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NATIONAL COMMISSION ON MILITARY, NATIONAL, AND PUBLIC SERVICE

1 CFR Part 426

RIN 3262-AA01

Privacy Act Regulations

AGENCY: National Commission on Military, National, and Public Service

ACTION: Interim final rule; request for comments.

SUMMARY: This rule provides guidance and assigns responsibility for the privacy program of the National Commission on Military, National, and Public Service (the “Commission”) pursuant to the Privacy Act of 1974 and applicable Office of Management Budget (OMB) guidance.

DATES: This interim final rule is effective on INSERT [DATE OF PUBLICATION IN FEDERAL REGISTER]. Written comments on the interim final rule should be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION].

ADDRESSES: You may send comments, identified by Regulatory Information Number (RIN) number, by any of the following methods:

- Email: Please send comments to legal@inspire2serve.gov and include the RIN in the subject line of the message.
- Website: <http://www.inspire2serve.gov/content/share-your-thoughts>. Follow the instructions on the page to submit a comment and include the docket number in the comment.

- Mail: National Commission on Military, National, and Public Service, Attn: Rulemaking– RIN 3262-AA01, 2530 Crystal Drive, Suite 1000, Box No. 63. Arlington, VA 22202.

All submissions received should include the RIN for this rulemaking. If the Commission cannot read your comment due to technical difficulties and cannot contact you for clarification, the Commission may not be able to consider your comment.

FOR FURTHER INFORMATION CONTACT: For general inquiries, submission process questions, or any additional information about this interim final regulation, please contact Rachel Rikleen, at (703) 571–3760 or by email at rachel.l.rikleen@inspire2serve.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 23, 2016, the President signed into law the National Defense Authorization Act for Fiscal Year 2017, Pub. L. 114-328, 130 Stat. 2000 (2016), which created the National Commission on Military, National, and Public Service (the “Commission”). Pub. L. 114-328, Subtitle F, 130 Stat. at 2130. To establish procedures to facilitate public interaction with the Commission, the agency is issuing interim final regulations under the Privacy Act of 1974.

II. Summary of Interim Final Rule

The authority for this rulemaking is 5 U.S.C. 552a, the Privacy Act of 1974, as amended (the Privacy Act), which requires implementation by Federal agencies. This action ensures that the Commission’s collection, use, maintenance, or dissemination of information about individuals for purposes of discharging its statutory responsibilities

will be performed in accordance with the Privacy Act and applicable guidance from the Office of Management and Budget (OMB). This rule:

- Establishes rules of conduct for the Commission personnel and contractors involved in the design, development, operation, or maintenance of any system of records.
- Establishes appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual about whom information is maintained.
- Establishes procedures for inquiring about implementation of the Privacy Act of 1974, acquiring access to records, amending or correcting an individual's record, and appealing a refusal to amend or correct a record.
- Ensures that laws, policies, procedures, and systems for protecting individual privacy rights are implemented throughout the Commission.

III. Procedural Requirements

Administrative Procedure Act

This interim final rule parallels the procedures currently used by other agencies to implement the Privacy Act. The Commission has determined that good cause exists under 5 U.S.C. 553(b) and 5 U.S.C. 553(d)(3) to waive the notice and comment and delayed effective requirements of the Administrative Procedure Act to publish this regulation as an interim final rule with a request for comments. The Commission is a temporary, independent establishment with statutorily-defined deadlines and a limited existence. It is

the intent of the agency to protect private information. In light of this agency's limited duration, as set forth in its enabling legislation, and the need for timely access, the Commission has decided that full notice and comment rulemaking is impracticable and contrary to public policy. Additionally, the Commission has determined that full notice and comment rulemaking is not necessary as this rule constitutes a rule of agency procedure under 5 U.S.C. 553(b). This is because the rule generally establishes procedures to facilitate requests under the Privacy Act. It does not change the substantive standards by which the agency evaluates such requests. Finally, the Commission has determined that this interim final rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553(d)(3). The 30-day delay in effective date typically allows regulated entities time to revise their policies in light of a regulation that governs those entities' conduct. Here, such a delay is unnecessary because the regulation facilitates requests under the Privacy Act.

