



DEPARTMENT OF JUSTICE

28 CFR Part 16

[CPCLO Order No. 004-2025]

Privacy Act of 1974; Implementation

AGENCY: Executive Office for Immigration Review, United States Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: In the Notice section of today's Federal Register, the Executive Office for Immigration Review (EOIR), a component within the United States Department of Justice (DOJ or Department), has published a notice of a modified system of records, Adjudication and Appeal Records of the Office of the Chief Immigration Judge and Board of Immigration Appeals, JUSTICE/EOIR-001. This system of records has been exempted from the access and amendment provisions of the Privacy Act of 1974, U.S.C. 552a(d), pursuant to 5 U.S.C. 552a(k)(1), and (k)(2). *See* 28 C.F.R. 16.83. In this notice of proposed rulemaking, EOIR proposes to update 28 C.F.R. 16.83 consistent with the system of records' modifications to exempt this system of records from certain provisions of the Privacy Act to protect properly classified information and law enforcement sensitive materials maintained in the system. For the reasons provided below, the Department proposes to update its Privacy Act regulations exempting records in this system from certain provisions of the Privacy Act. Public comment is invited.

DATES: Comments must be received by [INSERT DATE 30 AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments by any of the following methods:

- E-mail: privacy.compliance@usdoj.gov. To ensure proper handling, please reference the CPCLO Order No. in the subject line of the message.

- Fax: 202-307-0693.
- Mail: United States Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, Two Constitution Square, 145 N St. NE, Suite 8W-300, Washington, DC 20530. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes. To ensure proper handling, please reference the CPCLO Order No. in your correspondence.
- Federal eRulemaking Portal: <http://www.regulations.gov>. When submitting comments electronically, you must include the CPCLO Order No. in the subject box. Please note that the Department is requesting that electronic comments be submitted before midnight Eastern Daylight Savings Time on the day the comment period closes because <http://www.regulations.gov> terminates the public's ability to submit comments at that time. Commenters in time zones other than Eastern Time may want to consider this so that their electronic comments are received.

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov> and in the Department's public docket. Such information includes personally identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all personal identifying information that you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, may be posted online and placed in the Department’s public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency’s public docket file in person by appointment, please see the “FOR FURTHER INFORMATION CONTACT” paragraph, below.

FOR FURTHER INFORMATION CONTACT: Alexander Y. Hartman, Senior Component Official for Privacy, Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, Alexander.Hartman@usdoj.gov, EOIR.Privacy.Intake@usdoj.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Under delegated authority from the Attorney General, EOIR interprets and administers Federal immigration laws by conducting immigration court proceedings, appellate reviews, and administrative hearings. Two of EOIR's adjudicating components include the Office of the Chief Immigration Judge (OCIJ) and the Board of Immigration Appeals (BIA or Board). OCIJ oversees the administration of the immigration courts nationwide. 8 C.F.R. 1003.9. Immigration judges are responsible for conducting immigration court proceedings. 8 C.F.R. 1003.10. Decisions of immigration judges are subject to review by the BIA in any case in which the BIA has jurisdiction. 8 C.F.R. 1003.10(c). The BIA is the highest administrative body for interpreting and applying immigration laws. 8 C.F.R. 1003.1. The BIA and its appellate immigration judges have nationwide jurisdiction to review certain decisions rendered by immigration judges, Adjudicating Officials in attorney discipline cases, and district directors of the Department of Homeland Security (DHS). 8 C.F.R. 1003.1(b).

Parties to immigration proceedings may file documents with the immigration court or the BIA by mail, hand delivery, or electronically. 8 C.F.R. 1003.2(g), 1003.3(g), 1003.31. The official file containing the documents relating to an individual's immigration case is the Record of Proceeding (ROP), which may be paper or electronic. ROPs generally contain the Notice to Appear (Form I-862), hearing notices, a practitioner of record's entry of appearance form (Forms EOIR-27 or EOIR-28) (if any), any change of address forms (Form EOIR-33), applications for immigration relief, evidence, exhibits, motions, briefs, and all written orders and decisions of the immigration judge or appellate immigration judge(s). *See* 8 C.F.R. 1240.9. When relevant to the immigration relief sought, parties may also file documents and materials pertaining to an individual's criminal history or terroristic activities, and such materials are incorporated into the ROP.

