

Executive Order 12866, “Regulatory Planning and Review”

It has been determined 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 in a material way 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 obligations 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)

It has been determined 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)

It has been determined 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”

It has been determined that Privacy Act rules for the Department of Defense do 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 determined that 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 326

Privacy.

■ Accordingly, 32 CFR part 326 is amended as follows:

PART 326—PRIVACY ACT PROGRAM

■ 1. The authority citation for 32 CFR part 326 continues to read as follows:

Authority: Public Law 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Section 326.17 is amended by adding paragraph (k) to read as follows:

§ 326.17 Exemptions.

* * * * *

k. QNRO–27.

1. System name: Legal Records.

2. Exemption: Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(k)(2) and (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

3. Authority: 5 U.S.C. 552a (k)(2) and (k)(5).

4. Reasons: i. From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

ii. From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

iii. From subsection (e)(1) because it is not always possible to detect the

relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

iv. From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

v. From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

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Dated: October 7, 2009.

Patricia L. Toppings,

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

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BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE**Department of the Air Force**

[Docket ID: USAF–2009–0009]

32 CFR Part 806b**Privacy Act; Implementation**

AGENCY: Department of Air Force, DoD.

ACTION: Final rule with request for comments.

SUMMARY: The Department of Air Force is updating the Department of Air Force Privacy Act Program Rules, 32 CFR part 806b, by adding the (k)(2) exemption to accurately describe the basis for exempting the records. The Privacy Act system of records notice, F051 AFJA E, entitled “Judge Advocate General’s Professional Conduct Files”, has already been published on December 31, 2008 (73 FR 80372).

DATES: The rule will be effective on December 28, 2009 unless comments are received that would result in a contrary determination. Comments will be accepted on or before December 28, 2009.

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

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *Mail:* Federal Docket management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (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 <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Brodie at (703) 696-7557.

SUPPLEMENTARY INFORMATION: Executive Order 12866, "Regulatory Planning and Review". It has been determined 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 in a material way 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 obligations 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.

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do 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.

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List of Subjects in 32 CFR Part 806b

Privacy.

■ Accordingly, 32 CFR part 806b is amended as follows:

PART 806b—PRIVACY ACT PROGRAM

■ 1. The authority citation for 32 CFR part 806b continues to read as follows:

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

■ 2. Paragraph (e) of Appendix D to 32 CFR part 806b is amended by adding paragraph (22) to read as follows:

Appendix D to Part 806b—General and Specific Exemptions

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(22) System identifier and name: F051 AFJA E, Judge Advocate General's Professional Conduct Files.

(i) *Exemption:* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. Note: When claimed, this exemption allows limited protection of investigatory reports maintained in a system of records used in personnel or administrative actions. Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

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

(iii) *Reasons:* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation. This could seriously compromise case preparation by prematurely revealing its existence and

nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

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Dated: October 7, 2009.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

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DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF-2009-0021]

32 CFR Part 806b

Privacy Act; Implementation

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule with request for comments.

SUMMARY: The Department of the Air Force is updating the Department of Air Force Privacy Act Program Rules, 32