other than to investigate individuals who may have violated the law. The Privacy Act of 1974 permits a federal agency, including DHS, to collect information pertaining to individuals provided that it has the requisite statutory authority to do so. The Privacy Act requires federal agencies to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains including the authority, purpose, category of records, and routine uses in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which PII is put, and to assist individuals to more easily find such files within the agency. DHS met these requirements with the publication of the DHS/USCIS-012 CIDR SORN on September 10, 2010 in the **Federal Register**. As noted in DHS/USCIS-012 CIDR SORN, the authority to collect information within CIDR is §§ 101 and 103 of the Immigration and Nationality Act, as amended (8 U.S.C.

1101 and 1103), and the regulations issued pursuant thereto; § 451 of the Homeland Security Act of 2002 (Pub. L. 107-296); E.O. 12958; E.O. 13356; E.O. 13388; and E.O. 12333.

In addition, as set forth in the DHS/USCIS-012 CIDR SORN, the CIDR system will not collect any new information, but rather, is a mirror copy of USCIS's major immigrant and non-immigrant benefits databases combined into a single user interface and presented in an updated, searchable format on the classified network. This system takes existing USCIS data and recompiles them into a system for the following three purposes: (1) Vetting USCIS application information for indications of possible immigration fraud and national security concerns; (2) detecting possible fraud and misuse of immigration information or position by USCIS employees, for personal gain or by coercion; and (3) to respond to requests for information (RFIs) from the DHS Office of Intelligence and Analysis (I&A) and/or the federal intelligence and law enforcement community members that are based on classified criteria.

After consideration of public comments, the Department will implement the rulemaking as proposed.

### 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:** 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 "53":

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

\* \* \* \* \*

53. The DHS/USCIS-012 CIDR System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/USCIS-012 CIDR 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; 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/USCIS-012 CIDR 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 PII 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 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) (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 could 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 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, 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 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 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.

Dated: December 14, 2010.

**Mary Ellen Callahan,**

*Chief Privacy Officer, Department of Homeland Security.*

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS-2008-0060]

RIN 0579-AD13

### Hass Avocados From Mexico; Importation Into the Commonwealth of Puerto Rico and Other Changes

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations governing the importation of fruits and vegetables to provide for the importation of Hass avocados from Mexico into Puerto Rico under the same systems approach currently required for the importation of Hass avocados into all States of the United States from Michoacán, Mexico. The systems approach requirements include trapping, orchard certification, limited production area, trace back labeling, pre-harvest orchard surveys for all pests, orchard sanitation, post-harvest safeguards, fruit cutting and inspection at the packinghouse, port-of-arrival inspection, and clearance activities. This action will allow for the importation of Hass avocados from Michoacán, Mexico, into Puerto Rico while continuing to provide protection against the introduction of quarantine pests. In addition, we are amending the regulations to provide for the Mexican national plant protection organization to use an approved designee to inspect avocados for export and to suspend importation of avocados into the United States from Michoacán, Mexico, only

from specific orchards or packinghouses when quarantine pests are detected, rather than suspending imports from the entire municipality where the affected orchards or packinghouses are located. These changes will provide additional flexibility in operating the export program while continuing to provide protection against the introduction of quarantine pests.

**DATES:** *Effective Date:* December 28, 2010.

**FOR FURTHER INFORMATION CONTACT:** Mr. David B. Lamb, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737-1231; (301) 734-0627.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under the regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–50, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

The requirements for importing Hass avocados into the United States from Michoacán, Mexico, are described in § 319.56–30. Those requirements include pest surveys and pest risk-reducing practices, treatment, packinghouse procedures, inspection, and shipping procedures.

On May 14, 2010, we published in the **Federal Register** (75 FR 27225–27227, Docket No. APHIS-2008-0060) a proposal<sup>1</sup> to amend the regulations to:

- Allow the importation of Hass avocados from Michoacán, Mexico, into Puerto Rico, under the same conditions required for importation into the 50 States;
- Provide for the Mexican national plant protection organization (NPPO) to use an approved designee to inspect avocados for export; and
- Limit the scope of suspension of export certification to the orchard or packinghouse in which pests are found, rather than the municipality in which the orchard or packinghouse is located.

We solicited comments concerning our proposal for 60 days ending July 13, 2010. We received four comments by that date. They were from associations of avocado producers and representatives of State and foreign

<sup>1</sup> To view the proposed rule and the comments we received, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0060>.