

on your correspondence. You may review an electronic version of this proposed rule at <http://www.regulations.gov>. You may also comment via the Internet to the DOJ/Justice Management Division at the following e-mail address: [DOJPrivacyACTProposedRegulations@usdoj.gov](mailto:DOJPrivacyACTProposedRegulations@usdoj.gov); or by using the <http://www.regulations.gov> comment form for this regulation. When submitting comments electronically, you must include the AAG/A Order No. in the subject box.

**FOR FURTHER INFORMATION CONTACT:** Mary Cahill, (202) 307-1823.

**SUPPLEMENTARY INFORMATION:** The FBI's whistleblower regulations are at 28 CFR part 27; the specific role of the OARM is at 28 CFR part 27.4. This is the basis for the new system of records, "Federal Bureau of Investigation Whistleblower Case Files, JMD-023." The DOJ/JMD proposes to exempt this system of records from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g). The exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k).

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, this order will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information, Sunshine Act, Privacy.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, it is proposed to amend 28 CFR part 16 as follows:

1. The authority for part 16 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 552b(g), and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

#### § 16.76 [Amended]

2. Section 16.76 is amended by adding paragraphs (c) and (d) to read as follows:

\* \* \* \* \*

(c) The following system of records is exempted from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g): Federal Bureau of Investigation Whistleblower Case Files (Justice/JMD-023). These exemptions apply only to the extent that information in a record contained

within this system is subject to exemptions pursuant to 5 U.S.C. 552a(j)(2) and (k).

(d) Exemption from the particular subsections is justified for the following reasons:

(1) Subsection (c)(3). To provide the subject with an accounting of disclosures of records in this system could inform that individual of the existence, nature, or scope of an actual or potential law enforcement or counterintelligence investigation, and thereby seriously impede law enforcement or counterintelligence efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties, civil remedies, or counterintelligence measures.

(2) Subsection (c)(4). This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) Subsection (d)(1). Information within this record system could relate to official federal investigations and matters of law enforcement. Individual access to these records could compromise ongoing investigations, reveal confidential informants and/or sensitive investigative techniques used in particular investigations, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Disclosure may also reveal information relating to actual or potential law enforcement investigations. Disclosure of classified national security information would cause damage to the national security of the United States.

(4) Subsection (d)(2). Amendment of these records could interfere with ongoing criminal or civil law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(5) Subsections (d)(3) and (4). These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) Subsection (e)(1). It is often impossible to determine in advance if investigatory information contained in this system is accurate, relevant, timely and complete, but, in the interests of effective law enforcement and counterintelligence, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(7) Subsection (e)(2). To collect information from the subject individual could serve to notify the subject individual that he or she is the subject of a criminal investigation and thereby

present a serious impediment to such investigations.

(8) Subsection (e)(3). To inform individuals as required by this subsection could reveal the existence of a criminal investigation and compromise investigative efforts.

(9) Subsection (e)(5). It is often impossible to determine in advance if investigatory information contained in this system is accurate, relevant, timely and complete, but, in the interests of effective law enforcement and counterintelligence, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(10) Subsection (e)(8). To serve notice could give persons sufficient warning to evade investigative efforts.

(11) Subsection (g). This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: August 31, 2005.

**Paul R. Corts,**

*Assistant Attorney General for Administration.*

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**BILLING CODE 4410-FR-P**

## FEDERAL MEDIATION AND CONCILIATION SERVICE

### 29 CFR Part 1404

#### Proposed Changes to Arbitration Policies, Functions, and Procedures

**AGENCY:** Federal Mediation and Conciliation Service.

**ACTION:** Proposed rule: extension of comment period.

**SUMMARY:** This document extends the comment period for the proposed rule published on July 7, 2005 at 70 FR page 39209.

The Federal Mediation and Conciliation Service (FMCS) is proposing to revise 29 CFR part 1404, Arbitration Services. The revisions are intended to set forth the criteria and procedures for listing on the arbitration roster, removal from the arbitration roster, and expedited arbitration processing. Other changes include how parties may request arbitration lists or panels and fees associated with the arbitrators. The purpose of these changes is to facilitate the management and administration of the arbitration roster.

**DATES:** Written comments must be submitted to the office listed in the address section below on or before December 6, 2005.

**ADDRESSES:** Submit comments to the Maria A. Fried, General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427. Comments may be submitted also by fax at (202) 606-5345 or electronic mail (e-mail) to *mfried@fmcs.gov*. All comments and data in electronic form must be identified by the appropriate agency form number.

**FOR FURTHER INFORMATION CONTACT:** Maria A. Fried, General Counsel and Federal Register Liaison, FMCS, 2100 K Street, NW., Washington, DC 20427. Telephone (202) 606-5444; Fax (202) 606-5345.

Dated: August 31, 2005.

**Maria A. Fried,**

*General Counsel and Federal Register Contact.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 310

#### Department of Defense Privacy Program

**AGENCY:** Department of Defense.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Defense is proposing to update policies and responsibilities for the Defense Privacy Program which implements the Privacy Act of 1974 by showing organizational changes and realignments and by revising referenced statutory and regulatory authority.

**DATES:** Comments must be received on or before November 7, 2005 to be considered by this agency.

**ADDRESSES:** Send comments to the Director, Defense Privacy Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202-4512.

**FOR FURTHER INFORMATION CONTACT:** Mr. Vahan Moushegian, Jr., at (703) 607-2943.

#### 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.

#### 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 rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

#### Executive Order 13132, "Federalism"

It has been 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 310

Privacy.

Accordingly, 32 CFR part 310, Subpart A-DoD Policy, is proposed to be amended as follows:

#### PART 310—DOD PRIVACY PROGRAM

1. The authority citation for 32 CFR part 310 continues to read as follows:

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

2. Revise § 310.1 to read as follows:

#### § 310.1 Reissuance.

This part is reissued to consolidate into a single document (32 CFR part 310) Department of Defense (DoD) policies and procedures for implementing the Privacy Act of 1974, as amended (5 U.S.C. 552a) by authorizing the development, publication and maintenance of the DoD Privacy Program set forth by DoD Directive 5400.11, November 16, 2004, and 5400.11-R, August 31, 1983, both entitled: "DoD Privacy Program."

3. Amend § 310.3 by revising paragraph (a) to read as follows:

#### § 310.3 Applicability and scope.

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense (IG, DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereinafter referred to collectively as "the DoD Components"). This part is mandatory for use by all DoD Components. Heads of DoD Components may issue supplementary instructions only when necessary to provide for unique requirements within their Components. Such instructions will not conflict with the provisions of this part.

\* \* \* \* \*

4. Amend § 310.4 by revising the definition of *Individual* to read as follows:

#### § 310.4 Definitions.

\* \* \* \* \*

*Individual.* A living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. The parent of a minor or the legal guardian of any individual also may act on behalf of an individual. Members of the United States Armed Forces are individuals. Corporations, partnerships, sole proprietorships, professional groups, businesses, whether incorporated or unincorporated, and other commercial entities are not individuals.

\* \* \* \* \*

5. Amend § 310.5 as follows:

- a. Remove the introductory text;
- b. Revise paragraphs (a) and (g);
- c. Add paragraph (j) to read as follows: