



9500-01

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

32 CFR Part 1701

Privacy Act of 1974: Implementation

AGENCY: Office of the Director of National Intelligence.

ACTION: Proposed rule.

SUMMARY: The Office of the Director of National Intelligence (ODNI) proposes to exempt two new systems of records from subsections (c)(3); (d)(1),(2),(3),(4); (e)(1) and (e)(4)(G),(H),(I); and (f) of the Privacy Act. With respect to the existing system of records named ODNI Information Technology Systems Activity and Access Records (ODNI-19), the ODNI proposes to invoke subsection (k)(2) as an additional rationale for exempting records from these provisions of the Privacy Act. The ODNI has previously established a rule, published on March 28, 2008, that will preserve the exempt status of records it receives when the reason for the exemption remains valid.

DATES: Submit comments on or before [INSERT DATE 40 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>.

Email: DNI-FederalRegister@dni.gov

Mail: Information Management Division, Office of the Director of National Intelligence, Washington, D.C. 20511.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Hudson, Director, Information Management Division, Office of the Chief Information Officer, Office of the Director of National Intelligence, Washington, D.C. 20511; 703-874-8085.

SUPPLEMENTARY INFORMATION: In compliance with the Privacy Act, 5 U.S.C. 552a(e)(4), the ODNI describes in the notice section of this Federal Register the following two new systems of records: Counterintelligence Trends Analyses Records (ODNI/NCSC-002) and Insider Threat Program Records (ODNI-22). As permitted by the Privacy Act, 5 U.S.C. 552a(k), pursuant to this rulemaking, the Director of National Intelligence (DNI) is invoking exemption of records in these systems from the requirements of certain provisions of the Privacy Act, as described herein. In addition, the DNI is invoking subsection 552a(k)(2) as a further basis of exemption for records contained in the existing system entitled Information Technology Systems Activity and Access Records (ODNI-19).

Regulatory Flexibility Act

This proposed rule affects the manner in which the ODNI collects and maintains information about individuals. The ODNI certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, no regulatory flexibility analysis is required for this rule.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the ODNI to comply with small entity requests for information and advice about compliance with statutes and regulations within the ODNI's jurisdiction. Any small entity that has a question regarding this document may address it to the information contact listed above. Further information regarding SBREFA is available on the Small Business Administration's Web page at http://www.sba.gov/advo/law/law_lib.html.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the ODNI consider the impact of paperwork and other burdens imposed on the public associated with the collection of information. There are no information collection requirements associated with this proposed rule and therefore no analysis of burden is required.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a “significant regulatory action” within the meaning of Executive Order 12866. This rule will not have an annual effect on the economy of \$100 million or more or otherwise adversely affect the economy or sector of the economy in a material way; will not create inconsistency with or interfere with other agency action; will not materially alter the budgetary impact of entitlements, grants, fees, or loans or the right and obligations of recipients thereof; or raise legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. Accordingly, further regulatory evaluation is not required.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. No. 104-4, 109 Stat. 48 (Mar. 22, 1995) requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. This proposed rule imposes no Federal mandate on any State, local, or tribal government or on the private sector. Accordingly, no UMRA analysis of economic and regulatory alternatives is required.

Executive Order 13132, Federalism

Executive Order 13132 requires the ODNI to examine the implications for the distribution of power and responsibilities among the various levels of government

resulting from this proposed rule. The ODNI concludes that the proposed rule does not affect the rights, roles, and responsibilities of the States, involves no preemption of State law, and does not limit State policymaking discretion. This rule has no federalism implications as defined by the Executive Order.

Environmental Impact

The ODNI has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321-4347 and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94-163, as amended, 42 U.S.C. 6362. This rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 32 CFR Part 1701

Records, Privacy Act.

For the reasons stated in the preamble, the ODNI proposes to amend 32 CFR part 1701 as follows:

PART 1701 – ADMINISTRATION OF RECORDS UNDER THE PRIVACY ACT OF
1974

1. The authority citation for part 1701 continues to read as follows:

Authority: 50 U.S.C. 401-442; 5 U.S.C. 552a.

2. Revise §1701.24 to read as follows:

§ 1701.24 Exemption of Office of the Director of National Intelligence (ODNI) systems of records.

(a) The ODNI may invoke its authority to exempt the following systems of records from the requirements of subsections (c)(3); (d)(1),(2),(3) and (4); (e)(1) and (e)(4)(G),(H),(I); and (f) of the Privacy Act to the extent that information in the system is subject to exemption pursuant subsections (k)(1), (k)(2), or (k)(5) of the Act as noted in the existing system notice entitled ODNI Information Technology Systems Activity and Access Records (ODNI-19) and in the following new systems notices:

(1) Counterintelligence Trends Analyses Records (ODNI/NCSC-002).

(2) Insider Threat Program Records (ODNI-22).

(b) Exemptions of records in these systems from any or all of the enumerated requirements may be necessary for the following reasons:

(1) From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an

intelligence or investigative interest on the part of the ODNI or recipient agency and could result in release of properly classified national security or foreign policy information.

(2) From subsections (d)(1), (2), (3) and (4) (record subject's right to access and amend records) because affording access and amendment rights could alert the record subject to the investigative interest of intelligence or law enforcement agencies or compromise sensitive information classified in the interest of national security. In the absence of a national security basis for exemption, records in this system may be exempted from access and amendment to the extent necessary to honor promises of confidentiality to persons providing information concerning a candidate for position. Inability to maintain such confidentiality would restrict the free flow of information vital to a determination of a candidate's qualifications and suitability.

(3) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible to establish relevance and necessity before all information is considered and evaluated in relation to an intelligence concern. In the absence of a national security basis for exemption under subsection (k)(1), records in this system may be exempted from the relevance requirement pursuant to subsections (k)(2) and (k)(5) because it is not possible to determine in advance what exact information may assist in non-criminal law enforcement investigations or in determining the continued eligibility of an individual for access to classified information. Seemingly irrelevant details, when

combined with other data, can provide a useful composite for investigatory and evaluation purposes.

(4) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subjects of the existence of records about them and how they may access records and contest contents) because the system is exempted from subsection (d) provisions regarding access and amendment, and from the subsection (f) requirement to promulgate agency rules. Nevertheless, the ODNI has published notice concerning notification, access, and contest procedures because it may in certain circumstances determine it appropriate to provide subjects access to all or a portion of the records about them in a system of records.

(5) From subsection (e)(4)(I) (identifying sources of records in the system of records) because identifying sources could result in disclosure of properly classified national defense or foreign policy information, intelligence sources and methods, and investigatory techniques and procedures. Notwithstanding its proposed exemption from this requirement, ODNI identifies record sources in broad categories sufficient to provide general notice of the origins of the information it maintains in its systems of records.

(6) From subsection (f) (agency rules for notifying subjects to the existence of records about them, for accessing and amending records, and for assessing fees) because the system is exempt from subsection (d) provisions regarding access and amendment of records by record subjects. Nevertheless, the ODNI has published agency rules

concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the ODNI may determine it appropriate to satisfy a record subject's access request.

Dated: May 19, 2015.

Mark W. Ewing,

Chief Management Officer.

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