

■ Accordingly, chapter IX of title 28 Code of Federal Regulations is amended by adding part 906 to read as follows:

**PART 906—OUTSOURCING OF NONCRIMINAL JUSTICE ADMINISTRATIVE FUNCTIONS**

Sec.

906.1 Purpose and authority.

906.2 Third party handling of criminal history record information.

**Authority:** 42 U.S.C. 14616.

**§ 906.1 Purpose and authority.**

The purpose of this part 906 is to establish rules and procedures for third parties to perform noncriminal justice administrative functions involving access to Interstate Identification Index (III) information. The Compact Council is establishing this rule pursuant to the National Crime Prevention and Privacy Compact (Compact), title 42, U.S.C., chapter 140, subchapter II, section 14616. The scope of this rule is limited to noncriminal justice background checks in so far as they are governed by the provisions of the Compact as set forth in 42 U.S.C. 14614 and 14616.

**§ 906.2 Third party handling of criminal history record information.**

(a) Except as prohibited in paragraph (b) of this section, criminal history record information obtained from the III System for noncriminal justice purposes may be made available:

(1) To a governmental agency pursuant to a contract or agreement under which the agency performs activities or functions for another governmental agency that is authorized to obtain criminal history record information by a federal statute, federal executive order or a state statute that has been approved by the United States Attorney General; and

(2) To a private contractor, or other nongovernmental entity or organization, pursuant to a contractual agreement under which the entity or organization performs activities or functions for a governmental agency authorized to obtain criminal history record information as identified in paragraph (a)(1) of this section or for a nongovernmental entity authorized to obtain such information by federal statute or executive order.

(b) Criminal history record information provided in response to fingerprint-based III System record requests initiated by authorized governmental agencies or nongovernmental entities for noncriminal justice purposes may be made available to contracting agencies or organizations manually or electronically for such authorized

purposes. Such contractors, agencies, or organizations shall not be permitted to have direct access to the III System by computer terminal or other automated means which would enable them to initiate record requests, provided however, the foregoing restriction shall not apply with respect to: (1) Persons, agencies, or organizations that may enter into contracts with the FBI or State criminal history record repositories for the performance of authorized functions requiring direct access to criminal history record information; and (2) any direct access to records covered by 42 U.S.C. 14614(b).

(c) The contracts or agreements authorized by paragraphs (a)(1) and (a)(2) of this section shall specifically describe the purposes for which criminal history record information may be made available to the contractor and shall incorporate by reference a security and management control outsourcing standard approved by the Compact Council after consultation with the United States Attorney General. The security and management control outsourcing standard shall specifically authorize access to criminal history record information; limit the use of the information to the purposes for which it is provided; prohibit retention and/or dissemination of the information except as specifically authorized in the security and management control outsourcing standard; ensure the security and confidentiality of the information; provide for audits and sanctions; provide conditions for termination of the contractual agreement; and contain such other provisions as the Compact Council, after consultation with the United States Attorney General, may require.

(d) The exchange of criminal history record information with an authorized governmental or nongovernmental entity or contractor pursuant to this part is subject to cancellation for use, retention or dissemination of the information in violation of federal statute, regulation or executive order, or rule, procedure or standard established by the Compact Council in consultation with the United States Attorney General.

Dated: November 29, 2004.

**Donna M. Uzzell,**

*Compact Council Chairman.*

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**DEPARTMENT OF DEFENSE**

**Department of the Army**

**32 CFR Part 635**

**RIN 0702-AA42-U**

**Law Enforcement Reporting**

**AGENCY:** Department of the Army, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Army is publishing our rule concerning law enforcement reporting. The regulation prescribes policies and procedures on preparing, reporting, using, retaining, and disposing of Military Police Reports. The regulation prescribes policies and procedures for offense reporting and the release of law enforcement information.

**DATES:** Effective Date: January 18, 2005.

**ADDRESSES:** Headquarters, Department of the Army, Office of the Provost Marshal General, ATTN: DAPM-MPD-LE, 2800 Army Pentagon, Washington, DC 20310-2800.

**FOR FURTHER INFORMATION CONTACT:**

Nathan Evans, Policy Analyst, Arlington, VA at (703) 693-2126.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

In the July 16, 2004 issue of the **Federal Register** (69 FR 42626) the Department of the Army issued a proposed rule to publish 32 CFR part 635. This final rule prescribes procedures and responsibilities for law enforcement reporting. The Department of the Army received responses from two commentors. No substantive changes were requested or made. The Department of the Army has added two sections since the publication of this part as a proposed rule. Section 635.29 was added to support Department of Defense guidance and the recommendations from the Army G-1 Domestic Violence Task Force. This section encourages provost marshals to enter into memoranda of understanding with local civilian law enforcement agencies to improve sharing of information. Section 635.30 was added to provide guidance on the handling and disposition of lost, unclaimed or abandoned property. The subsequent sections have been re-numbered.

**B. Regulatory Flexibility Act**

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the rule does not have a significant economic impact on a substantial number of small entities within the

meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

### C. Unfunded Mandates Reform Act

The Department of the Army has determined that the Unfunded Mandates Reform Act does not apply because the rule does not include a mandate that may result in estimated costs to State, local or tribal governments in the aggregate, or the private sector, of \$100 million or more.

### D. National Environmental Policy Act

The Department of the Army has determined that the National Environmental Policy Act does not apply because the rule does not have an adverse impact on the environment.

### E. Paperwork Reduction Act

The Department of the Army has determined that the Paperwork Reduction Act does not apply because the rule does not involve collection of information from the public.

### F. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Department of the Army has determined that Executive Order 12630 does not apply because the rule does not impair private property rights.

### G. Executive Order 12866 (Regulatory Planning and Review)

The Department of the Army has determined that according to the criteria defined in Executive Order 12866 this rule is not a significant regulatory action. As such, the proposed rule is not subject to Office of Management and Budget review under section 6(a)(3) of the Executive Order.

### H. Executive Order 13045 (Protection of Children From Environmental Health Risk and Safety Risks)

The Department of the Army has determined that according to the criteria defined in Executive Order 13045 this rule does not apply.

### I. Executive Order 13132 (Federalism)

The Department of the Army has determined that according to the criteria defined in Executive Order 13132 this rule does not apply because it will not have a substantial effect 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.

**Jeffery B. Porter,**

*Chief, Law Enforcement Policy and Oversight Section.*

### List of Subjects in 32 CFR Part 635

Crime, Law, Law enforcement, Law enforcement officers, Military law.

■ For reasons stated in the preamble the Department of the Army adds 32 CFR part 635 to read as follows:

## PART 635—LAW ENFORCEMENT REPORTING

### Subpart A—Records Administration

Sec.

- 635.1 General.
- 635.2 Safeguarding official information.
- 635.3 Special requirements of the Privacy Act of 1974.
- 635.4 Administration of expelled or barred persons file.
- 635.5 Police intelligence/criminal information.
- 635.6 Name checks.
- 635.7 Registration of sex offenders.

### Subpart B—Release of Information

- 635.8 General.
- 635.9 Guidelines for disclosure within DOD.
- 635.10 Release of information.
- 635.11 Release of information under the Freedom of Information Act (FOIA).
- 635.12 Release of information under the Privacy Act of 1974.
- 635.13 Amendment of records.
- 635.14 Accounting for military police record disclosure.
- 635.15 Release of law enforcement information furnished by foreign governments or international organizations.

### Subpart C—Offense Reporting

- 635.16 General.
- 635.17 Military Police Report.
- 635.18 Identifying criminal incidents and subjects of investigation.
- 635.19 Offense codes.
- 635.20 Military Police Codes (MPC).
- 635.21 USACRC control numbers.
- 635.22 Reserve component, U.S. Army Reserve, and Army National Guard personnel.
- 635.23 DA Form 4833 (Commander's Report of Disciplinary or Administrative Action).
- 635.24 Updating the COPS MPRS.
- 635.25 Submission of criminal history data to the CJIS.
- 635.26 Procedures for reporting absence without leave (AWOL) and desertion offenses.
- 635.27 Vehicle Registration System.
- 635.28 Domestic Violence and Protection Orders.
- 635.29 Establishing Domestic Violence Memoranda of Understanding.
- 635.30 Lost, abandoned, or unclaimed property.

