



DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DOD-2023-OS-0044]

RIN 0790-AL54

Privacy Act of 1974; Implementation

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

ACTION: Direct final rule.

SUMMARY: The DoD is amending its regulations to remove the exemption rules associated with 14 systems of records notices (SORNs) established for the DoD Components listed in the SUPPLEMENTARY INFORMATION section, under the Privacy Act of 1974, as amended.

Elsewhere in this issue of the *Federal Register*, the DoD is giving concurrent notice of the rescindment of 26 SORNs, including those that correspond to the exemption rules being removed by this rule amendment. 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 If such comments are received, this direct final rule will be withdrawn and a proposed rule for comments will be published.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].

ADDRESSES: You may submit comments, identified by docket number, Regulation Identifier Number (RIN), and title, by any of the following methods.

\* Federal Rulemaking Portal: <https://www.regulations.gov>.

Follow the instructions for submitting comments.

\* Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350-1700.

*Instructions:* All submissions received must include the agency name and docket number or 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. Rahwa Keleta, OSD.DPCLTD@mail.mil, (703) 571-0070.

SUPPLEMENTARY INFORMATION:

I. Privacy Act Exemption

The DoD is amending 32 CFR part 310 to remove the exemption rules associated with the following 14 systems of records notices (SORNs) established for the DoD Components.

Department of the Air Force SORNs:

System identifier and name. F051 AFJA I, Military Justice and Magistrate Court Records

System identifier and name. F033 AF A, Information Requests – Freedom of Information Act

System identifier and name. F033 AF B, Privacy Act Request File

Department of the Army SORN:

System identifier and name. A0340-21 OAA, Privacy Case Files

Department of the Navy SORNs:

System identifier and name. NM05211-1, Privacy Act Request/Amendment Files and Tracking System

System identifier and name. NM05720-1, FOIA Request/Appeal Files and Tracking System.

Defense Intelligence Agency SORN:

System identifier and name. LDIA 0010, Information Requests-Freedom of Information Act (FOIA) and Privacy Act

Defense Logistics Agency SORN:

System identifier and name. S510.30, Freedom of Information Act/Privacy Act Requests and Administrative Appeal Records.

Defense Security Service SORN:

System identifier and name. V1-01, Privacy and Freedom of Information Request Records.

Defense Threat Reduction Agency SORN:

System identifier and name. HDTRA 021, Freedom of Information Act and Privacy Act Case Files.

National Guard Bureau SORN:

System identifier and name. INGB 001, Freedom of Information Act (FOIA) and Privacy Act (PA) Case Files

Office of the Inspector General SORN:

System identifier and name. CIG-01, Privacy Act and Freedom of Information Act Case Files

Office of the Secretary of Defense SORNs:

System identifier and name. DWHS E02, Freedom of Information Act (FOIA) Case Files

System identifier and name. DWHS E04, Privacy Act Case Files

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 exemption.

When a system of records is no longer required to be collected or maintained, the system of records may be discontinued. The notice for that system of record is rescinded in the *Federal Register*, and the records covered by the rescinded system of records are lawfully transferred or disposed of in accordance with applicable requirements. At the time of rescindment or following rescindment for the system of records notice, Federal agencies will seek to also rescind the associated exemption rules within the Code of Federal Regulations.

## II. 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 cancelled and a proposed rule for comments will be published. If no such comments are received, this direct final rule will become effective 10 days after the comment period expires.

For purposes of this rulemaking, 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 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.

The DoD is modifying 32 CFR part 310 by rescinding the following regulation provisions (in their entirety) due to the underlying SORNs being rescinded (most of them concurrently by associated public notice):

- 32 CFR 310.14(e)(7), System identifier and name. F051 AF JA F, Courts-Martial and Article 15 Records.
- 32 CFR 310.14(f)(20), System identifier and name. F033 AF A, Information Requests - Freedom of Information Act.
- 32 CFR 310.14(f)(21), System identifier and name. F033 AF B, Privacy Act Request Files.
- 32 CFR 310.15(g)(21), System identifier and name. A0340-21 OAA, Privacy Case Files.
- 32 CFR 310.16(a)(22), System identifier and name. NM05211-1, Privacy Act Request Files and Tracking System.
- 32 CFR 310.16(a)(23), System identifier and name. NM05720-1, FOIA Request/Appeal Files and Tracking System.
- 32 CFR 310.20(b)(8), System identifier and name. LDIA 0010, Information Requests-Freedom of Information Act (FOIA) and Privacy Act.
- 32 CFR 310.21(c)(6), System identifier and name. S510.30, Freedom of Information Act/Privacy Act Requests and Administrative Appeal Records.
- 32 CFR 310.22(b)(1), System identifier and name. V1-01, Privacy and Freedom of Information Request Records.
- 32 CFR 310.23(a)(3), System identifier and name. HDTRA 021, Freedom of Information Act and Privacy Act Request Case Files.
- 32 CFR 310.25(e)(1), System identifier and name. INGB 001, Freedom of Information Act (5 U.S.C.) and Privacy Act (5 U.S.C. 552a) Case Files.
- 32 CFR 310.28(c)(5), System identifier and name. CIG 01, Privacy Act and Freedom of Information Act Case Files.
- 32 CFR 310.29(c)(12), System identifier and name. DFOISR 05, Freedom of Information Act Case Files.
- 32 CFR 310.29(c)(13), System identifier and name. DFOISR 10, Privacy Act Case Files.

## **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 rule is not a significant regulatory action under these Executive orders.

### **Congressional Review Act (5 U.S.C. 804(2))**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. DoD will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule may take effect no earlier than 60 calendar days after Congress receives the rule report or the rule is published in the Federal Register, whichever is later. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

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

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, in any one year of \$100 million in 1995 dollars, updated annually for inflation. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

**Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. 601 *et seq.*)**

The Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency has certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule is concerned only with the administration of Privacy Act systems of records within the DoD. Therefore, the Regulatory Flexibility Act, as amended, does not require DoD to prepare a regulatory flexibility analysis.

**Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 501 *et seq.*)**

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) was enacted to minimize the paperwork burden for individuals; small businesses; educational and nonprofit institutions; Federal contractors; State, local, and tribal governments; and other persons resulting from the collection of information by or for the Federal Government. The Act requires agencies to obtain approval from the Office of Management and Budget before using identical questions to collect information from ten or more persons. This rule does not impose reporting or recordkeeping requirements on the public.

**Executive Order 13132, “Federalism”**

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. This rule will not have a substantial effect on State and local governments.

**Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments”**

Executive Order 13175 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on one or more Indian tribes, preempts tribal law, or affects the distribution of power and responsibilities between the Federal Government and Indian tribes. This rule will not have a substantial effect on Indian tribal governments.

## List of Subjects in 32 CFR Part 310

Privacy.

Accordingly, 32 CFR part 310 is 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.

#### **§310.14 [Amended]**

2. Amend §310.14 by removing and reserving paragraphs (e)(7) and (f)(20) and (21).

#### **§310.15 [Amended]**

3. Amend §310.15 by removing and reserving paragraph (g)(21).

#### **§310.16 [Amended]**

4. Amend §310.16 by removing and reserving paragraphs (a)(22) and (23).

#### **§310.20 [Amended]**

5. Amend §310.20 by removing and reserving paragraph (b)(8).

#### **§310.21 [Amended]**

6. Amend §310.21 by removing and reserving paragraph (c)(6).

#### **§310.22 [Amended]**

7. Amend §310.22 by removing and reserving paragraph (b)(1).

#### **§310.23 [Amended]**

8. Amend §310.23 by removing paragraph (a)(3).

#### **§310.25 [Amended]**

9. Amend §310.25 by removing and reserving paragraph (e)(1).

#### **§310.28 [Amended]**

10. Amend §310.28 by removing and reserving paragraph (c)(5).

#### **§310.29 [Amended]**

11. Amend §310.29 by removing and reserving paragraphs (c)(12) and (13).

Dated: June 27, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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