



DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DOD-2025-OS-0276]

RIN 0790-AL59

Privacy Act of 1974; Implementation

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: The Department of Defense (Department or DoD) is giving concurrent notice of a new Department-wide system of records pursuant to the Privacy Act of 1974 for the DoD-0027, “Suspension and Debarment Records” system of records and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of this system of records from certain provisions of the Privacy Act because of law enforcement and confidential source considerations.

DATES: Send comments on or before [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE 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 05F16, 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, Defense Privacy and Civil Liberties Directorate, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 05F16, Alexandria, VA 22350-1700; osd.mc-alex.oatsd-pclt.mbx.pclld-sorn@mail.mil; (703) 571-0070.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, the Department is establishing a new system of records titled “Suspension and Debarment Records,” DoD-0027. This system of records notice supports the collection of and documentation of decisions regarding suspension, debarment, or other administrative actions, as authorized by the Federal Acquisition Regulation or the Non-procurement Common Rule. Additional information about Suspension and Debarment records may be found in the accompanying notice of a new system of records, published elsewhere in today’s issue of the *Federal Register*.

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 those that provide 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 first go through the rulemaking process pursuant to 5 U.S.C. 553(b)(1)-(3), (c), and (e). This proposed rulemaking 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 Department proposes to modify 32 CFR part 310 to add a new Privacy Act exemption rule for DoD-0027, "Suspension and Debarment Records." In this proposed rule, the Department proposes to exempt portions of this system of records from certain provisions of the Privacy Act because information in this system of records may fall within the scope of 5 U.S.C. 552a(k)(2) and (k)(5).

The DoD is proposing to add a new Privacy Act exemption rule for this system of records because records in the system may contain investigatory material compiled for law enforcement purposes within the scope of 5 U.S.C. 552a(k)(2). This exemption authorizes agencies to claim an exemption for systems of records that contain investigatory materials compiled for law enforcement purposes, other than material within the scope of 5 U.S.C. 552a(j)(2). Information in this system may contain such investigatory materials for the purpose of preventing, among other harms, the identification of actual or potential subjects of investigation and/or sources of investigative information and to avoid frustrating the underlying law enforcement purpose for which the records were collected. The DoD therefore is proposing to exempt this system from several provisions of the Privacy Act, including various access, amendment, disclosure of accounting, and certain record-keeping and notice requirements, to prevent identification of actual or potential subjects of investigation and/or identification of sources of investigative information to prevent harm to the underlying law enforcement purpose.

In addition, the DoD proposes an exemption for this system of records because these records may contain investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, and the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. The Privacy Act, pursuant to 5 U.S.C. 552a(k)(5), authorizes agencies to claim an exemption for systems of records that contain information identifying sources crucial to determining suitability for holding positions of trust. This exemption is generally applicable to

confidential source-identifying material in background and personnel-type investigative files used to determine suitability, eligibility, or qualification for Federal contracts. 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-0027 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 rule is not a significant regulatory action.

Executive Order 14192, “Unleashing Prosperity Through Deregulation”

This rule is not an Executive Order 14192 regulatory action because this rule is not significant under Executive Order 12866.

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

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532(a)) 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. Chapter 6)

The Acting 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 et seq.) 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 35)

The Paperwork Reduction Act (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 that agencies 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 proposed rule that has federalism implications, imposes substantial direct compliance costs on State and local governments, and is not required by statute, or has federalism implications and preempts state law. 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 proposed rule (and subsequent final 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 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. Amend § 310.13 by reserving paragraphs (e)(16)-(19) and adding paragraph (e)(20) to read as follows:

§ 310.13 Exemptions for DoD-wide systems.

* * * * *

(e) * * *

(16) [Reserved]

(17) [Reserved]

(18) [Reserved]

(19) [Reserved]

(20) *System identifier and name.* DoD-0027, “Suspension and Debarment Records.”

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

(ii) *Authority.* 5 U.S.C. 552a (k)(2) and (k)(5).

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

(A) *Subsections (c)(3), (d)(1), and (d)(2).*

(1) *Exemption (k)(2)*. Records in this system of records may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C.

552a(j)(2). Application of exemption (k)(2) may be necessary because access to, amendment of, or release of the accounting of disclosures of such records could: inform the record subject of an investigation of the existence, nature, or scope of an actual or potential law enforcement or disciplinary investigation, and thereby seriously impede law enforcement efforts by permitting the record subject and other persons to whom the subject might disclose the records or accounting of records to avoid criminal penalties, civil remedies, or disciplinary measures; interfere with a civil or administrative action or investigation by allowing the subject to tamper with witnesses or evidence, and to avoid detection or apprehension, which may undermine the entire investigatory process; or reveal confidential sources who might not have otherwise come forward to assist in an investigation and thereby hinder DoD's ability to obtain information from future confidential sources, and result in an unwarranted invasion of the privacy of others. Amendment of such records could also impose a highly impracticable administrative burden by requiring investigations to be continuously reinvestigated. If an individual, however, is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible because of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source.

(2) *Exemption (k)(5)*. Records in this system of records may contain information concerning investigatory material compiled solely for determining suitability, eligibility, and qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information. In some cases, such records may contain information pertaining to the identity of a source who furnished information to the Government under an express promise that the source's identity would be held in confidence (or prior to the effective date of the Privacy Act, under an implied promise). Application of exemption (k)(5) for such records may be necessary because

access to, amendment of, or release of the accounting of disclosures of such records could identify these confidential sources who might not otherwise come forward to assist the Government, could hinder the Government's ability to obtain information from future confidential sources, and result in an unwarranted invasion of the privacy of others.

(B) *Subsection (d)(3), and (d)(4)*. These subsections are inapplicable to the extent that an exemption is being claimed from subsections (d)(1) and (2). Accordingly, exemptions from subsections (d)(3), and (d)(4) are claimed pursuant to (k)(2) and (k)(5).

(C) *Subsection (e)(1)*. In the collection of information for investigatory purposes it is not always possible to conclusively determine the relevance and necessity of particular information in the early stages of the investigation or adjudication. In some instances, it will be only after the collected information is evaluated in light of other information that its relevance and necessity for effective investigation and adjudication can be assessed. Collection of such information permits more informed decision-making by the Department when making required disciplinary determinations. Accordingly, application of exemptions (k)(2) and (k)(5) may be necessary.

(D) *Subsection (e)(4)(G) and (H)*. These subsections are inapplicable to the extent exemption is claimed from subsections (d)(1) and (2). If suspension or debarment action is taken against an individual, the individual will be notified and have the procedural rights set forth by the governing regulation, i.e., 48 CFR subpart 9.4 for contracts, and 2 CFR part 180 for non-procurement transactions. These regulations address the respondent's access to the administrative record and response rights.

(E) *Subsection (e)(4)(I)*. To the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect the existence, nature, or scope of an actual or potential law enforcement which may seriously impede law enforcement efforts, prior to the initiation of any

suspension or debarment action. Accordingly, application of exemptions (k)(2) and (k)(5) may be necessary.

(F) *Subsection (f)*. The agency's rules are inapplicable to those portions of the system that are exempt. Accordingly, application of exemption (k)(2) and (k)(5) may be necessary. If suspension or debarment action is taken against an individual, the individual will be notified and have the procedural rights set forth by the governing regulation, i.e., 48 CFR subpart 9.4 for contracts, and 2 CFR part 180 for non-procurement transactions. These regulations address the respondent's access to the administrative record and response rights.

(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 23, 2025.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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