

also 20 CFR 725.708(c) and 725.710(d). In adopting this approach, the Department explained that payment of these bills “would require extensive modifications to the existing computer processes for full implementation. The Department is currently transitioning to a new computer system and will realize cost-savings by building the new payment methodologies into that system rather than modifying the existing one.” 83 FR 27691.

The Department has been diligently working toward developing and deploying a new computer system to implement the new payment formulas but has encountered unforeseen delays. While many of the issues causing these delays have been resolved, OWCP cannot complete development of the new computer system without shifting significant resources from other critical workloads in time to process professional and outpatient bills by the current November 30, 2019 applicability date. As an alternative, OWCP considered, but rejected, manually processing these bills in the interim. Based on black lung program data from FY 2015 through FY 2017, OWCP estimates it receives an average of approximately 69,000 requests annually for payment of professional medical services alone. OWCP does not have the staff necessary to manually process this volume of bills. Thus, without an adequate computer system, it would be impractical for OWCP to timely process and pay professional and outpatient bills due to the volume. As a result, the Department is delaying the applicability date of the rules governing payment of these bills until April 26, 2020, the day before the new computer system is now scheduled to become operational.

The Department’s implementation of this action without opportunity for public comment, effective immediately upon publication, is based on the good cause exceptions in the Administrative Procedure Act, 5 U.S.C. 553(b)(B) and 553(d)(3). Section 553(b)(B) provides that an agency may issue a rule without notice and comment when the agency for “good cause” finds “that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” Section 553(d) provides that final rules may not become effective less than thirty days after publication in the *Federal Register* “except . . . as otherwise provided by the agency for good cause,” among other exceptions.

Under these standards, the Department has determined that there is good cause for making this rule final without notice and comment procedures, and effective immediately

upon *Federal Register* publication. As already noted, OWCP does not have the capacity to manually process the volume of bills it receives for professional and outpatient medical services. Thus, delaying the rule’s application is a necessity: Without the delay, OWCP would no longer be able to promptly pay medical professionals and hospitals who provide treatment services to totally disabled coal miners. That result is contrary to the interests of miners and medical providers alike. Delaying the rules’ application also does not impose any additional procedural burdens on the treatment providers. They will continue to seek payment in the same manner they do now no matter when the rules become applicable. See generally 20 CFR 725.714 and 725.715.

Finally, neither medical professionals nor outpatient services providers will be harmed economically by the delay in any significant way. The Department summarized its economic impact analysis of the new payment formulas in its notice of proposed rulemaking. 82 FR 739, 745–765 (Jan. 4, 2017). The Department compared payments it actually made from the Trust Fund in FY 2014 with payments it would have made if the new payment formulas in the proposed (and eventually final) rules applied. For both medical professionals and outpatient services, total annual Trust Fund payments decreased, in the aggregate, under the new payment formulas: \$8,493 for professionals and \$1,719,543 for outpatient services. 82 FR 746–748. Thus, delaying application of the new payment formulas will not, in the aggregate, harm the providers of either professional or outpatient services.

#### List of Subjects in 20 CFR Part 725

Administrative practice and procedure, Black lung benefits, Claims, Coal miners’ entitlement to benefits, Health care, Reporting and recordkeeping requirements, Survivors’ entitlement to benefits, Total disability due to pneumoconiosis, Vocational rehabilitation, Workers’ compensation.

For the reasons set forth in the preamble, the Department of Labor amends 20 CFR part 725 as follows:

#### PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

■ 1. The authority citation for part 725 continues to read as follows:

**Authority:** 5 U.S.C. 301; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950,

15 FR 3174; 30 U.S.C. 901 *et seq.*, 902(f), 921, 932, 936; 33 U.S.C. 901 *et seq.*; 42 U.S.C. 405; Secretary’s Order 10–2009, 74 FR 58834.

#### § 725.708 [Amended]

■ 2. In § 725.708, amend paragraph (c) by removing the date “November 30, 2019” and adding in its place “April 26, 2020”.

#### § 725.710 [Amended]

■ 3. In § 725.710, amend paragraph (d) by removing the date “November 30, 2019” and adding in its place “April 26, 2020”.

