

Register Notice ("notice") posed twelve questions in all; some were general regulatory review questions, while others asked about material issues that are specific to the smokeless tobacco regulations. The notice requested commenters to provide answers where possible, and specifically asked for consumer research, studies or other data to support comments submitted to the Commission. Pursuant to the Federal Register Notice, the initial comment period ended on April 24, 2000. The Commission subsequently reopened and extended that comment period to July 21, 2000.

After the comment period ended, United States Tobacco Company requested an opportunity to submit an untimely comment. In particular, the company would like an opportunity to respond to the comment submitted by the Massachusetts Department of Health and the two statistical surveys filed as part of that comment, and to respond to questions posed in the Commission's Federal Register Notice regarding potential burdens that may result from any suggested changes to the existing regulations.

The Commission is mindful that United States Tobacco Company has both notice and opportunity to file a timely comment. The Commission likewise appreciates the need to deal with this matter as expeditiously as possible. At the same time, the Commission recognizes the need to obtain comments from parties that are directly affected by these regulations. Accordingly, in order to provide an opportunity for this and other interested parties to submit comments, the Commission has decided to reopen the public comment period and extend the deadline for comments until October 16, 2000.

List of Subjects in 16 CFR Part 307

Health warnings, Smokeless tobacco, Trade practices.

Authority: 15 U.S.C. 1401-1410.

By direction of the Commission, Commissioner Anthony dissenting.

Donald S. Clark, Secretary.

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DEPARTMENT OF DEFENSE

Defense Logistics Agency

32 CFR Part 323

[Defense Logistics Agency Regulation 5400.21]

Defense Logistics Agency Privacy Program

AGENCY: Defense Logistics Agency, DoD.

ACTION: Proposed rule.

SUMMARY: The Defense Logistics Agency (DLA) is proposing to amend its Privacy Act regulations. These changes consist of DLA office code changes and DLA publication name changes. DLA is also adding language to clarify the training requirements for its employees and military members who work with the news media or the public.

DATES: Comments must be received on or before December 12, 2000 to be considered by this agency.

ADDRESSES: Send comments to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767-6183.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

It has been determined that this Privacy Act rule for the Department of Defense does not constitute "significant regulatory action". Analysis of the rule indicates that it does not have an annual effect on the economy of \$100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act

It has been determined that this Privacy Act rule for the Department of Defense imposes 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, and 44 U.S.C. Chapter 35.

List of Subjects in 32 CFR Part 323

Privacy.

Accordingly, 32 CFR part 323 is proposed to be amended as follows:

PART 323—DEFENSE LOGISTICS AGENCY PRIVACY 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. 32 CFR part 323 is propose to be amended by revising footnotes 1 through 8 to read as follows:

Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DSS-CV, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

3. Section 323.2(e) is proposed to be revised to read as follows:

§ 323.2 Policy.

* * * * *

(e) Make reasonable efforts to ensure that records containing personal information are accurate, relevant, timely, and complete for the purposes for which they are being maintained before making them available to any recipients outside DoD, other than a Federal agency, unless the disclosure is made under DLAR 5400.14, DLA Freedom of Information Act Program (32 CFR part 1285).

* * * * *

4. Section 323.4 is proposed to be amended as follows:

- a. By revising paragraph (a)(1) introductory text,
- b. Adding paragraph (a)(1)(v), and
- c. Revising paragraph (a)(2), introductory text, paragraphs (a)(3) and (b)(4). The revisions and addition read as follows:

§ 323.4 Responsibilities.

(a) * * *

(1) The Staff Director, Corporate Communications, DLA Support Services (DSS-C) will:

* * * * *

(v) Establish training programs for all individuals with public affairs duties, and all other personnel whose duties require access to or contact with systems of records affected by the Privacy Act. Initial training will be given to new employees and military members upon assignment. Refresher training will be provided annually or more frequently if conditions warrant.

(2) The General Counsel, DLA (DLA-GC) will:

* * * * *

(3) The DLA Chief Information Office (J-6) will formulate and implement protective standards for personal information maintained in automated data processing systems and facilities.

(b) * * *

(4) Establish training programs for all individuals with public affairs duties, and all other personnel whose duties require access to or contact with systems of records affected by the Privacy Act. Initial training will be given to new employees and military members upon assignment. Refresher training will be provided annually or more frequently if conditions warrant.

5. Section 323.5 is proposed to be amended by revising paragraphs (b)(3)(iv), (b)(4), (b)(5), (c)(5)(ii), (c)(6) introductory text, (c)(6)(i), (f)(3), introductory text, (h)(6), (i)(5)(ii), (j)(5), (k), (l)(1), (1)(2), and (1)(3) and by removing paragraph (b)(3)(v) to read as follows:

§ 323.5 Procedures.

* * * * *

(b) * * *

(3) * * *

(iv) Notice to the individual of his or her right to appeal the denial within 60 calendar days of the date of the denial letter and to file any such appeal with the HQ DLA Privacy Act Officer, Defense Logistics Agency (DSS-CA), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

(4) DLA will process all appeals within 30 days of receipt unless a fair and equitable review cannot be made within that period. The written appeal notification granting or denying access is the final DLA action on access.

(5) The records in all systems of records maintained in accordance with the Office of Personnel Management (OPM) Government-wide system notices are technically only in the temporary custody of DLA. All requests for access to these records must be processed in accordance with the Federal Personnel Manual (5 CFR part 293, 294, 297 and 735) as well as this part. DLA-GC is responsible for the appellate review of denial of access to such records.

(c) * * *

(5) * * *

(ii) Notification that he or she may seek further independent review of the decision by filing an appeal with the HQ DLA Privacy Act Officer, Defense Logistics Agency (DSS-CA), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, and including all supporting materials.

