

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Thomas D. Shope,

Regional Director, Regional Director, North Atlantic—Appalachian Region.

[FR Doc. 2020–27601 Filed 12–15–20; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE**Office of the Secretary****32 CFR Part 310**

[Docket ID: DoD–2020–OS–0084]

RIN 0790–AK99

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Proposed rule.

SUMMARY: The Office of the Secretary of Defense proposes to exempt some records maintained in DoD 0003 “Mobilization Deployment Management Information System (MDMIS)”. The proposed action is sought to protect classified information for national security purposes. In the course of carrying out collections and analysis of information, exempt records received from other Systems of Records may become part of this system. To the extent that copies of exempt records from those other systems of records are maintained in this system, the Department also claims the same exemptions for the records from those other systems that are maintained in this system, as claimed for the prior system(s) of which they are a part, provided the reason for the exemption remains valid and necessary.

DATES: Send comments on or before February 16, 2021.

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

Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: The 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 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.

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FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Jenkins at (703) 571–0070.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense proposes to exempt some records maintained in DoD 0003 “Mobilization Deployment Management Information System (MDMIS)” from subsections 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4) of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(1). This proposed modification to 32 CFR part 310 adds a new Privacy Act exemption rule for the Mobilization Deployment Management Information System (MDMIS), a system which accounts for the mobilization and deployment of every unit and military member in an automated and auditable information technology platform.

Some information within the MDMIS may be classified pursuant to executive order. Information classified pursuant to executive order, as implemented by DoD Instruction (DoDI) 5200.01 and DoD Manual (DoDM) 5200.01, Volumes 1 and 3, may be exempt pursuant to 5 U.S.C. 552a(k)(1). Granting unfettered access to information that is properly classified pursuant to those authorities may cause damage to the national security.

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 (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that this rule is not a significant regulatory action and has not been reviewed by the Office of Management and Budget under these Executive Orders.

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs”

This rule has been deemed not significant under Executive Order (E.O.) 12866, “Regulatory Planning and Review.” Therefore, the requirements of E.O. 13771, “Reducing Regulation and

Controlling Regulatory Costs,” do not apply.

Congressional Review Act

This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C Chapter 6)

It has been certified that this rule does not have a 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 DoD. A Regulatory Flexibility Analysis is not required.

Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

It has been determined that this rule does not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Section 202, Public Law 104–4, “Unfunded Mandates Reform Act”

It has been determined that this rule 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 it will not significantly or uniquely affect small governments.

Executive Order 13132, “Federalism”

It has been determined that this rule does not have federalism implications. This 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 32 CFR Part 310

Privacy.

Accordingly, 32 CFR part 310 is proposed to be amended as follows:

PART 310—PROTECTION OF PRIVACY AND ACCESS TO AND AMENDMENT OF INDIVIDUAL RECORDS UNDER THE PRIVACY ACT OF 1974

■ 1. The authority citation for 32 CFR part 310 continues to read as follows:

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

■ 2. Section 310.13 is amended by adding paragraph (e)(3) as follows:

§ 310.13 Procedures for exemptions.

* * * * *

(e) * * *

(3) *System identifier and name.* DoD 0003 “Mobilization Deployment

Management Information System (MDMIS).”

(i) *Exemptions.* This system of records is exempt from subsections 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), and (d)(4) of the Privacy Act.

(ii) *Authority.* 5 U.S.C. 552a(k)(1).

(iii) *Exemption from the particular subsections.* Exemption from the particular subsections is justified for the following reasons:

(A) From subsection (c)(3) (accounting of disclosures) because common enterprise records may contain information properly classified pursuant to Executive Order; some disclosure accountings of such records may also contain information properly classified pursuant to executive order that if disclosed could damage national security.

(B) From subsections (d)(1), (2), (3), and (4) (record subject's right to access and amend records) because access to, amendment of, or release of the accounting of disclosures of such records could disclose information properly classified pursuant to executive order that could damage national security.