### Subpart D—Army Quarterly Trends and Analysis Report

- 635.31 General.
- 635.32 Crime rate reporting.

### Subpart E—Victim and Witness Assistance Procedures

- 635.33 General.
- 635.34 Procedures.
- 635.35 Notification.
- 635.36 Statistical reporting requirements.

**Authority:** 28 U.S.C. 534 note, 42 U.S.C. 10601, 18 U.S.C. 922, 42 U.S.C. 14071, 10 U.S.C. 1562, 10 U.S.C. Chap. 47.

### Subpart A—Records Administration

#### § 635.1 General.

(a) Military police records and files created under provisions of this part will be maintained and disposed of in accordance with instructions and standards prescribed by Army Regulation (AR) 25–400–2, AR 25–55, AR 340–21, and other applicable HQDA directives.

(b) Each provost marshal will appoint in writing two staff members, one primary and one alternate, to account for and safeguard all records containing personal information protected by law. Action will be taken to ensure that protected personal information is used and stored only where facilities and conditions will preclude unauthorized or unintentional disclosure.

(c) Personal information includes information that is intimate or private to an individual, as distinguished from that which concerns a person's official function or public life. Examples include the social security number (SSN) medical history, home address, and home telephone number.

(d) Access to areas in which military police records are prepared, processed and stored will be restricted to those personnel whose duties require their presence or to other personnel on official business. Military police records containing personal information will be stored in a locked room or locked filing cabinet when not under the personal control of authorized personnel. Alternate storage systems providing equal or greater protection may be used in accordance with AR 25–55.

(e) Areas in which remote computer terminals or authorized personal computers used for government business and activities are used, stored, process, or retrieve military police records will be restricted to personnel on official business. When processing military police information, computer video display monitors will be positioned so that protected information cannot be viewed by unauthorized persons. Computer output from automated military police systems will

be controlled as specified in paragraph (d) of this section.

(f) Output from any locally prepared data or automated systems containing personal information subject to the Privacy Act will be controlled per AR 340-21. All locally created or MACOM unique automated systems of records containing law enforcement information must be reported to and approved by HQDA, Office of the Provost Marshal General prior to use. The request must clearly document why the COPS MPRS system cannot meet the requirements or objectives of the organization. After review and approval by HQDA, the installation and MACOM will complete and process the systems notice for publication in the **Federal Register** per AR 340-21 and the Privacy Act.

(g) Security of automated systems is governed by AR 380-19. Provost marshals using automated systems will appoint, in writing, an Information Assurance Security Officer (IASO) who will ensure implementation of automation security requirements within the organization. Passwords used to control systems access will be generated, issued, and controlled by the IASO.

(h) Supervisors at all levels will ensure that personnel whose duties involve preparation, processing, filing, and release of military police records are knowledgeable of and comply with policies and procedures contained in this part, AR 25-55, AR 340-21, and other applicable HQDA directives. Particular attention will be directed to provisions on the release of information and protection of privacy.

(i) Military police records identifying juveniles as offenders will be clearly marked as juvenile records and will be kept secure from unauthorized access by individuals. Juvenile records may be stored with adult records but clearly designated as juvenile records even after the individual becomes of legal age. In distributing information on juveniles, provost marshals will ensure that only individuals with a clear reason to know the identity of a juvenile are provided the identifying information on the juvenile. For example, a community commander is authorized to receive pertinent information on juveniles. When a MPR identifying juvenile offenders must be provided to multiple commanders or supervisors, the provost marshal must sanitize each report to withhold juvenile information not pertaining to that commander's area of responsibility.

(j) Military police records in the custody of USACRC will be processed, stored and maintained in accordance

with policy established by the Director, USACRC.

#### **§ 635.2 Safeguarding official information.**

(a) Military police records are unclassified except when they contain national security information as defined in AR 380-5.

(b) When military police records containing personal information transmitted outside the installation law enforcement community to other departments and agencies within DOD, such records will be marked "For Official Use Only." Records marked "For Official Use Only" will be transmitted as prescribed by AR 25-55. Use of an expanded marking is required for certain records transmitted outside DOD per AR 25-55.

(c) Military police records may also be released to Federal, state, local or foreign law enforcement agencies as prescribed by AR 340-21. Expanded markings will be applied to these records.

#### **§ 635.3 Special requirements of the Privacy Act of 1974.**

(a) Certain personal information is protected under the Privacy Act and AR 340-21.

(b) Individuals requested to furnish personal information must normally be advised of the purpose for which the information is routinely used.

(c) Army law enforcement personnel performing official duties often require an individual's SSN for identification purposes. Personal information may be obtained from identification documents without violating an individual's privacy and without providing a Privacy Act Statement. This personal information can be used to complete military police reports and records. The following procedures may be used to obtain SSNs:

(1) Active Army, U.S. Army Reserve (USAR), Army National Guard (ARNG) and retired military personnel are required to produce their DD Form 2A (Act), DD Form 2 (Act), DD Form 2 (Res), or DD Form 2 (Ret) (U.S. Armed Forces of the United States General Convention Identification Card), or other government issued identification, as appropriate.

(2) Family members of sponsors may be requested to produce their DD Form 1173 (Uniformed Services Identification and Privilege Card). Information contained thereon (for example, the sponsor's SSN) may be used to verify and complete applicable sections of MPRs and related forms.

(3) DOD civilian personnel may be requested to produce their appropriate service identification. DA Form 1602

(Civilian Identification) may be requested from DA civilian employees. If unable to produce such identification, DOD civilians may be requested to provide other verifying documentation.

(4) Non-DOD civilians, including family members and those whose status is unknown, will be advised of the provisions of the Privacy Act Statement when requested to disclose their SSN.

(d) Requests for new systems of military police records, changes to existing systems, and continuation systems, not addressed in existing public notices will be processed as prescribed in AR 340-21, after approval is granted by HQDA, OPMG (DAPM-MPD-LE).

#### **§ 635.4 Administration of expelled or barred persons file.**

(a) When action is completed by an installation commander to bar an individual from the installation under 18 U.S.C. 1382 the installation provost marshal will be provided—

(1) A copy of the letter or order barring the individual.

(2) Reasons for the bar.

(3) Effective date of the bar and period covered.

(b) The provost marshal will maintain a list of barred or expelled persons. When the bar or expulsion action is predicated on information contained in military police investigative records, the bar or expulsion document will reference the appropriate military police record or MPR. When a MPR results in the issuance of a bar letter the provost marshal will forward a copy of the bar letter to Director, USACRC to be filed with the original MPR. The record of the bar will also be entered into COPS, in the Vehicle Registration module, under Barrings.

#### **§ 635.5 Police intelligence/criminal information.**

(a) The purpose of gathering police intelligence is to identify individuals or groups of individuals in an effort to anticipate, prevent, or monitor possible criminal activity. If police intelligence is developed to the point where it factually establishes a criminal offense, an investigation by the military police, U.S. Army Criminal Investigation Command (USACIDC) or other investigative agency will be initiated.

(b) Information on persons and organizations not affiliated with DOD may not normally be acquired, reported, processed or stored. Situations justifying acquisition of this information include, but are not limited to—

(1) Theft, destruction, or sabotage of weapons, ammunition, equipment facilities, or records belonging to DOD units or installations.

(2) Possible compromise of classified defense information by unauthorized disclosure or espionage.

(3) Subversion of loyalty, discipline, or morale of DA military or civilian personnel by actively encouraging violation of laws, disobedience of lawful orders and regulations, or disruption of military activities.

(4) Protection of Army installations and activities from potential threat.

(5) Information received from the FBI, state, local, or international law enforcement agencies which directly pertain to the law enforcement mission and activity of the installation provost marshal office, MACOM provost marshal office, or that has a clearly identifiable military purpose and connection. A determination that specific information may not be collected, retained or disseminated by intelligence activities does not indicate that the information is automatically eligible for collection, retention, or dissemination under the provisions of this part. The policies in this section are not intended and will not be used to circumvent any federal law that restricts gathering, retaining or dissemination of information on private individuals or organizations.

(c) Retention and disposition of information on non-DOD affiliated individuals and organizations are subject to the provisions of AR 380-13 and AR 25-400-2.

(d) Police intelligence will be actively exchanged between DOD law enforcement agencies, military police, USACIDC, local, state, federal, and international law enforcement agencies. One tool developed by DOD for sharing police intelligence is the Joint Protection Enterprise Network (JPEN). JPEN provides users with the ability to post, retrieve, filter, and analyze real-world events. There are seven reporting criteria for JPEN:

- (1) Non-specific threats;
- (2) Surveillance;
- (3) Elicitation;
- (4) Tests of Security;
- (5) Repetitive Activities;
- (6) Bomb Threats/Incidents; and
- (7) Suspicious Activities/Incidents.

(e) If a written extract from local police intelligence files is provided to an authorized investigative agency, the following will be included on the transmittal documents: "THIS DOCUMENT IS PROVIDED FOR INFORMATION AND USE. COPIES OF THIS DOCUMENT, ENCLOSURES THERETO, AND INFORMATION THEREFROM, WILL NOT BE FURTHER RELEASED WITHOUT THE PRIOR APPROVAL OF THE INSTALLATION PROVOST MARSHAL."

(f) Local police intelligence files may be exempt from certain disclosure requirements by AR 25-55 and the Freedom of Information Act (FOIA).

#### § 635.6 Name checks.

(a) Information contained in military police records may be released under the provisions of AR 340-21 to authorized personnel for valid background check purposes. Examples include child care/youth program providers, access control, unique or special duty assignments, and security clearance procedures. Any information released must be restricted to that necessary and relevant to the requester's official purpose. Provost marshals will establish written procedures to ensure that release is accomplished in accordance with AR 340-21.

(b) Checks will be accomplished by a review of the COPS MPRS. Information will be disseminated according to subpart B of this part.

(c) In response to a request for local files or name checks, provost marshals will release only founded offenses with final disposition. Offenses determined to be unfounded will not be released. These limitations do not apply to requests submitted by law enforcement agencies for law enforcement purposes, and counterintelligence investigative purposes.

(d) COPS MPRS is a database, which will contain all military police reports filed worldwide. Authorized users of COPS MPRS can conduct name checks for criminal justice purposes. To conduct a name check, users must have either the social security number/foreign national number, or the first and last name of the individual. If a search is done by name only, COPS MPRS will return a list of all matches to the data entered. Select the appropriate name from the list.

(e) A successful query of COPS MPRS would return the following information:

- (1) Military Police Report Number;
- (2) Report Date;
- (3) Social Security Number;
- (4) Last Name;
- (5) First Name;
- (6) Protected Identity (Y/N);
- (7) A link to view the military police report; and

(8) Whether the individual is a subject, victim, or a person related to the report disposition.

(f) Name checks will include the criteria established in COPS MPRS and the USACRC. All of the policies and procedures for such checks will conform to the provisions of this part. Any exceptions to this policy must be coordinated with HQDA, Office of the

Provost Marshal General before any name checks are conducted. The following are examples of appropriate uses of the name check feature of COPS MPRS:

(1) Individuals named as the subjects of serious incident reports.

(2) Individuals named as subjects of investigations who must be reported to the USACRC.

(3) Employment as child care/youth program providers.

(4) Local checks of the COPS MPRS as part of placing an individual in the COPS MPRS system.

(5) Name checks for individuals employed in law enforcement positions.

(g) Provost marshals will ensure that an audit trail is established and maintained for all information released from military police records.

(h) Procedures for conduct of name checks with the USACRC are addressed in AR 195-2. The following information is required for USACRC name checks (when only the name is available, USACRC should be contacted telephonically for assistance):

(1) Full name, date of birth, SSN, and former service number of the individual concerned.

(2) The specific statute, directive, or regulation on which the request is based, when requested for other than criminal investigative purposes.

(i) Third party checks (first party asks second party to obtain information from third party on behalf of first party) will not be conducted.

#### § 635.7 Registration of sex offenders.

Soldiers who are convicted by court-martial for certain sexual offenses must comply with any applicable state registration requirements in effect in the state in which they intend to reside. See AR 190-47, Chapter 14 and AR 27-10, Chapter 24. This is a statutory requirement based on the Jacob Wetterling Act, and implemented by DOD Instruction 1325.7, and AR 27-10. Provost Marshals should coordinate with their local Staff Judge Advocate to determine if an individual must register. The registration process will be completed utilizing the state registration form, which is available through state and local law enforcement agencies. A copy of the completed registration form will be maintained in the installation Provost Marshal Office. Additionally, a Military Police Report (DA Form 3975) will be completed as an information entry into COPS. Installation Provost Marshals will provide written notice to state and local law enforcement agencies of the arrival of an offender to the local area so the registration process can be completed.

**Subpart B—Release of Information****§ 635.8 General.**

(a) The policy of HQDA is to conduct activities in an open manner and provide the public accurate and timely information. Accordingly, law enforcement information will be released to the degree permitted by law and Army regulations.

(b) Any release of military police records or information compiled for law enforcement purposes, whether to persons within or outside the Army, must be in accordance with the FOIA and Privacy Act.

(c) Requests by individuals for access to military police records about themselves will be processed in compliance with AR 25–55 and AR 340–21.

(d) Military police records in the temporary possession of another organization remain the property of the originating law enforcement agency. The following procedures apply to any organization authorized temporary use of military police records:

(1) Any request from an individual seeking access to military police records will be immediately referred to the originating law enforcement agency for processing.

(2) When the temporary purpose of the using organization has been satisfied, the military police records will be destroyed or returned to the originating law enforcement agency.

(3) A using organization may maintain information from military police records in their system of records, if approval is obtained from the originating law enforcement agency. This information may include reference to a military police record (for example, MPR number or date of offense), a summary of information contained in the record, or the entire military police record. When a user includes a military police record in its system of records, the originating law enforcement agency may delete portions from that record to protect special investigative techniques, maintain confidentiality, preclude compromise of an investigation, and protect other law enforcement interests.

**§ 635.9 Guidelines for disclosure within DOD.**

(a) Criminal record information contained in military police documents will not be disseminated unless there is a clearly demonstrated official need to know. A demonstrated official need to know exists when the record is necessary to accomplish a function that is within the responsibility of the requesting activity or individual, as prescribed by statute, DOD directive,

regulation, or instruction, or by Army regulation.

(1) Criminal record information may be disclosed to commanders or staff agencies to assist in executing criminal justice functions. Only that information reasonably required will be released. Such disclosure must clearly relate to a law enforcement function.

(2) Criminal record information related to subjects of criminal justice disposition will be released when required for security clearance procedures.

(3) Criminal record information may be released to an activity when matters of national security are involved.

(4) When an individual informs an activity of criminal record information pertaining to them, the receiving activity may seek verification of this information through the responsible law enforcement agency or may forward the request to that organization. The individual must be advised by the receiving agency of the action being pursued. Law enforcement agencies will respond to such requests in the same manner as FOIA and Privacy Act cases.

(b) Nothing in this part will be construed to limit the dissemination of information between military police, the USACIDC, and other law enforcement agencies within the Army and DOD.

**§ 635.10 Release of information.**

(a) Release of information from Army records to agencies outside DOD will be governed by AR 25–55, AR 340–21, AR 600–37, and this part. Procedures for release of certain other records and information is contained in AR 20–1, AR 27–20, AR 27–40, AR 40–66, AR 195–2, AR 360–1, and AR 600–85. Installation drug and alcohol offices may be provided an extract of DA Form 3997 (Military Police Desk Blotter) for offenses indicating excessive use of alcohol (for example, drunk driving or disorderly conduct) or illegal use of drugs.

(b) Installation provost marshals are the release authorities for military police records under their control. They may release criminal record information to other activities as prescribed in AR 25–55 and AR 340–21, and this part.

(c) Authority to deny access to criminal records information rests with the initial denial authority (IDA) for the FOIA and the access and amendment refusal authority (AARA) for Privacy Acts cases, as addressed in AR 25–55 and AR 340–21.

