

language in the “Add” column as set forth below:

Paragraph heading	Remove	Add
Paragraph (e)(5)	Example 4 ..	Example 5
Paragraph (e)(6)	Example 5 ..	Example 6
Paragraph (e)(7)	Example 6 ..	Example 7
Paragraph (e)(8)	Example 7 ..	Example 8
Paragraph (e)(9)	Example 8 ..	Example 9
Paragraph (e)(10)	Example 9 ..	Example 10
Paragraph (e)(11)	Example 10 ..	Example 11
Paragraph (e)(12)	Example 11 ..	Example 12
Paragraph (e)(13)	Example 12 ..	Example 13
Paragraph (e)(14)	Example 13 ..	Example 14
Paragraph (e)(15)	Example 14 ..	Example 15
Paragraph (e)(16)	Example 15 ..	Example 16
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Paragraph (e)(18)	Example 17 ..	Example 18
Paragraph (e)(19)	Example 18 ..	Example 19
Paragraph (e)(20)	Example 19 ..	Example 20
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Paragraph (e)(22)	Example 21 ..	Example 22
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Paragraph (e)(24)	Example 23 ..	Example 24
Paragraph (e)(25)	Example 24 ..	Example 25
Paragraph (e)(26)	Example 25 ..	Example 26
Paragraph (e)(27)	Example 26 ..	Example 27

§ 1.904-4 [Amended]

■ **Par. 6.** Section 1.904-4 is amended by removing the language “and (3)” from paragraph (q)(1).

■ **Par. 7.** Section 1.904-6 is amended by revising the first and second sentences of paragraph (f) to read as follows:

§ 1.904-6 Allocation and apportionment of foreign income taxes.

* * * * *

(f) * * * Some or all of the foreign gross income of a United States shareholder of a controlled foreign corporation, or of a U.S. person that owns the United States shareholder (the “U.S. owner”), that is attributable to foreign law inclusion regime income with respect to a foreign law CFC described in § 1.861-20(d)(3)(iii) or foreign law pass-through income from a reverse hybrid described in § 1.861-20(d)(3)(i)(C) is assigned to the section 951A category if, were the controlled foreign corporation the taxpayer that recognizes the foreign gross income, the foreign gross income would be assigned to the controlled foreign corporation’s tested income group (as defined in § 1.960-1(b)(33)) within the general category to which an inclusion under section 951A is attributable. The amount of the United States shareholder’s, or the U.S. owner’s, foreign gross income that is assigned to the section 951A category (or a specified separate category associated with the section 951A category) is based on the inclusion percentage (as defined in § 1.960-2(c)(2)) of the United States shareholder. * * *

* * * * *

■ **Par. 8.** Section 1.904(g)-3 is amended by revising paragraphs (b)(2) and (3) to read as follows:

§ 1.904 (g)-3 Ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for the recapture of separate limitation losses, overall foreign losses, and overall domestic losses.

* * * * *

(b) * * *

(2) *Full net operating loss deduction.* If the full net operating loss (that remains after carryovers to other taxable years) is deducted in computing the taxable income in a particular year (carryover year), so that there is no remaining net operating loss that can be carried to other taxable years, U.S. source losses and foreign source losses in separate categories that comprise the net operating loss shall be combined with the U.S. source income or loss and the foreign source income or loss in the same separate categories in the carryover year.

(3) *Partial net operating loss deduction.* If the full net operating loss (that remains after carryovers to other taxable years) is not deducted in computing the taxable income in a carryover year, so that there is remaining loss that can be carried to other taxable years, the following rules apply:

(i) Any U.S. source loss (not to exceed the amount of the net operating loss carryover deducted in computing the taxable income in the carryover year (the net operating loss deduction)) shall be carried over to the extent of any U.S. source income in the carryover year.

(ii) If the net operating loss deduction exceeds the U.S. source loss carryover determined under paragraph (b)(3)(i) of this section, then separate limitation losses that are part of the net operating loss shall be tentatively carried over to the extent of separate limitation income in the same separate category in the carryover year. If the sum of the potential separate limitation loss carryovers determined under the preceding sentence exceeds the amount of the net operating loss deduction reduced by any U.S. source loss carried over under paragraph (b)(3)(i) of this section, then the potential separate limitation loss carryovers shall be reduced pro rata so that their sum equals such amount.

(iii) If the net operating loss deduction exceeds the sum of the U.S. and separate limitation loss carryovers determined under paragraphs (b)(3)(i) and (ii) of this section, then a proportionate part of the remaining loss from each separate category shall be carried over to the extent of such excess and combined with the foreign source

loss, if any, in the same separate categories in the carryover year.

(iv) If the net operating loss deduction exceeds the sum of all the loss carryovers determined under paragraphs (b)(3)(i), (ii), and (iii) of this section, then any U.S. source loss not carried over under paragraph (b)(3)(i) of this section shall be carried over to the extent of such excess and combined with the U.S. source loss, if any, in the carryover year.

