

### 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.

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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

version of the guidance, submit written comments on the draft guidance by August 12, 2011.

**ADDRESSES:** Submit written requests for hard copies of these draft guidance documents to Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA-AMS-NOP, 1400 Independence Ave., SW., Room 2646 So., Ag Stop 0268, Washington, DC 20250-0268. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance documents.

Interested persons may comment on these four draft guidance documents using the following procedures:

*Internet:* <http://www.regulations.gov>.

*Mail:* Comments may be submitted by mail to: Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA-AMS-NOP, 1400 Independence Ave., SW., Room 2646 So., Ag Stop 0268, Washington, DC 20250-0268.

Written comments responding to this request should be identified with the document number AMS-NOP-11-0002; NOP-11-02. You should clearly indicate your position and the reasons for your position. You should clearly indicate which guidance document you are commenting on, especially if you choose to comment on more than one draft guidance document. If you are suggesting changes to a draft guidance document, you should include recommended language changes, as appropriate, along with any relevant supporting documentation.

USDA intends to make available all comments, including names and addresses when provided, regardless of submission procedure used, on <http://www.regulations.gov> and at USDA, AMS, NOP, Room 2646-South building, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to noon and from 1 to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South building to view comments from the public to this notice are requested to make an appointment by calling (202) 720-3252.

**FOR FURTHER INFORMATION CONTACT:** Melissa R. Bailey, PhD, Director, Standards Division, National Organic Program (NOP), USDA-AMS-NOP, 1400 Independence Ave., SW., Room 2646-So., Ag Stop 0268, Washington, DC 20250-0268, Telephone: (202) 720-3252, E-mail: [NOP.guidance@ams.usda.gov](mailto:NOP.guidance@ams.usda.gov), or visit the NOP Web site at: <http://www.ams.usda.gov/nop>.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The NOP selected the topics for the four draft guidance documents announced through this notice in response to recommendations issued by the National Organic Standards Board (NOSB) and the need to improve consistency in how certifying agents and certified operations are implementing the NOP regulations at 7 CFR part 205. The NOP developed “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)” in response to outstanding NOSB recommendations from May 2002, February 2005, and November 2008. The NOP developed “The Use of Kelp in Organic Livestock Feed (NOP 5027)” in response to requests by certifying agents and certified operations for clarifications on this issue. The NOP developed “Responding to Results from Pesticide Residue Testing (NOP 5028)” to describe the reporting scheme and actions that certifying agents should be instituting to meet the requirements at § 205.670 of the NOP regulations.

**II. Significance of Guidance**

These draft guidance documents are being issued in accordance with the Office of Management and Budget (OMB) Bulletin on Agency Good Guidance Practices (GGPs) (January 25, 2007, 72 FR 3432-3440).

The purpose of GGPs is to ensure that program guidance documents are developed with adequate public participation, are readily available to the public, and are not applied as binding requirements. The draft guidance, when finalized, will represent the NOP's current thinking on these topics. It does not create or confer any rights for, or on, any person and does not operate to bind the NOP or the public. Guidance documents are intended to provide a uniform method for operations to comply that can reduce the burden of developing their own methods and simplify audits and inspections. Alternative approaches that can demonstrate compliance with the Organic Foods Production Act (OFPA), as amended (7 U.S.C. 6501-6522), and its implementing regulations are also acceptable. As with any alternative compliance approach, the NOP strongly encourages industry to discuss alternative approaches with the NOP before implementing them to avoid unnecessary or wasteful expenditures of resources and to ensure the proposed

alternative approach complies with the Act and its implementing regulations.

*Electronic Access*

Persons with access to Internet may obtain the draft guidance at either NOP's Web site at <http://www.ams.usda.gov/nop> or <http://www.regulations.gov>. Requests for hard copies of the draft guidance documents can be obtained by submitting a written request to the person listed in the **ADDRESSES** section of this Notice.

**Authority:** 7 U.S.C. 6501-6522.

Dated: June 7, 2011.

**Ellen King,**

*Acting Administrator, Agricultural Marketing Service.*

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 983**

[Doc. No. AMS-FV-10-0099; FV11-983-1 PR]

**Pistachios Grown in California, Arizona, and New Mexico; Proposed Amendments to Marketing Order**

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

**ACTION:** Proposed rule.

**SUMMARY:** Four amendments to Marketing Agreement and Order No. 983, which regulates the handling of pistachios grown in California, Arizona, and New Mexico, were proposed by the Administrative Committee for Pistachios (Committee), which is responsible for local administration of the order. The proposed amendments would provide authority to establish aflatoxin and quality regulations for pistachios shipped to export markets, including authority to establish different regulations for different markets. The order currently provides authority for aflatoxin and quality regulations only for pistachios shipped to domestic markets. These proposed amendments are intended to provide authority to ensure uniform and consistent aflatoxin and quality regulations in the domestic and various export markets.

**DATES:** Comments must be received by July 13, 2011.

**ADDRESSES:** Written comments should be submitted to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington,