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Privacy Act; Systems of Records (/document/USDA_FRDOC_0001-2529)

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From: no-reply@regulations.gov <no-reply@regulations.gov>

To: Coping.PimaNRCD@pm.me <coping.pimanrcd@pm.me>

Date: Monday, November 29th, 2021 at 7:46 PM

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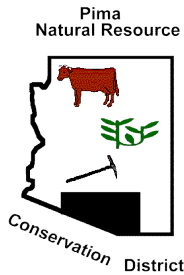
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Agency: DEPARTMENT OF AGRICULTURE (USDA)
Document Type: Notice
Title: Privacy Act; Systems of Records
Document ID: USDA_FRDOC_0001-2529

Comment:
Please accept the comments submitted herein by attachment.

Uploaded File(s):
2021.11.29 Pima NRCD Comments on USDA Medical Surveillance.pdf

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Pima Natural Resource Conservation District
Pima Center for Conservation Education, Inc.
3241 N. Romero Road
Tucson, AZ 85705



Monday, November 29, 2021

United States Secretary of Agriculture Tom Vilsack
% USDA OCIO–CEC MS 365 Program Manager
2312 E Bannister Road
Mail Stop 9198, Kansas City, MO 64114

CC: Arizona Attorney General Mark Brnovich
2005 North Central Avenue
Phoenix, Arizona 85004-2926

RE: USDA/OSEC–02 Contractor and Visitor Public Health Emergency Records;

Secretary Vilsack:

The Pima NRCD submits the following comments on behalf of our cooperators in response to the USDA's notice in the Volume 86 No. 214 Federal Register at 62142 to 62144 (the Notice) of its intent to establish a medical surveillance system identified as, USDA/OSEC-02 (the surveillance).

[About the Pima Natural Resource Conservation District](#)

The Pima Natural Resource Conservation District (Pima NRCD or District) is one of 32 NRCDs in Arizona. The Districts are all established under the Arizona Revised Statutes (A.R.S.) Title 37, Chapter 6. Each District is an independent local unit of Arizona government, with elected leadership, and is recognized in statute as having special expertise in soil and water conservation. The Districts are organized under the Arizona Natural Resources Commissioner.

The mission of the District therefore aligns with the statutory mission of the Arizona Natural Resources Commissioner:

"To provide for restoration and conservation of lands and soil resources, preservation of water rights, control and prevention of soil erosion, and thereby conserve natural resources, conserve wildlife, pro-

tect the tax base, protect private, state and federal lands, protect and restore the state's rivers, streams and associated riparian habitats including livestock, fish and wildlife dependent on those habitats, in such manner to protect and promote public health, public safety, and the general public welfare.”
(A.R.S. §37-1001)

Each District is managed by, and serves, voluntary cooperators who reside within the geographic boundaries of their respective NRCD. An NRCD cooperator is any person who has entered into a voluntary cooperative agreement with their NRCD for the purpose of protecting, conserving and practicing wise use of the natural resources under his or her control.

In carrying out our statutory mission, the Pima NRCD (District) is closely aligned with, and recently signed a Memorandum of Understanding with the USDA Natural Resources Conservation Service (NRCS). Many of our cooperators have contractual agreements with NRCS under the EQIP or other USDA grant programs. At present, the District's home office resides within the USDA Plant Materials Center building in Tucson, Arizona.

Recommendation

The Pima NRCD recommends the USDA immediately withdraw and cease implementation of the proposed system of records.

Discussion

The Pima NRCD opposes the USDA's medical surveillance system for the following five reasons:

1. Under Title 36 of the Arizona Revised Statutes prohibit the Pima NRCD from demanding any contractor, subcontractor, volunteer, employee or other affiliate to be vaccinated for Covid-19.

36-681. COVID-19 vaccine passport; prohibitions

A. Notwithstanding any other law, this state and any city, town or county of this state are prohibited from establishing a COVID-19 vaccine passport or requiring either of the following:

1. Any person to be vaccinated for COVID-19.

2. A business to obtain proof of the COVID-19 vaccination status of any patron entering the business establishment.

B. Any law or ordinance establishing a COVID-19 vaccine passport is void and is not enforceable against any person or business located in this state.

2. The surveillance system's authorizations may not be legal or Constitutional. The entire Board of Supervisors of the Pima NRCDC have signed Oaths to uphold the Constitution and Laws of the United States and the Constitution and Laws of the State of Arizona.

The USDA claims the surveillance is authorized by Executive Order 14042 (the EO). The EO is presently under judicial review in the 5th Circuit Court of Appeals No. 21-60845. Rather than repeat the claims of the 14 State Attorneys General who brought the suit, we include their joint complaint herein by reference, in its entirety.¹

3. The Notice cites the Privacy Act as one of its authorities, yet nowhere in the Notice do we find the word, "consent." The Privacy Act specifically requires an individual's *written* consent to divulge their personal medical information willy-nilly around all federal agencies, the Microsoft Corporation (whose sole accountability is to its shareholders) and even to students and volunteers as the Notice states. We therefore question the surveillance system's compliance with the Privacy Act.

4. The Notice presents a chilling assault on the First Amendment religious rights of all Americans, as well as their civil rights. The surveillance system identifies, classifies, shares almost without restriction, and permanently stores a database of which individuals refuse to take the vaccine as religious conscientious objectors.

It is a fact that all the available vaccines were either developed directly from, or tested upon, aborted fetal tissue.² Therefore, people of many faiths, (and likely including some of the District's cooperators), believe the vaccines violate the will and sacred commandments of their chosen deity. The surveillance system will facilitate religious persecution by classifying individuals as religious objectors and making their personally identifiable information available to a virtually unlimited number of people.

The Privacy Act (5 U.S.C. 552 a) will not protect an individual's privacy because the surveillance system allows the USDA to share this sensitive personal data with literally any of hundreds of thousands of people, inside and outside the federal government. The USDA indicates a vast array of potential recipients of the data that compromises the privacy of an individual who makes a religious decision to refuse the vaccine. Any person with access to the data could easily use it to identify, locate and persecute unvaccinated individuals. When that happens the victim has little if any legal recourse. As the Department of Justice explains, the courts have done a fine job of minimizing the protections Congress wrote into the Privacy Act.³

5. The surveillance system therefore also runs roughshod over an individual's implicit Fourth Amendment right to privacy and the legal prohibition in the Civil Rights Act against any classification of individuals based on their spiritual beliefs.

¹ See the complaint at <https://www.ca5.uscourts.gov/opinions/pub/21/21-60845-CV0.pdf#page=16>

² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8205255/> The author makes excuses for using aborted fetal tissue but freely admits the Covid vaccines were in fact developed from or tested on it.

³ <https://www.justice.gov/opcl/privacy-act-1974>

The Civil Rights Act of 1964, PL 88-352 SEC. 703. (a) clearly states:

*It shall be an unlawful employment practice for an employer-- (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or **classify his employees** in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin*

displays a currently valid OMB control number.

National Agricultural Statistics Service (NASS)

Title: Conservation Practice Adoption Motivations Survey.

OMB Control Number: 0535–NEW.

Summary of Collection: The primary objective of the National Agricultural Statistics Service (NASS) is to collect, prepare and issue State and national estimates of crop and livestock production, prices, and disposition; as well as economic statistics, environmental statistics related to agriculture and also to conduct the Census of Agriculture.

Need and Use of the Information: NASS will collect information about these types of operations to understand conservation practices within the United States in terms of the following: (1) How often are specific conservation practices adopted without assistance, with technical assistance and/or financial assistance. (2) How does adoption evolve over time? What proportion of producers who “try” a given practice continue or expand use over time? How many discontinue the practice? (3) What motivates farmers to initially try a practice and then continue, expand, or discontinue use? The questions reflect a range of factors including conservation need(s), experience(s) of neighbors, financial benefits or costs, producer’s time and effort, availability of technical and financial assistance, regulation or conservation compliance, and concern about the environmental quality. The United States Department of Agriculture’s Natural Resources Conservation Service has entered into an interagency agreement with NASS to conduct this survey.

Description of Respondents: The 2022 survey will target operations who own or operate cropland as well as confined livestock feeding operations. Operators who have grazing land or forestry land will be done at a later date.

Number of Respondents: 35,200.

Frequency of Responses: Once.

Total Burden Hours: 35,614.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–24375 Filed 11–8–21; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Privacy Act of 1974; System of Records

AGENCY: Office of Secretary, USDA.

ACTION: Notice of a new system of records.

SUMMARY: As required by the Privacy Act of 1974, and Office of Management and Budget (OMB) Circular No. A–108, this notice is a new Privacy Act System of Records titled USDA/OSEC–02 Contractor and Visitor Public Health Emergency Records, which include information on contractor employees who work in, as well as visitors to, Department of Agriculture (USDA) facilities during declared public health emergencies. The system contains information provided by the contractor’s employees including such information as their applicable vaccination or medical countermeasure status and whether they are experiencing symptoms associated with the public health emergency. Each contractor with employees who will work in USDA facilities (regardless of whether the contract is with USDA or another Federal agency) will be asked to confirm if its employees have been vaccinated or have received appropriate medical countermeasures, in addition, the contractor will be required to ensure that its employees follow the guidelines specified for working in USDA facilities, for example, to mitigate the spread of COVID–19, not fully vaccinated employees are required to wear masks and maintain physical distancing. Visitors to USDA facilities will also be asked to provide information about their vaccination or medical countermeasure status and may be asked to provide proof of their status and information about whether they are experiencing any symptoms associated with the public health emergency.