(6) DLA will process all appeals within 30 days unless a fair review cannot be made within this time limit.

(i) If the appeal is granted, DLA will promptly notify the requester and system manager of the decision. The system manager will amend the record(s) as directed and ensure that all prior known recipients of the records who are known to be retaining the record are notified of the decision and the specific nature of the amendment and that the requester is notified as to which DoD Components and Federal agencies have been told of the amendment.

* * * * *

(f) * * *

(3) All records must be disclosed if their release is required by the Freedom of Information Act. DLAR 5400.14, (32 CFR part 1285) requires that records be made available to the public unless exempted from disclosure by one of the nine exemptions found in the Freedom of Information Act. The standard for exempting most personal records, such as personnel records, medical records, and similar records, is found in DLAR 5400.14 (32 CFR part 1285). Under the exemption, release of personal information can only be denied when its release would be a "clearly unwarranted invasion of personal privacy."

* * * * *

(f) * * *

(6) DLAI 5530.1, Publications, Forms, Printing, Duplicating, Micropublishing, Office Copying, and Automated Information Management Programs,² provides guidance on administrative requirements for Privacy Act Statements used with DLA forms. Forms subject to the Privacy Act issued by other Federal agencies have a Privacy Act Statement attached or included. Always ensure that the statement prepared by the originating agency is adequate for the purpose for which the form will be used by the DoD activity. If the Privacy Act Statement provided is inadequate, the activity concerned will prepare a new statement of a supplement to the existing statement before using the form. Forms issued by agencies not subject to the Privacy Act (state, municipal, and other local agencies) do not contain Privacy Act statements. Before using a form prepared by such agencies to collect personal data subject to this part, an appropriate Privacy Act Statement must be added.

* * * * *

(i) * * *

(5) * * *

(ii) Special administrative, physical, and technical procedures are required to protect data that are stored or being

processed temporarily in an automated data processing (ADP) system or in a work processing activity to protect it against threats unique to those environments (see DLAR 5200.17, Security Requirements for Automated Information and Telecommunications System,³ and appendix D of this part).

* * * * *

(j) * * *

(5) Systems notices and reports of new and altered systems will be submitted to DLA Support Services (DSS-CA) as required.

* * * * *

(k) *Exemptions.* The Director, DLA will designate the DLA records which are to be exempted from certain provision of the Privacy Act. DLA Support Services (DSS-CA) will publish in the **Federal Register** information specifying the name of each designated system, the specific provisions of the Privacy Act from which each system is to be exempted, the reasons for each exemption, and the reason for each exemption of the record system.

(l) * * *

(1) Forward all requests for matching programs to include necessary routine use amendments and analysis and proposed matching program reports to DLA Support Services. Changes to existing matching programs shall be processed in the same manner as a new matching program report.

(2) No time limits are set by the OMB guidelines. However, in order to establish a new routine use for a matching program, the amended system notice must have been published in the **Federal Register** at least 30 days before implementation. Submit the documentation required above to DLA Support Services (DSS-CA) at least 60 days before the proposed initiation date of the matching program. Waivers to the 60 days' deadline may be granted for good cause shown. Requests for waivers will be in writing a fully justified.

(3) For the purpose of the OMB guidelines, DoD and all DoD Components are considered a single agency. Before initiating a matching program using only the records of two or more DoD activities, notify DLA Support Services (DSS-CA) that the match is to occur. Further information may be requested from the activity proposing the match.

* * * * *

6. Section 323.6 is proposed to be revised to read as follows:

§ 323.6 Forms and reports.

DLA activities may be required to provide data under reporting requirements established by the Defense

Privacy Office and DLA Support Services (DSS-CA). Any report established shall be assigned Report Control Symbol DD-DA&M(A)1379.

Appendix A to Part 323 [Amended]

7. Appendix A to part 323 is proposed to be amended by revising paragraphs C.2., F.2., I.4., revised to read as follows:

* * * * *

C. * * *

2. When multiple locations are identified by type of organization, the system location may indicate that official mailing addresses are contained in an address directory published as an appendix to DLAH 5400.1.

* * * * *

F. * * *

2. For administrative housekeeping records, cite the directive establishing DLA as well as the Secretary of Defense authority to issue the directive. For example, 'Pursuant to the authority contained in the National Security Act of 1947, as amended (10 U.S.C. 133d), the Secretary of Defense has issued DoD Directive 5105.22 (32 CFR part 398), Defense Logistics Agency (DLA), the charter

of the Defense Logistics Agency (DLA) as a separate agency of the Department of Defense under his control. Therein, the Director, DLA, is charged with the responsibility of maintaining all necessary and appropriate records.'

I. * * *

4. *Retention and disposal.* Indicate how long the record is retained. When appropriate, state the length of time the records are maintained by the activity, when they are transferred to a Federal Records Center, length of retention at the Records Center and when they are transferred to the National Archives or are destroyed. A reference to DLAI 5015.1,⁸ DLA Records Management Procedures and Records Schedules, or other issuance without further detailed information is insufficient.

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Appendix B to Part 323 [Amended]

8. Appendix B to part 323 is proposed to be amended by revising paragraphs C. and F.1 introductory text to read as follows:

* * * * *

C. Reports of new and altered systems. Submit a report of a new or altered system to DLA Support Service (DSS-CA) before collecting information and for using a new system or altering an existing system.

* * * * *

F. * * *

11. The OMB may authorize a Federal agency to begin operation of a system of records before the expiration of time limits described above. When seeking such a waiver, include in the letter of transmittal to DLA Support Services (CA) an explanation why a delay of 60 days in establishing the system of records would not be in the public interest. The transmittal must include:

* * * * *

Dated: October 6, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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