DEPARTMENT OF JUSTICE

28 CFR Part 16

[CPCLO Order No. 003–2016]

Privacy Act of 1974; Implementation

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: Elsewhere in the **Federal Register**, the Federal Bureau of Investigation (FBI), a component of the Department of Justice (Department or DOJ), has published a notice of a modified Privacy Act system of records, ''The Next Generation Identification (NGI) System,'' JUSTICE/FBI–009. In this notice of proposed rulemaking, the FBI proposes to exempt this system from certain provisions of the Privacy Act in order to prevent interference with the FBI's mission to detect, deter, and prosecute crimes and to protect the national security, which includes the use of criminal history record information and biometric identifiers. For the reasons provided below, the Department proposes to amend its Privacy Act regulations by establishing an exemption for records in this system from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k). Public comment is invited.

DATES: Comments must be received by June 6, 2016.

ADDRESSES: Address all comments to the Privacy Analyst, Privacy and Civil Liberties Office, National Place Building, 1331 Pennsylvania Ave. NW., Suite 1000, Washington, DC 20530–0001 or facsimile 202–307–0693. To ensure proper handling, please reference the CPCLO Order No. on your correspondence. You may review an electronic version of the proposed rule at *http://www.regulations.gov.* You may also comment via the Internet to either the Privacy and Civil Liberties Office at DOJ Privacy ACT *ProposedRegulations@usdoj.gov*; or by using the *http://www.regulations.gov* comment form for this regulation. When submitting comments electronically, you must include the CPCLO Order No. in the subject box.

Please note that the Department is requesting that electronic comments be submitted before midnight Eastern Daylight Savings Time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at that time. Commenters in time zones other than Eastern Time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Department's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Department's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

FOR FURTHER INFORMATION CONTACT: Roxane M. Panarella, Assistant General Counsel, Privacy and Civil Liberties Unit, Office of the General Counsel, FBI, Washington, DC 20535–0001, telephone 304–625–4000.

SUPPLEMENTARY INFORMATION: In the Notice section of today's **Federal Register**, the FBI has established a modified Privacy Act system of records, ''The Next Generation Identification (NGI) System,'', JUSTICE/FBI–009. The system serves as a repository for FBI information and for information lawfully received from federal, state, local, tribal, foreign, and other governmental partners. It provides fingerprint identification and criminal history services, as well as biometric services such as latent fingerprint, palm print, and face recognition. In this rulemaking, the FBI proposes to exempt this Privacy Act system of records from certain provisions of the Privacy Act in order to prevent interference with the responsibilities of the FBI to detect, deter, and prosecute crimes and to protect the national security.

Regulatory Flexibility Act

This proposed rule relates to individuals rather than small business entities. Pursuant to the requirements of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, therefore, the proposed rule will not have a significant economic impact on a substantial number of small entities.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, 5 U.S.C. 801 *et seq.,* requires the FBI to comply with small entity requests for information and advice about compliance with statutes and regulations within FBI 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 *http://www.sba.gov/advo/archive/sum_sbrefa.html.*

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), requires that the FBI 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 proposed rule. The records that are contributed to this system are created by the FBI or other law enforcement and governmental entities and sharing of this information electronically will not increase the paperwork burden on the public.

Analysis of Regulatory Impacts

This proposed rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866 and therefore further regulatory evaluation is not necessary. This proposed rule will not have a significant economic impact on a substantial

number of small entities because it applies only to information about individuals.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 103–3, 109 Stat. 48, requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in aggregate, $100 million or more in any one year, the UMRA analysis is required. This proposed rule would not impose Federal mandates on any State, local, or tribal government or the private sector.

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, it is proposed to amend 28 CFR part 16 as follows:

PART 16—[AMENDED]

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

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

Subpart E—Exemption of Records Systems Under the Privacy Act

§ 16.96 [Amended]

■ 2. Amend by revising § 16.96 paragraph (e) as follows:

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

* * * * *

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

(1) The Next Generation Identification (NGI) System (JUSTICE/FBI–009).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k). Where compliance would not appear to interfere with or adversely affect the purpose of this system to detect, deter, and prosecute crimes and to protect the national security, the applicable exemption may be waived by the FBI in its sole discretion.

(f) Exemptions from the particular subsections 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 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 investigative interest by the FBI or agencies that are recipients of the disclosures. Revealing this information could compromise ongoing, authorized law enforcement and national security efforts and may permit the record subject with the opportunity to evade or impede the 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 of 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)(1), (2), (3) and (4), (e)(4)(G) and (H), (e)(8), (f) and (g) because these provisions concern individual access to and amendment of law enforcement records and compliance could alert the subject of an authorized law enforcement activity about that particular activity and the interest of the FBI and/or other law enforcement agencies. Providing access could compromise sensitive law enforcement information, disclose information which would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigative technique; could 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. Also, an alternate system of access has been provided in 28 CFR 16.30 to 34 and 28 CFR 20.34 for record subjects to obtain a copy of their criminal history records. However, the vast majority of criminal history records concern local arrests for which it would be inappropriate for the FBI to undertake correction or amendment.

(4) From subsection (e)(1) because it is not always possible to know in advance what information is relevant and necessary for law enforcement purposes. The relevance and utility of certain information may not always be evident until and unless it is vetted and matched with other sources of information that are necessarily and lawfully maintained by the FBI. Most records in this system are acquired from state and local law enforcement agencies and it is not possible for the FBI to review that information as relevant and necessary.

(5) From subsection (e)(2) and (3) because 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. Also, the majority of criminal history records and associated biometrics in this system are collected by state and local agencies at the time of arrest; therefore it is not feasible for the FBI to collect directly from the individual or to provide notice. Those persons who voluntarily submit fingerprints into this system pursuant to state and federal statutes for licensing, employment, and similar civil purposes receive an (e)(3) notice.

(6) From subsection (e)(4)(I), 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 the sources of law enforcement information and to protect the privacy and safety of witnesses and informants and others who provide information to the FBI.

(7) From subsection (e)(5) because in the collection of information for authorized law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With time, seemingly irrelevant or untimely information may acquire new significance when new details are brought to light. Additionally, the information may aid in establishing patterns of activity and providing criminal leads. Most records in this system are acquired from state and local law enforcement agencies and it would be impossible for the FBI to vouch for the compliance of these agencies with this provision. The FBI does communicate to these agencies the need for accurate and timely criminal history

records, including criminal dispositions.

Dated: April 21, 2016.

Erika Brown Lee,

Chief Privacy and Civil Liberties Officer, Department of Justice.

[FR Doc. 2016–10119 Filed 5–4–16; 8:45 am]

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