§ 329.6 Procedures.

(a) Publication of notice in the FR. (1) A SORN shall be published in the FR of any record system meeting the definition of a SOR, as defined by 5 U.S.C. 552a.

(2) System Managers shall submit notices for new or revised SORNs through their Director to the Chief of the OIP for review at least 90 working days prior to implementation.

(3) The Chief of the OIP shall forward complete SORNs to the Defense Privacy and Civil Liberties Office (DPCLO), or the respective service that has the statutory authority to publish the SORN, for review and publication in the FR in accordance with 32 CFR part 310, subpart G. Following the OMB comment period, the public is given 30 days to submit written data, views, or arguments for consideration before a SORN is established or modified.

(b) Access to Systems of Records Information. (1) As provided by 5 U.S.C. 552a, records shall be disclosed to the individual they pertain to and under whose individual name or identifier they are filed, unless exempted by the provisions in 32 CFR part 310, subpart F, and § 329.7 of this part. If an individual is accompanied by a third party, or requests a release to a third party, the individual shall be required to furnish a signed access authorization granting the third party access conditions according to 32 CFR part 310, subpart D.

(2) Individuals seeking access to records that pertain to themselves, and that are filed by their name or other personal identifier, may submit the request in person, by mail, or by email. All requests for access must be in accordance with these procedures:

(i) Any individual making a request for access to records in person shall show personal identification to the appropriate System Manager, as identified in the SORN published in the FR, to verify his or her identity, according to 32 CFR part 310, subpart D.

(ii) Pursuant to 5 U.S.C. 552a and 32 CFR part 310, subpart E, the disclosure accounting will include the release date, a description of the information released, the reason for the release; and, the name and address of the recipient.

(iii) Requests for access shall include a mailing address where the records should be sent and include either a signed notarized statement or a signed unworn declaration to verify his or her identity to ensure that they are
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seeking to access records about themselves and not, inadvertently or intentionally, the records of others. The Privacy Act (5 U.S.C. 552a) provides a penalty of a misdemeanor and a fine of not more than $5,000 for any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses. If making a declaration, it shall read as follows:

(A) Inside the U.S.: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).”

(B) Outside the U.S.: “I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).”

(iv) All requests for records shall describe the record sought and provide sufficient information to enable the records to be located (e.g. identification of the SORN, approximate date the record was initiated, originating organization, and type of document).

(v) All requesters shall comply with the procedures in 32 CFR part 310, subpart D for inspecting and/or obtaining copies of requested records.

(vi) Requestors affiliated with the DoD may not use official government supplies or equipment to include mailing addresses, work phones/faxes, or DoD-issued email accounts to make requests. If requests are received using DoD equipment, the requestor will be advised to make a new request, using non-DoD equipment, and processing of their request will begin only after such new request is received.

(3) The System Manager shall mail a written acknowledgement of the request for access to the individual within 10 working days of receipt. The acknowledgement shall identify the request and may, if necessary, request any additional information needed to access the record, advising the requestor that they have 20 calendar days to reply. No acknowledgement is necessary if the request can be reviewed and processed, to include notification to the individual of a grant or denial of access, within the 10 working day period. Whenever practical, the decision to grant or deny access shall be made within 30 working days. For requests presented in person, written acknowledgement may be provided at the time the request is presented.

(4) When a request for access is received, System Managers shall promptly take one of three actions on requests to access records:

(i) If no portions of the record are exempt, pursuant to the published SORN, 32 CFR part 310, subpart F, and § 329.7 of this part, the request for access shall be granted and the individual will be provided access to all records about him or her. If there is information within the record not about the record subject (e.g. third party information) that information will be removed and referred to the Chief of the OIP for processing under 5 U.S.C. 552, pursuant to 32 CFR part 286.

(ii) If the System Manager finds that the record, or portions of the record, is exempt from access pursuant to the published SORN, 32 CFR part 310, subpart F, and § 329.7 of this part, they will refer the recommended denial to the Chief of the OIP, through their Director, within 10 working days of receipt. The referral will include the following:

(A) Written recommendation for denial explaining which portion(s) of the record should be exempt from access and a discussion for why the record, or portions of the record, should be denied.

(B) The record, or portions of the record, being recommended for denial. If only portions of records are recommended for denial they must be clearly marked or highlighted.

(C) The original request and any correspondence with the requestor.

(D) A clean copy of the record.

