

constitutes a “major” rule. If the OMB deems a rule to be a “major rule,” the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication. The Congressional Review Act defines a “major rule” as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.<sup>18</sup>

For the same reasons set forth above, the Board is adopting the extension of the temporary final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.<sup>19</sup> In light of current market uncertainty, the Board believes that delaying the effective date of the extension of the temporary final rule would be contrary to the public interest for the same reasons discussed above.

As required by the Congressional Review Act, the Board will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a valid OMB control number.

In accordance with the PRA, the information collection requirements included in this temporary final rule extension have been submitted to OMB for approval under control numbers 3133–0141, 3133–0127 and 3133–0040.

#### D. Executive Order 13132, on Federalism

Executive Order 13132<sup>20</sup> encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency, as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive order to adhere to fundamental federalism principles. The extension of the temporary final rule will 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. The Board has therefore determined that this rule does not constitute a policy that has federalism implications for purposes of the Executive order.

#### E. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that the extension of the temporary final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.<sup>21</sup>

#### F. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule or a final rule pursuant to the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. For purposes of the RFA, the Board considers credit unions with assets less than \$100 million to be small entities.

As discussed previously, consistent with the APA, the Board has determined for good cause that general notice and opportunity for public comment is unnecessary, and therefore the Board is not issuing a notice of proposed rulemaking. Rules that are exempt from notice and comment procedures are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Accordingly, the

Board has concluded that the RFA’s requirements relating to initial and final regulatory flexibility analysis do not apply.

#### List of Subjects in 12 CFR Part 701

Aged, Civil rights, Credit, Credit unions, Fair housing, Individuals with disabilities, Insurance, Mortgages, Reporting and recordkeeping requirements.

By the NCUA Board, this 17th day of December 2021.

**Melane Conyers-Ausbrooks,**  
*Secretary of the Board.*

For the reasons discussed in the preamble, the Board amends 12 CFR part 701 as follows:

#### PART 701—ORGANIZATION AND OPERATION OF CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1785, 1786, 1787, 1788, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

#### § 701.22 [Amended]

■ 2. In § 701.22(e), remove the date “December 31, 2021” and add in its place the date “December 31, 2022”.

#### § 701.23 [Amended]

■ 3. Amend § 701.23 as follows:

- a. In paragraph (i) introductory text, remove the date “December 31, 2021” and add in its place the date “December 31, 2022”; and
- b. Effective April 1, 2022, in paragraph (i)(2) remove the term “CAMEL”, and add in its place the term “CAMELS.”

#### § 701.36 [Amended]

■ 4. In § 701.36(c)(3), remove the date “December 31, 2021” and add in its place the date “December 31, 2022”.

[FR Doc. 2021–27771 Filed 12–20–21; 4:15 pm]

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## DEPARTMENT OF STATE

### 22 CFR Part 51

[Public Notice: 11609]

RIN 1400–AE68

**Passports: Option for Passport Applicants Eligible To Apply by Mail for Renewal of Passports To Apply On-Line**

**AGENCY:** Department of State.

<sup>18</sup> 5 U.S.C. 804(2).

<sup>19</sup> 5 U.S.C. 808.

<sup>20</sup> Executive Order 13132 on Federalism, was signed by former President Clinton on August 4, 1999, and subsequently published in the **Federal Register** on August 10, 1999 (64 FR 43255).

<sup>21</sup> Public Law 105–277, 112 Stat. 2681 (1998).

**ACTION:** Final rule.

**SUMMARY:** Pursuant to Department regulations, the renewal of a U.S. passport must meet certain requirements to qualify for submission of an application by mail. The Department will now provide qualified applicants the option of submitting renewal applications by mail or on-line via the Department's official website. This amendment will provide more flexibility for the renewal applicant, will improve the customer experience, and eliminate the added burden, time, and cost to the customer by providing the on-line option as an alternative to the mail in process.

