DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 323

[Docket ID DoD–2009–OS–0006]

Privacy Act; Implementation

AGENCY: Defense Logistics Agency, DoD.

ACTION: Direct final rule with request for comments.

SUMMARY: The Defense Logistics Agency (DLA) is updating the DLA Privacy Act Program Rules by updating the language of the (k)(2) exemption. The update of the exemption will more accurately describe the basis for exempting the records. The Privacy Act system of records notice, S500.20, entitled ''Defense Logistics Agency Criminal Incident Reporting System Records'', has already been published on June 8, 2009, in the **Federal Register**. This direct final rule makes nonsubstantive changes to the Defense Logistics Agency Privacy Program rules. These changes will allow the Department to exempt records from certain portions of the Privacy Act. This will improve the efficiency and effectiveness of DoD's program by preserving the exempt status of the records when the purposes underlying the exemption are valid and necessary to protect the contents of the records.This rule is being published as a direct final rule as the Department of Defense does not expect to receive any adverse comments, and so a proposed rule is unnecessary.

DATES: The rule will be effective on October 20, 2011 unless comments are received that would result in a contrary determination. Comments will be accepted on or before October 11, 2011.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

- *Mail:* Federal Docket management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION:

Direct Final Rule and Significant Adverse Comments

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes dealing with DoD's management of its Privacy Progams. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will withdraw this direct final rule by publishing a notice in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory 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 these Executive orders.

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 additional information collection requirements on the public under the Paperwork Reduction Act of 1995.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that Privacy Act rules for the Department of Defense do not involve a Federal mandate that may result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 323

Privacy.

Accordingly, 32 CFR part 323 is amended as follows:

PART 323—DLA PRIVACY ACT PROGRAM

■ 1. The authority citation for 32 CFR part 323 continues to read as follows:

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

■ 2. Paragraph (b) of Appendix H to 32 CFR part 323 is revised to read as follows:

Appendix H to Part 23—DLA Exemption Rules

* * * * *

b. ID: S500.20 (Specific exemption).

1. SYSTEM NAME:

Defense Logistics Agency Criminal Incident Reporting System Records.

2. EXEMPTION:

(i) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(k)(2) if the investigative material is compiled for law enforcement purposes. However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or

for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source if the information is compiled and maintained by a component of the agency, which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(ii) The specific sections of 5 U.S.C. 552a from which the system is to be exempted are 5 U.S.C. 552a(c)(3) and (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (f), and (g).

3. AUTHORITY:

5 U.S.C. 552a(k)(2).

4. REASONS:

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

(ii) From subsections (c)(4), (d), and (f) because providing access to this information could result in the concealment, destruction or fabrication of evidence and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component and could result in the invasion of privacy of individuals only incidentally related to an investigation. Investigatory material is exempt to the extent that the disclosure of such material would reveal the identity of a source who furnished the information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975 under an implied promise that the identity of the source would be held in confidence. This exemption will protect the identities of certain sources that would be otherwise unwilling to provide information to the Government. The exemption of the individual's right of access to his/her records and the reasons therefore necessitate the exemptions of this system of records from the requirements of the other cited provisions.

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

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

(v) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(vi) From subsections (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise). In addition, this system of records is exempt from the access provisions of subsection (d).

(vii) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

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

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

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Dated: July 8, 2011.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–20240 Filed 8–10–11; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0696]

Drawbridge Operation Regulation; Grassy Sound Channel, Middle Township, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Grassy Sound/Ocean Drive Bascule Bridge across the Grassy Sound Channel, mile 1.0, at Middle Township, NJ. The deviation is necessary to accommodate racers in ''The Wild Half'' half marathon. This deviation allows the bridge to remain in the closed position to ensure safe passage for the half marathon racers.

DATES: This deviation is effective from 7:45 a.m. through 11 a.m. on August 27, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0696 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0696 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or