DATES: This notice is applicable upon publication, subject to a 30-day review and comment period for the routine uses. We will consider comments received on or before November 29, 2021.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments by mail to the United States Department of Agriculture, Privacy Office, ATTN: Privacy Analyst, 1400 Independence Ave. SW, Washington, DC 20250; by telephone at 202–384–5026; or by email at SM.OCIO.CIO.UsdaPrivacy

FOR FURTHER INFORMATION CONTACT: Sullie Coleman, Chief Privacy Officer, 1400 Independence Ave. SW, Washington, DC 20250, 202–604–0467.

SUPPLEMENTARY INFORMATION: USDA is establishing a system of records, USDA/OSEC–02, subject to the Privacy Act of 1974, 5 U.S.C. 552a. The purpose of this new system of records is to house

information provided by contractors, subcontractors, their employees, and visitors needed for USDA to take appropriate actions during a public health emergency. The information collected includes medical countermeasures, such as vaccinations, diagnostic test results, whether the individual is experiencing relevant symptoms, and any other information necessary to assist USDA with determining appropriate mitigation measures to take with respect to contractor employees and visitors in USDA facilities or in the performance of duties associated with the Department. In general, the information will be used to confirm that contractors, their employees, and visitors to USDA facilities are aware of and complying with requirements necessitated by the public health emergency, such as those to wear masks and maintain physical distancing while working onsite or visiting a USDA facility. For onsite contractor employees, the information will be used to make decisions such as office space planning and assigning office space, assigning tasks that require individuals to work in close physical proximity, as well for operational staffing requirements for carrying out work in field operations.

As required by the Privacy Act (specifically 5 U.S.C. 552a(r)) and implemented by the Office of Management and Budget (OMB) Circular A108, USDA has provided a report of this system of records to the Office of Information and Regulatory Affairs, Office of Management and Budget; the Chairman, Committee on Government Reform and Oversight, House of Representatives; and the Chairman, Committee on Governmental Affairs, United States Senate.

SYSTEM NAME AND NUMBER:

USDA/OSEC–02 Contractor and Visitor Public Health Emergency Records

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Micro-Soft (MS) 365 Multi-Tenant (MT) provides Exchange and SharePoint Access for USDA/OSEC–02 Contractor and Visitor Public Health Emergency Records. Tenant locations are defaulted to Geo based on the country. In the United States, these records may be maintained electronically at one or more of Microsoft Data Centers, including, but not limited to, Boydton, Virginia, and Cheyenne, Wyoming. The agency, U.S. Department of Agriculture, address is 1400 Independence Ave. SW,

Washington, DC 20250 and the address of the third-party service provider is Microsoft, 1 Microsoft Way, Redmond, Washington 98052–6399.

SYSTEM MANAGER(S):

Contact information of the agency official who is responsible for this system is USDA OCIO–CEC MS 365 Program Manager, 2312 E Bannister Road, Mail Stop 9198, Kansas City, MO 64114, 816–926–6860.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Emergencies Act (50 U.S.C. 1601–1651); the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, 5192(1)); 5 U.S.C. 301, 7901, 7902, and 7903; the Occupational Safety and Health Act (29 U.S.C. 668), Executive Order 12196, Occupational safety, and health programs for Federal employees; Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors; Workforce Innovation and Opportunity Act (WIOA) WIOA 159(g) ((29 U.S.C. 3209(g)) and WIOA 147(a)(3)(J) ((29 U.S.C. 3197(a)(3)(J)).

PURPOSE(S) OF THE SYSTEM:

To capture and report health and safety-related information during public health emergencies. Such reporting will be provided to USDA contracting officers and other authorized officials in USDA to enable the agency to use the data from the system to review submissions for compliance with applicable mitigation requirements, and, in the case of contractor employees, with contractual terms and conditions for contracts for which they are responsible.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USDA/OSEC–02 Contractor and Visitor Public Health Emergency Records System contains records related to employees of prime and subcontractors who are performing work on federal contract awards at any USDA facility, or in shared operations. An owner, agent, or employee of a prime or subcontractor may enter or certify information, as applicable.

USDA/OSEC–02 Contractor and Visitor Public Health Emergency Records System may also contain records related to visitors to USDA facilities, such as, but not limited to, volunteers, individuals from outside the USDA workforce on detail to USDA, experts/consultants, and grantees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information in the system of records consists of electronic records,

including records of vaccination status or other medical countermeasures (such as diagnostic test results), status of employees or visitors, and other health and safety information related to the public health emergency. The information in the system of records includes the name of the person entering, and as applicable, certifying, information on behalf of the prime or subcontractor, their position within the company, phone number, and email address.