**Julia K. Hearthway,**

*Director, Office of Workers’ Compensation Programs.*

[FR Doc. 2019–25282 Filed 11–18–19; 4:15 pm]

**BILLING CODE 4510–CR–P**

## DEPARTMENT OF JUSTICE

### 28 CFR Part 16

[CPCLO Order No. 11–2019]

#### 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, Office of the Chief Administrative Hearing Officer (OCAHO) Case Management System (CMS), JUSTICE/EOIR–002, which were published as a Notice of Proposed Rulemaking (NPRM) on August 16, 2019. Specifically, the Department’s regulations will exempt the records maintained in JUSTICE/EOIR–002 from one or more provisions of the Privacy Act. The exemptions are necessary to ensure the integrity of investigatory and adjudicatory records in cases before OCAHO. The Department received two comments and neither comments were substantive.

**DATES:** This final rule is effective December 23, 2019.

**FOR FURTHER INFORMATION CONTACT:** Michelle Curry, Associate General Counsel and Senior Component Official for Privacy, Office of the General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, by email at [michelle.curry@usdoj.gov](mailto:michelle.curry@usdoj.gov), or by facsimile at 703–305–0443.

**SUPPLEMENTARY INFORMATION:****Background**

EOIR created a new system of records subject to the Privacy Act of 1974, 5 U.S.C. 552a. The system of records will be used by OCAHO to facilitate adjudication of its cases and may include paper and electronic files maintained by OCAHO. The records to be maintained in this new system historically have been included as part of EOIR-001, Records and Management Information System. They are being transferred into this new system to improve efficiency, improve records management practices, and provide better access for parties to proceedings.

OCAHO Administrative Law Judges (ALJs) hear cases and adjudicate issues arising under the provisions of the Immigration and Nationality Act (INA) relating to: (1) Knowingly hiring, recruiting or referring for a fee, or continuing to employ unauthorized aliens, failure to comply with employment eligibility verification requirements, and requiring indemnity bonds from employees in violation of section 274A of the INA (8 U.S.C. 1324a), (2) immigration-related unfair employment practices in violation of section 274B of the INA (8 U.S.C. 1324b), and (3) immigration-related document fraud in violation of section 274C of the INA (8 U.S.C. 1324c).

Complaints under sections 274A and 274C of the INA are filed by the U.S. Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE). Complaints under section 274B of the INA may be filed by private individuals or entities, or by the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (DOJ/CRT). The respondents in OCAHO cases are typically businesses or employers. The parties to 274A and 274C cases may seek administrative review of ALJ decisions and orders by the Chief Administrative Hearing Officer (CAHO). Parties in all case types may appeal final agency orders to the appropriate United States Circuit Court of Appeals.

In order to process and adjudicate cases and appeals, OCAHO must collect certain information and documents from and about complainants and respondents. The DOJ/CRT and DHS ICE can file complaints with OCAHO. Often, these agencies will submit investigatory records as exhibits or attachments to other filings. The investigatory records include, but are not limited to, notices of inspection, summaries of inspection results, affidavits or memoranda from investigators, results from searches of

internal agency databases, and similar records. These exhibits or attachments then become part of OCAHO's official case record.

To improve tracking and storage of case-related information and documents, OCAHO is implementing a new electronic case management system (CMS). The OCAHO CMS will manage the entire life cycle of OCAHO's case processes, including tracking and managing case information and documents, facilitating case research, and reporting on key business functions and metrics. The OCAHO CMS will also include an electronic filing capability, which will enable parties to submit case information and documents electronically through a secure web-based portal. The portal will also provide notifications and updates on case status, and will allow authorized parties to access copies of all case-related documents electronically. The system is segregated by "need to know" user controls and allows authorized users to track various stages of the proceedings. The system also contains templates to generate letters, notices, and decisions used in the OCAHO process. The system can generate reports by case status and disposition.

**Response to Public Comments**

In its OCAHO CMS NPRM and Notice of a New System of Records, published on August 16, 2019, the Department invited public comment (84 FR 41940 and 84 FR 42016). The comment periods for both notices closed on September 16, 2019. The Department received two comments from individuals. The Department has closely reviewed and considered these comments. Both comments received were concerned with the general appropriateness of exempting records from certain provisions of the Privacy Act, including the provision for individual access to records under the Act. Congress recognized the need for exemptions to these provisions of the Privacy Act to ensure the integrity of investigatory and adjudicatory records. As noted in the NPRM, the exemptions taken here apply in "limited circumstances," only to the extent information in this system comes within the scope of 5 U.S.C. 552a(k)(1) and (2).

*Executive Orders 12866, 13563, 13771—Regulatory Review*

In accordance with 5 U.S.C. 552a(j) and 552a(k), this action is subject to rulemaking procedures, which give 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 exemptions claimed by the system, as detailed below, do not raise novel legal or policy issues, nor do they 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.

*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.

