

DEPARTMENT OF JUSTICE**28 CFR Part 16**

[CPCLO Order No. 003–2009]

Privacy Act of 1974; Implementation**AGENCY:** Criminal Division, Department of Justice.**ACTION:** Final rule.

SUMMARY: The Criminal Division (CRM), Department of Justice, issued a proposed rule to amend its Privacy Act regulations (Title 28 of the Code of Federal Regulations, Part 16), to revise the exemptions for the following newly modified Privacy Act system of records entitled “Organized Crime Drug Enforcement Task Force Fusion Center and International Organized Crime Intelligence and Operations Center System,” JUSTICE/CRM–028, 74 FR 26598 (June 3, 2009). The “Organized Crime Drug Enforcement Task Force Fusion Center and International Organized Crime Intelligence and Operations Center System,” JUSTICE/CRM–028, is exempt from the subsections of the Privacy Act listed below for the reasons set forth in the following text. Information in this system of records relates to matters of law enforcement, and the exemptions are necessary to avoid interference with law enforcement responsibilities and to protect the privacy of third parties.

DATES: *Effective Date:* August 25, 2009.**FOR FURTHER INFORMATION CONTACT:**

Rena Y. Kim, Chief FOIA/PA Unit Criminal Division, Department of Justice, Suite 1127, Keeney Building, Washington, DC 20530–0001 on (202) 616–0370.

SUPPLEMENTARY INFORMATION: The notice of the proposed rule with invitation to comment was published on June 3, 2009, at 74 FR 26598. No comments were received. The Department of Justice is exempting JUSTICE/CRM–028 from 5 U.S.C. 552a (c)(3), and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H), and (I), (e)(5) and (e)(8); (f) and (g).

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information, Sunshine Act and Privacy.

■ Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and

delegated to me by Attorney General Order No. 2940–2008, this rule 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, 552b (g), and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717 and 9701.

■ 2. Section 16.91 is amended by revising paragraphs (u) and (v) to read as follows:

§ 16.91 Exemption of Criminal Division Systems—limited access, as indicated.

* * * * *

(u) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j) and/or (k) from subsections (c)(3) and (4); (d)(1), (d)(2), (d)(3) and (d)(4); (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (e)(5) and (e)(8); (f), and (g) of 5 U.S.C. 552a: Organized Crime Drug Enforcement Task Force Fusion Center and International Organized Crime Intelligence and Operations Center System (JUSTICE/CRM–028). These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j) and/or (k).

(v) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because to provide the subject with an accounting of disclosures of records in this system could inform that individual of the existence, nature, or scope of an actual or potential law enforcement or counterintelligence investigation by the Organized Crime Drug Enforcement Task Force Fusion Center, the International Organized Crime Intelligence and Operations Center, or the recipient agency, and could permit that individual to take measures to avoid detection or apprehension, to learn the identity of witnesses and informants, or to destroy evidence, and would therefore present a serious impediment to law enforcement or counterintelligence efforts. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record. Moreover, release of an accounting may reveal information that is properly classified pursuant to Executive Order and could compromise the national defense or foreign policy.

(2) From subsection (c)(4) because this subsection is inapplicable to the extent that an exemption is being claimed from subsections (d)(1), (2), (3), and (4).

(3) From subsection (d)(1) because disclosure of records in the system could alert the subject of an actual or potential criminal, civil, or regulatory investigation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identity of confidential witnesses and informants, of the investigative interest of the Organized Crime Drug Enforcement Task Force Fusion Center, International Organized Crime Intelligence and Operations Center, and other intelligence or law enforcement agencies (including those responsible for civil proceedings related to laws against drug trafficking or related financial crimes or international organized crime); lead to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; reveal the details of a sensitive investigative or intelligence technique, or the identity of a confidential source; or otherwise impede, compromise, or interfere with investigative efforts and other related law enforcement and/or intelligence activities. In addition, disclosure could invade the privacy of third parties and/or endanger the life, health, and physical safety of law enforcement personnel, confidential informants, witnesses, and potential crime victims. Access to records could also result in the release of information properly classified pursuant to Executive Order, thereby compromising the national defense or foreign policy.

(4) From subsection (d)(2) because amendment of the records thought to be incorrect, irrelevant, or untimely would also interfere with ongoing investigations, criminal or civil law enforcement proceedings, and other law enforcement activities and impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised, as well as impact information properly classified pursuant to Executive Order.

