



## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 310

[Docket ID DoD-2020-OS-0095]

RIN 0790-AK96

### Privacy Act of 1974; Implementation

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** The DoD is giving concurrent notice of an updated system of records pursuant to the Privacy Act of 1974 for the DoD 0004 “Defense Repository for Common Enterprise Data (DRCED)” system of records and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the DRCED system of records from certain provisions of the Privacy Act because of national security requirements.

**DATES:** Send comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- \* Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.
- \* Mail: The DoD cannot receive written comments at this time due to the COVID-19 pandemic. Comments should be sent electronically to the docket listed above.

*Instructions:* All submissions received must include the agency name and docket number for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions

available for public viewing on the Internet at <https://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lyn Kirby, Chief, Defense Privacy, Civil Liberties, and Transparency Division, Directorate for Oversight and Compliance, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350-1700; OSD.DPCLTD@mail.mil; (703) 571-0070.

**SUPPLEMENTARY INFORMATION:**

I. Background

The DoD 0004 DRCED system of records is a DoD-wide system of records that supports multiple information systems that provide DoD-wide and component-level enterprise solutions for integrating and analyzing targeted data from existing DoD systems to develop timely, actionable, and insightful conclusions in support of national strategies. These systems are used to automate financial and business transactions, perform cost-management analysis, produce oversight and audit reports, and provide critical data linking to improve performance of mission objectives. These systems are also capable of creating predictive analytic models based upon specific data streams to equip decision makers with critical data necessary for execution of fiscal and operational requirements.

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 the provisions providing individuals with a right to request access to and amendment of their own records. If an agency intends to exempt a particular system of records, it must typically first go through the rulemaking process to provide public notice and an opportunity to comment on the proposed exemption. This proposed rule explains why an exemption is being claimed for this system of records and invites public comment, which DoD will consider before the issuance of a

final rule implementing the exemption.

The DoD proposes to modify 32 CFR part 310 to add a new Privacy Act exemption rule for the DoD 0004 DRCED system of records. The DoD proposes an exemption for DoD 0004 DRCED because some of its records may contain classified national security information and disclosure of those records to an individual 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 executive order. DoD is proposing to claim an exemption from the access and amendment requirements of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(1), to prevent disclosure of any information properly classified pursuant to executive order, as implemented by DoD Instruction (DoDI) 5200.01 and DoD Manual (DoDM) 5200.01, Volumes 1 and 3.

If implemented, this proposed rule will deny an individual access under the Privacy Act to only those portions of records for which the claimed exemption applies. In addition, records in the DoD 0004 DRCED system of records are only exempt from the Privacy Act to the extent the purposes underlying the exemption pertain to the record.

A notice of a modified system of records for DoD 0004 DRCED is also published in this issue of the *Federal Register*.

## **REGULATORY ANALYSIS**

### **Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that this proposed

rule is not a significant regulatory action.

**Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs”**

This proposed rule has been deemed not significant under Executive Order (EO) 12866, “Regulatory Planning and Review,” therefore, the requirements of EO 13771, “Reducing Regulation and Controlling Regulatory Costs” do not apply.

**Congressional Review Act**

This proposed rule is not a “major rule” as defined by 5 U.S.C. 804(2).

**Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C Chapter 6)**

It has been certified that this proposed rule does not have a significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act Systems of Records within the DoD. A Regulatory Flexibility Analysis is not required.

**Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)**

It has been determined that this proposed rule does not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

**Section 202, Public Law 104-4, “Unfunded Mandates Reform Act”**

It has been determined that this proposed rule does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that it will not significantly or uniquely affect small governments.

**Executive Order 13132, “Federalism”**

It has been determined that this proposed rule does not have federalism implications. This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

## List of Subjects in 32 CFR Part 310

Privacy.

Accordingly, 32 CFR part 310 is proposed to be amended as follows:

### **PART 310—PROTECTION OF PRIVACY AND ACCESS TO AND AMENDMENT OF INDIVIDUAL RECORDS UNDER THE PRIVACY ACT OF 1974**

1. The authority citation for 32 CFR part 310 continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Section 310.13 is amended by adding paragraph (e)(3) as follows:

#### **§310.13 Exemptions for DoD-wide systems.**

\* \* \* \* \*

(e) \* \* \*

(3) *System identifier and name:* DoD 0004, "Defense Repository for Common Enterprise Data (DRCED)."

(i) *Exemptions:* This system of records is exempt from subsections 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), and (d)(4) of the Privacy Act.

(ii) *Authority:* 5 U.S.C. 552a(k)(1).

(iii) *Exemption from the particular subsections.* Exemption from the particular subsections is justified for the following reasons:

(A) *Subsection (c)(3) (accounting of disclosures).* Because common enterprise records may contain information properly classified pursuant to Executive Order, the disclosure accountings of such records may also contain information properly classified pursuant to executive order, the disclosure of which may cause damage to national security.

(B) *Subsections (d)(1), (2), (3), and (4) (record subject's right to access and amend records).* Access to and amendment of records by the record subject could disclose information properly classified pursuant to executive order. Disclosure of classified records to an individual may cause damage to national security.

(iv) *Exempt records from other systems.* In addition, in the course of carrying out the overall purpose for this system, exempt records from other system of records may in turn become part of the records maintained in this system. To the extent that copies of exempt records from those other systems of records are maintained in this system, the DoD claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the prior system(s) of which they are a part, provided the reason for the exemption remains valid and necessary.

Dated: December 22, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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