See 8 U.S.C. 1182 (describing grounds for inadmissibility to include criminal- and security-related grounds). Such information may be classified or law enforcement sensitive, filed under seal or per a request for an *in camera* hearing. Immigration hearings are digitally recorded, and hearings may be transcribed. 8 C.F.R. 1240.9. Transcripts of hearings may also be included in the ROP. 8 C.F.R. 1240.9.

EOIR maintains a system of records used by OCIJ and the BIA to process, track, and adjudicate immigration proceedings. EOIR is modifying the system of records, Adjudication and Appeal Records of the Office of the Chief Immigration Judge and Board of Immigration Appeals, JUSTICE/EOIR-001, to account for changes in the scope, character and format, and routine uses of records in this system that have occurred since EOIR last published a complete system of records notice on May 11, 2004. *See* Records and Information Management System, JUSTICE/EOIR-001, 68 FR 26179 (May 11, 2004). EOIR is modifying the system of records in the following ways. First, EOIR is expanding the scope of this system of records by consolidating it with another system of records, Decisions of the Board of Immigration Appeals, JUSTICE/BIA-001, 48 FR 5331 (Feb. 4, 1983). The records in both systems serve the same purposes, are authorized by the same legal authorities, and have similar routine uses. EOIR will rename JUSTICE/EOIR-001 from “Records and Management Information System” to “Adjudication and Appeal Records of the Office of the Chief Immigration Judge and Board of Immigration Appeals.” Second, EOIR is modifying this system of records to encompass electronic records used by OCIJ and the BIA to adjudicate immigration proceedings. OCIJ and the BIA have incorporated digital processes producing electronic records that are not currently captured in EOIR’s systems of records notices. Third, EOIR is updating some of the routine uses of this system of records to clarify EOIR’s current information sharing practices. Because the system of records is being modified, EOIR proposes to also update the Privacy Act exemptions claimed for the system.

II. Privacy Act Exemptions

The Privacy Act allows Federal agencies to exempt eligible records in a system of records from certain provisions of the Act, including those that provide individuals with a right to request access to and amendment of records about the individual. If an agency intends to exempt a particular system of records, it must first issue a rulemaking pursuant to 5 U.S.C. 553(b)(1)-(3), (c), and (e).

The Department proposes to modify the Privacy Act exemptions for this system of records at 28 C.F.R. part 16, to better reflect the modified system of records, Adjudication and Appeal Records of the Office of the Chief Immigration Judge and Board of Immigration Appeals, JUSTICE/EOIR-001. The regulations at 28 C.F.R. 16.83 codify the exemption of the Executive Office for Immigration Review's Adjudication and Appeal Records of the Office of the Chief Immigration Judge and Board of Immigration Appeals, JUSTICE/EOIR-001, from 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1), and from 5 U.S.C. 552a(d)(2), (3), and (4) pursuant to 5 U.S.C. 552a(k)(2). The regulations at 28 C.F.R. 16.84 codify the exemption of the Board of Immigration Appeals system of records, JUSTICE/BIA-001, from 5 U.S.C. 552a(d)(2), (3), and (4) pursuant to 5 U.S.C. 552a(k).

EOIR is consolidating these two systems of records. As such, the Department proposes to remove and reserve 28 C.F.R. 16.84 and to rename the system as it appears in 28 C.F.R. 16.83 to "Adjudication and Appeal Records of the Office of the Chief Immigration Judge and the Board of Immigration Appeals." The Department is not proposing any other changes to 28 C.F.R. 16.83 as the exemptions from 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1), and from 5 U.S.C. 552a(d)(2), (3), and (4) pursuant to 5 U.S.C. 552a(k)(2), continue to apply to this consolidated system of records for the reasons provided in the regulations and restated here:

- (a) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) The Executive Office for Immigration Review's Records and Management Information System (JUSTICE/EOIR-001).

This exemption applies only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k) (1) and (2).

(b) Exemption from the following subsections of the Privacy Act are justified for the following reasons:

(1) From subsection (d) because access to information which has been properly classified pursuant to an Executive Order could have an adverse effect on the national security. In addition, from subsection (d) because unauthorized access to certain investigatory material could compromise ongoing or potential investigations; reveal the identity of confidential informants; or constitute unwarranted invasions of the personal privacy of third parties.