**§ 635.11 Release of information under the Freedom of Information Act (FOIA).**

(a) The release and denial authorities for all FOIA cases concerning military

police records include provost marshals and the Commander, USACIDC. Authority to act on behalf of the Commander, USACIDC is delegated to the Director, USACRC.

(b) FOIA requests from members of the press will be coordinated with the installation public affairs officer prior to release of records under the control of the installation provost marshal. When the record is on file at the USACRC the request must be forwarded to the Director, USACRC.

(c) Requests will be processed as prescribed in AR 25–55 and as follows:

(1) The provost marshal will review requested reports to determine if any portion is exempt from release. Any discretionary decision to disclose information under the FOIA should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information.

(2) Statutory and policy questions will be coordinated with the local staff judge advocate.

(3) Coordination will be completed with the local USACIDC activity to ensure that the release will not interfere with a criminal investigation in progress or affect final disposition of an investigation.

(4) If it is determined that a portion of the report, or the report in its entirety will not be released, the request to include a copy of the MPR or other military police records will be forwarded to the Director, USACRC, ATTN: CICR–FP, 6010 6th Street, Fort Belvoir, VA 22060–5585. The requestor will be informed that their request has been sent to the Director, USACRC, and provided the mailing address for the USACRC. When forwarding FOIA requests, the outside of the envelope will be clearly marked “FOIA REQUEST.”

(5) A partial release of information by a provost marshal is permissible when partial information is acceptable to the requester. (An example would be the deletion of a third party’s social security number, home address, and telephone number, as permitted by law). If the requester agrees to the omission of exempt information, such cases do not constitute a denial. If the requester insists on the entire report, a copy of the report and the request for release will be forwarded to the Director, USACRC. There is no requirement to coordinate such referrals at the installation level. The request will simply be forwarded to the Director, USACRC for action.

(6) Requests for military police records that have been forwarded to USACRC and are no longer on file at the

installation provost marshal office will be forwarded to the Director, USACRC for processing.

(7) Requests concerning USACIDC reports of investigation or USACIDC files will be referred to the Director, USACRC. In each instance, the requestor will be informed of the referral and provided the Director, USACRC address.

(8) Requests concerning records that are under the supervision of an Army activity, or other DOD agency, will be referred to the appropriate agency for response.

**§ 635.12 Release of Information under the Privacy Act of 1974.**

(a) Military police records may be released according to provisions of the Privacy Act of 1974, as implemented by AR 340-21 and this part.

(b) The release and denial authorities for all Privacy Act cases concerning military police records are provided in § 635.10 of this part.

(c) Privacy Act requests for access to a record, when the requester is the subject of that record, will be processed as prescribed in AR 340-21.

**§ 635.13 Amendment of records.**

(a) *Policy.* An amendment of records is appropriate when such records are established as being inaccurate, irrelevant, untimely, or incomplete. Amendment procedures are not intended to permit challenging an event that actually occurred. For example, a request to remove an individual's name as the subject of a MPR would be proper providing credible evidence was presented to substantiate that a criminal offense was not committed or did not occur as reported. Expungement of a subject's name from a record because the commander took no action or the prosecutor elected not to prosecute normally will not be approved. In compliance with DOD policy, an individual will still remain entered in the Defense Clearance Investigations Index (DCII) to track all reports of investigation.

(b) *Procedures.* (1) Installation provost marshals will review amendment requests. Upon receipt of a request for an amendment of a military police record that is five or less years old, the installation provost marshal will gather all relevant available records at their location. A decision to grant or deny the request will be made by the Commanding General, USACIDC. In accordance with AR 340-21, paragraph 1-71, the Commanding General, USACIDC is the sole access and amendment authority for criminal investigation reports and military police

reports. Access and amendment refusal authority is not delegable. If the decision is made to amend a MPR, a supplemental DA Form 3975 will be prepared. The supplemental DA Form 3975 will change information on the original DA Form 3975 and will be mailed to the Director, USACRC with the amendment request from the requestor as an enclosure. The Director, USACRC will file the supplemental DA Form 3975 with the original MPR.

(2) Requests to amend military police documents that are older than five years will be coordinated through the Director, USACRC. The installation provost marshal will provide the Director, USACRC a copy of an individual's request to amend a military police record on file at the USACRC. If the Director, USACRC receives an amendment request, the correspondence with any documentation on file at the USACRC will be sent to the originating provost marshal office. The installation provost marshal will review the request and either approve the request or forward it to the Director, USACRC for denial. A copy of the provost marshal's decision must be sent to the Director, USACRC to be filed in the USACRC record. If an amendment request is granted, copies of the supplemental DA Form 3975 will be provided to each organization, activity, or individual who received a copy of the original DA Form 3975.

(3) If the provost marshal office no longer exists, the request will be staffed with the major Army commander that had oversight responsibility for the provost marshal office at the time the DA Form 3975 was originated.

**§ 635.14 Accounting for military police record disclosure.**

(a) AR 340-21 prescribes accounting policies and procedures concerning the disclosure of military police records.

(b) Provost Marshals will develop local procedures to ensure that disclosure data requirements by AR 340-21 are available on request.

**§ 635.15 Release of law enforcement information furnished by foreign governments or international organizations.**

(a) Information furnished by foreign governments or international organizations is subject to disclosure, unless exempted by AR 25-55, AR 340-21, or federal statutes or executive orders.

(b) Information may be received from a foreign source under an express pledge of confidentiality as described in AR 25-55 and AR 340-21 (or under an implied pledge of confidentiality given prior to September 27, 1975).

(1) Foreign sources will be advised of the provisions of the Privacy Act of 1974, the FOIA, and the general and specific law enforcement exemptions available, as outlined in AR 340-21 and AR 25-55.

(2) Information received under an express promise of confidentiality will be annotated in the MPR or other applicable record.

(3) Information obtained under terms of confidentiality must clearly aid in furthering a criminal investigation.

(c) Denial recommendations concerning information obtained under a pledge of confidentiality, like other denial recommendations, will be forwarded by the records custodian to the appropriate IDA or AARA per AR 25-55 or AR 340-21.

(d) Release of U.S. information (classified military information or controlled unclassified information) to foreign governments is accomplished per AR 380-10.

**Subpart C—Offense Reporting**

**§ 635.16 General.**

(a) This subpart establishes policy for reporting founded criminal offenses by Army installation and major Army command provost marshal offices.

(b) This subpart prescribes reporting procedures, which require the use of the COPS MPRS and a systems administrator to ensure that the system is properly functioning. Reporting requirements include—

(1) Reporting individual offenders to the USACRC, NCIC, CJIS, and the DOD.

(2) *Crime reports to the DOD.* DOD collects data from all the Services utilizing the Defense Incident-Based Reporting System (DIBRS). The Army inputs its data into DIBRS utilizing COPS. Any data reported to DIBRS is only as good as the data reported into COPS, so the need for accuracy in reporting incidents and utilizing proper offense codes is great. DIBRS data from DOD is eventually sent to the Department of Justice's National Incident-Based Reporting System (NIBRS). The data is eventually incorporated into the Uniform Crime Report.

(c) A provost marshal office initiating a DA Form 3975 or other military police investigation has reporting responsibility explained throughout this subpart and this part in general.

(d) In the event the provost marshal office determines that their office does not have investigative responsibility or authority, the MPR will be terminated and the case cleared by exceptional clearance. A case cleared by exceptional clearance is closed by the provost

marshal when no additional investigative activity will be performed or the case is referred to another agency. If a case is transferred to the provost marshal from another law enforcement investigation agency the provost marshal office will have all reporting responsibility using the COPS MPRS system.

#### § 635.17 Military Police Report.

(a) *General use.* DA form 3975 is a multipurpose form used to—

(1) Record all information or complaints received or observed by military police.

(2) Serve as a record of all military police and military police investigator activity.

(3) Document entries made into the COPS MPRS system and other automated systems.

(4) Report information concerning investigations conducted by civilian law enforcement agencies related to matters of concern to the U.S. Army.

(5) Advise commanders and supervisors of offenses and incidents involving personnel or property associated with their command or functional responsibility.

(6) Report information developed by commanders investigating incidents or conducting inspections that result in the disclosure of evidence that a criminal offense has been committed.

(b) *Special use.* The DA Form 3975 will be used to—

(1) Transmit completed DA Form 3946 (Military Police Traffic Accident Report). This will include statements, sketches, or photographs that are sent to a commander or other authorized official.

(2) Transmit the DD Form 1805 (U.S. District Court Violation Notice) when required by local installation or U.S. Magistrate Court policy. The DA Form 3975 is used to advise commanders or supervisors that military, civilian, or contract personnel have been cited on a DD Form 1805.

(3) Match individual subjects with individual victims or witnesses, and founded criminal offenses. This is a federal statutory requirement. This is done using the relationships tab within COPS MPRS.

(4) Document victim/witness liaison activity.

(c) *Distribution.* The DA Form 3975 will be prepared in three copies, signed by the Provost Marshal or a designated representative, and distributed as follows—

(1) Original to USACRC. Further information, arising or developed at a later time, will be forwarded to USACRC using a supplemental DA

Form 3975. Reports submitted to USACRC will include a good, legible copy of all statements, photographs, sketches, laboratory reports, and other information that substantiates the offense or facilitates the understanding of the report. The USACRC control number must be recorded on every DA Form 3975 sent to the USACRC. A report will not be delayed for adjudication or commander's action beyond 45 days.

(2) One copy retained in the provost marshal's files.

(3) One copy forwarded through the field grade commander to the immediate commander of each subject or organization involved in an offense.

(d) *Changing reports for unfounded offenses.* If an offense is determined to be unfounded, after the case has been forwarded to USACRC, the following actions will be completed:

(1) A supplemental DA Form 3975, using the same MPR number and USACRC control number will be submitted stating the facts of the subsequent investigation and that the case is unfounded.

(2) A copy of the supplemental DA Form 3975 will be provided to those agencies or activities that received a copy of the completed DA Form 3975 at the time of submission to USACRC and to the commander for action.

#### § 635.18 Identifying criminal incidents and subjects of investigation.

(a) An incident will not be reported as a founded offense unless adequately substantiated by police investigation. A person or entity will be reported as the subject of an offense on DA Form 3975 when credible information exists that the person or entity may have committed a criminal offense or are otherwise made the object of a criminal investigation. The decision to title a person is an operational rather than a legal determination. The act of titling and indexing does not, in and of itself, connote any degree of guilt or innocence; but rather, ensures that information in a report of investigation can be retrieved at some future time for law enforcement and security purposes. Judicial or adverse administrative actions will not be based solely on the listing of an individual or legal entity as a subject on DA Form 3975.

(b) A known subject will be reported to the USACRC when the suspected offense is punishable by confinement of six months or more. The COPS MPRS will be used to track all other known subjects. A subject can be a person, corporation, or other legal entity, or organization about which credible information exists that would cause a

reasonable person to suspect that the person, corporation, other legal entity or organization may have committed a criminal offense, or otherwise make them the object of a criminal investigation.

(c) When investigative activity identifies a subject, all facts of the case must be considered. When a person, corporation, or other legal entity is entered in the subject block of the DA Form 3975, their identity is recorded in DA automated systems and the DCII. Once entered into the DCII, the record can only be removed in cases of mistaken identity. This policy is consistent with DOD reporting requirements. The Director, USACRC enters individuals from DA Form 3975 into the DCII.

#### § 635.19 Offense codes.

(a) The offense code describes, as nearly as possible, the complaint or offense by using an alphanumeric code. Appendix C of AR 190-45 lists the offense codes that are authorized for use within the Army. This list will be amended from time to time based on new reporting requirements mandated by legislation or administrative procedures. MACOM commanders and installation provost marshals will be notified by special letters of instruction issued in numerical order from HQDA, Office of the Provost Marshal General (DAPM-MPD-LE) when additions or deletions are made to list. The COPS MPRS module will be used for all reporting requirements.

(b) MACOMs and installations may establish local offense codes in category 2 (major Army command and installation codes) for any offense not otherwise reportable. Locally established offense codes will not duplicate, or be used as a substitute for any offense for which a code is contained for other reportable incidents. Category 2 incidents are not reported to the Director, USACRC or the DOJ. If an offense occurs meeting the reporting description contained in Appendix C of AR 190-45, that offense code takes precedence over the local offense code. Local offense codes may be included, but explained, in the narrative of the report filed with the USACRC. Use the most descriptive offense code to report offenses.

(c) Whenever local policy requires the provost marshal to list the subject's previous offenses on DA Form 3975, entries will reflect a summary of disposition for each offense, if known.

#### § 635.20 Military Police Codes (MPC).

(a) MPCs identify individual provost marshal offices. The Director, USACRC

will assign MPCs to provost marshal offices.

(b) Requests for assignment of a MPC will be included in the planning phase of military operations, exercises, or missions when law enforcement operations are anticipated. The request for a MPC will be submitted as soon as circumstances permit, without jeopardizing the military operation to HQDA, Office of the Provost Marshal General (DAPM-MPD-LE). Consistent with security precautions, MACOMs will immediately inform HQDA, Office of the Provost Marshal General (DAPM-MPD-LE) when assigned or attached military police units are notified for mobilization, relocation, activation, or inactivation.

(c) When a military police unit is alerted for deployment to a location not in an existing provost marshal's operational area, the receiving MACOM or combatant commander will request assignment of an MPC number from HQDA, Office of the Provost Marshal General (DAPM-MPD-LE) providing the area of operations does not have an existing MPC number. The receiving MACOM or Unified Combatant Commander is further responsible for establishing an operational COPS system for the deployment.

#### **§ 635.21 USACRC control numbers.**

(a) Case numbers to support reporting requirements will be issued by the Director, USACRC to HQDA (DAPM-MPD-LE) prior to the beginning of a new calendar year. HQDA, Office of the Provost Marshal General (DAPM-MPD-LE) will release block numbers to each MACOM for assignment to their installation provost marshals. To ensure accuracy in reporting criminal incidents, USACRC control numbers will be used only one time and in sequence. Every MPR sent to the USACRC will have a USACRC control number reported. Violation of this policy could result in significant difficulties in tracing reports that require corrective action.

(b) Each MACOM will report the USACRC control numbers they have assigned to their installations by January 15th of each year. If during the calendar year the MACOM reassigns control numbers from one installation to another, HQDA, Office of the Provost Marshal General (DAPM-MPD-LE) will be notified. The Director USACRC will receive an information copy of such notification from the MACOM provost marshal office.

(c) USACRC control numbers will be issued along with each newly assigned MPC.

(d) When the deploying unit will be located in an area where there is an existing provost marshal activity, the deploying unit will use the MPC number and USACRC control numbers of the host provost marshal.

#### **§ 635.22 Reserve component, U.S. Army Reserve, and Army National Guard personnel.**

(a) When in a military duty status pursuant to official orders (Federal status for National Guard) Reserve and National Guard personnel will be reported as active duty. Otherwise they will be reported as civilians.

(b) The DA Form 3975 and DA Form 4833 will be forwarded to the individual's continental U.S. Army Commander, state adjutant, or 7th Army Reserve Command, as appropriate. The forwarding correspondence will reflect this part as the authority to request disposition of the individual.

#### **§ 635.23 DA Form 4833 (Commander's Report of Disciplinary or Administrative Action).**

(a) *Use.* DA Form 4833 is used with DA Form 3975 to—

(1) Record actions taken against identified offenders.

(2) Report the disposition of offenses investigated by civilian law enforcement agencies.

(b) *Preparation by the provost marshal.* The installation provost marshal initiates this critical document and is responsible for its distribution and establishing a suspense system to ensure timely response by commanders. Disposition reports are part of the reporting requirements within DA, DOD, and DOJ.

(c) *Completion by the unit commander.* Company, troop, and battery level commanders are responsible and accountable for completing DA Form 4833 with supporting documentation in all cases investigated by MPI, civilian detectives employed by the Department of the Army, and the PMO. The Battalion Commander or the first Lieutenant Colonel in the chain of command is responsible and accountable for completing DA Form 4833 with support documentation (copies of Article 15s, court-martial orders, reprimands, etc) for all USACIDC investigations. The commander will complete the DA Form 4833 within 45 days of receipt.

