

Billing Code



This document is scheduled to be published in the Federal Register on 07/22/2021 and available online at [federalregister.gov/d/2021-15600](https://www.federalregister.gov/d/2021-15600), and on [govinfo.gov](https://www.govinfo.gov)

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DoD-2021-OS-0054]

RIN 0790-AL14

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary of Defense, Department of Defense (DoD).

ACTION: Direct final rule with request for comments.

SUMMARY: The Department of Defense (DoD or Department) is giving concurrent notice of a new Department-wide system of records DoD 0007, “Defense Reasonable Accommodation and Assistive Technology Records,” and this rulemaking, which exempts portions of this system of records from certain provisions of the Privacy Act of 1974, as amended, because of national security requirements. This rule is being published as a direct final rule as the Department does not expect to receive any adverse comments. If such comments are received, this direct final rule will be withdrawn and a proposed rule for comments will be published.

DATES: The rule is effective on [INSERT DATE 70 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER] unless comments are received that would result in a contrary determination. Comments will be accepted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]. If adverse comment is received, the Department will publish a timely withdrawal of the rule in the Federal Register.

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

\* Federal eRulemaking 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 or Regulatory Information Number (RIN) 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, OSD.DPCLTD@mail.mil, (703) 571-0070.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In accordance with the Privacy Act of 1974, DoD is establishing a new Department-wide system of records titled DoD 0007, “Defense Reasonable Accommodation and Assistive Technology Records.” This system of records covers both electronic and paper records and will be used by DoD components and offices to maintain records about accommodations based on disability requested by or provided to employees and applicants for employment and participants in DoD programs and activities. The Rehabilitation Act of 1973, as amended, generally requires Federal agencies to provide accommodations which enable individuals with disabilities to perform DoD employment and participate in DoD programs and activities, unless such accommodation would impose an undue burden. In addition, DoD’s Computer/Electronic Accommodations Program (CAP) provides assistive (computer/electronic) technology solutions to individuals—including injured, wounded, or ill Service members—with hearing, vision, dexterity, cognitive, and/or communications impairments in the form of an accessible work environment. This also includes the request and delivery of personal assistance services for covered individuals. Such disability accommodations include: (1) making existing facilities readily accessible to and usable by individuals with disabilities; (2) job restructuring,

modification of work schedules or place of work, extended leave, telecommuting, or reassignment to a vacant position; and/or (3) acquisition or modification of equipment or devices, including computer software and hardware, appropriate adjustments or modifications of examinations, training materials or policies, the provision of qualified readers and/or interpreters, personal assistants, service animals, and other similar accommodations.

## II. Privacy Act Exemption

The Privacy Act permits 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 and accountings of disclosures of such records. If an agency intends to exempt a particular system of records, it must first go through the rulemaking process to provide public notice and an opportunity to comment on the proposed exemption. The Office of the Secretary is amending 32 CFR part 310 to add a new Privacy Act exemption rule for this system of records. The DoD is adding an exemption for this system of records because some of its records may contain classified national security information and providing notice, access, amendment, and disclosure of accounting of 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 executive order. The DoD is claiming an exemption from several provisions of the Privacy Act, including various access, amendment, disclosure of accounting, and certain record-keeping and notice requirements, to prevent disclosure of any information properly classified pursuant to executive order, as implemented by DoD Instruction 5200.01 and DoD Manual 5200.01, Volumes 1 and 3.

## III. Direct Final Rulemaking

This rule is being published as a direct final rule as the Department does not expect to receive any significant adverse comments. If such comments are received, this direct final rule

will be withdrawn and a proposed rule for comments will be published. If no such comments are received, this direct final rule will become effective ten days after the comment period expires.

For purposes of this rule, a significant adverse comment is one that explains (1) why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of this direct final rule, the Department will consider whether the comment raises an issue serious enough to warrant a substantive response had it been submitted in a standard notice-and-comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this direct final rule would be ineffective without the addition.

