

§ 310.10

Privacy Program policies and procedures.

(3) Notify promptly the system manager whenever there are changes to processing equipment, hardware or software, and the data base that may require the submission of an amended system notice for any system of records.

(i) *DoD employees* shall:

(1) Not disclose any personal information contained in any system of records except as authorized in this part.

(2) Not maintain any official files which are retrievable by name or other personal identifier without first ensuring that a notice for the system has been published in the FEDERAL REGISTER.

(3) Report any disclosures of personal information from a system of records or the maintenance of any system of records that are not authorized by this part to the appropriate Privacy Act officials for his or her action.

[51 FR 2364, Jan. 16, 1986. Redesignated at 56 FR 55631, Oct. 29, 1991, as amended at 56 FR 57800, Nov. 14, 1991]

Subpart B—Systems of Records

§ 310.10 General.

(a) *System of records.* To be subject to the provisions of this part a “system of records” must:

(1) Consist of “records” (as defined in § 310.3(n)) that are retrieved by the name of an individual or some other personal identifier, and

(2) Be under the control of a DoD Component.

(b) *Retrieval practices.* (1) Records in a group of records that *may be* retrieved by a name or personal identifier are not covered by this part even if the records contain personal data and are under control of a DoD Component. The records *must be*, in fact, retrieved by name or other personal identifier to become a system of records for the purpose of this part.

(2) If files that are not retrieved by name or personal identifier are rearranged in such manner that they are retrieved by name or personal identifier, a new systems notice must be submitted in accordance with § 310.63(c) of subpart G.

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(3) If records in a system of records are rearranged so that retrieval is no longer by name or other personal identifier, the records are no longer subject to this part and the system notice for the records shall be deleted in accordance with § 310.64(c) of subpart G.

(c) *Relevance and necessity.* Retain in a system of records only that personal information which is relevant and necessary to accomplish a purpose required by a federal statute or an Executive Order.

(d) *Authority to establish systems of records.* Identify the specific statute or the Executive Order that authorize maintaining personal information in each system of records. The existence of a statute or Executive order mandating the maintenance of a system of records does not abrogate the responsibility to ensure that the information in the system of records is relevant and necessary.

(e) *Exercise of First Amendment rights.* (1) Do not maintain any records describing how an individual exercises his or her rights guaranteed by the First Amendment of the U.S. Constitution except when:

(i) Expressly authorized by federal statute;

(ii) Expressly authorized by the individual; or

(iii) Maintenance of the information is pertinent to and within the scope of an authorized law enforcement activity.

(2) First Amendment rights include, but are not limited to, freedom of religion, freedom of political beliefs, freedom of speech, freedom of the press, the right to assemble, and the right to petition.

(f) *System manager’s evaluation.* (1) Evaluate the information to be included in each new system before establishing the system and evaluate periodically the information contained in each existing system of records for relevancy and necessity. Such a review shall also occur when a system notice amendment or alteration is prepared (see §§ 310.63 and 310.64 of subpart G).

(2) Consider the following:

(i) The relationship of each item of information retained and collected to the purpose for which the system is maintained;

(ii) The specific impact on the purpose or mission of not collecting each category of information contained in the system;

(iii) The possibility of meeting the information requirements through use of information not individually identifiable or through other techniques, such as sampling;

(iv) The length of time each item of personal information must be retained;

(v) The cost of maintaining the information; and

(vi) The necessity and relevancy of the information to the purpose for which it was collected.

(g) *Discontinued information requirements.* (1) Stop collecting immediately any category or item of personal information from which retention is no longer justified. Also excise this information from existing records, when feasible.

(2) Do not destroy any records that must be retained in accordance with disposal authorizations established under 44 U.S.C. 303a, "Examination by the Administrator of General Services of Lists and Schedules of Records Lacking Preservation Value, Disposal of Records."

[51 FR 2364, Jan. 16, 1986. Redesignated at 56 FR 55631, Oct. 29, 1991, and amended at 56 FR 57800, Nov. 14, 1991]

§ 310.11 Standards of accuracy.

(a) *Accuracy of information maintained.* Maintain all personal information that is used or may be used to make any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in making any such determination.

(b) *Accuracy determination before dissemination.* Before disseminating any personal information from a system of records to any person outside the Department of Defense, other than a federal agency, make reasonable efforts to ensure that the information to be disclosed is accurate, relevant, timely, and complete for the purpose it is being maintained (see also § 310.30(d), subpart D and § 310.40(d), subpart E).

[51 FR 2364, Jan. 16, 1986. Redesignated at 56 FR 55631, Oct. 29, 1991, and amended at 56 FR 57800, Nov. 14, 1991]

§ 310.12 Government contractors.

(a) *Applicability to government contractors.* (1) When a DoD Component contracts for the operation or maintenance of a system of records or a portion of a system of records by a contractor, the record system or the portion of the record system affected are considered to be maintained by the DoD Component and are subject to this part. The Component is responsible for applying the requirements of this part to the contractor. The contractor and its employees are to be considered employees of the DoD Component for purposes of the sanction provisions of the Privacy Act during the performance of the contract. Consistent with the Defense Acquisition Regulation (DAR), § 1.327, "Protection of Individual Privacy" contracts requiring the maintenance of a system of records or the portion of a system of records shall identify specifically the record system and the work to be performed and shall include in the solicitation and resulting contract such terms as are prescribed by the DAR.

(2) If the contractor must use or have access to individually identifiable information subject to this part to perform any part of a contract, and the information would have been collected and maintained by the DoD Component but for the award of the contract, these contractor activities are subject to this Regulation.

(3) The restriction in paragraphs (a) (1) and (2) of § 310.12 do not apply to records:

(i) Established and maintained to assist in making internal contractor management decisions, such as records maintained by the contractor for use in managing the contract;

(ii) Maintained as internal contractor employee records even when used in conjunction with providing goods and services to the Department of Defense; or

(iii) Maintained as training records by an educational organization contracted by a DoD Component to provide training when the records of the contract students are similar to and comingled with training records of other students (for example, admission forms, transcripts, academic counseling and similar records);