(1) Appropriate blocks will be checked and blanks annotated to indicate the following:

(i) Action taken (for example, judicial, nonjudicial, or administrative). In the event the commander takes action against the soldier for an offense other

than the one listed on the DA Form 3975, the revised charge or offense will be specified in the REMARKS section of the DA Form 4833.

(ii) Sentence, punishment, or administrative action imposed.

(iii) Should the commander take no action, the DA Form 4833 must be annotated to reflect that fact.

(2) If the commander cannot complete the DA Form 4833 within 45 days, a written memorandum is required to explain the circumstances. The delay will have an impact on other reporting requirements (e.g., submitting fingerprint cards to the FBI).

(d) *Procedures when subjects are reassigned.* When the subject of an offense is reassigned, the provost marshal will forward the DA Form 3975, DA Form 4833, and all pertinent attachments to the gaining installation provost marshal who must ensure that the new commander completes the document. Copies of the documents may be made and retained by the processing provost marshal office before returning the documents to the losing installation provost marshal for completion of automated entries and required reports.

(e) *Report on subjects assigned to other installations.* When the DA Form 3975 involves a subject who is assigned to another installation, the initiating provost marshal will forward the original and two copies of DA Form 4833 to the provost marshal of the installation where the soldier is permanently assigned. The procedures in paragraph (d) of this section will be followed for soldiers assigned to other commands.

(f) *Offenses not reportable to USACRC.* When the offense is not within a category reportable to USACRC, the original DA Form 4833 is retained by the provost marshal. Otherwise, the original is sent to the Director, USACRC for filing with the MPR.

(g) *Civilian court proceedings.* If a soldier is tried in a civilian court, and the provost marshal has initiated a MPR, the provost marshal must track the civilian trial and report the disposition on DA Form 4833 as appropriate. That portion of the signature block of DA Form 4833 that contains the word "Commanding" will be deleted and the word "Reporting" substituted. The provost marshal or other designated person will sign DA Form 4833 before forwarding it to USACRC.

(h) *Dissemination to other agencies.* A copy of the completed DA Form 4833 reflecting offender disposition will also be provided to those agencies or offices that originally received a copy of DA



Form 3975 when evidence is involved. The evidence custodian will also be informed of the disposition of the case. Action may then be initiated for final disposition of evidence retained for the case now completed.

(i) *Review of offender disposition by the provost marshal.* On receipt of DA Form 4833 reflecting no action taken, the provost marshal will review the MPR. The review will include, but is not limited to the following—

(1) Determination of the adequacy of supporting documentation.

(2) Whether or not coordination with the supporting Staff Judge Advocate should have been sought prior to dispatch of the report to the commander for action.

(3) Identification of functions that warrant additional training of military police or security personnel (for example, search and seizure, evidence handling, or rights warning).

(j) *Offender disposition summary reports.* Provost marshals will provide the supported commander (normally, the general courts-martial convening authority or other persons designated by such authority) summary data of offender disposition as required or appropriate. Offender disposition summary data will reflect identified offenders on whom final disposition has been reported. These data will be provided in the format and at the frequency specified by the supported commander.

#### § 635.24 Updating the COPS MPRS.

Installation provost marshals will establish standard operating procedures to ensure that every founded offense is reported into the COPS MPRS. Timely and accurate reporting is critical. If a case remains open, changes will be made as appropriate. This includes reporting additional witnesses and all aspects of the criminal report.

#### § 635.25 Submission of criminal history data to the CJIS.

(a) *General.* This paragraph establishes procedures for submitting criminal history data (fingerprint cards) to CJIS when the provost marshal has completed a criminal inquiry or investigation. The policy only applies to members of the Armed Forces and will be followed when a military member has been read charges and the commander initiates proceedings for—

(1) *Field Grade Article 15, Uniform Code of Military Justice.* Initiation refers to a commander completing action to impose non-judicial punishment. Final disposition shall be action on appeal by the next superior authority, expiration of the time limit to file an appeal, or the

date the military member indicates that an appeal will not be submitted.

(2) *A special or general courts-martial.* Initiation refers to the referral of court-martial charges to a specified court by the convening authority or receipt by the commander of an accused soldier's request for discharge in lieu of court-martial. Final disposition of military judicial proceedings shall be action by the convening authority on the findings and sentence, or final approval of a discharge in lieu of court-martial. The procedures in this subpart meet administrative and technical requirements for submitting fingerprint cards and criminal history information to CJIS. No variances are authorized. Results of summary court-martial will not be reported to the FBI.

(3) In instances where final action is taken by a magistrate, the provost marshal will complete the DA Form 4833.

(4) Provost marshal offices will submit fingerprint cards on subjects apprehended as a result of Drug Suppression Team investigations and operations unless the USACIDC is completing the investigative activity for a felony offense. In those cases, the USACIDC will complete the fingerprint report process.

(b) *Procedures.* The following procedures must be followed when submitting criminal history data to CJIS.

(1) Standard FBI fingerprint cards will be used to submit criminal history data to CJIS. FBI Form FD 249, (Suspect Fingerprint Card) will be used when a military member is a suspect or placed under apprehension for an offense listed in Appendix D of AR 190-45. Two FD 249s will be completed. One will be retained in the provost marshal file. The second will be sent to the Director, USACRC and processed with the MPR as prescribed in this subpart. A third set of prints will also be taken on the FBI Department of Justice (DOJ) Form R-84 (Final Disposition Report). The R-84 requires completion of the disposition portion and entering of the offenses on which the commander took action. Installation provost marshals are authorized to requisition the fingerprint cards by writing to FBI, J. Edgar Hoover Building, Personnel Division, Printing Unit, Room 1B973, 925 Pennsylvania Ave., NW, Washington, DC 20535-0001.

(2) Fingerprint cards will be submitted with the MPR to the Director, USACRC, ATTN: CICR-CR, 6010 6th Street, Fort Belvoir, VA 22060-5585. The Director, CRC will forward the fingerprint card to CJIS. The USACRC is used as the central repository for criminal history information in the Army. They also respond to inquiries

from CJIS, local, state and other federal law enforcement agencies.

(3) Submission of the MPR with the FD 249 to USACRC will normally occur upon a commander's initiation of judicial or nonjudicial proceedings against a military member. If final disposition of the proceeding is anticipated within 60 days of command initiation of judicial or nonjudicial proceedings, the FD 249 may be held and final disposition recorded on FD 249. Provost marshals and commanders must make every effort to comply with the 60 days reporting requirement to ensure that the FD Form 249 is used as the primary document to submit criminal history to CJIS. Approval of a discharge in lieu of court-martial will be recorded as a final disposition showing the nature and character of the discharge in clear English (e.g., resignation in lieu of court-martial; other than honorable discharge).

(4) If the commander provides the DA Form 4833 after the 60th day, a letter of transmittal will be prepared by the provost marshal forwarding the FBI (DOJ) R-84 with the DA Form 4833 to the USACRC within 5 days after disposition. Submission of fingerprint cards shall not be delayed pending appellate actions. Dispositions that are exculpatory (e.g., dismissal of charges, acquittal) shall also be filed.

(5) The procedures for submitting fingerprint cards will remain in effect until automated systems are in place for submission of fingerprints electronically.

#### § 635.26 Procedures for reporting absence without leave (AWOL) and desertion offenses.

(a) *AWOL reporting procedures.* (1) The commander will notify the installation provost marshal in writing within 24 hours after a soldier has been reported AWOL.

(2) The provost marshal will initiate an information blotter entry.

(3) If the AWOL soldier surrenders to the parent unit or returns to military control at another installation, the provisions of AR 630-10 will be followed.

(4) On receipt of written notification of the AWOL soldier's return or upon apprehension, the provost marshal will initiate a reference blotter entry indicating the soldier's return to military control and will prepare an initial DA Form 3975, reflecting the total period of unauthorized absence, and the DA Form 4833. Both of these documents will be forwarded through the field grade commander to the unit commander.