**DATES:** This final rule is effective on December 23, 2021.

**FOR FURTHER INFORMATION CONTACT:** Kelly Cullum, Office of Adjudication, Passport Services, (202) 485-8800, or email [PassportOfficeofAdjudicationGeneral@state.gov](mailto:PassportOfficeofAdjudicationGeneral@state.gov).

**SUPPLEMENTARY INFORMATION:** The Department published a proposed rule, Public Notice 11457 at 86 FR 43458, August 9, 2021 (the NPRM), with a request for comments to amend 22 CFR 51.21(b), (b)(2), (b)(3); and 51.8(a), (b), (c), and (d) to allow eligible applicants the option to apply on-line via the Online Passport Renewal (OPR) system. Applicants must meet all of the eligibility requirements for using OPR or will be referred to the paper application process. Applicants using OPR will enter their application information and upload their photos directly into the OPR system and submit their payment through [pay.gov](http://pay.gov). This process will improve efficiency and accessibility by offering online verification of renewal eligibility, electronic photo upload, and electronic payment. Applications received through OPR will automatically enter review queues at the passport agency, thus eliminating the physical application and processing at the Lockbox. The new OPR system will improve the customer experience, reduce operational and maintenance costs, and focus on data quality, protection, and traceability. The first release of the OPR system will be limited in its release and apply to persons in the United States who are submitting an application in the same name, gender marker, date of birth, and place of birth as the most recently issued passport of the same type with the intent that future releases will permit changes and be used by persons applying abroad.

The rule was discussed in detail in Public Notice 11457, as were the

Department's reasons for the other changes to the regulations. The Department is now promulgating a final rule with minor changes from the proposed rule and no substantive change.

*Analysis of Comments:* The Department provided 60 days for comment on the NPRM. The comment period closed October 8, 2021.

The Department received twelve responsive comments, none of which were opposed to this amendment. Several commenters noted their concerns about possible identity theft and insisted on the use of the latest technology to protect applicants. Online passport applications are subject to the same rigorous protection of personally identifiable information (PII) as physical applications. The Department processes passport applications, whether mailed or submitted online, on controlled workstations accessed by authorized employees only. The rollout of the OPR system is compliant with the Department's policy (5 FAM 772.1) in that "encryption and digital certificates must be integrated into the applications to the greatest extent possible."

Two commenters also requested that online payment be acceptable and specifically, that it include use of credit cards. As noted in the proposed rule, applicants using the OPR will submit payment through [pay.gov](http://pay.gov) which already accepts credit cards.

Two commenters discussed the need for online submission of supporting documents or using existing information in U.S. government databases to verify citizenship. They noted the difficulty of sending original vital records and naturalization certificates. As discussed in the proposed rule, eligible OPR users will upload applications and photos directly to the system eliminating the need for paper-based applications. Adults renewing passports who are eligible to use OPR generally do not need to submit supporting documentation because the issuance of a prior passport serves as citizenship evidence. In most cases prior passport issuance information is already available in adjudication systems. The Department coordinates with federal agencies such as USCIS as well as vital records offices to protect the integrity of the passport application process, verify citizenship documentation, and confirm entitlement to a U.S. passport. Passport Services' modernization efforts include online document verification.

One commenter requested that the Department make OPR available for first-time applicants and another requested it be available for applicants located outside the United States. As

defined in 22 CFR 51.21(a), first-time applicants (who by statute, 22 U.S.C. 213, are required to verify their application by an in person oath), applicants who have never been issued a passport in his or her own name, applicants who have not been issued a passport for the full validity period of 10 years within 15 years of the date of a new application, and minors under the age of 16 must apply for a passport by appearing in person before a passport agent or passport acceptance agent. The applicant must verify the application by oath or affirmation before the passport agent or passport acceptance agent, sign the completed application, provide photographs and any other information or documents as prescribed or requested by the Department. These requirements cannot be addressed through OPR. As noted in the draft rule, the first release of the OPR system will apply to persons in the United States, with the intent for future releases applying to persons abroad.

