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(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: fr.inspection@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

Issued on August 28, 2023.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

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FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1406

RIN 3076-AA26

FMCS Terms of Service

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is issuing this proposed rule for FMCS clients. This rulemaking sets forth terms for FMCS's provision of services. This rulemaking further expounds upon confidentiality rules associated with FMCS's services.

DATES: Comments must be submitted on or before October 31, 2023.

ADDRESSES: You may submit comments, in writing, to FMCS on this proposed rule, identified by RIN 3076-AA26, by any of the following methods:

- *Email:* register@fmcs.gov. Include the reference "Proposed Rule FMCS Terms of Service, RIN 3076-AA26" in the subject line of the message.

- *Mail:* FMCS, One Independence Square, 250 E Street SW, Washington, DC 20427, Attention: Alisa Zimmerman, Deputy General Counsel.

FOR FURTHER INFORMATION CONTACT:

Alisa Zimmerman, Deputy General Counsel, Office of General Counsel, Federal Mediation and Conciliation Service, 250 E St SW, Washington, DC 20427; Office/Fax/Mobile 202-606-5488; azimmerman@fmcs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Mediation and Conciliation Service (FMCS) works to build better, more effective workplace relationships and mitigate the damage from inevitable conflict through preventive dialogue, honest

communication, and responsive strategies. Through our mission, FMCS provides professional services to a wide range of Federal, state, and local government agencies to resolve disputes, design conflict management systems, build capacity for constructive conflict management, and strengthen inter-agency and public-private cooperation. In offering these services, FMCS recipients must agree to abide by the proposed rule to preserve the integrity of the provided services.

II. Analysis of the Regulations

Section 1406.1 General Terms of Service

Paragraphs (a) through (g) set forth general terms of service applicable to all FMCS services. More specifically:

Paragraph (a) explains that when FMCS services are chosen, recipients of the services agree to abide by the terms as well as any other terms of services provided by FMCS and will hold FMCS and any FMCS neutral harmless.

Paragraph (b) notes FMCS will determine the date, time, and manner of services in accordance with applicable statutes and regulations.

Paragraph (d) explains that any person shadowing an FMCS neutral agrees to be bound by the same confidentiality standards as the FMCS neutral, which will be honored by the parties.

Paragraph (e) notes that FMCS recognizes the importance of mediator confidentiality, and as such FMCS will not produce materials related to a mediation, with some exceptions.

Paragraph (f) states that's the section does not negate or modify FMCS's Confidential Commercial Information (CCI) regulation.

Paragraph (g) discusses that FMCS will make the terms publicly available and make a copy available to all parties upon request.

Section 1406.2 Terms of Service for Mediation, Facilitation, and Other Alternative Dispute Resolution Services

Paragraphs (a) through (g) sets forth additional terms of service specific to mediation, facilitation, & other alternative dispute resolution services provided by FMCS.

Section 1406.3 Virtual Services—Additional Terms of Service

Paragraphs (a) through (c) set forth additional terms of service specific to virtual services provided by FMCS.

Section 1406.4 Grievance Mediation and Federal Sector Inter-Agency Agreement Mediation—Additional Terms of Service

Paragraphs (a) through (e) set forth additional terms of service specific to grievance mediations and Federal sector inter-agency agreement mediations provided by FMCS.

Section 1406.5 Training and Outreach

This section sets forth additional terms of service specific to training and outreach presentations provided by FMCS.

III. Matters of Regulatory Procedure

Administrative Procedure Act

Under 5 U.S.C. 553(a)(2), rules relating to agency management or personnel are exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act (APA). In addition, under 5 U.S.C. 553(b)(3)(A), notice and comment rulemaking requirements do not apply to rules concerning matters of agency organization, procedure, or practice. Given that the rule concerns matters of agency management or personnel, and organization, procedure, or practice, the notice and comment requirements of the APA do not apply here. Nor is a public hearing required under 45 U.S.C. 160a. In issuing a proposed rule on this matter, FMCS, will consider all written comments on this proposed rule that are submitted by the October 31, 2023 due date.

