

pursuant to INA 212(a)(5)(A), must provide written confirmation of the relevant information sworn and subscribed to before a notary public by the employer or an authorized employee or agent of the employer. The signer's printed name and position or other relationship with the employer must accompany the signature.

(f) *Use of Federal poverty line Where INA 213A not applicable.* An immigrant visa applicant, not subject to the requirements of INA 213A, and relying solely on personal income to establish eligibility under INA 212(a)(4), who does not demonstrate an annual income above the Federal poverty line, as defined in INA 213A(h), and who is without other adequate financial resources, shall be presumed ineligible under INA 212(a)(4).

Hugo Rodriguez,

Principal Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

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DEPARTMENT OF JUSTICE

28 CFR Part 16

[CPCLO Order No. 004-2023]

Privacy Act of 1974; Implementation

AGENCY: Office of Privacy and Civil Liberties, United States Department of Justice.

ACTION: Final rule.

SUMMARY: The Office of Privacy and Civil Liberties (OPCL), 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, Data Protection Review Court Records System, JUSTICE/OPCL-001, which were published as a notice of proposed rulemaking (NPRM) on May 23, 2023. The notice for this new system of records, Data Protection Review Court Records System, JUSTICE/OPCL-001, was also published in the **Federal Register** on May 23, 2023. Specifically, the Department's regulations will exempt this system of records from certain provisions of the Privacy Act to protect national security and law enforcement sensitive information, preserve judicial independence, and ensure the integrity of adjudicatory records in cases before the Data Protection Review Court (DPRC). The Department received no comments on the NPRM.

DATES: This final rule is effective October 5, 2023.

FOR FURTHER INFORMATION CONTACT: Katherine Harman-Stokes, Director (Acting), Office of Privacy and Civil Liberties, U.S. Department of Justice, Two Constitution Square, 145 N St. NE, Suite 8W-300, Washington, DC 20530; email: privacy.compliance@usdoj.gov; telephone: (202) 514-0208; facsimile: (202) 307-0693.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, OPCL is establishing a new system of records, Data Protection Review Court Records System, JUSTICE/OPCL-001, to maintain an accurate record of the DPRC review of determinations made by the Civil Liberties Protection Officer of the Office of the Director of National Intelligence (ODNI CLPO) in response to complaints alleging violations of United States law in the conduct of United States signals intelligence activities, under the EU-U.S. Data Protection Framework established on October 7, 2022, pursuant to Executive Order (E.O.) 14086, Enhancing Safeguards for United States Signals Intelligence Activities, 87 FR 62283 (Oct. 14, 2022).

E.O. 14086 directed the Attorney General to issue a regulation establishing the DPRC as the second level of a two-level redress mechanism for alleged violations of law regarding signals intelligence activities. The Attorney General issued the regulation on October 7, 2022, "Data Protection Review Court." 87 FR 628303 (Oct. 14, 2022) (codified at 28 CFR part 201).

The first level of the new redress mechanism established by E.O. 14086 is the investigation, review, and determination by the ODNI CLPO of whether a covered violation occurred and, where necessary, the appropriate remediation in response to a complaint. The complainant or an element of the Intelligence Community may seek review by the DPRC of the ODNI CLPO's determination.

Exercising the Attorney General's authority under 28 U.S.C. 511 and 512 to provide his advice and opinion on questions of law and the authority delegated to the Attorney General under E.O. 14086, the DPRC will review whether the ODNI CLPO's determination regarding the occurrence of a covered violation was legally correct and supported by substantial evidence and whether, in the event of a covered violation, the ODNI CLPO's determination as to the appropriate remediation was consistent with E.O. 14086.

The regulations require the DPRC, and OPCL in support of the DPRC, to maintain all records relating to the DPRC's review. For each application for review, OPCL shall maintain records of the information reviewed or created by the DPRC and the decision of the DPRC panel, which records shall be made available for consideration as non-binding precedent to future DPRC panels considering applications for review. 28 CFR 201.9(j), *see also* 28 CFR 201.5 through 201.15. Records of the DPRC's review will include material created by the complainant, the public authority of a designated state, ODNI CLPO, elements of the Intelligence Community, DPRC Judges and Special Advocates, and Department of Justice personnel. Most of the information in this system consists of records that are classified, including the record of review received from the ODNI CLPO.

Pursuant to 28 CFR 201.9(i), information in the system indicating a violation of any authority subject to the oversight of the Foreign Intelligence Surveillance Court (FISC) will be shared with the Assistant Attorney General for National Security, who shall report violations to the FISC as required by law and in accordance with its rules of procedure. Similarly, information in the system will be provided to the Privacy and Civil Liberties Oversight Board (PCLOB) as necessary for the PCLOB to conduct the annual review of the redress process described in section 3(e) of E.O. 14086, consistent with the protection of intelligence sources and methods.

II. Privacy Act Exemption

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 modifies 28 CFR part 16 to add a new Privacy Act exemption for the new system of records, Data Protection Review Court Records System, JUSTICE/OPCL-001. The Department adds this exemption because most of the records in this system will contain classified national security information. As such, notice, access, amendment, and disclosure (to include accounting for those records) to an individual, as well as certain record-keeping requirements, may cause damage to national security. The Privacy Act, pursuant to 5 U.S.C.

552a(k)(1), authorizes agencies to claim an exemption for systems of records that contain information properly classified pursuant to applicable law. Pursuant to 5 U.S.C. 552a(k)(1), the Department has claimed an exemption from several provisions of the Privacy Act, including provisions for individual access, amendment, disclosure of accounting, as well as certain provisions for record-keeping and notice, to prevent disclosure of any information properly classified pursuant to applicable law.

The Department has also claimed an exemption for this system of records from the above references provision of the Privacy Act because the records in this system relate to criminal law enforcement activities, and certain requirements of the Privacy Act may interfere with the effective execution of these law enforcement activities. The Privacy Act, pursuant to 5 U.S.C. 552a(j)(2), authorizes agencies with a principal law enforcement function pertaining to the enforcement of criminal laws (including activities of prosecutors, courts, etc.) to claim an exemption for systems of records that contain information identifying criminal offenders and alleged offenders, information compiled for the purpose of criminal investigation, or reports compiled for the purpose of criminal law enforcement proceedings. Additionally, pursuant to 5 U.S.C. 552a(k)(2), agencies may exempt a system of records from certain provisions of the Privacy Act if it contains investigatory material compiled for law enforcement purposes, other than materials within the scope of 5 U.S.C. 552a(j)(2). The Department has claimed exemptions from several provisions of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2) and 552a(k)(2), to prevent the harms articulated in this rule from occurring. Records in this system of records are only exempt from the Privacy Act to the extent the purposes underlying the exemption pertain to the record.

Executive Orders 12866, 13563, and 14094—Regulatory Review

In accordance with 5 U.S.C. 552a(j) and 552a(k), this regulation was 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. This regulation exempts this system of records from certain provisions of the Privacy Act to protect national security and law enforcement sensitive information, preserve judicial independence and to ensure the

integrity of adjudicatory records in cases before DPRC.

The Department has determined that this rule is not a “significant” regulatory action under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

This rule has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), Principles of Regulation; Executive Order 13563, “Improving Regulation and Regulatory Review,” section 1(b), General Principles of Regulation; and Executive Order 14094, “Modernizing Regulatory Review”. OPCL anticipates no costs or benefits accruing from this rule.

Regulatory Flexibility Act

This regulation will impact records related to or reviewed in handling complaints in accordance with E.O. 14086 and DOJ regulation, 28 CFR part 201, which are personal and generally do not apply to an individual’s entrepreneurial capacity, subject to limited exceptions. Even though this system will contain records that are not covered by the Privacy Act, the Chief Privacy and Civil Liberties Officer has nevertheless reviewed this regulation in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), 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**. Persons can obtain further information regarding SBREFA on the Small Business Administration’s web page at <https://www.sba.gov/advocacy>. This regulation 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 E.O. 13132, it is determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform (Plain Language)

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 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 E.O. 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. There are no current or new information collection requirements associated with this regulation.

List of Subjects in 28 CFR Part 16

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

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.

Subpart E—Exemption of Records Systems Under the Privacy Act

■ 2. Add § 16.139 to read as follows:

§ 16.139 Exemption of the Department of Justice Data Protection Review Court Records System, JUSTICE/OPCL–001.

(a) The Department of Justice Data Protection Review Court system of records JUSTICE/OPCL–001 is exempted from subsections 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2) and (3); (e)(4)(G), (H) and (I); (e)(5) and (8); (f) and (g) of the Privacy Act. These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) or (k). Where DOJ determines that compliance would not appear to interfere with or adversely affect the purpose of this system to address certain violations of United States law in the conduct of United States signals intelligence activities, and not interfere with national security or law enforcement operations, the applicable exemption may be waived by the DOJ in its sole discretion.

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

(1) From the subsection (c)(3) (accounting of disclosures) 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). Where the individual is the subject of intelligence activities, to provide that individual with the disclosure accounting records would hinder authorized United States intelligence activities by informing that individual of the existence, nature, or scope of information that is properly classified pursuant to Executive Order 12958, as amended, and thereby cause damage to the national security. Revealing this information would also be contrary to Executive Order 14086 and could compromise ongoing, authorized law enforcement and intelligence efforts, particularly efforts to identify and/or mitigate national security threats.

(2) From subsection (c)(4) (notice of amendment to record recipients) notification requirements because this system is exempt from the access and amendment provisions of subsection (d)

as well as the provision for making the accounting of disclosures available to an individual in subsection (c)(3). The DOJ 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 DOJ records, it will share that information in appropriate cases.

(3) From subsection (d)(1), (2), (3) and (4) (record subject's right to access and amend records), (e)(4)(G) and (H) (publication of procedures for notifying subjects of the existence of records about them and how they may access records and contest contents), (e)(8) (notice of compelled disclosures), (f) (agency rules for notifying subjects to the existence of records about them, for accessing and amending records, and for assessing fees) and (g) (civil remedies) because these provisions concern individual access to and amendment of records containing national security, law enforcement, intelligence, counterintelligence and counterterrorism sensitive information that could alert the subject of an authorized law enforcement or intelligence activity about that particular activity and the interest of the DOJ and/or other law enforcement or intelligence agencies in the subject. Providing access could compromise information classified to protect national security; disclose information that would 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, witnesses, or other individuals. Nevertheless, DOJ has published notice concerning notification, access, and contest procedures because it may in certain circumstances determine it appropriate to provide subjects access to all or a portion of the records about them in a system of records, particularly if information pertaining to the individual has been declassified.

(4) From subsection (e)(1) (maintain only relevant and necessary records) because the Data Protection Review Court (DPRC), in the course of receiving information pursuant to an application for review, including the Office of the Director of National Intelligence (ODNI) Civil Liberties Protection Officer's (CLPO) record of review, may receive records that are ultimately deemed irrelevant or unnecessary for the adjudication of the matter. Relevance and necessity are questions of judgment

and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after the information is assessed that its relevancy and necessity can be established. Even if the records received are ultimately determined to be irrelevant or unnecessary to the adjudication of an application for review, the Office of Privacy and Civil Liberties (OPCL) generally must nevertheless retain such records to maintain an accurate and complete record of the information reviewed by the DPRC.

(5) From subsection (e)(2) (collection directly from the individual) and (3) (provide Privacy Act Statement to subjects furnishing information). The DPRC will rely on records received from the ODNI CLPO, including records that the ODNI CLPO received from other elements of the Intelligence Community. The collection efforts of agencies that supply information ultimately received by the DPRC would be thwarted if the agencies were required to collect information with the subject's knowledge. Application of these provisions would put the subject of United States signals intelligence activities on notice of the signals intelligence activities and allow the subject an opportunity to engage in conduct intended to impede the investigative activity or avoid apprehension.

(6) From subsection (e)(4)(I) (identifying sources of records in the system of records), to the extent that this subsection is interpreted to require more detail regarding the record sources in this system than has been published in the **Federal Register**. Should the subsection be so interpreted, exemption from this provision is necessary to protect disclosure of properly classified national security and law enforcement sensitive information. Further, greater specificity of sources of properly classified records could compromise national security.

(7) From subsection (e)(5) (maintain timely, accurate, complete and up-to-date records) because many of the records in the system were derived from other domestic and foreign agency record systems over which DOJ exercises no control. It is often impossible to determine in advance if intelligence records contained in this system are accurate, relevant, timely and complete, but in the interest of maintaining a complete record of the information reviewed by the DPRC in each case, it is necessary to retain this information. The restrictions imposed by subsection (e)(5) would impede development of the record for review

and limit the DPRC’s ability to exercise independent judgment in the adjudication of applications for review.

(8) Continue in effect and assert all exemptions claimed under 5 U.S.C. 552a(j) or (k) by an originating agency from which DOJ obtains records where the purposes underlying the original exemption remain valid and necessary to protect the contents of the record.