*Congressional Review Act*

This rule is not a major rule as defined by 5 U.S.C. 804 of the Congressional Review Act.

*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. The Paperwork Reduction Act applies to some of the records collected as part of this system of records. The following approved information collection is associated with this system of records: Form EOIR-58, Unfair Immigration-Related Employment Practices Complaint Form, and OMB #1125-0016. This system of records will also collect information via a web-based electronic filing portal. The Department is in the process of seeking approval of this information collection under the Paperwork Reduction Act.

*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.

**List of Subjects in 28 CFR Part 16**

Administrative practices and procedures, Courts, Freedom of information, Privacy Act.

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

■ 2. Amend § 16.83 by adding paragraphs (e) and (f) to read as follows:

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

\* \* \* \* \*

(e) The following system of records is exempt from 5 U.S.C. 552a(d): Office of the Chief Administrative Hearing Officer (OCAHO) Case Management System (CMS) (JUSTICE/EOIR–002). 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).

(f) Exemption from 5 U.S.C. 552a(d) is justified for the system of records in paragraph (e) of this section for the following reasons:

(1) In limited circumstances, from subsection (d) when access to the records contained in the system of records in paragraph (e) of this section could inform the subject of an ongoing investigation of an actual or potential criminal, civil, or regulatory violation or the existence of that investigation; of the nature and scope of the information and evidence obtained as to the subject’s activities; of the identity of confidential sources, witnesses, and law enforcement personnel; and of information that may enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law and regulatory enforcement where they prevent the successful completion of the investigation, endanger the physical safety of confidential sources, witnesses, and law enforcement personnel; and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-

sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties.

(2) From subsections (d)(2), (3), and (4) because the administrative case files constitute an official record which includes transcripts of 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.

Dated: November 14, 2019.

**Peter A. Winn,**

*Acting Chief Privacy and Civil Liberties Officer, United States Department of Justice.*  
[FR Doc. 2019–25080 Filed 11–20–19; 8:45 am]

**BILLING CODE 4410–30–P**

**DEPARTMENT OF DEFENSE**

**Department of the Army, Corps of Engineers**

**33 CFR Part 334**

[COE–2017–0011]

**James River, Skiffes Creek, and Warwick River Surrounding Joint Base Langley-Eustis (JBLE-Eustis), Virginia; Restricted Areas and Danger Zones**

**AGENCY:** United States Army Corps of Engineers, Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** The Corps of Engineers is establishing restricted areas and danger zones in the waters of the James River, Skiffes Creek and Warwick River in Newport News, Virginia. JBLE-Eustis contains a military port, berthing numerous Army vessels, and conducts exercises to include small craft testing and live fire training activities. The amendment is necessary to protect the public from hazards associated with training and mission operations, and to protect government assets, missions, and the base population in general. The amendment increases the restricted areas and creates danger zones surrounding the existing installation and firing ranges.

**DATES:** Effective date: December 23, 2019.

**ADDRESSES:** U.S. Army Corps of Engineers, Attn: CECW–CO (David Olson), 441 G Street NW, Washington, DC 20314–1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Olson, Headquarters, Operations

and Regulatory Division, Washington, DC at 202–761–4922.

**SUPPLEMENTARY INFORMATION:** The proposed rule was published in the May 23, 2018, edition of the **Federal Register** (83 FR 23864) and the regulations.gov docket number was COE–2017–0011. In response to the proposed rule, three comments were received. One commenter stated that additional clarification was needed regarding the proposed areas coordinates because as written it is unclear what the intended extent of the areas should be, therefore, the applicant provided corrected coordinates and modified the rule text to address the charting concerns.

Another commenter stated that they are not in opposition to the proposal, however, they believe that an Environmental Impact Statement (EIS) should be provided to the public prior to the comment period closing. The preliminary review prior to publishing the proposed rule for comment determined that an EIS was not warranted for the proposed rule and no additional information was identified during review warranting a change to this finding.

One commenter stated that they fully support the proposed restricted areas and danger zones, and no further evaluation was warranted.

In response to a request by the United States Air Force, and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is amending 33 CFR 334.280 to establish permanent restricted areas and danger zones, in the waters of the James River, Skiffes Creek, and Warwick River in Newport News, Virginia. The permanent restricted areas and the danger zones are necessary to protect the public from hazards associated with training and mission operations, and to fulfill the current security needs of the Department of the Air Force to protect government assets, missions, and the base population in general at the facility.

**Procedural Requirements**

*a. Regulatory Planning and Review*

Executive Orders 12866 and 13563 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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. For the reasons stated below, this final rule is not a