



DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DoD-2024-OS-0112]

RIN 0790-AL45

Privacy Act of 1974; Implementation

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

ACTION: Final rule.

SUMMARY: The Department of Defense (Department or DoD) is issuing a final rule to amend its regulations to exempt portions of DoD-0024, “Catch a Serial Offender (CATCH) Program Records,” system of records from certain provisions of the Privacy Act of 1974. Specifically, the rule exempts portions of the CATCH Program Records from certain provisions of the Privacy Act to avoid interference during the conduct of criminal, civil, or administrative actions or investigations and to protect the identity of confidential sources pertaining to adult sexual assault allegations.

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Ms. Rahwa Keleta, Chief, Privacy and Civil Liberties Division, Oversight and Compliance Directorate, 4800 Mark Center Drive, Attn: Mailbox #24, Suite 05F16, Alexandria, VA 22350-1700, osd.mc-alex.odam.mbx.pcl-d-sorn@mail.mil; (703) 571-0070.

SUPPLEMENTARY INFORMATION:

Discussion of Comments and Changes

The proposed rule was published in the Federal Register (89 FR 85892-85895) on October 29, 2024. Comments were accepted until December 30, 2024. The Department

received five public comments. Commenters were generally supportive of the rule and the program; two commenters raised questions and concerns regarding the implementation of the CATCH Program Records system, including victim eligibility, the assurance of accurate records, and the selection of Privacy Act exemptions.

With respect to victim eligibility, eligibility criteria are established by sexual assault prevention and response policy rather than this Privacy Act rulemaking. Regarding the assurance of the accuracy of information, the CATCH Program Records system records information voluntarily submitted by victims. Because the system is intended to generate investigative leads rather than serve as an evidentiary database, determinations of accuracy and credibility are made through established investigative and adjudicative processes.

Concerning Privacy Act exemptions, DoD notes that the exemptions are consistent with the Privacy Act of 1974 and are necessary to preserve the integrity of the system by preventing subjects of reports from accessing or altering information in ways that could compromise ongoing investigative efforts.

After careful consideration of all comments, DoD has determined that the existing eligibility criteria, safeguards, and exemptions adequately address the concerns raised. Accordingly, no changes to the final rule text are required.

This final rule adds to the DoD's Privacy Act exemptions for Department-wide systems of records found in 32 CFR 310.13(e)(16). Note: When the proposed rule was published, the intended location of the exemption rule was 32 CFR 310.13(e)(15); because an exemption rule for a different SORN has since been added to that location, this final rule will now be codified at 32 CFR 310.13(e)(16).

I. Background

In finalizing this rule, DoD exempts portions of this system of records titled, "CATCH a Serial Offender Program Records," DoD-0024 from certain provisions of the Privacy

Act. This system of records covers DoD's maintenance of records used to collect and compare sexual assault reports for the purpose of identifying alleged serial sexual assault offenders. These records will consist of information voluntarily submitted into the CATCH system by eligible victims who elect to participate in the CATCH program and provide information about an alleged adult sexual assault incident, without identifying such victims, through established CATCH processes.

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 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). The DoD is amending 32 CFR part 310 to add a new Privacy Act exemption rule for the DoD-0024, CATCH a Serial Offender Program Records, system of records. The DoD is adding an exemption for this system of records pursuant to 5 U.S.C. 552a(j)(2) to prevent the harms articulated in this rule from occurring. The DoD is claiming an exemption from several provisions of the Privacy Act, including various access, amendment, disclosure of accounting, and certain recordkeeping and notice requirements, to avoid, among other harms, frustrating the underlying purposes for which the information was gathered.

III. 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, distributive 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 rulemaking is not a significant regulatory action.

Executive Order 14192, “Unleashing Prosperity Through Deregulation”

This rule is not subject to Executive Order 14192, because this rule is not a significant regulatory action under Executive Order 12866.

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(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 rulemaking 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 Director of Administration and Management has certified that this rulemaking 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 rulemaking 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. 3501 et seq.)

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 agencies obtain approval from the Office of Management and Budget before using identical questions to collect information from ten or more persons. This rulemaking 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 final rule that has federalism implications, imposes substantial direct requirement costs on State and local governments, and is not required by statute, or has federalism implications and preempts State law. This final 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 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 final 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.

2. Amend § 310.13 by adding paragraph (e)(16) to read as follows:

§ 310.13 Exemptions for DoD-wide systems.

* * * * *

(e) * * *

(16) *System identifier and name.* DoD-0024, “CATCH a Serial Offender
Program 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)(1); (e)(2); (e)(3); (e)(4)(G), (H), and (I); (e)(5); (e)(8); (f) and (g).

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

(iii) *Exemption from the particular subsections.* Exemption from the particular subsections is justified pursuant to 5 U.S.C. 552a(j)(2) for the following reasons:

(A) *Subsection (c)(3), (d)(1), and (d)(2).* Records in this system of records may contain investigatory material compiled for criminal law enforcement purposes to include information identifying criminal offenders and alleged offenders, information compiled for the purpose of criminal investigation, or reports compiled during criminal law enforcement proceedings. Application of exemption (j)(2) may be necessary as access to, amendment of, or release of the accounting of disclosures of such records could inform a 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 or prosecutorial efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties or disciplinary measures; access to, amendment of, or release of the accounting of disclosures could also 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.

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

(C) *Subsection (e)(1).* In the collection of information for investigatory or law enforcement 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 and prosecutorial determinations.

(D) *Subsection (e)(2).* To collect information from the subject individual could serve notice that he or she is the subject of a criminal investigation and thereby present a serious impediment to such investigations. Collection of information only from the individual accused of criminal activity or misconduct could also subvert discovery of relevant evidence and subvert the course of justice. Accordingly, application of exemption (j)(2) may be necessary.

(E) *Subsection (e)(3).* To inform individuals as required by this subsection could reveal the existence of a criminal investigation and compromise investigative efforts. Accordingly, application of exemption (j)(2) may be necessary.

(F) *Subsection (e)(4)(G) and (H)*. These subsections are inapplicable to the extent exemption is claimed from subsections (d)(1) and (2).

(G) *Subsection (e)(4)(I)*. To the extent that this provision is construed to require more detailed disclosure about record sources 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 privacy and physical safety of witnesses and informants. Accordingly, application of exemption (j)(2) may be necessary.

(H) *Subsection (e)(5)*. It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of effective law enforcement, it is necessary to retain this information to maintain an accurate record of the investigatory activity to preserve the integrity of the investigation and satisfy various Constitutional and evidentiary requirements, such as mandatory disclosure of potentially exculpatory information in the investigative file to a defendant. It is also necessary to retain this information to aid in establishing patterns of activity and provide investigative leads. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined through judicial processes. Accordingly, application of exemption (j)(2) may be necessary.

(I) *Subsection (e)(8)*. To serve notice could give persons sufficient warning to evade investigative efforts. Accordingly, application of exemption (j)(2) may be necessary.

(J) *Subsection (f)*. To the extent that portions of the system are exempt from the provisions of the Privacy Act concerning individual access and amendment of records, DoD is not required to establish rules concerning procedures and requirements relating to such provisions. Accordingly, application of exemptions (j)(2) may be necessary.

(K) *Subsection (g)*. This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act to which the civil remedies provisions pertain.

(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 14, 2026.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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