Dated: August 23, 2023.

Peter Winn,

Chief Privacy and Civil Liberties Officer (Acting), United States Department of Justice.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[USCG–2023–0250]

2023 Quarterly Listings; Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DHS.

ACTION: Notification of expired temporary rules issued.

SUMMARY: This document provides notification of substantive rules issued by the Coast Guard that were made temporarily effective but expired before they could be published in the **Federal Register**. This document lists temporary safety zones, security zones, and special local regulations, all of limited duration and for which timely publication in the **Federal Register** was not possible. This document also announces notifications of enforcement for existing reoccurring regulations that we issued but were unable to be published before the enforcement period ended.

DATES: This document lists temporary Coast Guard rules and notifications of enforcement that became effective, primarily between January 2023 and March 2023, unless otherwise indicated, and were terminated before they could be published in the **Federal Register**.

ADDRESSES: Temporary rules listed in this document may be viewed online, under their respective docket numbers, using the Federal eRulemaking Portal at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For questions on this document contact Yeoman First Class Glenn Grayer, Office of Regulations and Administrative Law, telephone (202) 372–3862.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. *Safety zones* may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. *Security zones* limit access to prevent injury or damage to vessels, ports, or waterfront facilities. *Special local regulations* are issued to enhance the safety of participants and spectators at regattas and other marine events.

Timely publication of these rules in the **Federal Register** may be precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, often informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by

the rule. Timely publication of notifications of enforcement of reoccurring regulations may be precluded when the event occurs with short notice or other agency procedural restraints.

Because **Federal Register** publication was not possible before the end of the effective period, mariners were personally notified of the contents of these safety zones, security zones, special local regulations, regulated navigation areas or drawbridge operation regulations by Coast Guard officials on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary safety zones, security zones, special local regulations, regulated navigation areas and drawbridge operation regulations. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register**. Temporary rules are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. In some of our reoccurring regulations, we say we will publish a notice of enforcement as one of the means of notifying the public. We use this notification to announce those notifications of enforcement that we issued and will post them to their dockets.

The following unpublished rules were placed in effect temporarily during the period between January 2023 and March 2023 unless otherwise indicated. To view copies of these rules, visit www.regulations.gov and search by the docket number indicated in the following table.

| Docket No. | Type of regulation | Location | Enforcement date |
|----------------------|--|---|------------------|
| USCG–2022–0991 | Safety Zones (Parts 147 and 165) | Port Detroit Zone | 12/31/2022 |
| USCG–2022–1008 | Safety Zones (Parts 147 and 165) | Corpus Christi, TX | 1/4/2023 |
| USCG–2022–1003 | Security Zones (Part 165) | Cincinnati, OH | 1/4/2023 |
| USCG–2023–0060 | Safety Zones (Parts 147 and 165) | U.S. EEZ offshore of Jacksonville, Daytona, and Cape Canaveral, FL. | 1/12/2023 |
| USCG–2023–0066 | Safety Zones (Parts 147 and 165) | Corpus Christi, TX | 1/13/2023 |
| USCG–2023–0069 | Security Zones (Part 165) | Amelia Island, FL | 1/22/2023 |
| USCG–2023–0103 | Security Zones (Part 165) | Baltimore, MD | 1/30/2023 |
| USCG–2023–0088 | Safety Zones (Parts 147 and 165) | Pensacola, FL | 1/30/2023 |
| USCG–2023–0107 | Safety Zones (Parts 147 and 165) | Corpus Christi, TX | 1/30/2023 |
| USCG–2023–0090 | Safety Zones (Parts 147 and 165) | Corpus Christi, TX | 2/1/2023 |
| USCG–2023–0140 | Security Zones (Part 165) | Tampa, FL | 2/9/2023 |
| USCG–2022–1006 | Special Local Regulations (Part 100) | Bradenton, FL | 2/11/2023 |
| USCG–2023–0071 | Safety Zones (Parts 147 and 165) | South Padre Island, TX | 2/11/2023 |
| USCG–2023–0190 | Safety Zones (Parts 147 and 165) | Charleston, SC | 3/2/2023 |
| USCG–2023–0016 | Security Zones (Part 165) | Miami Beach, FL | 3/8/2023 |
| USCG–2023–0208 | Security Zones (Part 165) | San Diego, CA | 3/13/2023 |