



DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 5

[Docket No. DHS-2020-0003]

Disclosure of Records and Information Regulations; Technical Amendment

AGENCY: DHS, Privacy Office.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (“DHS”) is updating its regulations related to the procedures for disclosure of records information under the Privacy Act. Specifically, DHS is updating its regulations to state that the DHS Office of the General Counsel or its designee is the authorized appeals authority with respect to requests made under the Privacy Act.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For information about this document call Jonathan R. Cantor, Chief Privacy Officer (Acting), telephone 202-343-1717.

SUPPLEMENTARY INFORMATION:

I. Discussion of the Rule

The Department of Homeland Security (“DHS”) is updating its regulations to state that the DHS Office of the General Counsel or its designee is the authorized appeals authority with respect to requests made under the Privacy Act.¹ Pursuant to the Privacy Act, DHS promulgated regulations implementing procedures for processing requests

¹ See 5 U.S.C. 552a; 6 CFR 5.20–5.36.

made by an individual regarding records or information pertaining to that individual. *See* 5 U.S.C. 552a(f); 6 CFR 5.20–5.36. The regulations provide for appeals within the agency after initial adverse determinations. *See* 5 U.S.C. 552a(f)(4); 33 CFR 5.24, 5.25, 5.26, 5.27. In all instances where these regulations designate the appellate authority as the Associate General Counsel (General Law), this technical amendment updates the regulations to reflect that the appellate authority is the Office of General Counsel or its designee.

II. Regulatory History

DHS did not publish a notice of proposed rulemaking for this rule. Under Title 5 of the United States Code (U.S.C.), Section 553(b)(A), this final rule is exempt from notice and public comment rulemaking requirements because the change involves rules of agency organization, procedure, or practice. In addition, under 5 U.S.C. 553(b)(B), an agency may waive the notice and comment requirements if it finds, for good cause, that notice and comment is impracticable, unnecessary, or contrary to the public interest. DHS finds that notice and comment is unnecessary under 5 U.S.C. 553(b)(B) because the change of the named appellate authority is an agency procedural update that will have no substantive effect on the public. For the same reasons, DHS finds that good cause exists under 5 U.S.C. 553(d) for making this final rule effective immediately upon publication.

III. Regulatory Analyses

DHS considered numerous statutes and executive orders related to rulemaking when developing this rule. Below are summarized analyses based on these statutes or executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. Because this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* the OMB Memorandum titled “Guidance Implementing Executive Order 13771, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017). This rule involves non-substantive changes and internal agency practices and procedures; it will not impose any additional costs on the public. The benefit of the non-substantive change that updates internal agency procedures is increased clarity and accuracy of regulations for the public.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601-612, DHS has considered

whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule is not preceded by a notice of proposed rulemaking. Therefore, it is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Regulatory Flexibility Act does not apply when notice and comment rulemaking is not required. This rule consists of a technical amendment to internal agency procedures and does not have any substantive effect on the regulated industry or small businesses.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

D. Environment

DHS reviews proposed actions to determine whether the National Environmental Policy Act (NEPA) applies to them and if so what degree of analysis is required. DHS Directive 023-01 Rev. 01 (Directive) and Instruction Manual 023-01-001-01 Rev. 01 (Instruction Manual) establish the procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508.

The CEQ regulations allow federal agencies to establish, with CEQ review and concurrence, categories of actions (“categorical exclusions”) which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment (EA) or Environmental

Impact Statement (EIS). 40 CFR 1507.3(b)(2)(ii), 1508.4. For an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Instruction Manual section V.B(2)(a)-(c).

This rule is a technical amendment that updates internal agency procedures. Specifically, the amendment updates the designated appeals authority for requests made under the Privacy Act. Therefore, it clearly fits within categorical exclusion A3(a) “Promulgation of rules ... of a strictly administrative or procedural nature.” Instruction Manual, Appendix A, Table 1. Furthermore, the rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental impacts. Therefore, the amendment is categorically excluded from further NEPA review.

List of Subjects in 6 CFR Part 5

Classified information, Courts, Freedom of information, Government employees, Privacy.

For the reason stated in the preamble, DHS amends 6 CFR part 5 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.

§ 5.24 [Amended]

2. In § 5.24, remove, “Associate General Counsel (General Law)” and add, in its place, “DHS Office of the General Counsel or its designee”.

§ 5.25 [Amended]

3. In § 5.25, amend paragraphs (a) and (b) by removing , “Associate General Counsel (General Law)” and adding in its place, “DHS Office of the General Counsel or its designee”.

§ 5.26 [Amended]

4. In § 5.26(c), remove “Associate General Counsel (General Law)” and add in its place, “DHS Office of the General Counsel or its designee”.

§ 5.27 [Amended]

5. In § 5.27(c), remove “Associate General Counsel (General Law)” and add in its place “DHS Office of the General Counsel or its designee”.

Jonathan R. Cantor,
Chief Privacy Officer (Acting), Department of Homeland Security.
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