One commenter stated that applicants requesting a change in gender marker and those identifying as any gender besides male or female should be ineligible for OPR due to fraud concerns. The Department takes fraud very seriously and reviews all passport applications for possible fraud. Adjudicators receive extensive fraud training and utilize facial recognition technology and social security and birth information data verification to detect fraud, regardless of the method of application. Thus, while the Department appreciates the commenter's concern, it does not believe that the possibility of someone successfully committing fraud would be any greater after OPR is operational.

Regarding gender markers and other changes that an applicant might wish to make to their information, the proposed regulatory text (proposed section 51.21(b)(iii)) provided that the "first release of the OPR system will require that the application be submitted in the same name, sex [*i.e.*, gender] marker, date of birth, and place of birth as the most recently issued passport of the same type with the intent that future releases will permit changes". This text was removed from the text of the final rule because the Department determined that it is more appropriate for a statement of policy in the preamble and is not regulatory text. It does, however, reflect the limitation on the first release of the OPR system, but not Department policy for future releases.

While supportive of OPR, several commenters noted the continued need for the Department to reduce service times and paperwork and the

assumption that OPR would provide faster processing times. As noted in the draft rule, OPR will provide more flexibility for the renewal applicant, will improve the customer experience, and eliminate the added burden, time, and cost to the customer by providing the on-line option as an alternative to the mail in process. Processing times listed on [www.travel.state.gov](http://www.travel.state.gov) are still Department standard for all passport applications, physical and electronic. Future expansion of OPR may allow for changes to expected service commitment times for online applications. The Department continuously strives to reduce passport processing service times through modernization initiatives.

One person suggested maintaining a walk-in passport agency in every U.S. city with a population greater than 250,000. This is outside the scope of the proposed rule. However, the Department coordinates with a network of approximately 7,500 passport application acceptance facilities across the United States, all of which offer in-person service (though they may be by appointment only, rather than offering walk-in service). The network of passport application acceptance facilities provides convenient, nationwide access.

Another commenter requested that the Department coordinate with USCIS to automatically link the passport application to the naturalization process. This is outside the scope of the proposed rule. However, the Department regularly coordinates with USCIS to provide passport application acceptance services at naturalization ceremonies.

## Regulatory Findings

### *Administrative Procedure Act*

The Department published this rulemaking as a proposed rule and provided 60 days for public comment. The Department finds good cause for the effective date to be less than 30 days from date of publication. As stated in *American Bankers Ass'n v. NCUA*, 38 F. Supp. 2d 114, 139–40 (D.D.C. 1999), according to the legislative history of the APA, the purpose for deferring the effectiveness of a final rule under § 553(d) was to “afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take other action which the issuance may prompt.” S. REP. NO. 79–752, at 15 (1946). In the same vein, the D.C. Circuit has explained that “the purpose of the thirty-day waiting period is to give affected parties a reasonable time to adjust their behavior before the final

rule takes effect.” *Omnipoint Corp. v. FCC*, 316 U.S. App. D.C. 259, 78 F.3d 620, 630 (D.C. Cir. 1996).

There is no requirement for anyone to “adjust their behavior” or prepare for anything prior to this rule going into effect. Those who do not wish to renew their passports using the online procedure still have the current DS–82 available to them. The 30-day notice requirement of § 553(d) is “subject to the rule of prejudicial error.” See 5 U.S.C. 706; *Petaluma FX Partners, LLC v. Commissioner*, 416 U.S. App. D.C. 411, 420, 792 F.3d 72, 81 (2015).

In addition, the Department is providing a benefit to the public by this rulemaking. The Department estimates that the online application will take approximately five minutes to complete, as opposed to 40 minutes for the DS–82. OPR saves up to three weeks for initial application processing that includes mailing and receipt at the lockbox facility as well as the candling (fee processing, scanning, and batching) of the applications for physical transmission to passport agencies. Additionally, customers save time and money for transit to and from a post office for mailing, the price of an envelope, and either the cost of first-class stamp or express mail fees—of between \$0.58 to \$26.60 per application. Use of OPR allows the customer to create and submit a digital application, upload their photograph, and make a payment via [pay.gov](http://pay.gov) from a computer or mobile device with no physical/paper application involved.

Therefore, the Department finds good cause to publish this rule without a delayed effective date under 5 U.S.C. 553(d)(1) and (3).

### *Regulatory Flexibility Act*

The Department of State certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule gives greater flexibility to applicants applying to renew their U.S. passport.

### *Unfunded Mandates Act of 1995*

This final rule does not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it does not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Act of 1995.

### *Congressional Review Act*

This rule is not a major rule as defined by the Congressional Review Act. This rule does not result in an annual effect on the economy of \$100

million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

### *Executive Order 12866*

The Office of Information and Regulatory Affairs has designated this rule “not significant” under Executive Order 12866. As explained in the preamble and the APA section above, the benefits of the rule outweigh any costs to the public (which the Department assesses will be minimal).

### *Executive Order 13132—Federalism*

This rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities do not apply to this regulation.

### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

The Department has determined that this rulemaking does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

### *Paperwork Reduction Act*

This rulemaking is related to the information collection described in OMB Control No. 1405–0020 (Form DS–82). The web-based version of this form was approved in July 2021.

### List of Subjects in 22 CFR Part 51

Passports.

Accordingly, for the reasons set forth in the preamble, 22 CFR part 51 is amended as follows:

## PART 51—PASSPORTS

■ 1. The authority citation for part 51 continues to read as follows:

**Authority:** 8 U.S.C. 1504; 18 U.S.C. 1621; 22 U.S.C. 211a, 212, 212b, 213, 213n (Pub. L. 106–113 Div. B, Sec. 1000(a)(7) [Div. A, Title II, Sec. 236], 113 Stat. 1536, 1501A–430); 214, 214a, 217a, 218, 2651a, 2671(d)(3), 2705, 2714, 2714a, 2721, & 3926; 26 U.S.C. 6039E; 31 U.S.C. 9701; 42 U.S.C. 652(k) [Div. B, Title V of Pub. L. 103–317, 108 Stat. 1760]; E.O. 11295, Aug. 6, 1966, FR 10603, 3 CFR, 1966–1970 Comp., p. 570; Pub. L. 114–119, 130 Stat. 15; Sec. 1 of Pub. L. 109–210, 120

Stat. 319; Sec. 2 of *Pub. L. 109-167*, 119 Stat. 3578; Sec. 5 of *Pub. L. 109-472*, 120 Stat. 3554; *Pub. L. 108-447*, Div. B, Title IV, Dec. 8, 2004, 118 Stat. 2809; *Pub. L. 108-458*, 118 Stat. 3638, 3823 (Dec. 17, 2004).

■ 2. Revise § 51.8 to read as follows:

**§ 51.8 Submission of currently valid passport.**

(a) When applying for a new passport in person or by mail, an applicant must submit for cancellation any currently valid passport of the same type.

(b) When applying for a new passport on-line, an applicant must have the currently valid passport of the same type available for cancellation via the on-line process.

(c) If an applicant is unable to produce a passport under paragraph (a) or (b) of this section, they must submit a signed statement in the form prescribed by the Department setting forth the circumstances regarding the disposition of the passport.

(d) The Department may deny or limit a passport if the applicant has failed to provide a sufficient and credible explanation for lost, stolen, altered or mutilated passport(s) previously issued to the applicant, after being given a reasonable opportunity to do so.

■ 3. Amend § 51.21 by revising the paragraph (b) heading, paragraph (b)(2) and adding paragraph (b)(3) to read as follows:

**§ 51.21 Execution of passport application.**

(b) *Application by mail or on-line—persons in the United States.* \* \* \*

(2) A person in the United States who previously has been issued a passport valid for 10 years in their own name may apply for a new passport by filling out, signing, and submitting an on-line application via the Department’s official website if:

- (i) The applicant’s most recently issued passport was issued when the applicant was 16 years of age or older, and has one year or less of validity remaining;
- (ii) The application is made not more than 15 years following the issue date of the most recently issued passport of the same type;
- (iii) The most recently-issued passport of the same type is available for verification via the on-line process.

(3) The applicant must also provide photographs as prescribed by the Department and pay the applicable fees

prescribed in the Schedule of Fees for Consular Services (22 CFR 22.1).

\* \* \* \* \*

**Kevin E. Bryant,**

*Deputy Director, Office of Directives Management, U.S. Department of State.*

[FR Doc. 2021-27404 Filed 12-21-21; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 310**

[Docket ID: DoD-2020-OS-0095]

**RIN 0790-AK96**

**Privacy Act of 1974; Implementation**

**AGENCY:** Office of the Secretary of Defense (OSD), Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The DoD is issuing a final rule to amend its regulations to exempt portions of the DoD-0004, “Defense Repository for Common Enterprise Data (DRCED),” system of records from certain provisions of the Privacy Act of 1974.

**DATES:** This rule is effective on January 21, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lyn Kirby, *OSD.DPCLTD@mail.mil*, (703) 571-0070.

**SUPPLEMENTARY INFORMATION:**

**Discussion of Comments and Changes**

The proposed rule published in the **Federal Register** (86 FR 498-499) on January 6, 2021. Comments were accepted for 60 days until March 8, 2021. A total of four comments were received. Please see the summarized comments and the Department’s response as follows:

Commentators generally agreed that exempting national security and classified data is appropriate under this exemption rule and that exempting national security and classified information is in the best interests of the Department and the Nation. Notwithstanding that, a majority of the comments voiced a desire for more transparency about the classification process itself within the DoD. Although these comments do not directly pertain to the Privacy Act and the exemption claimed for this system of records notice (SORN), to promote public understanding in this area a description of the classification process at DoD is provided below.

Executive Order 13526 prescribes the framework for the Federal Government

(to include DoD) to classify national security information. Only DoD personnel who hold positions of trust and are delegated original classification authority in writing are authorized to review the Department’s information and determine whether damage would result to national security if that information were disclosed to the public. Several oversight and compliance mechanisms exist to ensure the classification of information process is appropriate.

These safeguards include the following: Personnel authorized to make classification determinations are required to receive training in proper classification, including the avoidance of over-classification, and declassification at least once a calendar year; information may only be classified if it pertains to specific categories or subjects, including military plans, weapons systems, or operations and intelligence activities; and agency heads must (on a periodic basis) complete a comprehensive review of the agency’s classification guidance, to include reviewing information that is classified within the agency, provide the results of such review to appropriate officials outside the agency at the National Archives, and release an unclassified version of the review to the public. Authorized holders of classified information are also encouraged and expected to “challenge” classification determinations if they believe the classification status is improper, and any individual or entity can request any Federal agency to review classified information for declassification, regardless of its age or origin, in accordance with the Mandatory Declassification Review (MDR) process. Additional information about the MDR process can be found on the National Archives and Records Administration’s MDR program page at <https://www.archives.gov/isoo/training/mdr>. In the interests of protecting information critical to the Nation’s defense, it is appropriate for the DoD to properly classify and exempt such information from public release under the Privacy Act so as to protect U.S. national security. Having considered the public comments, the Department will implement the rulemaking as proposed.

Additionally, DoD received one supportive, but non-substantive, comment on the system of records notice (SORN) that published in the **Federal Register** on January 6, 2021 (86 FR 526-529). The public comment period for the SORN ended on February 5, 2021.