L. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

M. Determination To Issue Final Rule Without the Opportunity for Public Comment and With Immediate Effective Date

BIA is taking this action under its authority, at 5 U.S.C. 552, to publish regulations in the Federal Register. Under the Administrative Procedure Act, statutory procedures for agency rulemaking do not apply “when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest,” 5 U.S.C. 553(b)(3)(B). BIA finds that the notice and comment procedure are impracticable, unnecessary, or contrary to the public interest, because: (1) These amendments are non-substantive; and (2) the public benefits for timely notification of a change in the official agency address, and further delay is unnecessary and contrary to the public interest. Similarly because this final rule makes no substantive changes and merely reflects a change of address and updates to titles in the existing regulations, this final rule is not subject to the effective date limitation of 5 U.S.C. 553(d).

List of Subjects in 25 CFR Part 293

Gambling, Indians-business and finance.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, amends part 293 in title 25 of the Code of Federal Regulations to read as follows:

PART 293—CLASS III TRIBAL STATE GAMING COMPACT PROCESS

1. The authority for part 293 continues to read as follows:


2. Revise § 293.9 to read as follows:

§ 293.9 Where should a compact or amendment be submitted for review and approval?

Submit compacts and amendments to the Director, Office of Indian Gaming, U.S. Department of the Interior, 1849 C Street NW, Mail Stop 3543, Main Interior Building, Washington, DC 20240. If this address changes, a notice with the new address will be published in the Federal Register within 5 business days.

Tara Sweeney, Assistant Secretary—Indian Affairs.

[FR Doc. 2020–13060 Filed 6–23–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[CPCLO Order No. 003–2020]

Privacy Act of 1974; Implementation

AGENCY: Federal Bureau of Investigation, United States Department of Justice.

ACTION: Final rule.

SUMMARY: The Federal Bureau of Investigation (FBI), a component of the United States Department of Justice (DOJ or Department), is finalizing without changes its Privacy Act exemption regulations for the system of records titled, “National Crime Information Center (NCIC),” 5 U.S.C. 552a(g) and (k), and inviting public comment on the proposed exemptions.

The Department claims no Privacy Act exemptions at all for NCIC system of records. EPIC makes a number of claims, among which are the following:

• “The over collection and maintenance of information that is unverified and unaccountable with no system for redress leaves personal data at a risk.”

• “The FBI sets forward no reason that it should be able to maintain records irrelevant or unnecessary to accomplish a purpose of the agency.”

• “[T]he categories of sources of records at minimum are essential in order to keep the government accountable throughout their data collection and law enforcement activities.”

• “The exemptions as currently proposed are needlessly overbroad.”

• “The NCIC has been known to have inaccurate and unreliable records, making it particularly unsuitable for vast exemptions from regulations designed to protect and optimize the accuracy and reliability of information held on people.”

After consideration of the statements in this public comment from EPIC, the Department has determined that, to protect the ability of the FBI to properly engage in its law enforcement and national security functions, the exemptions as proposed in the NPRM are codified in this final rule for the reasons stated below.

Response to Public Comments

As stated above, the one substantive comment the FBI received regarding its NPRM urged the FBI to withdraw its proposed Privacy Act exemptions. While, generically, it might be true that “[t]he over collection and maintenance of information that is unverified and
and appropriate data use, EPIC states that "the exemptions as currently proposed are needlessly overbroad." On the contrary, in the NPRM and here in the Final Rule, the Department explains the need for each exemption. The exemptions as taken by FBI are as intended by Congress when it passed the Privacy Act, in order to ensure that law enforcement can continue to properly function in the face of the many requirements of the statute. After careful consideration, Congress allowed for exemptions from some requirements and not from others. Rather than acting counter to the Privacy Act, the Department and FBI are acting pursuant to it. Further, even though the FBI is authorized under the Privacy Act to maintain certain exemptions in all cases, the FBI takes seriously the privacy interests of the public. As stated in the proposed rulemaking, where the FBI determines compliance with an exempted Privacy Act provision—including access and amendment provisions—would not appear to interfere with or adversely affect interests of the United States or other system stakeholders, the FBI at its sole discretion may waive such exemption in that circumstance in whole or in part. In each circumstance, the FBI considers whether the facts of the request merit compliance with an exempted Privacy Act provision(s). In appropriate circumstances, as indicated in the Final Rule, the FBI may waive such exemptions at its discretion.