Executive Orders 12866 and 13771

This rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required. It is also not subject to the requirements found in Executive Order 13771.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require State, local, or tribal governments to spend more than \$100 million in one year. This rule will not mandate any requirements for State, local or tribal governments, nor will it affect private sector costs.

Regulatory Flexibility Act

The Commission certifies this interim rule is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

It has been determined that this rule does not impose reporting or record keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects in 1 CFR Part 426

Administrative practice and procedure, Privacy, Reporting and recordkeeping requirements

Therefore, for reasons discussed in the preamble, the National Commission on Military, National, and Public Service amends title 1, chapter IV of the Code of Federal Regulations by adding part 426 to read as follows:

PART 426 - NATIONAL COMMISSION ON MILITARY, NATIONAL, AND PUBLIC SERVICE

Subpart A—Implementation of the Privacy Act of 1974

Sec.

426.101 Purpose and scope.

426.102 Definitions.

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426.105 Identification required when requesting access to records pertaining to an individual.

426.106 Procedures for amending or correcting an individual's record.

426.107 Procedures for appealing a refusal to amend or correct a record.

426.108 Fees charged to locate, review, or copy records.

426.109 Procedures for maintaining accounts of disclosures.

Subpart B [Reserved]

Authority: 5 U.S.C. 552a(f).

Subpart A—Implementation of the Privacy Act of 1974

§ 426.101 Purpose and scope.

The regulations in this part set forth the Commission's procedures under the Privacy Act, as required by 5 U.S.C. 552a(f), with respect to systems of records maintained by the Commission. The rules in this part apply to all records maintained by the Commission that are retrieved by an individual's name or by some identifying number, symbol, or other identifying particular assigned to the individual. These regulations establish procedures by which an individual may exercise the rights granted by the Privacy Act to determine whether a Commission system of records contains a record pertaining to him or her; to gain access to such records; and to request correction or amendment of such records. These rules should be read together with the Privacy Act, which provides additional information about records maintained on individuals.

§ 426.102 Definitions.

The definitions in subsection (a) of the Privacy Act (5 U.S.C. 552a(a)) apply to this part. In addition, as used in this part:

Business day means a calendar day, excluding Saturdays, Sundays, and legal public holidays.

Chair means the Chair of the Commission, or his or her designee;

Commission means the National Commission on Military, National, and Public Service;

Commission system means a system of records maintained by the Commission;

General Counsel means the General Counsel of the Commission, or his or her designee.

Individual means a citizen of the United States or an alien lawfully admitted for permanent residence.

Privacy Act or *Act* means the Privacy Act of 1974, as amended (5 U.S.C. 552a);

You, your, or other references to the reader of the regulations in this part are meant to apply to the individual to whom a record pertains.

§ 426.103 Inquiries about systems of records or implementation of the Privacy Act.

Inquiries about the Commission's systems of records or implementation of the Privacy Act should be sent to the following address: National Commission on Military, National, and Public Service, Office of the General Counsel, 2530 Crystal Drive, Suite 1000, Box No. 63, Arlington, VA 22202.

§ 426.104 Procedures for accessing records pertaining to an individual.

The following procedures apply to records that are contained in a Commission system:

(a) You may request to be notified if a system of records that you name contains records pertaining to you, and to review any such records, by writing to the Office of the General Counsel (see § 426.103). You also may call the Office of the General Counsel at 703-571-3742 on business days, between the hours of 9 a.m. and 5 p.m., to schedule an appointment to make such a request in person. A request for records should be presented in writing and should identify specifically the

Commission system(s) involved. Your request to access records pertaining to you will be treated as a request under both the Privacy Act, as implemented by this part, and the Freedom of Information Act (5 U.S.C. 552), as implemented by subpart B of this part.

(b) Access to the records, or to any other information pertaining to you that is contained in the system, shall be provided if the identification requirements of § 426.105 are satisfied and the records are determined otherwise to be releasable under the Privacy Act and these regulations. The Commission shall provide you an opportunity to have a copy made of any such records about you. Only one copy of each requested record will be supplied, based on the fee schedule in § 426.108.

