

(b) The ALJ may affirm, increase or reduce the penalties, assessment proposed or imposed by the DHA.

(c) The ALJ will issue the initial decision to all parties within 120 days after the time for submission of post-hearing briefs and reply briefs, if permitted, has expired. The decision will be accompanied by a statement describing the right of any party to file a notice of appeal with the DAB and instructions for how to file such appeal. If the ALJ fails to meet the deadline contained in this paragraph (c), he or she will notify the parties of the reason for the delay and will set a new deadline.

(d) Except as provided in paragraph (e) of this section, unless the initial decision is appealed to the DAB, it will be final and binding on the parties 30 days after the ALJ serves the parties with a copy of the decision. If service is by mail, the date of service will be deemed to be 5 days from the date of mailing.

(e) If an extension of time within which to appeal the initial decision is granted under § 200.2021(a), except as provided in § 200.2022(a), the initial decision will become final and binding on the day following the end of the extension period.

§ 200.2021 Appeal to DAB.

(a) Any party may appeal the initial decision of the ALJ to the DAB by filing a notice of appeal with the DAB within 30 days of the date of service of the initial decision. The DAB may extend the initial 30 day period for a period of time not to exceed 30 days if a party files with the DAB a request for an extension within the initial 30 day period and shows good cause.

(b) If a party files a timely notice of appeal with the DAB, the ALJ will forward the record of the proceeding to the DAB.

(c) A notice of appeal will be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions. Any party may file a brief in opposition to exceptions, which may raise any relevant issue not addressed in the exceptions, within 30 days of receiving the notice of appeal and accompanying brief. The DAB may permit the parties to file reply briefs.

(d) There is no right to appear personally before the DAB or to appeal to the DAB any interlocutory ruling by the ALJ, except on the timeliness of a filing of the hearing request.

(e) The DAB will not consider any issue not raised in the parties' briefs, nor any issue in the briefs that could

have been raised before the ALJ but was not.

(f) If any party demonstrates to the satisfaction of the DAB that additional evidence not presented at such hearing is relevant and material and that there were reasonable grounds for the failure to adduce such evidence at such hearing, the DAB may remand the matter to the ALJ for consideration of such additional evidence.

(g) The DAB may decline to review the case, or may affirm, increase, reduce, reverse, or remand any penalty or assessment determined by the ALJ.

(h) The standard of review on a disputed issue of fact is whether the initial decision is supported by substantial evidence on the whole record. The standard of review on a disputed issue of law is whether the initial decision is erroneous.

(i) Within 120 days after the time for submission of briefs and reply briefs, if permitted, has expired, the DAB will issue to each party to the appeal a copy of the DAB's decision and a statement describing the right of any petitioner or respondent who is found liable to seek judicial review.

(j) Except with respect to any penalty or assessment remanded by the ALJ, the DAB's decision, including a decision to decline review of the initial decision, becomes final and binding 60 days after the date on which the DAB serves the parties with a copy of the decision. If service is by mail, the date of service will be deemed to be 5 days from the date of mailing.

(k)(1) Any petition for judicial review must be filed within 60 days after the DAB serves the parties with a copy of the decision. If service is by mail, the date of service will be deemed to be 5 days from the date of mailing.

(2) In compliance with 28 U.S.C. 2112(a), a copy of any petition for judicial review filed in any U.S. Court of Appeals challenging a final action of the DAB will be sent by certified mail, return receipt requested, to the General Counsel of the DHA. The petition copy will be time-stamped by the clerk of the court when the original is filed with the court.

(3) If the General Counsel of the DHA receives two or more petitions within 10 days after the DAB issues its decision, the General Counsel of the DHA will notify the U.S. Judicial Panel on Multidistrict Litigation of any petitions that were received within the 10-day period.

§ 200.2022 Stay of initial decision.

(a) In a CMP case under section 1128A of the Act, the filing of a respondent's request for review by the

DAB will automatically stay the effective date of the ALJ's decision.

(b)(1) After the DAB renders a decision in a CMP case, pending judicial review, the respondent may file a request for stay of the effective date of any penalty or assessment with the ALJ. The request must be accompanied by a copy of the notice of appeal filed with the Federal court. The filing of such a request will automatically act to stay the effective date of the penalty or assessment until such time as the ALJ rules upon the request.

(2) The ALJ may not grant a respondent's request for stay of any penalty or assessment unless the respondent posts a bond or provides other adequate security.

(3) The ALJ will rule upon a respondent's request for stay within 10 days of receipt.

§ 200.2023 Harmless error.

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in any act done or omitted by the ALJ or by any of the parties, including Federal representatives or TRICARE contractors is ground for vacating, modifying, or otherwise disturbing an otherwise appropriate ruling or order or act, unless refusal to take such action appears to the ALJ or the DAB inconsistent with substantial justice. The ALJ and the DAB at every stage of the proceeding will disregard any error or defect in the proceeding that does not affect the substantial rights of the parties.

Dated: September 14, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DOD-2019-OS-0122]

RIN 0790-AK47

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Direct final rule with request for comments.

SUMMARY: The Office of the Secretary proposes to exempt records maintained in CIG-26, "Case Control System—Investigative." The System of Records Notice was published in the **Federal**

Register on August 9, 2011. This rule is being published as a direct final rule as the DoD does not expect to receive any adverse comments. If such comments are received, this direct final rule will be cancelled and a proposed rule for comments will be published.