(5) The unit commander will report action taken on the DA Form 4833 no later than the assigned suspense date or provide a written memorandum to the provost marshal explaining the delay.

(6) An original DD Form 460 (Provisional Pass) is issued to the soldier to facilitate their return to the parent unit. DD Form 460 will not be required if the provost marshal elects to return the soldier through a different means.

(7) If the soldier is apprehended at or returns to an installation other than his or her parent installation DA Form 3975 and 4833 with a copy of DD Form 460 will be sent to the parent installation provost marshal. The parent installation provost marshal will initiate an information blotter entry reflecting the AWOL soldiers return to military control. A DA Form 3975 and 4833 with an appropriate suspense will be sent through the field grade commander to the unit commander. On return of the completed DA Form 4833 from the unit commander, the original and one copy will be sent to the apprehending provost marshal. The parent installation provost marshal may retain a copy of DA Form 3975 and DA Form 4833.

(b) *Desertion reporting procedures.* (1) The unit commander must comply with the provisions of AR 630–10 when reporting a soldier as a deserter.

(2) On receipt of the DD Form 553 (Deserter/Absentee Wanted by the Armed Forces), the provost marshal will—

(i) Initiate a DA Form 3975 and a blotter entry reflecting the soldier's desertion status.

(ii) Complete portions of DD Form 553 concerning the soldier's driver's license and vehicle identification. In the remarks section, add other information known about the soldier such as confirmed or suspected drug abuse; history of violent acts; history of escapes; attempted escapes from custody; suicidal tendencies; suspicion of involvement in crimes of violence (for which a charge sheet has been prepared and forwarded); history of unauthorized absences; and any other information useful in the apprehension process or essential to protect the deserter or apprehending authorities.

(iii) An MPR number and a USACRC control number will be assigned to the case and be included in the remarks section of the DD Form 553.

(iv) The DD Form 553 must be returned to the unit commander within 24 hours.

(v) If the deserter surrenders to or is apprehended by the parent installation provost marshal, the provost marshal will telephonically verify the deserter's

status with the U.S. Army Deserter Information Point (USADIP). A reference blotter entry will be completed changing the soldier's status from desertion to return to military control.

(vi) If the deserter surrenders to or is apprehended by an installation not the parent installation, the provost marshal will telephonically verify the deserter's status with USADIP. An information military police report will be prepared, utilizing the CRC number from the original military police report prepared by the parent installation. A blotter entry will also be prepared.

(vii) A DD Form 616 (Report of Return of Absentee) will be completed when deserters are apprehended or surrender to military authority. The USACRC control number assigned to the DD Form 553 will be included in the remarks section of the DD Form 616.

(viii) Upon return of the deserter to military control, DA Forms 3975, 2804 (Crime Records Data), fingerprint card and 4833 will be initiated. The MPR number and USACRC control number will be recorded on all four forms.

(ix) The original DA Form 3975 and other pertinent documents will be sent to the Director, USACRC. The DA Form 4833 must include the commander's action taken, to include the Commander, Personnel Control Facility, or other commander who takes action based on the desertion charge.

#### **§ 635.27 Vehicle Registration System.**

The Vehicle Registration System (VRS) is a module within COPS. Use of VRS to register vehicles authorized access to Army installations is mandated in AR 190–5. Within VRS there are various tabs for registration of vehicles authorized access to an installation, to include personal data on the owner of the vehicle. There are also tabs for registering weapons, bicycles, and pets. Information on individuals barred entry to an installation is also maintained within VRS.

#### **§ 635.28 Domestic Violence and Protection Orders.**

(a) Responding to incidents of spouse abuse requires a coordinated effort by law enforcement, medical, and social work personnel, to include sharing information and records as permitted by law and regulation. AR 608–18 contains additional information about domestic violence and protective orders.

(b) Appendix C of AR 190–45 includes specific offense codes for domestic violence. All domestic violence incidents will be reported to the local PMO. All reported domestic violence incidents will be entered into

MPRS, utilizing DA Form 3975. These codes will be utilized in addition to any other offense code that may be appropriate for an incident. For example, a soldier strikes his or her spouse. When entering the offense data into MPRS, both the offense code for assault (*i.e.* 5C2B) and the offense code for spouse abuse (from the 5D6 series) will be entered.

(c) A military Protection Order is a written lawful order issued by a commander that orders a soldier to avoid contact with his or her spouse or children. Violations of a military Protection Order must be reported on DA Form 3975, entered into COPS, and entered into NCIC. Violations of a military Protection Order may be violations of Article 92, UCMJ. The commander should provide a written copy of the order within 24 hours of its issuance to the person with whom the member is ordered not to have contact. A copy should be forwarded to the installation Family Advocacy Program Manager (FAPM), the Chief, Social Work Service, and the installation military police.

(d) A civilian Protection Order is an order issued by a judge, magistrate or other authorized civilian official, ordering an individual to avoid contact with his or her spouse or children. Pursuant to the Armed Forces Domestic Security Act a civilian protection order has the same force and effect on a military installation as such order has within the jurisdiction of the court that issued the order. Violations of a civilian Protection Order must be reported on DA Form 3975, entered into COPS, and entered into NCIC.

#### **§ 635.29 Establishing Domestic Violence Memoranda of Understanding.**

(a) Coordination between military law enforcement personnel and local civilian law enforcement personnel is essential to improve information sharing, especially concerning domestic violence investigations, arrests, and prosecutions involving military personnel. Provost Marshals or other law enforcement officials shall seek to establish formal Memoranda of Understanding (MOU) with their civilian counterparts to establish or improve the flow of information between their agencies, especially in instances of domestic violence involving military personnel. MOUs can be used to clarify jurisdictional issues for the investigation of incidents, to define the mechanism whereby local law enforcement reports involving active duty service members will be forwarded to the appropriate installation law enforcement office, to

encourage the local law enforcement agency to refer victims of domestic violence to the installation Family Advocacy office or victim advocate, and to foster cooperation and collaboration between the installation law enforcement agency and local civilian agencies.

(b) MOUs should address the following issues:

(1) A general statement of the purpose of the MOU.

(2) An explanation of jurisdictional issues that affect respective responsibilities to and investigating incidents occurring on and off the installation. This section should also address jurisdictional issues when a civilian order of protection is violated on military property (see 10 U.S.C. 1561a).

(3) Procedures for responding to domestic violence incidents that occur on the installation involving a civilian alleged offender.

(4) Procedures for transmitting incident/investigation reports and other law enforcement information on domestic violence involving active duty service members from local civilian law enforcement agencies to the installation law enforcement office.

(5) Procedures for transmitting civilian protection orders (CPOs) issued by civilian courts or magistrates involving active duty service members from local law enforcement agencies to the installation law enforcement office.

(6) Designation of the title of the installation law enforcement recipient of such information from the local law enforcement agency.

(7) Procedures for transmitting military protection orders (MPOs) from the installation law enforcement office to the local civilian law enforcement agency with jurisdiction over the area in which the service member resides.

(8) Designation of the title of the local law enforcement agency recipient of domestic violence and CPO information from the installation law enforcement agency.

(9) Respective responsibilities for providing information to domestic violence victims regarding installation resources when either the victim or the alleged offender is an active duty service member.

(10) Sharing of information and facilities during the course of an investigation in accordance with the Privacy Act of 1974 (see 5 U.S.C. section 552a(b)(7)).

(11) Regular meetings between the local civilian law enforcement agency and the installation law enforcement office to review cases and MOU procedures.

#### **§ 635.30 Lost, abandoned, or unclaimed property.**

This is personal property that comes into the possession, custody, or control of the Army and is unclaimed by the owner. Property is considered to be abandoned only after diligent effort has been made to determine and locate its owner, the heir, next of kin, or legal representative. A military person who is ordered overseas and is unable to dispose of their personal property should immediately notify their chain-of-command. The commander will appoint a board to rule on the disposition of the property. If a law enforcement agency takes custody of the property it will be tagged and a record made as shown in paragraph (a) of this section. A report will be made to the installation commander who will take action in accordance with DOD 4160.21-M, chapter 4, paragraph 40, Defense Materiel Disposition Manual. Pending board action under DOD 4160.21-M, the law enforcement agency having physical custody is responsible for the safekeeping of seized property. The following procedures should be used:

(a) Property will be tagged using DA Form 4002 (Evidence/Property Tag) or clearly identified by other means, inventoried, and made a matter of record. These records are kept by the custodian of the property.