(c) The Commission will comply promptly with requests made in person at scheduled appointments, if the requirements of this section are met and the records sought are immediately available. The Commission will acknowledge, within 10 business days, mailed requests or personal requests for records that are not immediately available, and the information requested will be provided promptly thereafter.

(d) If you make your request in person at a scheduled appointment, you may, upon your request, be accompanied by a person of your choice to review your records. The Commission may require that you furnish a written statement authorizing discussion of your records in the accompanying person's presence. A record may be disclosed to a representative chosen by you upon your proper written consent.

(e) Medical or psychological records pertaining to you shall be disclosed to you unless, in the judgment of the Commission, access to such records might have an

adverse effect upon you. When such a determination has been made, the Commission may refuse to disclose such information directly to you. The Commission will, however, disclose this information to you through a licensed physician designated by you in writing.

(f) If you are unsatisfied with an adverse determination on your request to access records pertaining to you, you may appeal that determination using the procedures set forth in § 426.107(a).

§ 426.105 Identification required when requesting access to records pertaining to an individual.

The Commission will require reasonable identification of all individuals who request access to records in a Commission system to ensure that records are disclosed to the proper person.

(a) The amount of personal identification required will of necessity vary with the sensitivity of the record involved. In general, if you request disclosure in person, you will be required to show an identification card, such as a driver's license, containing your photograph and sample signature. However, with regard to records in Commission systems that contain particularly sensitive and/or detailed personal information, the Commission reserves the right to require additional means of identification as are appropriate under the circumstances. These means include, but are not limited to, requiring you to sign a statement under oath as to your identity, acknowledging that you are aware of the criminal penalties for requesting or obtaining records under false pretenses or falsifying information (see 5 U.S.C. 552a(i)(3); 18 U.S.C. 1001).

(b) If you request disclosure by mail, the Commission will request such information as may be necessary to ensure that you are properly identified and for a response to be sent. Authorized means to achieve this goal include, but are not limited to, requiring that a mail request include a signed, notarized statement asserting your identity or a statement signed under oath as described in subsection (a) of this section

§ 426.106 Procedures for amending or correcting an individual's record.

(a) You are entitled to request amendments to or corrections of records pertaining to you that you believe are not accurate, relevant, timely, or complete, pursuant to the provisions of the Privacy Act, including 5 U.S.C. 552a(d)(2). Such a request should be made in writing and addressed to the Office of the General Counsel (see § 426.103).

(b) Your request for amendments or corrections should specify the following:

- (1) The particular record that you are seeking to amend or correct;
- (2) The Commission system from which the record was retrieved;
- (3) The precise correction or amendment you desire, preferably in the form of an edited copy of the record reflecting the desired modification; and
- (4) Your reasons for requesting amendment or correction of the record.

(c) The Commission will acknowledge a request for amendment or correction of a record within 10 business days of its receipt, unless the request can be processed and the individual informed of the General Counsel's decision on the request within that 10-day period.

(d) If after receiving and investigating your request, the General Counsel agrees that the record is not accurate, timely, or complete, based on a preponderance

of the evidence, then the record will be corrected or amended promptly. The record will be deleted without regard to its accuracy, if the record is not relevant or necessary to accomplish the Commission's function for which the record was provided or is maintained. In either case, you will be informed in writing of the amendment, correction, or deletion. In addition, if accounting was made of prior disclosures of the record, all previous recipients of the record will be informed of the corrective action taken.

(e) If after receiving and investigating your request, the General Counsel does not agree that the record should be amended or corrected, you will be informed promptly in writing of the refusal to amend or correct the record and the reason for this decision. You also will be informed that you may appeal this refusal in accordance with § 426.107.

(f) Requests to amend or correct a record governed by the regulations of another agency will be forwarded to such agency for processing, and you will be informed in writing of this referral.

§ 426.107 Procedures for appealing a refusal to amend or correct a record.

