

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 297

RIN 3206-AN27

Privacy Procedures for Personnel Records

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend part 297 of title 5, Code of Federal Regulations, to implement a 60-day timeframe for individuals to appeal or submit requests for administrative review of initial decisions regarding access and amendment requests involving records maintained in OPM systems of records. This proposed change will allow greater efficiency in processing appeals and requests for administrative review and will also improve the office's records maintenance and disposal policies. OPM's retention of the Privacy Act Case Records are to be maintained in accordance with the NARA General Records Schedule 14 which relies on whether or not the request is appealed to institute a disposal timeframe. The addition of this appeal or administrative review timeframe will allow offices to dispose of records in accordance with the NARA General Records Schedule 14. OPM is also proposing to update the points of contact for Privacy Act matters, including where to address appeals or requests for administrative review of access and amendment denials involving records maintained in OPM systems of records.

OPM also proposes to amend part 297 of title 5, Code of Federal Regulations to implement exemptions for the OPM Central-9/Personnel Investigations Records, the OPM Internal 16/Adjudications Officer Control Files, the newly established OPM Internal 20/Integrity Assurance Officer Control Files, and the newly established OPM Internal 19/Investigative Training

Records. In this proposed rulemaking, OPM proposes to exempt portions of these system of records from one or more provisions of the Privacy Act to safeguard national security information, and law enforcement information, to protect the identities of sources who furnished information under an express promise of confidentiality, and to safeguard qualifications testing and examination materials that would, if released, compromise the objectivity or fairness of the testing or examination process.

DATES: We must receive your comments by July 5, 2016.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number 3206-AN27 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* combox@opm.gov. Include RIN number 3206-AN27 in the subject line of the message.
- *Mail:* Program Manager, Freedom of Information and Privacy Act office, U.S. Office of Personnel Management, Federal Investigative Services, 1137 Branchton Road, P.O. Box 618, Boyers, PA 16018.

FOR FURTHER INFORMATION CONTACT: Program Manager, Freedom of Information and Privacy Act office, U.S. Office of Personnel Management, Federal Investigative Services, (724) 794-5612.

SUPPLEMENTARY INFORMATION: OPM is amending 5 CFR 297.207(c)(1), (c)(2), and 297.306(a) to add a timeframe for individuals to appeal or ask for an administrative review of initial denials of access and requests to amend a record made by a Federal official, when a record is maintained in an OPM system of records. Individuals will have 60 days from the date of an initial decision to appeal or ask for an administrative review of the initial decision. This change will allow for efficiency in processing appeals and requests for administrative review and also improve the office's record maintenance and disposal policies. The office's Privacy Act Case Records are to be maintained in accordance with the NARA General Records Schedule 14 which relies on whether or not the request is appealed to institute a disposal timeframe. The addition of this timeframe will allow the

offices to dispose of records in accordance with the NARA General Records Schedule 14.

In addition, OPM proposes amendments to points of contact for Privacy Act matters in 5 CFR 297.106; where to address access denials in 5 CFR 297.207(c)(1) and (c)(2); and where to address requests for administrative review of initial amendment denials in 5 CFR 297.301(e) and (f).

The Privacy Act of 1974 allows Government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

OPM is amending 5 CFR 297.501(b)(5) to exempt certain records in the Personnel Investigations Records (OPM/CENTRAL-9) from the Privacy Act's requirement to maintain only information specifically relevant and necessary to accomplish a purpose of the agency, e.g., relevant to the adjudication of an investigation at a specific point in time, when the information is relevant to future personnel security or suitability determinations.

OPM is proposing to add 5 CFR 297.501(b)(9) to claim specific exemptions from certain requirements of the Privacy Act for the Adjudications Officer Control Files (OPM/Internal-16) to safeguard national security information and law enforcement information, to protect the identities of sources who furnished information under an express promise of confidentiality, and protect the testing and examining material used solely to determine individual qualifications for appointment or promotion in the Federal service when release of this information would compromise the objectivity and fairness of the testing or examining process.