DATES: The rule will be effective on December 7, 2020 unless comments are received that would result in a contrary determination. Comments will be accepted on or before November 27, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods.

* *Federal eRulemaking Portal:* <http://www.regulations.gov>.

Follow the instructions for submitting comments.

* *Mail:* DoD cannot receive written comments at this time due to the COVID-19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (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 <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Rivera, 703-699-5680.

SUPPLEMENTARY INFORMATION: The Office of the Secretary proposes to exempt records maintained in CIG-26, "Case Control System-Investigative," from subsections (c)(3) and (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), and (e)(8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(2).

This direct final rule adds to the Office of the Inspector General (OIG) exemptions found in 32 CFR 310.28. This exemption rule will allow the DoD OIG to efficiently and effectively implement the DoD Inspector General program by exempting certain records from pertinent provisions of 5 U.S.C. 552a.

The DoD OIG maintains this system of records in order to carry out its responsibilities pursuant to the Inspector General Act of 1978, as amended. The DoD OIG is statutorily directed to conduct and supervise investigations relating to the programs and operations of the DoD; to promote economy, efficiency, and effectiveness

in the administration of such programs and operations; and to prevent and detect fraud, waste, and abuse in such programs and operations. Accordingly, the records in this system are used in the course of investigating individuals suspected of administrative or criminal misconduct.

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

It has been previously determined that all Privacy Act rules for the Department of Defense 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.

Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs"

This final rule is not subject to the requirements of E.O. 13771 because it is not significant under E.O. 12866.

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

It has been determined that the Privacy Act rulemaking for the Department of Defense 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.

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

It has been determined that Privacy Act rules for the Department of Defense impose no additional reporting or recordkeeping requirements on the public under the Paperwork Reduction Act of 1995.

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

It has been certified that Privacy Act rules for the Department of Defense do

not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Congressional Review Act

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. We 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 cannot take effect until 60 days after it is published in the **Federal Register**. This direct final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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 32 CFR Part 310

Privacy.
Accordingly, 32 CFR part 310 is amended as follows:

PART 310—[AMENDED]

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

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

■ 2. Amend § 310.28 by adding paragraph (c)(9) to read as follows:

§ 310.28 Office of the Inspector General (OIG) exemptions.

* * * * *

(c) * * *

(9) *System identifier and name.* CIG-26, Case Control System-Investigative.

(i) *Exemption.* Any portion of this system which falls within the provisions of 5 U.S.C. 552a(j)(2) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G) through (I), (e)(5), (e)(8), and (g), as applicable. In addition, any portion of this system which falls within the provisions of 5 U.S.C. 552a(k)(1) or (k)(2) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through

(I), as applicable. Exempted records from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the DoD OIG claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part. Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(ii) *Authority.* 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2).

(iii) *Reasons.* (A) From subsections (c)(3) and (c)(4) because making available to a record subject the accounting of disclosure of investigations concerning him or her would specifically reveal an investigative interest in the individual. Revealing this information would reasonably be expected to compromise open or closed administrative or criminal investigation efforts to a known or suspected offender by notifying the record subject that he or she is under investigation. This information could also prompt the record subject to take measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(B) From subsection (d), because these provisions concern individual access to and amendment of certain records contained in this system. Granting access to information that is properly classified pursuant to executive order may cause damage to national security. Additionally, compliance with these provisions could alert the subject of an investigation of the fact and nature of the investigation and/or the investigative interest of law enforcement agencies. It can also compromise sensitive information related to national security; interfere with the overall law enforcement process by leading to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; could identify a confidential source or disclose information which would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigation or constitute a

potential danger to the health or safety of law enforcement personnel, confidential informants, and witnesses. Amendment of open or active investigations would interfere with ongoing law enforcement investigations and analysis activities, and impose an excessive administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised.

(C) From subsection (e)(1) because it is not always possible to determine what information is relevant and necessary at an early stage in a given investigation, and because DoD OIG and other agencies may not always know what information about a known or suspected offender may be relevant to law enforcement for the purpose of conducting an operational response. The nature of the criminal and/or administrative law enforcement investigative functions creates unique problems in prescribing a specific parameter and a particular case with respect to what information is relevant or necessary. Also, due to the DoD OIG's close liaison and working relationships with other Federal, State, local and foreign country criminal and administrative law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate criminal and administrative law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(D) From subsection (e)(2) because it is not always in the best interest of law enforcement to collect information to the greatest extent practicable directly from an investigative subject. Requiring the collection of information to the greatest extent practicable directly from an investigative subject would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

(E) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(F) From subsections (e)(4)(G) through (I) because this system of records is exempt from the access provisions of subsection (d).

(G) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of criminal law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(H) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to criminal law enforcement investigations by revealing investigative techniques, procedures, and existence of sensitive information and/or confidential sources.

(I) To the extent that exemptions have been established from other provisions of the Privacy Act, the civil remedies provisions of subsection (g) are inapplicable. The nature of criminal law enforcement investigations and the utilization of authorized exemptions should not increase the Department's exposure to civil litigation under the Privacy Act.

Dated: September 23, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2017-0335; FRL-10013-27]

***Pseudomonas fluorescens* Strain ACK55; Exemption From the Requirement of a Tolerance**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of *Pseudomonas fluorescens* strain ACK55 in or on all food commodities when used in accordance with label directions and good agricultural practices. The IR-4 Project submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum