

establish a sufficient foundation for the admissibility of domestic business records. This Rule works together with Mil.R.Evid. 803(6)."

*The amendment to the Federal Rules of Evidence, effective in United States District Courts, 1 December 2000, creating Rule 901(12) is not adopted.*

*Amend the analysis accompanying Nil.R.Evid. 1102 by inserting the following at the end thereof:*

"200 Amendment: The amendment to the Federal Rules of Evidence, effective in United States District Courts, 1 December 2000, creating Rule 902(12) is not adopted. Federal Rules 301, 302, and 415, were not adopted because they were applicable only to civil proceedings."

*Amend Part IV, para. 45(b)(2) by deleting para. 45(b)(2)(C) and inserting the following after para. 45(b)(2)(b):*

"(Note: Add one of the following elements)  
(c) That at the time of the sexual intercourse the person was under the age of 12.

(d) That at the time of the sexual intercourse the person had attained the age of 12 but was under the age of 16."

*Amend the analysis accompanying Part IV, para. 45(b) by inserting the following prior to the Discussion of subsection (c):*

"b. Elements.

200 Amendment: Paragraph 45(b)(2) was amended to add two distinct elements of age based upon the 1994 amendment to paragraph 45(e). See also concurrent change to R.C.M. 307(c)(3) and accompanying analysis."

*Amend Part IV, para. 45(f) to read as follows:*

"f. Sample specifications.

(1) Rape.

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, rape \_\_\_\_\_, (a person under the age of 12) (a person who had attained the age of 12 but was under the age of 16).

(2) Carnal Knowledge.

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, commit the offense of carnal knowledge with \_\_\_\_\_, (a person under the age of 12) (a person who attained the age of 12 but was under the age of 16)."

*Amend the analysis accompanying Part IV, para. 45(f) by inserting the following at the end of subsection (e):*

"200 Amendment: Paragraph 45(f)(2) was amended to aid practitioners in charging the two distinct categories of carnal knowledge created in 1994. For the same reason paragraph 45(f)(1) was amended to allow for contingencies of proof because carnal knowledge is a lesser-included offense of rape if properly pleaded. See also concurrent change to R.C.M. 307(c)(3) and accompanying analysis."

*Amend part IV, para. 51(b) to read as follows:*

"(1) That the accused engaged in unnatural carnal copulation with a certain other person or with an animal.

(Note: Add any of the following as applicable)

(2) That the act was done with a child under the age of 12.

(3) That the act was done with a child who had attained the age of 12 but was under the age of 16.

(4) That the act was done by force and without the consent of the other person."

*Amend the analysis accompanying Part IV, para. 51(b) by inserting the following prior to the Discussion of subsection (c):*

"b. Elements.

200 Amendment: Paragraph 51(b) was amended by adding two factors pertaining to age based upon the 1994 amendment to paragraph 51(e) that created two distinct categories of sodomy involving a child. See also concurrent change to R.C.M. 307(c)(3) and accompanying analysis."

*Amend Part IV, para. 51(f) to read as follows:*

"f. Sample specification.

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, commit sodomy with \_\_\_\_\_, (a child under the age of 12) (a child who had attained the age of 12 but was under the age of 16) (by force and without the consent of the said \_\_\_\_\_)."

*Amend the analysis accompanying Part IV, para. 51(f) by inserting the following at the end of subsection (e):*

"200 Amendment: Paragraph 51(f) was amended to aid practitioners in charging the two distinct categories of sodomy involving a child created in 1994. See also concurrent change to R.C.M. 307(c)(3) and accompanying analysis."

*Amend Part IV, para. 57(c) (2) (B) to read as follows:*

"(b) Material matter. The false testimony must be with respect to a material matter, but that matter need not be the main issue in the case. Thus, perjury may be committed by giving false testimony with respect to the credibility of a material witness or in an affidavit in support of a request for a continuance, as well as by giving false testimony with respect to a fact which a legitimate inference may be drawn as to the existence or nonexistence of a fact in issue."

*Amend the analysis accompanying Part IV, para 57(c) (2) (B) by inserting the following before the Discussion of subsection (d):*

"200 Amendment: Subsection (2)(b) was amended to comply with *United States v. Gaudin*, 515 U.S. 506 (1995), which held that when materiality is a statutory element of an offense, it must be submitted to the jury for decision. Materiality cannot be removed from the members' consideration by an interlocutory ruling that a statement is material. See also *Gaudin* at 521 ("It is commonplace for the same mixed question of law and fact to be assigned to the court for one purpose, and to the jury for another."); and at 517 ("The prosecution's failure to provide minimal evidence of any other element, of course raises a question of 'law' that warrants dismissal.").

