



Billing Code: 5001-06

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Docket ID: USN-2013-0039]

Privacy Act; Implementation

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

**ACTION:** Direct final rule with request for comments.

**SUMMARY:** Department of the Navy is updating the Navy Privacy Act Program by adding the (k)(5) exemption to accurately describe the basis for exempting the records in the system of records notice NM03800-1, Naval Global Maritime, Foreign, Counterterrorism and Counter Intelligence Operation Records. This direct final rule makes non-substantive changes to the Department of the Navy's Program rules. These changes will allow the Department to add exemption rules to the Department of the Navy Privacy Program rules that will exempt applicable Department records and/or material from certain portions of the Privacy Act. This will improve the efficiency and effectiveness of DoD's program by ensuring the integrity of the security and investigative material compiled for law enforcement purposes by the Department of the Navy and the Department of Defense.

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 **[INSERT DATE 70 DAYS AFTER THE DATE OF PUBLICATION IN FEDERAL REGISTER]** unless adverse comment is received by **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN FEDERAL REGISTER]**. If adverse comment is received, Department of the Navy will publish a timely withdrawal of the rule in the Federal Register.

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

- \* Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- \* Mail: Federal Docket Management System Office, 4800 Mark Center Drive; East Tower, 2<sup>nd</sup> Floor, Suite 02G09, Alexandria, VA 22350-3100.

Instructions: All submissions received must include the agency name and docket number 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. Robin Patterson at 202-685-6546.

**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 Programs. 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 this rule is not a significant rule. This rule does 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)**

This rule will 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. A Regulatory Flexibility Analysis is not required.

**Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)**

This rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

**Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"**

These amendments 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"**

These amendments 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. Therefore, no Federalism assessment is required.

**List of Subjects in 32 CFR Part 701**

Privacy.

Accordingly, 32 CFR part 701 is amended as follows:

**PART 701—AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND  
PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE  
PUBLIC**

1. The authority citation for 32 CFR part 701 continues to read as follows:

**Authority:** 5 U.S.C. 552.

2. In §701.128, add paragraph (y) to read as follows:

**§701.128 Exemptions for specific Navy record systems.**

\* \* \* \* \*

(y) System identifier and name: NM03800-1, Naval Global Maritime, Foreign, Counterterrorism and Counter Intelligence Operation Records.

(1) Exemptions: Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5) but only to the extent that such material would reveal the identity of a confidential source. An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3) (c) and (e) and is published at 32 CFR part 701.

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

(3) The reason for asserting this exemption is ensure the integrity of the security and investigative material compiled for law enforcement purposes by the Department of the Navy and the Department of Defense.

Dated: November 12, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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