

notice of hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be discussed. Requests to speak and outlines were due on June 9, 2022. As of the end of the day on June 14, 2022, no one requested to speak. Therefore, the public hearing scheduled for June 28, 2022, at 10 a.m. is cancelled.

**Oluwafunmilayo A. Taylor**,  
Branch Chief, Publications and Regulations  
Branch, Legal Processing Division, Associate  
Chief Counsel, (Procedure and  
Administration).

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 310

[Docket ID DoD-2022-OS-0066]

RIN 0790-AL08

#### Privacy Act of 1974; Implementation

**AGENCY:** Office of the Secretary of Defense (OSD), 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-0010, “Counterintelligence Functional Services” 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 national security, law enforcement, and employment suitability mission areas.

**DATES:** Send comments on or before August 23, 2022.

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

\* *Federal eRulemaking 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, Defense Privacy and Civil Liberties Division, Directorate for Privacy, Civil Liberties and Freedom of Information, 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 08D09, Alexandria, VA 22350-1700; [OSD.DPCLTD@mail.mil](mailto:OSD.DPCLTD@mail.mil); (703) 571-0070.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In accordance with the Privacy Act of 1974, the DoD is establishing a new DoD-wide system of records titled “Counterintelligence Functional Services,” DoD-0010. This system of records notice describes DoD’s collection, use, and maintenance of records about counterintelligence functional services (CIFS). The purpose of CIFS is to protect Department resources and personnel from foreign adversaries who seek to exploit sensitive information, operations, and programs to the detriment of the U.S. government. The system of records consists of both electronic and paper records and will be used by DoD components and offices to maintain records about individuals in support of the Counterintelligence (CI) mission for the Department. DoD is authorized to maintain records on individuals to protect against espionage, intelligence activities, sabotage, or assassinations conducted by foreign entities or international terrorists. CIFS activities support the following CI missions: countering espionage; countering international terrorism; and providing support to force protection, research, development, and acquisition activities. CIFS also include assessments of CI incidents and DoD-required CI reporting conducted throughout the DoD enterprise. Not included in this system of records are records concerning CI investigations or CI collection activities.

The CIFS records contain information on both Federal employees and members of the public. The CIFS system of records contains data derived from individuals, government records (Federal, State, and local, tribal, and

foreign) and information collected directly from the public.

##### 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 to provide public notice and an opportunity to comment on the proposed exemption. This proposed rule explains why exemptions are being claimed for this system of records and invites public comment, which DoD will consider before the issuance of a final rule implementing those exemptions.

The DoD proposes to amend 32 CFR part 310 to add a new Privacy Act exemption rule for the DoD-0010, “Counterintelligence Functional Services” system of records. In this proposed rulemaking, 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 the following Privacy Act exemptions: 5 U.S.C. 552a(k)(1), 5 U.S.C. 552a(k)(2), and 5 U.S.C. 552a(k)(5).

DoD proposes to exempt this system of records because these 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 therefore is proposing to claim 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.

The DoD is also proposing this exemption rule because this system of records may contain investigatory material compiled for law enforcement purposes within the scope of 5 U.S.C. 552a(k)(2). This exemption allows DoD entities 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), which describes certain material related to the enforcement of criminal laws maintained by principal-function criminal law enforcement agencies. The Department therefore is proposing to claim 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, 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. Finally, the DoD also proposes an exemption for this system of records because the records may contain information pertaining to 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, but only to the extent that 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 containing information identifying confidential sources crucial to determining suitability for holding positions of trust. Accordingly, the DoD is proposing to claim 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 the compromise of the identity of confidential sources within such investigatory material.

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-0010, "Counterintelligence Functional Services," 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 proposed rule is not a significant regulatory action under these executive orders.

### *Congressional Review Act*

This proposed rule is not a "major rule" as defined by 5 U.S.C. 804(2).

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

The Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency certified that this proposed rule does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of a Privacy Act system of records within the DoD.

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

It has been determined that this proposed rule does not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

It has been determined that this proposed rule does not involve a Federal mandate 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 it will not significantly or uniquely affect small governments.

### *Executive Order 13132, "Federalism"*

It has been determined that this proposed rule does not have federalism implications. This rule does 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.

### *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 effects the distribution of power and responsibilities between the federal government and Indian tribes. This proposed 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—[AMENDED]

■ 1. The authority citation for 32 CFR part 310 continues to read as follows:

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

■ 2. Section 310.13 is amended by adding paragraph (e)(8) to read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(8) *System identifier and name.* DoD-0010, "Counterintelligence Functional Services"

(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), and (I); and (f) of the Privacy Act.

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

(2) *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 or

prosecutorial efforts by permitting the record subject and other persons to whom he might disclose the records or the 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; 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.

(3) *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) 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 have otherwise come forward to assist the Government; hinder the Government'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.

(B) *Subsections (d)(3) and (4)*. These subsections are inapplicable to the extent an exemption is 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 suitability, eligibility, fitness, and credentialing determinations.

Accordingly, application of exemptions (k)(1), (k)(2) and (k)(5) may be necessary.

(D) *Subsections (e)(4)(G) and (H)*. These subsections are inapplicable to the extent exemption is claimed from subsections (d)(1) and (2). Because portions of this system are exempt from the individual access and amendment provisions of subsection (d) for the reasons noted above, 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 reveal classified information, undermine investigative efforts, reveal the identities of witnesses, potential witnesses, and confidential informants, and impose an undue administrative burden by requiring investigations to be continually reinvestigated. Accordingly, application of exemptions (k)(1), (k)(2) and (k)(5) may be necessary.

(E) *Subsection (e)(4)(I)*. To the extent that this provision is construed to require more detailed disclosure than the broad, general information currently published in the system notice concerning the categories of sources of the records in the system, an exemption from this provision is necessary to protect classified information, other national security information, and the confidentiality of national security, law enforcement, and investigatory sources of information, and to protect the privacy and physical safety of witnesses and informants. Accordingly, application of exemptions (k)(1), (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 exemptions (k)(1), (k)(2) and (k)(5) may be necessary.

(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: June 21, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2022-0291; EPA-HQ-OAR-2021-0663; FRL-9651-01-R9]

### Approval of Air Quality State Implementation Plans; Arizona; 2015 Ozone Interstate Transport Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Clean Air Act (CAA) requires each state implementation plan (SIP) to contain adequate provisions prohibiting emissions that will significantly contribute to nonattainment or interfere with maintenance of air quality in other states. The State of Arizona submitted a SIP revision to the Environmental Protection Agency (EPA) to address these requirements for the 2015 ozone national ambient air quality standards (NAAQS). The EPA is proposing to approve Arizona's SIP submission as meeting the requirement that the Arizona SIP contain adequate provisions to prohibit emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

**DATES:** Any comments must arrive by July 25, 2022.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0291 at <https://www.regulations.gov>. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is