(a) You may appeal a refusal to amend or correct a record to the Chair of the Commission. Such appeal must be made in writing within 30 business days of your receipt of the initial refusal to amend or correct your record. Your appeal should be sent to the Office of the General Counsel (see § 426.103), should indicate that it is an appeal, and should include the basis for the appeal.

(b) The Chair will review your request to amend or correct the record, the General Counsel's refusal, and any other pertinent material relating to the appeal. No hearing will be held.

(c) The Chair shall render his or her decision on your appeal within 30 business days of its receipt by the Commission, unless the Chair, for good cause shown, extends the 30-day period. Should the Chair extend the appeal period, you will be informed in writing of the extension and the circumstances of the delay.

(d) If the Chair determines that the record that is the subject of the appeal should be amended or corrected, the record will be so modified, and you will be informed in writing of the amendment or correction. Where an accounting was made of prior disclosures of the record, all previous recipients of the record will be informed of the corrective action taken.

(e) If your appeal is denied, you will be informed in writing of the following:

(1) The denial and the reasons for the denial;

(2) That you may submit to the Commission a concise statement setting forth the reasons for your disagreement as to the disputed record. Under the procedures set forth in paragraph (f) of this section, your statement will be disclosed whenever the disputed record is disclosed; and

(3) That you may seek judicial review of the Chair's determination under 5 U.S.C. 552a(g)(1).

(f) Whenever you submit a statement of disagreement to the Commission in accordance with paragraph (e)(2) of this section, the record will be annotated to indicate that it is disputed. In any subsequent disclosure, a copy of your statement of

disagreement will be disclosed with the record. If the Commission deems it appropriate, a concise statement of the Chair's reasons for denying your appeal also may be disclosed with the record. While you will have access to this statement of the Chair's reasons for denying your appeal, such statement will not be subject to correction or amendment. Where an accounting was made of prior disclosures of the record, all previous recipients of the record will be provided a copy of your statement of disagreement, as well as any statement of the Chair's reasons for denying your appeal deemed appropriate.

§ 426.108 Fees charged to locate, review, or copy records.

(a) The Commission will charge no fees for search time or for any other time expended by the Commission to review a record. However, the Commission may charge fees where you request that a copy be made of a record to which you have been granted access. Where a copy of the record must be made in order to provide access to the record (*e.g.*, computer printout where no screen reading is available), the copy will be made available to you without cost.

(b) Copies of records made by photocopy or similar process will be charged to you at the rate of \$0.12 per page. Where records are not susceptible to photocopying (*e.g.*, punch cards, magnetic tapes, or oversize materials), you will be charged actual cost as determined on a case-by-case basis. Copying fees will not be charged if the cost of collecting a fee would be equal to or greater than the fee itself. Copying fees for contemporaneous requests by the same individual shall be aggregated to determine the total fee.

(c) Special and additional services provided at your request, such as certification or authentication, postal insurance, and special mailing arrangement costs, will be charged to you at the market rate.

(d) You may request that a copying fee not be charged or, alternatively, be reduced, by submitting a written petition to the Commission's General Counsel (see § 426.103) asserting that you are indigent. If the General Counsel determines, based on the petition, that you are indigent and that the Commission's resources permit a waiver of all or part of the fee, the General Counsel may, in his or her discretion, waive or reduce the copying fee.

(e) All fees shall be paid before any copying request is undertaken.

§ 426.109 Procedures for maintaining accounts of disclosures.

(a) The Office of the General Counsel shall maintain a log containing the date, nature, and purpose of each disclosure of a record to any person or to another agency. Such accounting also shall contain the name and address of the person or agency to whom each disclosure was made. This log need not include disclosures made to the Commission's employees in the course of their official duties, or pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552).

(b) The Commission will retain the accounting of each disclosure for at least five years after the disclosure or for the life of the record that was disclosed.

(c) The Commission will make the accounting of disclosures of a record pertaining to you available to you at your request. Such a request should be made in accordance with the procedures set forth in § 426.104. This paragraph (c) does not apply to disclosures made for law enforcement purposes under 5 U.S.C. 552a(b)(7).

Subpart B [Reserved]

Joseph Heck,

Chairman

April 20, 2018

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