Categories of records include, but are not limited to: Name, unique identifier assigned by the prime or subcontractor, medical countermeasure (vaccination or diagnostic test) status, symptom questionnaires and other information relevant and necessary for mitigation purposes. Optional records that may be required for certain contracts or in certain geographic areas include: Name, position, work phone number, email address, USDA facility, lands, or shared operations at which the employee will be working on-site, and other similar records related to their official responsibilities.

RECORD SOURCE CATEGORIES:

Contract employee records are created, reviewed and, as appropriate, certified by the prime or subcontractor. Records pertaining to the individual entering and certifying data in the system may be created by the individual, by a contracting officer, or in the case of a subcontractor by the prime contractor or another subcontractor. Visitor records are created, reviewed and, as appropriate, certified by the appropriate Agency Official receiving the visitor to the USDA facility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected:

A. To appropriate medical facilities, or federal, state, local, tribal, territorial, or foreign government agencies, to the extent permitted by law, for the purpose of protecting the vital interests of individual(s), including to assist the United States Government in responding to or mitigating high consequence public health threats, or

diseases and illnesses relating to a public health emergency.

B. Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

C. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

D. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

E. To a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

F. To Federal, state, local, territorial, tribal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

G. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

H. To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

I. To appropriate agencies, entities, and persons when

(1) the Department suspects or has confirmed that there has been a breach of the system of records;

(2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal Government, or national security; and

(3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

J. To another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in

(1) responding to a suspected or confirmed breach, or

(2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

K. To any agency, organization, or individual for the purpose of performing authorized audit or oversight operations of the Department and meeting related reporting requirements.

L. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

All records in this system of records are maintained electronically and in paper and are in compliance with applicable executive orders, statutes, and agency implementing recommendations. Electronic records are stored in databases and/or on hard disks, removable storage devices, or other electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The Department will retrieve records by the individual's name, unique identifier assigned by the prime or subcontractor, vaccination status, position, or facility at which the employee will be working on-site.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

To the extent applicable, to ensure compliance with Americans with Disabilities Act (ADA) and the Rehabilitation Act, medical information must be "maintained on separate forms

and in separate medical files and be treated as a confidential medical record." 42 U.S.C. 12112(d)(3)(B). This means that medical information and documents must be stored separately from other personnel records. As such, the Department must keep medical records for at least one year from creation date. 29 CFR 1602.14. Further, records compiled under this SORN will be maintained in accordance with NARA General Records Schedule (GRS) 2.7, Items 010, 070 or 080, and NARA records retention schedules DAA-GRS2017-0010-0001, DAA-GRS2017-0010-0012, and DAA-GRS2017-0010-0013, to the extent applicable.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The Department safeguards records in this system according to applicable rules and policies, including all applicable USDA automated systems security and access policies. The Department has imposed strict controls to minimize the risk of compromising the information that is being stored. Users of individual computers can only gain access to the data by a valid user identification and password. Paper records are maintained in a secure, access-controlled room, with access limited to authorized personnel.

RECORD ACCESS PROCEDURES:

All requests for access to records must be in writing and should be addressed to the USDA Departmental FOIA Office, ATTN: Departmental FOIA Officer, 1400 Independence Avenue SW South Building, Room 4104, Washington, DC 20250-0706, Email: USDAFOIA@ocio.usda.gov. The envelope and letter should be clearly marked "Privacy Act Access Request." The request must describe the records sought in sufficient detail to enable Department personnel to locate them with a reasonable amount of effort. The request must include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury. Additional details on procedures for access under the Privacy Act can be found in USDA Department Regulation 3515-002 Privacy Policy and Compliance for Personally Identifiable Information (PII) or at Privacy Policy and Compliance for Personally Identifiable Information (PII) ([usda.gov](https://www.usda.gov)).

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records maintained in this system of records must direct their

requests to the address indicated in the "RECORD ACCESS PROCEDURES" paragraph, above. All requests to contest or amend records must be in writing and the envelope and letter should be clearly marked "Privacy Act Amendment Request." All requests must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record. Additional details on procedures for contesting or amending records under the Privacy Act can be found in USDA Department Regulation 3515-002 Privacy Policy and Compliance for Personally Identifiable Information (PII) or at Privacy Policy and Compliance for Personally Identifiable Information (PII) ([usda.gov](https://www.usda.gov)).

NOTIFICATION PROCEDURES:

Individuals may be notified if a record in this system of records pertains to them when the individuals request information utilizing the same procedures as those identified in the "RECORD ACCESS PROCEDURES" paragraph, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Sullie Coleman,

Chief Privacy Officer, United States Department of Agriculture.

[FR Doc. 2021-24402 Filed 11-8-21; 8:45 am]

BILLING CODE 3410-90-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 4, 2021.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological