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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 161

[Docket ID: DoD-2025-OS-0009]

RIN 0790-AL85

Identification (ID) Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals; Amendment

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: Interim final rule; request for comments.

SUMMARY: As directed by the Executive Order “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,” issued January 30, 2025, the Department is removing the procedures for retirees, dependents, and contractor employees to request a change to their “gender marker” in the Defense Enrollment Eligibility Reporting System (DEERS).

DATES: This interim final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments must be received by [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:

- (1) Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- (2) Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 05F16, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name, docket number and title 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 <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Robert Eves at 571-372-1956; email: robert.c.eves.civ@mail.mil.

SUPPLEMENTARY INFORMATION:

Background

On February 14, 2024, the DoD published a final rule, “Identification (ID) Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals” (89 FR 11172-11198), concerning the policies and procedures for issuing DoD ID cards. That final rule included the procedures for retirees, dependents, and contractor employees to request a change to their “gender marker” in the Defense Enrollment Eligibility Reporting System (DEERS). Executive Order 14168, “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,” issued January 30, 2025, recognized two sexes, male and female, and stated that “these sexes are not changeable and are grounded in fundamental and incontrovertible reality.” The Executive Order also requires Federal agencies to ensure that all applicable policies and documents, including rules, use the term “sex” and not “gender.”

Legal Authority

Authorities for this rule include 5 United States Code (U.S.C.) 5703 (per diem, travel, and transportation expenses; experts and consultants; individuals serving without pay); and 10 U.S.C. 1044a (authority to act as a notary); 1061-1064 (commissary and exchange benefits); 1072-1074, 1074a-1074c, 1076, 1076a, 1077, 1095 (k)(2) (medical and dental care); 1408(h) (payment of retired or retainer pay in compliance with court orders/benefits for dependents who are victims of

abuse by members losing right to retired pay); and Chapter 1223 (retired pay). These authorities provide members of the Uniformed Services (active component, reserve component, or retired members) and their spouses and dependents certain benefits and privileges. 18 U.S.C. 499 (military, naval, or official passes), 506 (seals of departments or agencies), 509 (possessing and making plates or stones for Government transportation requests), 701 (official badges, identification cards, other insignia), and 1001 (statements or entries generally), address penalties, fines and imprisonment for unauthorized reproduction of ID cards.

Changes Made with this Rule

On February 14, 2024, the DoD published a final rule in the Federal Register (89 FR 11172-11198) on the policies and procedures for issuing DoD ID cards. Included in the final rule was a provision that allowed retirees, dependents, and contractor employees to request their “gender marker” be changed based on their preference. EO 14168,¹ requires Federal agencies to ensure that all applicable policies and documents, including rules, use the term “sex” and not “gender.” With this rule the Department removes and replaces three instances of “gender” with “sex” and one instance of “gender marker” with “sex code.” Additionally, the interim final rule removes the procedure for retirees, dependents, and contractor employees to elect to change this data in DEERS, absent an administrative error. DoD has determined that receiving public comment prior to effectuating this CFR amendment is impracticable and against public interest. DoD seeks to avoid confusion and prevent unnecessary time spent on self-attestation requests, which would not be processed upon the final rule taking effect. For these same reasons, DoD finds good cause to make the interim final rule enforceable immediately upon publication.

Regulatory Compliance

Pursuant to 5 U.S.C. 553(d)(3), the Department finds there is good cause to make this final rule effective immediately upon publication. This final rule codifies actions taken under direct Presidential authority. Removing the regulations immediately provides transparency and may

¹ available at <https://www.govinfo.gov/content/pkg/FR-2025-01-30/pdf/2025-02090.pdf>,

reduce confusion. Further, a delayed effective date serves no practical purpose here since no adjustment period is needed for any regulated party to come into or otherwise prepare for compliance

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

EOs 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, distributive impacts, and equity). EO 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a “significant regulatory action” under EO 12866 and was not reviewed by OMB. This rule is not an E.O. 14192 regulatory action because this rule is not significant under E.O. 12866.