(iv) Exempt records from other systems. In addition, in the course of carrying out the overall purpose for this system, exempt records from other systems records may in turn become part of the records maintained in this system. To the extent that copies of exempt records from those other systems of records are maintained in this system, the DoD claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the prior system(s) of which they are a part, provided the reason for the exemption remains valid and necessary.

Dated: December 4, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020-27095 Filed 12-15-20; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Solicitation of New Safe Harbors and Special Fraud Alerts

AGENCY: Office of Inspector General (OIG), Department of Health and Human Services (HHS).

ACTION: Notification of intent to develop regulations.

SUMMARY: In accordance with section 205 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), this annual notification solicits proposals and recommendations for developing new, or modifying existing, safe harbor provisions under section 1128B(b) of the Social Security Act (the Act), the Federal anti-kickback statute, as well as developing new OIG Special Fraud Alerts.

DATES: To ensure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on February 16, 2021.

ADDRESSES: In commenting, please refer to file code OIG-128-N. Because of staff and resource limitations, we cannot accept comments by facsimile (fax) transmission. You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific recommendations and proposals through the Federal eRulemaking Portal at <http://www.regulations.gov>.

2. *By regular, express, or overnight mail.* You may send written comments to the following address: OIG, Regulatory Affairs, HHS, Attention: OIG-1117-N, Room 5527, Cohen Building, 330 Independence Avenue SW, Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver your written comments by hand or courier before the close of the comment period to the following address: OIG, HHS, Cohen Building, Room 5527, 330 Independence Avenue SW, Washington, DC 20201. Because access to the interior of the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to schedule their delivery with one of our staff members at officeofcounsel@oig.hhs.gov. For information on the inspection of public comments, please see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Samantha Flanzer, Office of Inspector General, (202) 619-0335.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on recommendations for developing new or revised safe harbors and Special Fraud Alerts. Please assist us by referencing the file code OIG-1117-N.

Inspection of Public Comments: All comments received before the end of the

comment period will be posted for public viewing at <http://www.regulations.gov>.

I. Background

A. OIG Safe Harbor Provisions

Section 1128B(b) of the Act, (42 U.S.C. 1320a-7b(b)), the Federal anti-kickback statute), provides for criminal penalties for whoever knowingly and willfully offers, pays, solicits, or receives remuneration to induce or reward, among other things, the referral for, or purchase of, items or services reimbursable under any of the Federal health care programs, as defined in section 1128B(f) of the Act (42 U.S.C. 1320a-7b(f)). The offense is classified as a felony and is punishable by fines of up to \$100,000 and imprisonment for up to 10 years. Violations of the Federal anti-kickback statute also may result in the imposition of civil monetary penalties under section 1128A(a)(7) of the Act (42 U.S.C. 1320a-7a(a)(7)), program exclusion under section 1128(b)(7) of the Act (42 U.S.C. 1320a-7(b)(7)), and liability under the False Claims Act (31 U.S.C. 3729-33).

Because of the broad reach of the statute, concern was expressed that some relatively innocuous business arrangements were covered by the statute and, therefore, potentially subject to criminal prosecution. In response, Congress enacted section 14 of the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100-93 (note to section 1128B of the Act; 42 U.S.C. 1320a-7b), which specifically requires the development and promulgation of regulations, the so-called safe harbor provisions, that would specify various payment and business practices that would not be subject to sanctions under the Federal anti-kickback statute, even though they potentially may be capable of inducing referrals of business for which payment may be made under a Federal health care program. Since July 29, 1991, there have been a series of final regulations published in the **Federal Register** establishing safe harbors protecting various payment and business practices.¹ These safe harbor provisions have been developed “to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial and innocuous

¹ See e.g., Medicare and State Health Care Programs: Fraud and Abuse; Revisions to the Safe Harbors Under the Anti-Kickback Statute and Civil Monetary Penalty Rules Regarding Beneficiary Inducements, 81 FR 88368 (Dec. 7, 2016).