OPM is proposing to add 5 CFR 297.501(b)(10) to claim specific exemptions from certain requirements of the Privacy Act for the Integrity Assurance Officer Control Files (OPM/Internal-20). OPM proposes to exempt portions of the system of records from one or more provisions of the Privacy Act to safeguard national security information, law enforcement information, protect the identities of sources who furnished information

under an express promise of confidentiality, and protect the testing and examining material used solely to determine individual qualifications for appointment or promotion in the Federal service when release of this information would compromise the objectivity and fairness of the testing or examining process. OPM is also proposing to exempt certain records in this system from the Privacy Act's requirement to maintain only information specifically relevant and necessary to accomplish a purpose of the agency, e.g., investigations into specific allegations of misconduct, negligence or error, when the information is relevant to establishing patterns of misconduct, negligence, or error.

OPM is also proposing to add 5 CFR 297.501(b)(11) to claim specific exemptions from certain requirements of the Privacy Act for the Investigative Training Records (OPM/Internal-19). OPM proposes to exempt portions of the system of records from one or more provisions of the Privacy Act to protect testing and examining material used solely to determine individual qualifications for appointment or promotion in the Federal service when release of this information would compromise the objectivity and fairness of the testing or examining process.

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

It has been determined that Privacy Act rules for OPM are not significant rules. The rules do not (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive orders.

Regulatory Flexibility Act (5 U.S.C. Chapter 6)

It has been determined that this Privacy Act rule for OPM does not have significant economic impact on a substantial number of small entities because it is concerned only with the

administration of Privacy Act systems of records within OPM.

Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for OPM impose no additional information collection requirements on the public under the Paperwork Reduction Act of 1995.

Unfunded Mandate Reform Act of 1995 (2 U.S.C. 1532)

It has been determined that this Privacy Act rulemaking for OPM 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 such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, Federalism

It has been determined that the Privacy Act rules for OPM do not have federalism implications. The 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.

List of Subjects in 5 CFR Part 297

Privacy.

U.S. Office of Personnel Management.
Beth F. Cobert,
Acting Director.

For the reasons discussed in the preamble, the Office of Personnel Management is proposing to amend 5 CFR part 297 as follows:

PART 297—PRIVACY PROCEDURES FOR PERSONNEL RECORDS

■ 1. The authority citation for part 297 continues to read as follows:

Authority: Sec. 3, Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Amend § 297.106 to read as follows:

To determine what records the Office maintains in its system of records, requesters must write to the Program Director, Information Management, Office of the Chief Information Officer, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415. Using the Office's response, requesters can contact the particular system manager indicated in the Office's notices of its systems published in the **Federal Register** for further assistance in determining if the Office maintains information pertaining to them.

■ 3. Amend § 297.207 by revising paragraph (c)(1) and (2) to read as follows:

§ 297.207 Denials of access and appeals with respect to such denials.

* * * * *

(c) * * *

(1) For initial denials made by an agency, when the record is maintained in an Office Governmentwide system of records, a request for administrative review should be made within 60 days to the Program Director, Information Management, Office of the Chief Information Officer, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(2) For denials initially made by an Office official, when a record is maintained in an internal or central system of records, a request for administrative review must be made within 60 days from the date of the initial decision to the General Counsel, Office of the General Counsel, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

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■ 4. Amend § 297.301 by revising paragraphs (e) and (f) to read as follows:

§ 297.301 General Provisions.

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(e) A request for administrative review of an agency denial to amend a record in the Office's systems of record should be addressed to the Program Director, Information Management, Office of the Chief Information Officer, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(f) A request for administrative review of a denial to amend a record by an Office official should be addressed to the General Counsel, Office of the General Counsel, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

■ 5. Amend § 297.306 by revising paragraph (a) to read as follows:

§ 297.306 Appeal of a denial of a request to amend a record.