An agency typically uses direct final rulemaking when it anticipates the rule will be non-controversial. The Department has determined that this rule is suitable for direct final rulemaking. The rule exempts this Privacy Act system of records on the basis that it may contain classified information. This exemption relieves the Department from the requirements of several provisions of the Privacy Act, including various access, amendment, disclosure of accounting, and certain recordkeeping and notice requirements. The purpose of the rule is to prevent disclosure of any information properly classified pursuant to executive order and protect against harm to the national security. This exemption should not be controversial and is consistent with federal law and policy regarding the appropriate handling and protection of national security information. Accordingly, pursuant to 5 U.S.C. 553(b), the Department has for good cause determined that the notice and comment requirements are unnecessary.

This direct final rule adds to the DoD's Privacy Act exemptions for Department-wide systems of records found in 32 CFR 310.13. 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.

A notice of a new system of records for DoD 0007 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 also emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that Privacy Act rules for the DoD are not significant rules under these Executive orders.

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

It has been determined that the Privacy Act rules for the DoD does not involve Federal mandates 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 such rules will not significantly or uniquely affect small governments.

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

It has been determined that Privacy Act rules for the DoD impose no additional reporting or recordkeeping requirements on the public under the Paperwork Reduction Act of 1995.

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

It has been certified that this Privacy Act rule for the DoD does not have significant economic impacts on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the DoD.

## **Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), it has been determined that this direct final rule is not a major rule, as defined by 5 U.S.C. 804(2).

## **Executive Order 13132, “Federalism”**

It has been determined that the Privacy Act rules for the DoD do not have federalism implications. The rules do 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 amended as follows:

#### **PART 310—[AMENDED]**

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

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

2. Amend § 310.13 by adding reserve paragraphs (e)(3), (4), and (5) and paragraph (e)(6) to read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(6) *System identifier and name.* DoD 0007, “Defense Reasonable Accommodation and Assistive Technology Records.”

(i) *Exemptions.* This system of records is exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(4)(G), (H), and (I); and (f).

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

(iii) *Exemption from the particular subsections.* Exemption from the particular subsections pursuant to exemption (k)(1) is justified for the following reasons:

(A) *Subsections (c)(3), (c)(4), (d)(1), and (d)(2).* Records in this system of records may contain information concerning individuals that is properly classified pursuant to executive order.

Application of exemption (k)(1) for such records may be necessary because access to and

amendment of the records, or release of the accounting of disclosures for such records, could

reveal classified information. Disclosure of classified records to an individual may cause damage to national security. Accordingly, application of exemption (k)(1) may be necessary.

(B) *Subsections (d)(3) and (4)*. Subsections (d)(3) and (4) are inapplicable to the extent an exemption is claimed from (d)(2).

(C) *Subsections (e)(4)(G) and (H) and Subsection (f)*. Subsections (e)(4)(G) and (H) and subsection (f) are inapplicable to the extent exemption is claimed from the access and amendment provisions of subsection (d). Because portions of this system are exempt from the individual access and amendment provisions of subsection (d) for the reasons noted in paragraphs (e)(6)(iii)(A) and (B) of this section, DoD is not required to establish requirements, rules, or procedures with respect to such access or amendment provisions. Providing notice to individuals with respect to the existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access, view, and seek to amend records pertaining to themselves in the system would potentially undermine national security and the confidentiality of classified information. Accordingly, application of exemption (k)(1) may be necessary.

(D) *Subsection (e)(4)(I)*. To the extent that subsection (e)(4)(I) is construed to require more detailed disclosure than the broad information currently published in the system notice concerning categories of sources of records in the system, an exemption from this provision is necessary to protect national security and the confidentiality of sources and methods, and other classified information.

(iv) *Exempt records from other systems*. In the course of carrying out the overall purpose for this system, exempt records from other systems 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: July 19, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021-15600 Filed: 7/21/2021 8:45 am; Publication Date: 7/22/2021]