Executive Order 12866

This proposed rule is not a significant rule for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

FMCS has determined under the Regulatory Flexibility Act, 5 U.S.C. chapter 6, that this proposed rule would not have a significant economic impact on a substantial number of small entities because it would primarily affect FMCS employees.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. chapter 35, does not apply to this proposed rule because it does not contain any information collection requirements that would require the approval of the Office of Management and Budget.

Congressional Review Act

FMCS has determined that this proposed rule does not meet the definition of a rule, as defined by the Congressional Review Act, 5 U.S.C. chapter 8, and thus does not require review by Congress.

List of Subjects in 29 CFR Part 1406

Administrative practice and procedure, Labor management relations.

For the reasons discussed in the preamble, FMCS proposes to amend 29 CFR chapter XII by adding part 1406 to read as follows:

PART 1406—FMCS TERMS OF SERVICE

Sec.

1406.1 General terms of service.

1406.2 Terms of service for mediation, facilitation, and other alternative dispute resolution services.

1406.3 Virtual services—additional terms of service.

1406.4 Grievance mediation and Federal sector inter-agency agreement mediation—additional terms of service.

1406.5 Training and outreach presentations.

Authority: 29 U.S.C. 172; 29 U.S.C. 173 *et seq.*; and 5 U.S.C. 574.**§ 1406.1 General terms of service.**

When Federal Mediation and Conciliation Service (FMCS) services are chosen, the recipients of the services have agreed to abide by FMCS's general terms of service as well as any other terms of service provided by FMCS.

(a) The recipients of a service shall hold FMCS and any FMCS neutrals harmless of any claim arising from the delivery of that FMCS service.

(b) FMCS will determine the date, time, place, and manner (virtual, in-person, or hybrid) of services provided in accordance with any applicable statutes, regulations, and agreements.

(c) FMCS may convene the parties for a threatened or actual work stoppage whenever in its judgment such dispute threatens to cause a substantial interruption of commerce.

(d) Any person shadowing an FMCS neutral agrees to be bound by the same confidentiality standards as the FMCS neutral and such confidentiality standards will be honored by the parties.

(e) FMCS recognizes the importance of mediator confidentiality to further its mission. Therefore, FMCS will not produce any materials related to a mediation other than the date, parties, location, and mediator, unless required by law. FMCS will not produce materials related to a mediation, materials exchanged in a mediation or facilitation, information related to non-plenary sessions of a facilitation, mediator or facilitator notes, and any internal communications with the mediator or facilitator, unless required by law.

(f) Nothing in this section shall be construed so as to negate or modify the FMCS's Confidential Commercial Information (CCI) regulation (29 CFR 1401.26).

(g) FMCS will make a copy of these terms available to all parties upon request.

§ 1406.2 Mediation, facilitation, and other alternative dispute resolution services—additional terms of service.

The following Terms of Service additionally apply when the FMCS service is a mediation, facilitation, training, and other alternative dispute resolution service.

(a) These services are voluntary processes that may be terminated at any time unless otherwise provided by statute or by agreement.

(b) The neutral has no authority to compel resolution.

(c) These services are confidential to the extent allowed by law. The obligations imposed by these terms and conditions are in addition to and do not supersede any obligations imposed by applicable state or Federal laws regarding mediation confidentiality.

(d) The parties agree that they will not record, transcribe, save, or otherwise capture any audio, video, files, documents, chat texts, or any other data that they would not have access to but for the service being provided, unless agreed to by all parties and with prior written approval of FMCS, or as otherwise required by law. They further agree to notify the neutral immediately if recordings, saves or other captures of data occur, to ensure that no further distribution or transfer occurs, and to immediately and permanently delete them.

(e) Non-parties may attend only with the agreement of the parties and the neutral unless otherwise required by law and are bound by these terms of service.

(f) If a party inadvertently gains access to any confidential discussions involving another party, the party with inadvertent access shall immediately disclose their presence and exit from the confidential discussions. Any confidential information inadvertently disclosed may not be used by the party with inadvertent access, even within the confines of the alternative dispute resolution session.