(b) Lost, abandoned, or unclaimed property will be kept in a room or container separate from one used to store property held as evidence. Records or logs of property not held as evidence will be separated from those pertaining to evidence. However, all property will be tagged, accounted for, and receipted for in a similar manner as evidence.

(c) Property that has been properly identified through board action under DOD 4160.21-M as having an owner will be segregated and tagged with the name of that person.

(d) Abandoned or unclaimed property will be held until its status can be determined. In many instances, lost property can be returned to the owner upon presentation of proof of ownership.

(e) In all cases, a receipt should be obtained at time of release.

#### **Subpart D—Army Quarterly Trends and Analysis Report**

##### **§ 635.31 General.**

(a) This subpart prescribes policies and procedures for the coordination and standardization of crime statistics reporting with HQDA. Crime statistical reports and trends provided to HQDA and other agencies and those related to

special interests inquiries, the media, and the public must reflect uniformity in terminology, methods of presentation, and statistical portrayal to preclude misinterpretation of information.

(b) Any report containing Army-wide aggregate crime data or statistics addressed to the Secretary of the Army, Chief of Staff of the Army, or Vice Chief of Staff of the Army will be coordinated and cleared with HQDA, Office of the Provost Marshal General (DAPM-MPD-LE). Correspondence and reports will be coordinated with HQDA, Office of the Provost Marshal General (DAPM-MPD-LE) prior to release to any agency, activity, or individual.

(c) HQDA staff agencies and MACOMs authorized by regulation or statute to conduct independent investigations, audits, analyses, or inquiries need not coordinate reported information with HQDA, Office of the Provost Marshal General (DAPM-MPD-LE) unless the information contains crime data for the Army as a whole. For example, reports submitted by USACIDC containing only USACIDC investigative data need not be coordinated with HQDA, Office of the Provost Marshal General (DAPM-MPD-LE).

##### **§ 635.32 Crime rate reporting.**

(a) The USACRC is the Army's collection point and analytic center for all Army aggregate crime data. Requests for Army-wide crime data reports will be forwarded through HQDA, Office of the Provost Marshal General (DAPM-MPD-LE) to the Director, USACRC. Replies will be routed back through HQDA Office of the Provost Marshal General (DAPM-MPD-LE) where they will be coordinated, as appropriate, prior to release. Requests for USACIDC, MACOM, or subordinate command specific crime data reports can be made directly to the specific command. Replies need not be coordinated with HQDA.

(b) Requests for Army aggregate crime reports are limited to data collected and accessible through the Automated Criminal Investigative Reporting System (ACIRS) and COPS.

(c) Routine collection of MACOM crime data, for use in Army-wide database, will be limited to that data collected by the above systems. MACOMs may determine internal data collection requirements.

(d) All provost marshal crime data will be recorded and forwarded by installations through MACOMS using the COPS system.

(e) In support of the Secretary Of the Army and the Office of the Chief of Staff

of the Army, the Chief, Operations Division, Office of the Provost Marshal General, will determine the requirements for routine publication of Army aggregate crime statistics.

(f) Normally, raw data will not be released without analysis on routine or non-routine requests. Comparison of MACOM crime data is generally not reported and should be avoided. General categories of CONUS or OCONUS are appropriate.

### Subpart E—Victim and Witness Assistance Procedures

#### § 635.33 General.

(a) This subpart implements procedures to provide assistance to victims and witnesses of crimes that take place on Army installations and activities. The procedures in this subpart apply to—

(1) Every victim and witness.

(2) Violations of the UCMJ, including crimes assimilated under the Assimilative Crimes Act reported to or investigated by military police.

(3) Foreign nationals employed or visiting on an Army installation OCONUS.

(b) Provost marshal personnel should refer to AR 27–10, chapter 18, for additional policy guidance on the Army Victim/Witness Program.

#### § 635.34 Procedures.

(a) As required by Federal law, Army personnel involved in the detection, investigation, and prosecution of crimes must ensure that victims and witnesses rights are protected. Victims rights include—

(1) The right to be treated with fairness, dignity, and a respect for privacy.

(2) The right to be reasonably protected from the accused offender.

(3) The right to be notified of court proceedings.

(4) The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial, or for other good cause.

(5) The right to confer with the attorney for the Government in the case.

(6) The right to restitution, if appropriate.

(7) The right to information regarding conviction, sentencing, imprisonment, and release of the offender from custody.

(b) In keeping with the requirements listed in paragraph (a) of this section, provost marshals must ensure that—

(1) All law enforcement personnel are provided copies of DD Form 2701

(Initial Information for Victims and Witnesses of Crime).

(2) A victim witness coordinator is appointed in writing.

(3) Statistics are collected and reported into COPS.

(4) Coordination with the installation staff judge advocate victim witness coordinator occurs to ensure that individuals are properly referred for information on restitution, administrative, and judicial proceedings.

(5) Coordination with installation Family Advocacy Program's Victim Advocate occurs to support victims of spouse abuse. Victim Advocacy services include crisis intervention, assistance in securing medical treatment for injuries, information on legal rights and proceedings, and referral to military and civilian shelters and other resources available to victims.

#### § 635.35 Notification.

(a) In addition to providing crime victims and witnesses a DD Form 2701, law enforcement personnel must ensure that individuals are notified about—

(1) Available military and civilian emergency medical care.

(2) Social services, when necessary.

(3) Procedures to contact the staff judge advocate victim/witness liaison office for additional assistance.

(b) Investigating law enforcement personnel, such as military police investigators—

(1) Must ensure that victims and witnesses have been offered a DD Form 2701. If not, investigating personnel will give the individual a copy.

(2) In coordination with the provost marshal victim witness coordinator, provide status on investigation of the crime to the extent that releasing such information does not jeopardize the investigation.

(3) Will, if requested, inform all victims and witnesses of the apprehension of a suspected offender.

#### § 635.36 Statistical reporting requirements.

(a) DOD policies on victim witness assistance require reporting of statistics on the number of individuals who are notified of their rights. The DA Form 3975 provides for the collection of statistical information.

(b) The COPS system supports automated reporting of statistics. HQDA, Office of the Provost Marshal General (DAPM–MPD–LE) as the program manager may require periodic reports to meet unique requests for information.

(c) It is possible that a victim or witness may initially decline a DD Form 2701. As the case progresses, the

individual may request information. If a case is still open in the provost marshal office, the provost marshal victim witness coordinator shall provide the DA Form 2701 to the individual and update the records. Once the case is referred to the staff judge advocate or law enforcement activity ceases, COPS will not be updated.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 228

[FRL–7848–2]

### Ocean Disposal; Designation of a Dredged Material Disposal Site in Rhode Island Sound

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) today designates the Rhode Island Sound Disposal Site (RISDS) in Rhode Island Sound offshore of Rhode Island. This action is necessary to provide a long-term dredged material disposal site for the current and future disposal of dredged material from Rhode Island, southeastern Massachusetts, and surrounding harbors (hereinafter referred to as the Rhode Island Region, or RIR). The site designation is for an indefinite period of time. The RISDS will be subject to continuing monitoring to ensure that significant unacceptable, adverse environmental impacts do not occur. The action is described in the Rhode Island Region Long-Term Dredged Material Disposal Site Evaluation Project Final Environmental Impact Statement (FEIS), and the monitoring plan is described in the RISDS Site Management and Monitoring Plan (SMMP). The SMMP is provided as Appendix C of the FEIS. Site designation does not itself actually authorize the disposal of any particular dredged material at a site. Proposals to dispose of dredged material at a designated site are subject to project-specific reviews and authorization and still must satisfy the criteria for ocean dumping.

**DATES:** This final regulation is effective on January 18, 2005.

**ADDRESSES:** EPA has established a file supporting this action that includes this rule, the FEIS and its appendices, including the SMMP, and other supporting documents. This information