



Billing Code: 5001-06

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

[Docket ID: DoD-2014-OS-0145]

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary, DoD.

ACTION: Direct final rule with request for comments.

SUMMARY: The Office of the Secretary of Defense (OSD) is exempting records maintained in DMDC 17 DoD, entitled "Continuous Evaluation Records for Personnel Security", from pertinent provisions of 5 U.S.C. 552a. In the course of carrying out records checks for continuous evaluation, exempt records received from other systems of records may become part of this system. To the extent that copies of exempt records from those 'other' systems of records are maintained in this system, OSD claims the same exemptions for the records from those 'other' systems that are maintained in this system, as claimed for the original primary system of which they are a part.

DATES: The rule is effective on [INSERT DATE 70 DAYS AFTER THE DATE OF PUBLICATION IN FEDERAL REGISTER] unless adverse comments are received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If adverse

comment is received, the Department of Defense 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, 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. Cindy Allard at (571) 372-0461.

SUPPLEMENTARY INFORMATION:

This direct final rule makes nonsubstantive changes to the OSD Privacy Program rules. These changes will allow the Department to add an exemption rule to the OSD

Privacy Program rules that will exempt applicable Department records and/or material from certain portions of the Privacy Act. This 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.

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)

It has been certified that this rule does not have a 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 DoD. A Regulatory Flexibility Analysis is not required.

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

It has been determined that this rule does not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

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

It has been determined that this rule does 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 it will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that this rule does not have federalism implications. This rule does 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 311

Privacy.

Accordingly, 32 CFR part 311 is amended as follows:

**PART 311-OFFICE OF THE SECRETARY OF DEFENSE AND JOINT STAFF
PRIVACY PROGRAM**

1. The authority citation for part 311 continues to read as follows:

Authority: 5 U.S.C. 522a.

2. Section 311.8 is amended by adding paragraph (c) (23) to read as follows:

§311.8 Procedures for exemptions.

* * * * *

(c) * * *

(23) System identifier and name: DMDC 17 DoD, Continuous Evaluation Records for Personnel Security.

(i) Exemption: In the course of carrying out records checks for continuous evaluation, exempt records from other systems of records may in turn become part of the case records maintained in this system. To the extent that copies of exempt records from those 'other' systems of records are maintained into this system, OSD claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) Authority: 5 U.S.C. 552a(j) (2), (k) (1), (k) (2), (k) (3), (k) (5), (k) (6), and (k) (7).

(iii) Reasons: Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent that such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now maintained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy; to avoid interference during the conduct of criminal, civil, or administrative actions or investigations; to ensure protective services provided the President and others are not compromised; to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations; to preserve the confidentiality and integrity of Federal testing materials; and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

Dated: October 29, 2014.

Aaron Siegel,
Alternate OSD Federal Register Liaison Officer,
Department of Defense.

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