(iii) If the request for access pertains to a record controlled and maintained by another Federal agency, but in the temporary custody of the NGB, the records are the property of the originating Component. Access to these records is controlled by the system notice and rules for the originating component/agency. Such requests shall be referred to the originating component/agency and the requestor will be notified in writing of the referral and contact information for the component/agency.
(5) The Chief of the OIP will use the following procedures for processing any recommended denials of access:

(i) The specific reason for denial cited by the System Manager will be evaluated and a recommendation will be presented to the denial authority.

(ii) If the request for access is denied, a written letter will be sent to the requester using procedures outlined in 32 CFR part 310, subpart D. The requester will be advised they have 60 calendar days to appeal the decision to deny access. Appeals should be sent to: NGB Chief Counsel, 1636 Defense Pentagon, Room 1D164, Washington, DC 20301–1636. The requester must provide proof of identity or a sworn declaration with their appeal, as outlined in 32 CFR part 310, subpart D.

(iii) If the request for access should be granted, the access request will be directed back to the System Manager to process.

(6) The Chief Counsel will use the following procedures for any appeals received:

(i) The Chief Counsel will notify the Chief of the OIP that an appeal has been received and will request the administrative record of the initial denial.

(ii) The Chief of the OIP will provide an exact copy of all records from the initial denial to the Chief Counsel within 10 working days.

(iii) The Chief Counsel will review the appeal and make a final determination on whether to grant or deny the appeal.

(A) If the appellate authority denies the appeal, he or she will provide a formal written notification to the requester using the procedures outlined in 32 CFR part 310, subpart D and will provide a copy of the response to the Chief of the OIP.

(B) If the appellate authority grants the appeal, he or she will notify the Chief of the OIP and the Directorate that recommended the denial that the individual is being given access to the record. The Chief Counsel will provide a subsequent notification to the requester advising that his or her appeal has been granted, and will provide the requester access to his or her record.

(iv) All appeals should be processed within 30 working days after receipt by the Chief Counsel. If the Chief Counsel determines that a fair and equitable review cannot be made within that time, the individual shall be informed in writing of the reasons for the delay and of the approximate date the review is expected to be completed.

(7) There is no requirement that an individual be given access to records that are not in a group of records that meet the definition of a SOR in 5 U.S.C. 552a.

(8) No verification of identity shall be required of an individual seeking access to records that are otherwise available to the public.

(9) Individuals shall not be denied access to a record in a SOR about themselves because those records are exempted from disclosure under 32 CFR part 285. Individuals may only be denied access to a record in a SOR about themselves when those records are exempted from the access provisions of 32 CFR part 310, subpart F, and this part.

(10) Individuals shall not be denied access to their records for refusing to disclose their Social Security Number (SSN), unless disclosure of the SSN is required by statute, by regulation adopted before January 1, 1975, or if the record’s filing identifier and only means of retrieval is by the SSN (reference 5 U.S.C. 552a, note, Executive Order 9397, as amended).

(c) Access to Records or Information Compiled for Law Enforcement Purposes.

(1) All requests by individuals to access records about themselves are processed under 5 U.S.C. 552, 5 U.S.C. 552a as well as 32 CFR part 286, 32 CFR part 310, subpart D to give requesters a greater degree of access to records on themselves, regardless of which Act is cited by the requester for processing.

(2) Records (including those in the custody of law enforcement activities) that have been incorporated into a SOR exempted from the access conditions of 5 U.S.C. 552a and 32 CFR part 310, subpart D will be processed in accordance with 5 U.S.C. 552a, 32 CFR part 310, subpart D, and this part. Individuals shall not be denied access to records solely because they are in an exempt system. They will have the same access that they would receive under 5 U.S.C. 552 and 32 CFR part 286.
(3) Records systems exempted from access conditions will be processed under 5 U.S.C. 552 and 32 CFR part 286, or 5 U.S.C. 552a and 32 CFR part 310, subpart D, depending upon which gives the greater degree of access.

(4) If a non-law enforcement element has temporary custody of a record otherwise exempted from access under 32 CFR part 310, subpart F for the purpose of adjudication or personnel actions, they shall refer any such access request, along with the records, to the originating agency and notify the requestor of the referral.

(d) Access to illegible, incomplete, or partially exempt records.

(1) An individual shall not be denied access to his or her record or a copy of the record solely because the physical condition or the format of the record does not make it readily available (e.g. record is in a deteriorated state or on a magnetic tape). The document will be prepared as an extract, or it will be exactly recopied.

(2) If a portion of the record contains information that is exempt from access, an extract or summary containing all of the information in the record that is releasable shall be prepared by the System Manager.

(3) When the physical condition of the record makes it necessary to prepare an extract for release, the extract shall be prepared so that the requestor will understand it.

(4) The requester shall be given access to any deletions or changes to records that are accessible.

(e) Access to medical records.

(1) Medical records and other protected health information (PHI) shall be disclosed to the individual pursuant to Chapter 11 of DoD 6025.18-R, DoD Health Information Privacy Regulation (Available at http://www.dtic.mil/whs/directives/corres/pdf/602518r.pdf) and 32 CFR part 310, subpart D.

(2) The individual may be charged reproduction fees for copies or records as outlined in 32 CFR part 310, subpart D.

(f) Amending and disputing personal information in systems of records.

(1) The System Manager shall allow individuals to request amendments to the records covered by their system notice to the extent that such records are not accurate, relevant, timely, or complete. Amendments are limited to correcting factual matters and not matters of official judgment, such as performance ratings, promotion potential, and job performance appraisals.

(2) Individuals seeking amendment to records that pertain to themselves, and that are filed or retrieved by their name or other personal identifier, may submit a request for amendment in person, by mail, or by email. All requests for amendment must be in accordance with the following:

(i) Any individual making a request for amendment to records in person shall show personal identification to the appropriate System Manager, as identified in the SORN published in the FR, to verify his or her identity, as outlined in 32 CFR part 310, subpart D.

(ii) Any individual making a request for amendment to records by mail or email shall address such request to the System Manager. If the System Manager is unknown, they may inquire to NGB–JA/OIP: AHS-Bldg 2, Suite T319B, 111 S. George Mason Drive, Arlington VA 22204–1382, or email ng.ncr.arng.mbx.ngb-privacy-office@mail.mil for assistance in locating the System Manager.

(iii) Requests for amendment shall include a mailing address where the decision on the request for amendment can be sent and include either a signed notarized statement or a signed unsworn declaration to verify his or her identity to ensure that they are seeking to amend records about themselves and not, inadvertently or intentionally, the records of others. The Privacy Act (5 U.S.C. 552a) provides a penalty of a misdemeanor and a fine of not more than $5,000 for any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses. The declaration shall read as follows:

(A) Inside the US: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).”

(B) Outside the US: “I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is

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true and correct. Executed on (date). (Signature).”

(iv) All requests for amendment must include all information necessary to make a determination on the request for amendment, as outlined in 32 CFR part 310, subpart D.

(v) Requestors affiliated with the DoD may not use official government supplies or equipment to include mailing addresses, work phones/faxes, or DoD-issued email accounts to make requests for amendment. If requests are received using DoD equipment, the requestor will be advised to make a new request, using non-DoD equipment, and processing of their request will begin only after such new request is received.

(3) When a request for amendment is received, the System Manager shall:

(i) Mail a written acknowledgement of the request for amendment to the individual within 10 working days of receipt. Such acknowledgement shall identify the request and may, if necessary, request any additional information needed to make a determination, advising the requestor that they have 20 calendar days to reply. No acknowledgement is necessary if the request can be reviewed and processed, including notification to the individual of a grant or denial of amendment within the 10 working day period. Whenever practical, the decision to amend shall be made within 30 working days. For requests presented in person, written acknowledgement may be provided at the time the request is presented.

(ii) Determine whether the requester has adequately supported his or her claim that the record is inaccurate, irrelevant, untimely, or incomplete.

(A) If it is determined the individual’s request for amendment is being granted, the System Manager will proceed to amend the records in accordance with existing statutes, regulations, or administrative procedures. The requestor will then be notified in writing of the agreement to amend and all previous holders of the records will be notified of the amendment as required by 32 CFR part 310, subpart D.

(B) If it is determined that any, or all, of the record should not be amended, the original request, along with the record requested for amendment, and justification for recommended denial action shall be forwarded through their Director to the Chief of the OIP within 10 working days of receipt for a decision by the IDA.

(C) If the request for an amendment pertains to a record controlled and maintained by another Federal agency, the amendment request shall be referred to the appropriate agency and the requestor will be notified in writing of the referral and contact information for the agency.

(4) The Chief of the OIP will use the following procedures for any recommended denials of amendment:

(i) The specific reason for denial of amendment cited by the System Manager shall be evaluated and a recommendation presented to the IDA on whether to support the recommendation to deny amendment to the record.

