



DEPARTMENT OF JUSTICE

28 CFR Part 16

[CPCLO Order No. 01-2026]

Privacy Act of 1974; Implementation

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

ACTION: Final rule.

SUMMARY: The Executive Office for Immigration Review (EOIR), a component within the United States Department of Justice (DOJ or Department), is finalizing without changes its Privacy Act exemption regulations for the system of records titled, Adjudication and Appeal Records of the Office of the Chief Immigration Judge and Board of Immigration Appeals, JUSTICE/EOIR-001, which were published as a Notice of Proposed Rulemaking (NPRM) on August 29, 2025. Specifically, the Department's regulations will exempt the records maintained in JUSTICE/EOIR-001 from one or more provisions of the Privacy Act. The exemptions are necessary to protect properly classified information and law enforcement sensitive materials maintained in the system. The Department received one anonymous comment in support of this rulemaking in response to the NPRM.

DATES: This final rule is effective [INSERT DATE 30 AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Justine Fuga, Senior Component Official for Privacy, Office of the General Counsel; Executive Office for Immigration Review, 900 Market Street, Suite 504 Annex, Philadelphia, PA 19107; Justine.Fuga@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 CFR 1003.9. Immigration judges are responsible for conducting immigration court proceedings. 8 CFR 1003.10. Decisions of immigration judges are subject to review by the BIA in any case in which the BIA has jurisdiction. 8 CFR 1003.10(c). The BIA is the highest administrative body for interpreting and applying immigration laws. 8 CFR 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 CFR 1003.1(b).

Parties to immigration proceedings may file documents with the immigration court or the BIA by mail, hand delivery, or electronically. 8 CFR 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 CFR 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 CFR 1240.9. Transcripts of hearings may also be included in the ROP. 8 CFR 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 is updating 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, by means of a rulemaking proceeding pursuant to 5 U.S.C. 553(b)(1)-(3), (c), and (e).

The Department is modifying 28 CFR part 16 to amend the Privacy Act exemptions for 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 CFR 16.83 codify the exemption of EOIR'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 CFR 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 CFR 16.84 and to rename the system as it appears in 28 CFR 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 CFR 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 records in the system are subject to exemption pursuant to 5 U.S.C. 552a(k)(1) and (2).

(b) Exemption from the subsections set forth below is 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 CFR 16.83. The language in 28 CFR 16.84 with respect to the exemption from 5 U.S.C. 552a(d)(2), (3), and (4) is duplicative of 28 CFR 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 records in this system of records are subject to the exemptions in 5 U.S.C. 552a(k)(1) and (k)(2). To the extent that 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.

The Department received one supportive comment from an anonymous submitter in response to the NPRM for JUSTICE/EOIR-001 (90 Fed. Reg. 42148 (Aug. 29, 2025)) and now finalizes this rule without changes.

Executive Orders 12866 and 13563–Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review” section 1(b), Principles of Regulation, and Executive Order 13563 “Improving Regulation and Regulatory Review” section 1(b), General Principles of Regulation. 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 regulation 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 regulation 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 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 regulation 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 regulation 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 amends 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 and republishing paragraph (a) to read as follows:

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

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

(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).

(2) These exemptions apply only to the extent that records in the system are 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: February 10, 2026.

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

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