* * * * *

§ 1.905-4T [Removed]

■ **Par. 9.** Section 1.905-4T is removed.

Oluwafunmilayo A. Taylor,
*Chief, Publications and Regulations Branch,
 Legal Processing Division, Associate Chief
 Counsel, (Procedure and Administration).*

[FR Doc. 2021-21175 Filed 9-30-21; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[CPCLO Order No. 009-2021]

Privacy Act of 1974; Implementation

AGENCY: Office of Legal Policy, United States Department of Justice.

ACTION: Final rule.

SUMMARY: The United States Department of Justice (DOJ or Department), is finalizing with changes its Privacy Act exemption regulations for the system of records titled, “Judicial Nominations Files,” JUSTICE/OLP-002, which were published as a notice of proposed rulemaking (NPRM) on July 23, 2021. Specifically, the Department’s regulations will exempt the records maintained in JUSTICE/OLP-002 from one or more provisions of the Privacy Act.

DATES: This final rule is effective November 1, 2021.

FOR FURTHER INFORMATION CONTACT: Matrina Matthews, Executive Officer, Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Room 4234, Washington, DC 20530-0001; telephone: (202) 616-0040; email: matrina.matthews@usdoj.gov.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 2021, the Office of Legal Policy (OLP) published in the **Federal Register** a System of Records Notice (SORN) for an OLP system of records titled, “Judicial Nominations Files,” JUSTICE/OLP-002. 86 FR 37192. On July 23, 2021, the Department published

a notice of proposed rulemaking (NPRM) proposing to exempt records maintained in JUSTICE/OLP-002 from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k), and inviting public comment on the proposed exemptions. 86 FR 38955. The comment period was open through August 13, 2021, for the SORN and through August 23, 2021, for the NPRM. The Department received no comments on the proposed rule. After providing the opportunity for public comment, exemptions necessary to protect the ability of OLP to do its judicial nomination functions have been codified in this final rule as proposed in the NPRM.

The exemptions are necessary because certain classified information may be maintained in JUSTICE/OLP-002, including but not limited to, records related to a potential nominee that maintained a previous or current position with access to classified information and/or assigned to a national security sensitive position. Moreover, given the law enforcement information that may be discovered as part of the nomination investigation and/or evaluations, certain investigatory materials for law enforcement purposes may be maintained in this system of records. In addition, investigatory material may also be used in determining suitability, eligibility, or qualification decisions, and such information may require exemption to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Department under an express promise that the identity of the source would be held in confidence. Finally, the Department also utilizes various examination materials to determine individual qualifications for appointment, which if disclosed, could compromise the objectivity or fairness of the Department's examination and vetting process.

Response to Public Comments

In its Judicial Nominations Files SORN, published on July 14, 2021, and its Judicial Nominations Files NPRM, published on July 23, 2021, the Department invited public comment. The comment period for the SORN closed on August 13, 2021, and the comment period for the NPRM closed on August 23, 2021. The Department received no comments. Because no comments were submitted, and because OLP continues to assert the rationales in support of the exemptions as stated in the NPRM, 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 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, 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.

Subpart E—Exemption of Records Systems Under the Privacy Act

- 2. Revise § 16.73 to read as follows:

§ 16.73 Exemption of Office of Legal Policy Systems.

(a) The Judicial Nominations Files (JUSTICE/OLP-002) system of records is exempt from subsections (c)(3); (d); (e)(1), (e)(4)(G), (H), and (I); and (f) of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), and (k)(6). The exemptions in this paragraph (a) apply only to the extent that information in this system of records is subject to an exemption, pursuant to 5 U.S.C. 552a(k). Where compliance would not appear to

interfere with or adversely affect the Office of Legal Policy's (OLP's) processes, OLP may waive the applicable exemption.

(b) Exemptions from the particular subsections in paragraph (a) of this section are justified for the following reasons:

(1) From subsection (c)(3), the requirement that an accounting be made available to the named subject of a record, because release of disclosure accountings could alert the subject of an investigation and/or evaluation to the extent of an investigation and/or evaluation. Such a disclosure could also reveal investigative interests by not only OLP, but also other recipient agencies or components. Since release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation and/or evaluation, release could result in the destruction of documentary evidence, improper influencing of witnesses, endangerment of the physical safety of confidential sources, witnesses, and law enforcement personnel, the fabrication of testimony, and other activities that could impede or compromise the investigation and/or evaluation. In addition, providing the individual an accounting for each disclosure could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(2) From subsection (d), the access and amendment provisions, because many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning the subject of an investigation and/or evaluation. Access could reveal the identity of the source of the information and constitute a breach of the promised confidentiality on the part of the Department. Such breaches ultimately would restrict the free flow of information vital to the determination of a candidate's qualifications and suitability, among other determinations. The Department also relies on certain examination materials to assess and evaluate an individual's qualifications for an applicable position. Access and/or amendment to such material could reveal information about the examination and vetting process and could compromise its objectivity and/or fairness. Access and/or amendment to such material could also inappropriately advantage future candidates with knowledge of the examination materials. Finally, providing the individual access or amendment rights could result in the release of properly classified

information which would compromise the national defense or disrupt foreign policy.