(a) An individual who disagrees with an initial denial to amend a record may file a written appeal of that denial to the appropriate official. The appeal must be made within 60 days from the date of the initial decision. In submitting an appeal, the individual should provide a copy of the original request for amendment, a copy of the initial denial decision, and a statement of the specific reasons why the initial denial is believed to be in error. Any appeal should be submitted to the official designated in the initial decision letter.

The appeal should include the words "PRIVACY ACT APPEAL" in capital letters on the envelope and at the top of the letter of appeal.

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■ 6. Amend § 297.501 by revising paragraph (b)(5), and by adding paragraphs (b)(9), (b)(10), and (b)(11) to read as follows:

§ 297.501 Exemptions

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(b) * * *
(5) *Personnel Investigations Records (OPM/CENTRAL-9)*.

(i) All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(1), (2), (3), (4), (5), (6), and (7) is exempt from the requirements of 5 U.S.C. 552a(c)(3), (d), and (e)(1). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject, access to and amendment of records, and maintaining in its records only such information that is relevant and necessary.

(ii) Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made for the reasons that follow:

(A) From subsection (c)(3) and (d), because access to the record, amendment of the record, or release of the accounting of disclosures of the record could disclose sensitive information that could be detrimental to national security; inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of another agency or law enforcement entity; compromise the safety of the individuals protected pursuant to 18 U.S.C 3056; affect compliance with a statutory mandate concerning statistical records; identify confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise); compromise the objectivity and fairness of the testing or examining process; or compromise evaluation material used to determine potential for promotion in the armed services.

(B) From subsection (e)(1), because in the course of personnel background investigations the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to favorably or unfavorably adjudicate a specific investigation at a specific point in time. However, in the

interests of protecting the public trust and national security, it is appropriate to retain all information that may aid in establishing patterns in such areas as criminal conduct, alcohol and drug abuse, financial dishonesty, allegiance, foreign preference or influence, and psychological conditions, that are relevant to future personnel security or suitability determinations.

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(9) *Adjudication Officer Control Files (OPM/Internal-16)*.

(i) All information in the Adjudications Officer Control Files that meets the criteria stated in 5 U.S.C. 552a(k)(1), (2), (5) and (6) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d), or 5 U.S.C. 552a(d) standing alone. These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records.

(ii) Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, because access to the record, amendment of the record, or release of the accounting of disclosures of the record could disclose sensitive information that could be detrimental to national security; inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of another agency or law enforcement entity; identify confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise); or compromise the objectivity and fairness of the testing or examining process.

(10) *Integrity Assurance Office Control Files (OPM/Internal-20)*.

(i) All information in the Integrity Assurance Officer Control Files that meets the criteria stated in 5 U.S.C. 552(k)(1), (2), (5), and (6) is exempt from the requirements of 5 U.S.C. 552a(c)(3), (d) and (e)(1). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject, access to and amendment of records, and maintaining in its records only such information that is relevant and necessary.

(ii) Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made and the reasons for the exemptions are as follows:

(A) From subsection (c)(3) and (d), because access to the record,

amendment of the record, or release of the accounting of disclosures of the record could disclose sensitive information that could be detrimental to national security; inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of another agency or law enforcement entity; identify confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise); or compromise the objectivity and fairness of the testing or examining process.

(B) From subsection (e)(1), because in the course of investigations into specific allegations of misconduct, negligence or error, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to the specific investigation. However, in the interests of ensuring the quality and accuracy of investigations, and protecting the public's trust in the integrity of personnel investigation program, it is appropriate to retain all information that may aid in establishing patterns of misconduct, negligence, or error.

(11) *Investigative Training Records (OPM/Internal-19)*.

(i) All information in the Investigative Training Records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records.

(ii) Exemption from subsection (c)(3) and (d) is justified, on a case-by-case basis to be determined at the time a request is made because access to the record, amendment of the record, or release of the accounting of disclosures of the record could compromise the objectivity and fairness of the testing and examining process used solely to determine individual qualifications for appointment or promotion in the Federal service.

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