

§ 115.403

the auditor, with the exception of contracting for subsequent PREA audits.

§ 115.403 Audit contents and findings.

(a) Each audit shall include a certification by the auditor that no conflict of interest exists with respect to his or her ability to conduct an audit of the agency under review.

(b) Audit reports shall state whether agency-wide policies and procedures comply with relevant PREA standards.

(c) For each PREA standard, the auditor shall determine whether the audited facility reaches one of the following findings: Exceeds Standard (substantially exceeds requirement of standard); Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period); Does Not Meet Standard (requires corrective action). The audit summary shall indicate, among other things, the number of provisions the facility has achieved at each grade level.

(d) Audit reports shall describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision for each audited facility, and shall include recommendations for any required corrective action.

(e) Auditors shall redact any personally identifiable inmate or staff information from their reports, but shall provide such information to the agency upon request, and may provide such information to the Department of Justice.

(f) The agency shall ensure that the auditor's final report is published on the agency's Web site if it has one, or is otherwise made readily available to the public.

§ 115.404 Audit corrective action plan.

(a) A finding of "Does Not Meet Standard" with one or more standards shall trigger a 180-day corrective action period.

(b) The auditor and the agency shall jointly develop a corrective action plan to achieve compliance.

(c) The auditor shall take necessary and appropriate steps to verify implementation of the corrective action plan, such as reviewing updated poli-

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cies and procedures or re-inspecting portions of a facility.

(d) After the 180-day corrective action period ends, the auditor shall issue a final determination as to whether the facility has achieved compliance with those standards requiring corrective action.

(e) If the agency does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that it has achieved compliance.

§ 115.405 Audit appeals.

(a) An agency may lodge an appeal with the Department of Justice regarding any specific audit finding that it believes to be incorrect. Such appeal must be lodged within 90 days of the auditor's final determination.

(b) If the Department determines that the agency has stated good cause for a re-evaluation, the agency may commission a re-audit by an auditor mutually agreed upon by the Department and the agency. The agency shall bear the costs of this re-audit.

(c) The findings of the re-audit shall be considered final.

Subpart F—State Compliance

§ 115.501 State determination and certification of full compliance.

(a) In determining pursuant to 42 U.S.C. 15607(c)(2) whether the State is in full compliance with the PREA standards, the Governor shall consider the results of the most recent agency audits.

(b) The Governor's certification shall apply to all facilities in the State under the operational control of the State's executive branch, including facilities operated by private entities on behalf of the State's executive branch.

PART 200—ALIEN TERRORIST REMOVAL PROCEDURES

AUTHORITY: Pub. L. 105-277, 112 Stat. 2681.

SOURCE: 64 FR 8496, Feb. 19, 1999, unless otherwise noted. Redesignated by Order No. 2662-2003, 68 FR 9846, Feb. 28, 2003.

Department of Justice

§ 201.3

§ 200.1 Eligibility for Protection under the Convention Against Torture.

A removal order under Title V of the Act shall not be executed in circumstances that would violate Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention, as implemented by section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105-277. Convention-based claims by aliens subject to removal under this Title shall be determined by the Attorney General, in consultation with the Secretary of State.

PART 201—DATA PROTECTION REVIEW COURT

Sec.

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AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 509, 510-512; Executive order of October 7, 2022.

SOURCE: AG Order No. 5517-2022, 87 FR 62305, October 14, 2022, unless otherwise noted.

§ 201.1 Purpose.

This part establishes an independent and impartial Data Protection Review Court (DPRC) to consider, in classified proceedings, applications for review of determinations made by the Civil Liberties Protection Officer of the Office of the Director of National Intelligence (ODNI CLPO) in response to qualifying complaints submitted through the redress mechanism established pursuant to section 3 of the Executive order of October 7, 2022, “Enhancing Safeguards

for United States Signals Intelligence Activities.”

§ 201.2 Definitions.

The terms “appropriate remediation,” “covered violation,” “element of the Intelligence Community,” “Intelligence Community,” “national security,” and “qualifying complaint” shall have the same meanings as they have in the Executive order of October 7, 2022. The term “qualifying state” means a country or regional economic integration organization designated as a qualifying state by the Attorney General pursuant to section 3(f) of the Executive order of October 7, 2022.

§ 201.3 Appointment of judges and rules of procedure.

(a) The Attorney General shall, in consultation with the Secretary of Commerce, the Director of National Intelligence, and the Privacy and Civil Liberties Oversight Board (PCLOB), appoint not fewer than six individuals to serve as judges on the DPRC for four-year renewable terms, choosing individuals who at the time of their initial appointment have not been employees of the executive branch in the previous two years.

(b) The Attorney General’s appointments shall be informed by the criteria used by the executive branch in assessing candidates for the Federal judiciary, giving weight to any prior judicial experience, and shall be of individuals with appropriate experience in the fields of data privacy and national security law. The Attorney General shall endeavor to ensure that at least half of the judges at any given time have prior judicial experience, and all persons appointed as judges shall be active members in good standing of the bar of a State, Commonwealth, Territory, or Possession, or of the District of Columbia and shall be duly licensed to practice law.

(c) During their term of appointment as judges on the DPRC, such judges shall not have any official duties or employment within the United States Government other than their official duties and employment as judges on the DPRC.

(d) The DPRC shall review and adopt by majority vote rules of procedure