(ii) If the request to amend the record is denied, a written letter will be sent to the requestor using procedures outlined in 32 CFR part 310, subpart D. If an individual disagrees with the denial decision, he or she may file an appeal within 60 calendar days of receipt of the denial notification. Appeals should be sent to: NGB Chief Counsel, 1636 Defense Pentagon, Room 1D164, Washington DC 20301–1636.

(5) The Chief Counsel will use the following procedures for any appeals received:

(i) The Chief Counsel will notify Chief of the OIP that an appeal has been received and request an exact copy of the administrative record be provided within 10 working days.

(ii) The Chief Counsel will review the appeal and make a final determination on whether to grant or deny the appeal.

(A) If the Chief Counsel denies the appeal, a written letter will be provided to the requestor using procedures outlined in 32 CFR part 310, subpart D including notification to the requestor that they may file a statement of disagreement. A brief statement will be prepared by the NGB Chief Counsel summarizing the reasons for refusing to amend the records and a copy will be provided to the Chief of the OIP and the System Manager.

(B) If the appellate authority grants the appeal, the procedures outlined in 32 CFR part 310, subpart D and this
part will be followed. The System Manager will be responsible for informing all previous recipients of the amendment when a disclosure accounting has been maintained in accordance with 32 CFR part 310, subpart E.

(iii) All appeals should be processed within 30 working days after receipt by the Chief Counsel. If the Chief Counsel determines that a fair and equitable review cannot be made within that time, the individual shall be informed in writing of the reasons for the delay and of the approximate date the review is expected to be completed.

(g) Disclosure of disputed information. If the appellate authority determines the record should not be amended and the individual has filed a statement of disagreement, the following procedures will be used:

(1) The System Manager that has control of the record shall annotate the disputed record so it is apparent to any person to whom the record is disclosed that a statement has been filed. Where feasible, the notation itself shall be integral to the record.

(2) Where disclosure accounting has been made, the System Manager shall advise previous recipients that the record has been disputed and shall provide a copy of the individual’s statement of disagreement, and the statement summarizing the reasons for the NGB refusing to amend the records in accordance with 32 CFR part 310, subpart D.

(3) The statement of disagreement shall be maintained in a manner that permits ready retrieval whenever the disputed portion of the record is disclosed.

(4) When information that is the subject of a statement of disagreement is subsequently requested for disclosure, the System Manager will follow these procedures:

(i) The System Manager shall note which information is disputed and provide a copy of the individual’s statement in the disclosure.

(ii) The System Manager shall include the summary of the NGB’s reasons for not making a correction when disclosing disputed information.

(5) Copies of the statement summarizing the reasons for the NGB refusing to amend the records will be treated as part of the individual’s record; however, it will not be subject to the amendment procedure outlined in 5 U.S.C. 552 and 32 CFR part 310, subpart D.

(h) Penalties. (1) Civil Action. An individual may file a civil suit against the NGB or its employees if the individual feels certain provisions of 5 U.S.C. 552a have been violated.

(2) Criminal Action.

(i) Criminal penalties may be imposed against any officer or employee for the offenses listed in subsection I of 5 U.S.C. 552a.

(ii) An officer or employee of NGB may be found guilty of a misdemeanor and fined up to $5,000 for a violation of the offenses listed in subsection I of 5 U.S.C. 552a.

(i) Litigation status sheet. Whenever a complaint citing 5 U.S.C. 552a is filed in a U.S. District Court against the NGB, or any employee of NGB, the Chief of Litigation and Employment Law shall:

(1) Promptly notify the Chief of the OIP of the complaint using the litigation status sheet in 32 CFR part 310, appendix H. This status sheet will be provided to the DPCL, or the respective service(s) involved in the litigation.

(2) Provide a revised litigation status sheet to the Chief of the OIP at each stage of the litigation for submission to the DPCL, or the respective service(s) involved.

(3) When a court renders a formal opinion or judgment, copies of the judgment or opinion shall be provided to the Chief of the OIP who will provide them to DPCL, or the respective service(s) involved, along with the litigation status sheet reporting the judgment or opinion.

(j) Computer matching programs. All requests for participation in a matching program (either as a matching agency, or a source agency) shall be submitted directly to the DPCL for review and compliance, following procedures in 32 CFR part 310, subpart L. The Directorate shall submit a courtesy copy of such requests to the Chief of the OIP.