

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

It has been certified 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.

Executive Order 13132, “Federalism”

It has been certified 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 505

Privacy.

Accordingly, 32 CFR part 505 is proposed to be amended to read as follows:

PART 505—ARMY PRIVACY ACT PROGRAM

1. The authority citation for 32 CFR part 505 continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Paragraph (e)(20) of § 505.5 is amended by adding the following text to read as follows:

§ 505.5 Exemptions.

* * * * *

(e) Exempt Army records. * * *

(20) *System identifier and name:* A0195-2c USACIDC, DoD Criminal Investigation Task Force Files.

(i) *Exemption:* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principle function any activity pertaining to the enforcement of criminal laws. Any portion of this system of records 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), (H), and (I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority:* 5 U.S.C. 552a(j)(2).

(iii) *Reasons:* (A) From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in

providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede criminal law enforcement.

(B) From subsection (c)(4) and (d), because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the ongoing investigation, reveal investigative techniques, and place confidential informants in jeopardy.

(C) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, 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 law enforcement purposes and to establish patterns of activity that may relate to the jurisdiction of other cooperating agencies.

(D) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal and/or civil investigation.

(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 and/or civil investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(F) From subsections (e)(4)(G), (H), and (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 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 least of all 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 law enforcement by revealing

investigative techniques, procedures, and existence of confidential investigations.

(I) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to the individual and record amendment procedures for this record system.

(J) From subsection (g) because this system of records should be exempt to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

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Dated: February 18, 2005.

Jeannette Owings-Ballard,
*OSD Federal Register Liaison Officer,
Department of Defense.*

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DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Secretary of the Navy Instruction 5211.5]

Privacy Act; Implementation

AGENCY: Department of the Navy.

ACTION: Proposed rule.

SUMMARY: The Department of the Navy is proposing to exempt the records contained in the Privacy Act system of records notice N12410-2, entitled 'NCIS Training Academy Records. The exemption (5 U.S.C. 552a (k)(6)) is intended to preserve the objectively and/or fairness of the NCIS test or examination process.

DATES: Comments must be received on or before April 26, 2005, to be considered by this agency.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS-36), 2000 Navy Pentagon, Washington, DC 20350-2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685-6545 or DSN 325-6545.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

The Director of Administration and Management, Office of the Secretary of Defense, hereby determines that 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 on 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 obligation 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 this Executive order.

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

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies 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.

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

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

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

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies 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.

Executive Order 13132, "Federalism"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies 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 701**Privacy.**

Accordingly, 32 CFR part 701 is proposed to be amended to read as follows:

PART 701—[AMENDED]

1. The authority citation for 32 CFR part 701, Subpart G continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 701.118 is amended by revising paragraph (h) to read as follows:

§ 701.118 Exemptions for specific Navy record systems.

* * * * *

(h) *System identifier and name:* N12410-2, NCIS Training Academy Records.

(1) *Exemption:* (i) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal or military service, if the disclosure would compromise the objectivity or fairness of the test or examination process may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process. Therefore, information within this system of records may be exempt pursuant to 5 U.S.C. 552a, subsection (d).

(ii) Portions of this system of records are exempt from the following subsection of the Privacy Act: (d).

(2) *Authority:* 5 U.S.C. 552a(k)(6).

(3) *Reason:* From subsection (d) because this system relates to testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the NCIS test and evaluation system.

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Dated: February 18, 2005.

Jeannette Owings-Ballard,

*OSD Federal Register Liaison Officer,
Department of Defense.*

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DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[COTP Corpus Christi-04-006]

RIN 1625-AA87

Security Zones; Port of Port Lavaca-Point Comfort, Point Comfort, TX and Port of Corpus Christi Inner Harbor, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to remove an established security zone in the port of Port Lavaca-Point Comfort. Under the Maritime Transportation Security Act of 2002, owners or operators of local facilities are required to take specific action to improve facility security. As such, a security zone around local facilities will no longer be necessary under normal conditions. This proposed rule would remove an established security zone.

DATES: Comments and related material must reach the Coast Guard on or before March 28, 2005.

ADDRESSES: You may mail comments and related material to Marine Safety Office Corpus Christi, 555 N. Carancahua, Suite 500, Corpus Christi, TX 78478. Marine Safety Office Corpus Christi maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Corpus Christi, 555 N. Carancahua, Suite 500, Corpus Christi, TX 78478, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Junior Grade (LTJG) Jay Michalczak, Marine Safety Office Corpus Christi, at (361) 888-3162, ext. 313.

SUPPLEMENTARY INFORMATION:**Request for Comments**

We encourage you to participate in this rulemaking by submitting