*Amend Part IV, para. 100a(c)(1) to read as follows:*

"(1) In general. This offense is intended to prohibit and therefore deter reckless or wanton conduct that wrongfully creates a substantial risk of death or grievous bodily harm to others."

*Amend Part IV, para. 100a(f) to read as follows:*

"f. Sample specification.

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, wrongfully and (recklessly) (wantonly) engage in conduct, to wit: (describe conduct), conduct likely to cause death or grievous bodily harm to \_\_\_\_\_."

*Amend the analysis accompanying Part IV, para. 100a by inserting the following at the end thereof:*

"200 Amendment: The sample specification was amended to add the word "wantonly" to make the sample specification consistent with the elements. The phrase "serious bodily harm" has been changed to read "grievous bodily harm" in the sample specification to parallel the language in the elements. Similarly, in the *Explanation*, the phrase "serious injury" was modified to read "grievous bodily harm." The format of the sample specification was also modified to follow the format of other sample specification in the MCM."

*Insert DoD Directive 5500.17, "The Roles and Responsibilities of the Joint Service Committee (JSC) on Military Justice" as Appendix 26.*

Dated: November 28, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 01-29922 Filed 12-3-01; 8:45 am]

**BILLING CODE 5001-08-M**

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Privacy Act of 1974; System of Records

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

**ACTION:** Notice to amend and delete systems of records.

**SUMMARY:** The Department of the Army is proposing to consolidate two existing Privacy Act systems of records its inventory of systems of records subject to the Privacy Act of 1974. The records systems are A0600 ARPC, Career Management Files of Dual Component Personnel and A0600-8-104g TAPC, Career Management Individual Files. As a result of the consolidation, A0600 ARPC will be deleted.

**DATES:** This proposed action will be effective without further notice on January 3, 2002, unless comments are received which result in a contrary determination.

**ADDRESSES:** Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060-5603.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janice Thornton at (703) 806-4390 or DSN 656-4390 or Ms. Christie King at (703) 806-3711 or DSN 656-3711.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 28, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

Deletion

#### **A0600 ARPC**

##### **SYSTEM NAME:**

Career Management Files of Dual Component Personnel (December 23, 1997, 62 FR 67055).

##### **REASON:**

Records are now being maintained under the Department of the Army system of records notice A0600-8-104g TAPC, entitled 'Career Management Individual and Dual Component Personnel Files'.

##### **AMENDMENT**

#### **A0600-8-104g TAPC**

##### **SYSTEM NAME:**

Career Management Individual Files (March 23, 1999, 64 FR 13972).

##### **CHANGES:**

\* \* \* \* \*

##### **SYSTEM NAME:**

Add to entry 'Dual Component Personnel Files'.

##### **SYSTEM LOCATION:**

Add a new address to entry 'Dual Component Personnel files are located at the U.S. Army Reserve Personnel Command, 1 Reserve Way, St. Louis, MO 63132-5200.'

##### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Add a new paragraph 'Any reserve or warrant officer on active duty as a regular Army enlisted; any reserve officer on active duty as a regular Army warrant officer. All reserve officers,

warrant officers, and enlisted members.'

##### **CATEGORIES OF RECORDS IN THE SYSTEM:**

Add to beginning of paragraph 'Name, rank, Social Security Number, basic entry date, promotion eligibility date to the beginning of paragraph'. Add 'academic reports; qualification records' after efficiency reports. Add 'mandatory removal date' after development actions. Add 'general orders concerning' after classification data. Add 'records and reports' after similar documents.

\* \* \* \* \*

##### **PURPOSE(S):**

Add to entry 'when they will be considered for promotion; military education that needs to be completed for eligibility' after Army career in first sentence. Add to end of entry 'Specific only to Dual Component Members: To make determinations if officer should be removed for substandard performance of duty; to advise of eligibility for retirement as either an officer of enlisted person and to apprise individuals of changes in the reserve program affecting them.'

\* \* \* \* \*

##### **SAFEGUARDS:**

Delete entry and replace with 'Records are restricted to officially designated individuals in the performance of their assigned duties. Automated data are stored in vaults in secure buildings.'

\* \* \* \* \*

##### **RECORD SOURCE CATEGORIES:**

Add to entry 'Army records, reports' after individual.

\* \* \* \* \*

#### **A0600-8-104g TAPC**

##### **SYSTEM NAME:**

Career Management Individual and Dual Component Personnel Files.

##### **SYSTEM LOCATION:**

U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332-0474. Decentralized segments exist at the General Officer Management Office, Judge Advocate General's Office, the Chief of Chaplains Office, and the Medical Service Corps. Official mailing addresses may be obtained from U.S. Total Army Personnel Command.

Dual Component Personnel files are located at the U.S. Army Reserve Personnel Command, 1 Reserve Way, St. Louis, MO 63132-5200.

##### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Active Army members in enlisted grades E-5 through E-9, all warrant and commission officers.

Any reserve or warrant officer on active duty as a regular Army enlisted; any reserve officer on active duty as a regular Army warrant officer. All reserve officers, warrant officers, and enlisted members.

##### **CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, rank, Social Security Number, basic entry date, promotion eligibility date; orders; record briefs; statements of preference; school credit papers; transcripts; details; career personnel actions; correspondence from individual concerned; original copy of efficiency report; academic reports; qualification records; appeal actions; assignment memoranda and requests for orders; memoranda concerning professional development actions; mandatory removal date; classification data; general orders concerning service awards; service agreements; variable incentive pay data; memoranda of interviews; assignment applications; resumes of qualifications, personal background and experience supporting service member's desires, nominative action by career managers; academic reports; copies of admonition/reprimands imposed under Article 15, UCMJ, letters of appreciation/commendation/recommendation; reports/letters from accredited educational and training organizations; and similar documents, records and reports.

##### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 3013, Secretary of the Army; Army Regulation 600-39, Dual Component Personnel Management Program; Army Regulation 600-8-104, Military Personnel Information Management/Records; and E.O. 9397 (SSN).

##### **PURPOSE(S):**

To manage member's Army career, when they will be considered for promotion; military education that needs to be completed for eligibility, including assignments, counseling, and monitoring professional development.

*Specific only to Dual Component members:* To make determinations if officer should be removed for substandard performance of duty; to advise of eligibility for retirement as either an officer of enlisted person and to apprise individuals of changes in the reserve program affecting them.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Paper records in file folders and on magnetic tapes and electronic storage media.

**RETRIEVABILITY:**

By individual's surname and/or Social Security Number.

**SAFEGUARDS:**

Records are restricted to officially designated individuals in the performance of their assigned duties. Automated data are stored in vaults in secure buildings.

**RETENTION AND DISPOSAL:**

Career branch individual files disposition pending until National Archives and Records Administration is approved, treat as permanent.

Reserve officer career management files are forwarded with the individual's personnel file when transferred to Army Reserve, entry to active duty National Guard, Standby or Retired Reserve, however, upon final separation the records are destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332-0474.

Commander, U.S. Army Reserve Personnel Command, 1 Reserve Way, St. Louis, MO 63132-5200 for Dual Component individuals.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the following:

*For information concerning general officers:* General Officer Management Office, 200 Army Pentagon, ATTN: Chief of Staff, Washington, DC 20310-0200.

*For information concerning chaplains:* Chief of Chaplains, 200 Army Pentagon, Room 1E417, Washington, DC 20310-0200.

*For information concerning officers of The Judge Advocate General Corps:* The Judge Advocate General, 200 Army Pentagon, Washington, DC 20310-0200.

*For information pertaining to all other soldiers:* Commander, U.S. Total Army Personnel, 200 Stovall Street, Alexandria, VA 22332-0474. Individuals should designate Officer or Enlisted status.

*For information concerning dual component personnel:* Commander, U.S. Army Reserve Personnel Command, 1 Reserve Way, St. Louis, MO 63132-5200.

Individual should provide the full name, Social Security Number, service identification number, military occupational specialty, military status, current home address and telephone number, and signature.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the following:

*For information concerning general officers:* General Officer Management Office, 200 Army Pentagon, ATTN: Chief of Staff, Washington, DC 20310-0200.

*For information concerning chaplains:* Chief of Chaplains, 200 Army Pentagon, Room 1E417, Washington, DC 20310-0200.

*For information concerning officers of The Judge Advocate General Corps:* The Judge Advocate General, 200 Army Pentagon, Washington, DC 20310-0200.

*For information pertaining to all other soldiers:* Commander, U.S. Total Army Personnel, 200 Stovall Street, Alexandria, VA 22332-0474. Individuals should designate Officer or Enlisted status.

*For information concerning dual component personnel:* Commander, U.S. Army Reserve Personnel Command, 1 Reserve Way, St. Louis, MO 63132-5200

Individual should provide the full name, Social Security Number, service identification number, military occupational specialty, military status, current home address and telephone number, and signature.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual; Army records; reports; enlistment, appointment, or commission related forms pertaining to

the service member having a current active duty status; academic, training, and qualifications records acquired incident to military service; correspondence, forms, documents and other related papers originating in or collected by the military department for management purposes.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 01-29920 Filed 12-3-01; 8:45 am]

BILLING CODE 5001-08-P

**DEPARTMENT OF DEFENSE****Department of the Army****Privacy Act of 1974; System of Records**

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

**ACTION:** Notice to Amend Systems of Records.

**SUMMARY:** The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on January 3, 2002 unless comments are received which result in a contrary determination.

**ADDRESSES:** Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060-5603.

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The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.