(g) The parties agree not to subpoena or compel the neutral to testify or produce any documents provided by a party in any administrative or judicial proceeding. The neutral will not voluntarily testify or produce documents on behalf of a party in any administrative or judicial proceeding unless otherwise required by law.

§ 1406.3 Grievance mediation and Federal sector inter-agency agreement mediation—additional terms of service.

The following Terms of Service additionally apply when the FMCS service is a grievance mediation or Federal sector inter-agency agreement mediation.

(a) The grievant or complainant is entitled to be present at the mediation.

(b) The parties agree not to disclose to any non-party oral or written communications made during the mediation process, including settlement terms, proposals, offers, or other statements, whether made privately to the neutral or when all parties are present.

(c) Evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation proceedings.

(d) The neutral has no authority to compel agreement or other resolution of the dispute and will issue no written recommendations or conclusions. At the request of the parties, or on the initiative of the neutral, the neutral may provide an oral recommendation or opinion to resolve the dispute. In that circumstance, the parties may jointly decide to implement that recommendation or opinion but neither party is obligated to do so.

(e) (For Federal sector inter-agency agreement mediation, if applicable) Any communications between the Agency or Organizational Program/or Alternative Dispute Resolution Coordinator and the neutral(s) and/or the parties are considered dispute resolution communications with a neutral and will be kept confidential.

§ 1406.4 Training and outreach presentations.

The following Terms of Service additionally apply when the FMCS service is a training or outreach presentation.

(a) The parties agree that they will not record any FMCS training or outreach presentation (whether delivered in-person or virtually) without the knowledge and consent of the parties and prior written approval of FMCS.

(b) [Reserved]

§ 1406.5 Virtual services—additional Terms of Service.

The following Terms of Service additionally apply when the FMCS service is provided virtually.

(a) Parties may not provide meeting access information to non-parties without permission from the neutral unless the session is open to the public.

(b) The neutral and all parties must be provided notice of all attendees before or at the time of attendance unless the session is open to the public.

(c) Parties must ensure the integrity of technology used in virtual meetings. If an attendee is aware of any security breach, that attendee will inform the neutral immediately.

Dated: August 29, 2023.

Anna Davis,

General Counsel.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DoD-2023-OS-0060]

RIN 0790-AL64

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-0019, “Information Technology Access and Audit Records,” 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 of 1974, as amended, because of national security requirements and to avoid interference during the conduct of criminal, civil, or administrative actions or investigations.

DATES: Send comments on or before October 31, 2023.

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

* *Federal Rulemaking Portal:* <http://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, 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 Department-wide system of records titled “Information Technology Access and Audit Records,” DoD-0019. The purpose of this system of records is to support information systems being established within the DoD using the same categories of data for the same purposes. This system of records covers DoD’s maintenance of records related to requests for user access, attempts to access, granting of access, records of user actions for DoD information technology (IT) systems, and user agreements. This includes details of programs, databases, functions, and sites accessed and/or used, and the information products created, received, or altered during the use of IT systems. The system consists of both electronic and paper records and will be used by DoD components and offices to maintain records about individuals who have user agreements, user access to and activity on networks, computer systems, applications, databases, or other digital technologies.

II. Privacy Act Exemption

The Privacy Act permits Federal agencies to exempt eligible records in a system of records from certain provisions of the Act, including that provide individuals with a right to request access to and amendment of their own records and accountings of disclosures of such records. If an agency intends to exempt a particular system of records, it must first go through the rulemaking process pursuant to 5 U.S.C. 553(b)(1)–(3), (c), and (e). This proposed rule explains why an exemption is being claimed for this system of records and invites public comment, which DoD will consider before the issuance of a final rule implementing the exemption.

The DoD proposes to modify 32 CFR part 310 to add a new Privacy Act exemption rule for DoD-0019, “Information Technology Access and Audit Records.” The DoD 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: (k)(1) and (k)(2).

The DoD proposes to exempt this system of records because some of 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. 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 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.

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-0019, “Information Technology Access and Audit Records,” 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