(5) From subsections (d)(3) and (4) because these subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) From subsection (e)(1) because, in the course of its acquisition, collation, and analysis of information under the statutory authority granted to them, both the Organized Crime Drug Enforcement Task Force Fusion Center and International Organized Crime Intelligence and Operations Center will occasionally obtain information, including information properly classified pursuant to Executive Order, that concern actual or potential

violations of law that are not strictly within its statutory or other authority or may compile information in the course of an investigation which may not be relevant to a specific prosecution. It is impossible to determine in advance what information collected during an investigation will be important or crucial to the apprehension of fugitives. In the interests of effective law enforcement, it is necessary to retain such information in this system of records because it can aid in establishing patterns of criminal activity and can provide valuable leads for federal and other law enforcement agencies. This consideration applies equally to information acquired from, or collated or analyzed for, both law enforcement agencies and agencies of the U.S. foreign intelligence community and military community.

(7) From subsection (e)(2) because in a criminal, civil, or regulatory investigation, prosecution, or proceeding, the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the investigation, prosecution, or proceeding would be placed on notice as to the existence and nature of the investigation, prosecution, and proceeding and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Moreover, thorough and effective investigation and prosecution may require seeking information from a number of different sources.

(8) From subsection (e)(3) (to the extent applicable) because the requirement that individuals supplying information be provided a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants and endanger their lives, health, and physical safety. The individual could seriously interfere with undercover investigative techniques and could take appropriate steps to evade the investigation or flee a specific area.

(9) From subsections (e)(4)(G), (H) and (I) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(10) From subsection (e)(5) because the acquisition, collation, and analysis of information for law enforcement purposes from various agencies does not permit a determination in advance or a

prediction of what information will be matched with other information and thus whether it is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can often only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators, intelligence analysts, and government attorneys to exercise their judgment in collating and analyzing information and would impede the development of criminal or other intelligence necessary for effective law enforcement.

(11) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement by revealing investigative techniques, procedures, evidence, or interest and interfering with the ability to issue warrants or subpoenas, and could give persons sufficient warning to evade investigative efforts.

(12) From subsections (f) and (g) because these subsections are inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: August 18, 2009.

Nancy C. Libin,

Chief Privacy and Civil Liberties Officer.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 3

RIN 0991-AB53

Patient Safety and Quality Improvement: Civil Money Penalty Inflation Adjustment

AGENCY: Office for Civil Rights, Office of the Secretary, HHS.

ACTION: Direct final rule.

SUMMARY: The Department of Health and Human Services amends the Patient Safety and Quality Improvement Rule by adjusting for inflation the maximum civil money penalty amount for violations of the confidentiality provisions of the Rule. We are amending the penalty amount to comply with the Federal Civil Penalties Inflation Adjustment Act of 1990. We are using direct final rulemaking for this action

because we expect that there will be no significant adverse comment on the rule.

DATES: This rule is effective November 23, 2009 without further action, unless significant adverse comment is received by September 24, 2009. If significant adverse comment is received, OCR will publish a timely withdrawal of the document in the **Federal Register**.

ADDRESSES: Send comments to one of the following addresses. Please do not submit duplicate comments. We will treat a comment directed to either the direct final rule or proposed rule (discussed in the **SUPPLEMENTARY INFORMATION** section) as being directed towards both, therefore there is no need to submit comments on both documents.

- *Federal eRulemaking Portal:* You may submit electronic comments at <http://www.regulations.gov>. Follow the instructions for submitting electronic comments. Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.

- *Regular, Express, or Overnight Mail:* You may mail written comments (one original and two copies) to the following address only: U.S. Department of Health and Human Services, Office for Civil Rights, *Attention:* PSQIA CMP Adjustment (RIN 0991-AB53), Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue, SW., Washington, DC 20201. Mailed comments may be subject to delivery delays due to security procedures. Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

- *Hand Delivery or Courier:* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to the following address only: Office for Civil Rights, *Attention:* PSQIA CMP Adjustment (RIN 0991-AB53), Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue, SW., Washington, DC 20201. (Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the mail drop slots located in the main lobby of the building.)

Inspection of Public Comments: All comments received before the close of the comment period will be available for public inspection, including any personally identifiable or confidential business information that is included in a comment. We will post all comments received before the close of the