Congressional Review Act (5 U.S.C. 801, et seq.)

The Congressional Review Act, 5 U.S.C. 801, et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 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. This interim final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

Title 2 U.S.C. Ch. 25, “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 require spending 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. Ch. 6)

The Under Secretary of Defense for Personnel and Readiness certifies this interim final rule is not subject to the Regulatory Flexibility Act because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

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

Under the Paperwork Reduction Act (PRA) of 1995, OMB approved and assigned OMB Control Number 0704-0415, “Application for Department of Defense Common Access Card—DEERS Enrollment.” The provision for the self-attestation for changing a sex code (gender marker) in an individual’s DEERS record (89 FR 11172) required only a signed individual statement. The “Application for Department of Defense Common Access Card - DEERS Enrollment” was not required and it was determined that the self-attestation did not change the cost or burden associated with this information collection. Therefore, removing the provision also has no effect on the cost or burden of the information collection. Additional information regarding this collection of information – including all current background materials – can be found at <https://www.reginfo.gov/public/do/PRAMain> by using the search function to enter either the title of the collection or the OMB Control Number.

Executive Order 13132, “Federalism”

EO 13132 establishes certain requirements that an agency must meet when it promulgates an interim final 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”

EO 13175 establishes certain requirements that an agency must meet when it promulgates an interim final rule that imposes substantial direct compliance costs on one or more Indian tribes, preempts tribal law, or effects the distribution of power and responsibilities between the Federal

government and Indian tribes. This interim final rule will not have a substantial effect on Indian tribal governments.

List of Subjects in 32 CFR Part 161

Administrative practice and procedure, Armed forces, Military personnel, National defense, Privacy, Security measures.

Accordingly, DoD amends 32 CFR part 161 as follows:

PART 161—IDENTIFICATION (ID) CARDS FOR MEMBERS OF THE UNIFORMED SERVICES, THEIR DEPENDENTS, AND OTHER ELIGIBLE INDIVIDUALS

1. The authority citation for part 161 is revised to read as follows:

Authority: 5 U.S.C. 5703, 10 U.S.C. 1061–1064, 1072–1074, 1074a–1074c, 1076, 1076a, 1077, and 1095(k)(2); 18 U.S.C. 499, 506, 509, 701, and 1001; 10 U.S.C. 1408(h), 1044a, and chapter 1223.

§ 161.3 [Amended]

2. Amend §161.3 by removing from the definition of *Spouse* the word “gender” and adding in its place the word “sex”.

§ 161.23 [Amended]

3. Amend § 161.23 by:

- a. Removing paragraph (k) and Table 33 to Subpart D of Part 161;
- b. Redesignating paragraphs (l) through (n) as paragraphs (k) through (m) and redesignating Tables 34 through 38 to Subpart D of Part 161 as Tables 33 through 37 to Subpart D of Part 161;
- c. In newly redesignated paragraph (k), removing the text “Table 34” and adding in its place the text “table 33”;
- d. In newly redesignated paragraph (l), removing the text “Table 35” and adding in its place the text “table 34”; and
- e. In newly redesignated paragraph (m)(1)(ii), removing the text “Tables 36 through 38” and adding in its place the text “tables 35 through 37”;

f. In newly redesignated paragraph (m)(2), removing the text “Table 36” and adding in its place the text “table 35”;

g. In newly redesignated paragraph (m)(3), removing the text “Gender”, “gender marker” and “Table 37” and adding in its place the text “Sex”, “sex code”, and “table 36”, respectively;

h. In the heading of newly redesignated Table 36 to Subpart D of Part 161, removing the words “Gender Marker” and adding in their place the words “Sex Code”; and

i. In newly redesignated paragraph (m)(4), removing the text “Table 38” and adding in its place the text “table 37”.

Dated: November 26, 2025.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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