

(2) *The (k)(2)*. Investigatory information compiled for law-enforcement purposes by nonlaw enforcement activities and which is not within the scope of § 310.51(a). If an individual is denied any right, privilege or benefit that he or she is otherwise entitled by federal law or for which he or she would otherwise be eligible as a result 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. This subsection when claimed allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(3) *The (k)(3)*. Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506.

(4) *The (k)(4)*. Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8.

(5) *The (k)(5)*. 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 such material would reveal the identity of a confidential source. This provision allows protection of confidential sources used in background investigations, employment inquiries, and similar inquiries that are for personnel screening to determine suitability, eligibility, or qualifications.

(6) *The (k)(6)*. Testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal or military service, if the disclosure would compromise the objectivity or fairness of the test or examination process.

(7) *The (k)(7)*. Evaluation material used to determine potential for promotion in the Military Services, but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(b) *Promises of confidentiality*. (1) Only the identity of sources that have been given an express promise of confidentiality may be protected from disclosure under paragraphs (a)(2), (5) and (7) of this section. However, the identity of sources who were given implied promises of confidentiality in inquiries conducted before September 27, 1975, may also be protected from disclosure.

(2) Ensure that promises of confidentiality are used on a limited basis in day-to-day operations. Establish appropriate procedures and identify fully those categories of individuals who may make such promises. Promises of confidentiality shall be made only when they are essential to obtain the information sought.

(c) *Access to records for which specific exemptions are claimed*. Deny the individual access only to those portions of the records for which the claimed exemption applies.

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

Subpart G—Publication Requirements

§ 310.60 Federal Register publication.

(a) *What must be published in the FEDERAL REGISTER*. (1) Three types of documents relating to the Privacy Program must be published in the FEDERAL REGISTER:

(i) DoD Component Privacy Program rules;

(ii) Component exemption rules; and

(iii) System notices.

(2) See DoD 5025.1-M, "Directives Systems Procedures," and DoD Directive 5400.9, (32 CFR part 296) "Publication of Proposed and Adopted Regulations Affecting the Public" for information pertaining to the preparation of documents for publication in the FEDERAL REGISTER.

(b) *The effect of publication in the FEDERAL REGISTER*. Publication of a document in the FEDERAL REGISTER constitutes official public notice of the existence and content of the document.

(c) *DoD Component rules*. (1) Component Privacy Program procedures and Component exemption rules are subject to the rulemaking procedures prescribed in 32 CFR part 296.

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(2) System notices are not subject to formal rulemaking and are published in the FEDERAL REGISTER as “Notices,” not rules.

(3) Privacy procedural and exemption rules are incorporated automatically into the Code of Federal Regulations (CFR). System notices are not published in the CFR.

(d) *Submission of rules for publication.*

(1) Submit to the Defense Privacy Office, ODASD(A), all proposed rules implementing this part in proper format (see Appendices E, F and G) for publication in the FEDERAL REGISTER.

(2) This part has been published as a final rule in the FEDERAL REGISTER (32 CFR part 310). Therefore, incorporate it into your Component rules by reference rather than by republication.

(3) DoD Component rules that simply implement this part need only be published as final rules in the FEDERAL REGISTER (see DoD 5025.1-M, “Directives System Procedures,” and DoD Directive 5400.9, “Publication of Proposed and Adopted Regulations Affecting the Public,” (32 CFR part 296).

(4) Amendments to Component rules are submitted like the basic rules.

(5) The Defense Privacy Office ODASD(A) submits the rules and amendments thereto to the FEDERAL REGISTER for publication.

(e) *Submission of exemption rules for publication.* (1) No system of records within the Department of Defense shall be considered exempt from any provision of this part until the exemption and the exemption rule for the system has been published as a final rule in the FEDERAL REGISTER (see paragraph (c) of this section).

(2) Submit exemption rules in proper format to the Defense Privacy Office ODASD(A). After review, the Defense Privacy Office will submit the rules to the FEDERAL REGISTER for publication.

(3) Exemption rules require publication both as proposed rules and final rules (see DoD Directive 5400.9, 32 CFR part 296).

(4) Section 310.61 of this subpart discusses the content of an exemption rule.

(5) Submit amendments to exemption rules in the same manner used for establishing these rules.

(f) *Submission of system notices for publication.* (1) While system notices are not subject to formal rulemaking procedures, advance public notice must be given before a Component may begin to collect personal information or use a new system of records. The notice procedures require that:

(i) The system notice describes the contents of the record system and the routine uses for which the information in the system may be released.

(ii) The public be given 30 days to comment on any proposed routine uses before implementation; and

(iii) The notice contain the data on which the system will become effective.

(2) Submit system notices to the Defense Privacy Office in the Federal Register format (see appendix E). The Defense Privacy Office transmits the notices to the FEDERAL REGISTER for publication.

(3) Section 310.62 of this subpart discusses the specific elements required in a system notice.

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

§ 310.61 Exemption rules.

(a) *General procedures.* Paragraph (b)(1) of § 310.50, subpart F, provides the general guidance for establishing exemptions for systems of records.

(b) *Contents of exemption rules.* (1) Each exemption rule submitted for publication must contain the following:

(i) The record system identification and title of the system for which the exemption is claimed (see § 310.62 of this subpart);

(ii) The specific subsection of the Privacy Act under which exemptions for the system are claimed (for example, 5 U.S.C. 552a(j)(2), 5 U.S.C. 552a(k)(3); or 5 U.S.C. 552a(k)(7));

(iii) The specific provisions and subsections of the Privacy Act from which the system is to be exempted (for example, 5 U.S.C. 552a(c)(3), or 5 U.S.C. 552a(d)(1)–(5)) (see appendix D); and

(iv) The specific reasons why an exemption is being claimed from each subsection of the Act identified.