(2) From subsection (d) (2), (3), and (4) because the record of proceeding constitutes an official record which includes transcripts of quasi-judicial administrative proceedings, investigatory materials, evidentiary materials such as exhibits, decisional memoranda, and other case-related papers. Administrative due process could not be achieved by the ex parte "correction" of such materials by the individual who is the subject thereof.

28 C.F.R. 16.83(a)-(b). The language in 28 C.F.R. 16.84 with respect to the exemption from 5 U.S.C. 552a(d)(2), (3), and (4) is duplicative of 28 C.F.R. 16.83(b)(2), obviating the need for any modifications to the regulations to account for the consolidation of the two systems.

These exemptions apply only to the extent that information in this system of records is subject to an exemption pursuant to 5 U.S.C. 552a(k)(1) and (k)(2). To the extent that information in a record pertaining to an individual does not relate to national defense or foreign policy, official Federal investigations and/or law enforcement matters,

the exemption does not apply. In addition, where compliance would not appear to interfere with or adversely affect the overall law or regulatory enforcement process, the applicable exemption may be waived by EOIR.

Executive Orders 12866 and 13563–Regulatory Review

In accordance with 5 U.S.C. 552a(k), this proposed action is subject to formal rulemaking procedures by giving interested persons an opportunity to participate in the rulemaking process “through submission of written data, views, or arguments,” pursuant to 5 U.S.C. 553. The purpose of this proposed rule is to exempt certain records within this system from the requirements of 5 U.S.C. 552a(d) for the same reasons as currently stated at 28 C.F.R. 16.83 and 16.84. This proposed rule does not raise novel legal or policy issues, nor does it adversely affect the economy, the budgetary impact of entitlements, grants, user fees, loan programs, or the rights and obligations of recipients thereof in a material way. The Department of Justice has determined that this rule is not a “significant regulatory action” under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Information and Regulatory Affairs within the Office of Management and Budget pursuant to Executive Order 12866.

Regulatory Flexibility Act

This proposed rule will only impact Privacy Act-protected records, which are personal and generally do not apply to an individual’s entrepreneurial capacity, subject to limited exceptions. Accordingly, the Chief Privacy and Civil Liberties Officer, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E–

Congressional Review Act)

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, 5 U.S.C. 801 *et seq.*, requires the Department to comply with small entity requests for information and advice about compliance with statutes and regulations within the Department's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in "FOR FURTHER INFORMATION CONTACT" paragraph, above. Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at <https://www.sba.gov/advocacy>. This proposed rule is not a major rule as defined by 5 U.S.C. 804 of the Congressional Review Act.

Executive Order 13132–Federalism

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988–Civil Justice Reform

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13175–Consultation and Coordination With Indian Tribal Governments

This proposed rule will have no implications for Indian Tribal governments. More specifically, it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of

power and responsibilities between the Federal government and Indian tribes. Therefore, the consultation requirements of Executive Order 13175 do not apply.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000, as adjusted for inflation, or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), requires the Department to consider the impact of paperwork and other information collection burdens imposed on the public. This system of records encompasses the official records of proceedings (ROPs) in immigration cases before EOIR, which are comprised in part by EOIR and DHS forms subject to the Paperwork Reduction Act. A list of active EOIR forms and their OMB Control Numbers can be found on the EOIR website at <https://www.justice.gov/eoir/eoir-forms>. A list of active DHS forms and their OMB Control Numbers can be found on the DHS website at <https://www.dhs.gov/find-dhs-forms>.

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated by Attorney General Order 2940-2008, the Department of Justice proposes to amend 28 CFR part 16 as follows:

PART 16-PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717; [42 U.S.C. 405](#).

Subpart E – Exemption of Records Systems Under the Privacy Act

2. Amend § 16.83 by revising paragraph (a)(1) to read as follows:

§ 16.83 Exemption of the Executive Office for Immigration Review System—limited access.

(a) * * *

(1) The Executive Office for Immigration Review’s Adjudication and Appeal Records of the Office of the Chief Immigration Judge and Board of Immigration Appeals (JUSTICE/EOIR-001).

This exemption applies only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k)(1) and (k)(2).

* * * * *

§ 16.84 [Removed and Reserved]

3. Remove and reserve § 16.84

Dated: August 26, 2025.

Peter Winn,
Acting Chief Privacy and Civil Liberties Officer,
United States Department of Justice.
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