The Department has considered the submitted comment; however, for the reasons set forth above and the rationales included in the regulations, the Department adopts in this Final Rule the exemptions and rationales proposed in the NPRM.

Executive Orders 12866 and 13563—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Orders 12866 and 13563—Regulatory Review.
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.

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.

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

This rule imposes no information collection or recordkeeping requirements.

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 to me by Attorney General Order 2940—2008, 28 CFR part 16 is amended as follows:

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

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


2. Amend §16.96 by:

a. Revising paragraphs (g) and (h) and

b. Removing paragraph (i).

The revisions read as follows:

§16.96 Exemption of Federal Bureau of Investigation Systems-limited access.

* * * * *

(g) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g):

(I) National Crime Information Center (NCIC) (JUSTICE/FBI—001).

(2) These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(G) and (k). Where the FBI determines compliance with an exempted provision would not appear to interfere with or adversely affect interests of the United States or other system stakeholders, the FBI in its sole discretion may waive an exemption, in whole or in part; exercise of this discretionary waiver prerogative in a particular matter shall not create any entitlement to or expectation of waiver in that matter or any other matter. As a condition of discretionary waiver, the FBI in its sole discretion may impose any restrictions deemed advisable by the FBI (including, but not limited to, restrictions on the location, manner, or scope of notice, access or amendment).

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

(I) From subsection (c)(3) the requirement that an accounting be made available to the named subject of a record, because this system is exempt from the access provisions of subsection (d). Also, because making available to a record subject the accounting of disclosures from records concerning him/her would specifically reveal law enforcement or national security investigative interest in the individual by the FBI or agencies that are recipients of the disclosures. Revealing this information could compromise ongoing, authorized law enforcement and intelligence efforts, particularly efforts to identify and define any potential acts of terrorism or other potential violations of criminal law. Revealing this information could also permit the record subject to obtain valuable insight concerning the information obtained during any investigation and to take measures to circumvent the investigation (e.g., destroy evidence or flee the area to avoid investigation).

(2) From subsection (c)(4) notification requirements because this system is exempt from the access and amendment provisions of subsection (d) as well as the accounting disclosures provision of subsection (c)(3). The FBI takes seriously its obligation to maintain accurate records despite its assertion of this exemption, and to the extent it, in its sole discretion, agrees to permit amendment or correction of FBI records, it will share that information in appropriate cases.

(3) From subsection (d), (e)(4)(G) and (H), (e)(8), (f), and (g) because these provisions concern individual access to and amendment of law enforcement and intelligence records and compliance could alert the subject of an authorized law enforcement or intelligence activity about that particular activity and the investigative interest of the FBI and/or other law enforcement or intelligence agencies. Providing access could compromise sensitive law enforcement information; disclosure of information that could constitute an unwarranted invasion of another’s personal privacy;
reveal a sensitive investigative or intelligence technique; provide information that would allow a subject to avoid detection or apprehension; or constitute a potential danger to the health or safety of law enforcement personnel, confidential sources, and witnesses. The FBI takes seriously its obligation to maintain accurate records despite its assertion of this exemption, and to the extent it, in its sole discretion, agrees to permit amendment or correction of FBI records, it will share that information in appropriate cases with subjects of the information.

(4) From subsection (e)(4)(j) because it is not always possible to know in advance what information is relevant and necessary for law enforcement and intelligence purposes. Relevance and necessity are questions of judgment and timing. For example, what appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after information is assessed that its relevancy and necessity in a specific investigative activity can be established.