(3) From subsection (e)(1), because in the collection of information for investigative and evaluative purposes, it is impossible to determine in advance what exact information may be of assistance in determining the qualifications and suitability of the subject of an investigation and/or evaluation. Information which may seem irrelevant, when combined with other seemingly irrelevant information, can on occasion provide a composite picture of a candidate which assists in determining whether that candidate should be nominated for appointment. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In interviewing individuals or obtaining other forms of information during OLP processes, information may be supplied to OLP which relates to matters incidental to the primary purpose of OLP's processes, but also relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(4) From subsections (e)(4)(G) and (H), and subsection (f), because this system is exempt from the access and amendment provisions of subsection (d).

(c) The General Files System of the Office of Legal Policy (JUSTICE/OLP-003) system of records is exempt from subsections 552a(c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H), and (e)(5); and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2) and (k)(5). The exemptions in this paragraph (c) apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552(j), (k). Where compliance would not appear to interfere with or adversely affect OLP's processes, the applicable exemption may be waived by OLP.

(d) Exemptions from the particular subsections in paragraph (c) of this section are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest on the part of the Department as well as the recipient agency. This would permit record subjects to impede the investigation, *e.g.*, destroy evidence, intimidate potential witnesses, or flee the area to

avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From subsection (d) because the records contained in this system relate to official Federal investigations. Individual access to these records might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e)(1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information since it may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigation process if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(5) From subsections (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations and duties.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

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

(8) From subsection (g) because this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

Dated: September 23, 2021.

Peter A. Winn,

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

[FR Doc. 2021-21340 Filed 9-30-21; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 323

[Docket ID: DOD-2019-OS-0110]

RIN 0790-AK69

Defense Logistics Agency Privacy Program

AGENCY: Defense Logistics Agency, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This final rule removes DoD's regulation concerning the Defense Logistics Agency Privacy Program. On April 11, 2019, the Department of Defense published a revised DoD-level Privacy Program rule, 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 October 1, 2021.

FOR FURTHER INFORMATION CONTACT: Lew Oleinick at 703-767-6194.

SUPPLEMENTARY INFORMATION: DoD now has a single DoD-level Privacy Program rule at 32 CFR part 310 (84 FR 14728) that contains all the codified information required for the Department. The Defense Logistics Agency Program regulation at 32 CFR part 323, last updated on July 9, 2015 (80 FR 39381), is no longer required and can 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 the removal of policies and procedures that are either now reflected in another CFR part, 32 CFR part 310, or are publicly available on the Department's website. To the extent that the Defense Logistics Agency internal guidance concerning the implementation of the Privacy Act within the Defense Logistics Agency is necessary, it will be issued in an internal document.

This rule is one of 20 separate component Privacy rules. With the finalization of the DoD-level Privacy rule at 32 CFR part 310, the Department is eliminating the need for this separate component Privacy rule and 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.

This rule is not significant under Executive Order 12866, "Regulatory Planning and Review."

List of Subjects in 32 CFR Part 323

Privacy.

PART 323—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 323 is removed.

Dated: September 27, 2021.

Aaron T. Siegel,

*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

[FR Doc. 2021-21344 Filed 9-30-21; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0201]

RIN 1625-AA00

Safety Zone; Columbia River Outfall Project, Columbia River, Vancouver, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters of the Columbia River. This action is necessary to provide for the safety of life on these navigable waters near Knapp, WA, at Columbia River Mile 95.8. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector Columbia River or a designated representative.

DATES: This rule is effective from 12:01 a.m. on October 1, 2021 through 11:59 p.m. on March 15, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0201 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Sean Morrison, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503-240-9319, email D13-SMB-MSUPortlandWWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On November 18, 2020, the Discovery Clean Water Alliance notified the Coast Guard that it would begin construction on the Phase 5A Project: Columbia River Outfall and Effluent Pipeline from 12:01 a.m. on October 1, 2021 through 11:59 p.m. on March 15, 2022, to remove and replace existing pipeline. The construction project includes the removal and replacement of an existing navigation marker (3-pile dolphin), installation of a 48" pipeline in the riverbed outside the navigation channel, and removal of an existing 30" pipeline from the riverbed. The scope of work may include the need to construct temporary pile-supported work platforms, or dredge, to access shallow water areas. Lighted barges will be used in deeper water. The Captain of the Port Sector Columbia River (COTP) has determined that potential hazards associated with the construction project would be a safety concern for anyone within the designated area of the Columbia River Outfall and Effluent Pipeline construction project. In response, on August 28, 2021 the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Columbia River Outfall Project, Columbia River, Vancouver, WA (86 FR 47611). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this safety zone. During the comment period that ended September 10, 2021 we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the Columbia River Outfall Projects.