(5) From subsections (e)(2) and (3) because it is not feasible to comply with these provisions given the nature of this system. The majority of the records in this system come from other federal, state, local, joint, foreign, tribal, and international agencies; therefore, it is not feasible for the FBI to collect information directly from the individual or to provide notice. Additionally, the application of this provision could present a serious impediment to the FBI’s responsibilities to detect, deter, and prosecute crimes and to protect the national security. Application of these provisions would put the subject of an investigation on notice of that fact and allow the subject an opportunity to engage in conduct intended to impede that activity or avoid apprehension.

(6) From subsection (e)(4)(j), to the extent that this subsection is interpreted to require more detail regarding the record sources in this system than has already been published in the Federal Register through the SORN documentation. Should the subsection be so interpreted, exemption from this provision is necessary to protect the sources of law enforcement and intelligence information and to protect the privacy and safety of witnesses and informants and others who provide information to the FBI.

(7) From subsection (e)(S) because in the collection of information for authorized law enforcement and intelligence purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With time, additional facts, or analysis, information may acquire new significance. The restrictions imposed by subsection (e)(S) would limit the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement. Although the FBI has claimed this exemption, it continuously works with its federal, state, local, tribal, and international partners to maintain the accuracy of records to the greatest extent practicable. The FBI does so with established policies and practices. The criminal justice and national security communities have a strong operational interest in using up-to-date and accurate records and will foster relationships with partners to further this interest.


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

[FR Doc. 2020–11386 Filed 6–23–20; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF DEFENSE
Office of the Secretary
32 CFR Part 321
[Docket ID: DOD–2018–OS–0008]
RIN 0790–AK67

Defense Security Service Privacy Program
AGENCY: Defense Counterintelligence and Security Agency, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes DoD’s regulation concerning the Defense Security Service (DSS) Privacy Program. The DSS organization’s name has been changed since codification to the Defense Counterintelligence and Security Agency (DCSA). Moving forward, this agency will be referenced as DCSA. On April 11, 2019, the Department of Defense published a revised DoD-level Privacy program, which contains the necessary information for an agency-wide Privacy Program regulation under the Privacy Act and now serves as the single Privacy Program rule for the Department. That revised Privacy Program rule also includes all DoD component exemption rules. Therefore, this part is now unnecessary and may be removed from the CFR.

DATES: This rule is effective on June 24, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie J. Courtney, 371–305–6740.

SUPPLEMENTARY INFORMATION: DoD now has a single DoD-level Privacy Program rule at 32 CFR 310 (84 FR 14728) that contains all the codified information required for the Department. The Defense Counterintelligence and Security Privacy Act Program regulation at 32 CFR 321, last updated on September 14, 1999 (64 FR 49660), is no longer required and may be removed.

It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing DoD policies and procedures that are either now reflected in another CFR part, 32 CFR 310, or are publically available on the Department’s website. To the extent that DCSA internal guidance concerning the implementation of the Privacy Act within DCSA is necessary, it will be issued in an internal document.

This rule is one of 20 separate DoD component Privacy rules. With the finalization of the DoD-level Privacy rule at 32 CFR part 310, the Department eliminated the need for this component Privacy rule, thereby reducing costs to the public as explained in the preamble of the DoD-level Privacy rule published on April 11, 2019, at 84 FR 14728–14811.

This rule is not significant under Executive Order (E.O.) 12866, “Regulatory Planning and Review.” Therefore, E.O. 13771, “Reducing Regulation and Controlling Regulatory Costs” does not apply.

List of Subjects in 32 CFR Part 321
Privacy.

PART 321—[REMOVED]

Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 321 is removed.

Dated: June 12, 2020.

Aaron T. Siegel,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–13115 Filed 6–23–20; 8:45 am]