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9500-01

## OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

### 32 CFR Part 1701

#### Privacy Act Systems of Records

AGENCY: Office of the Director of National Intelligence.

ACTION: Final rule.

SUMMARY: The Office of the Director of National Intelligence (ODNI) is issuing a final rule exempting two (2) 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, and invoking subsection (k)(2) as an additional basis for exempting records from these provisions of the Act with respect to one (1) existing system of records. The ODNI published a notice and a proposed rule implementing these exemptions on May 27, 2015. The enumerated exemptions will be invoked on a case by case basis, as necessary to preclude interference with investigatory, intelligence and counterterrorism functions and responsibilities of the ODNI. The ODNI received no comments regarding the proposed rule.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jennifer L. Hudson, Director, Information Management Division, 703-874-8085.

#### SUPPLEMENTARY INFORMATION:

##### **Background**

On May 27, 2015, the Office of the Director of National Intelligence (ODNI) published notice of two new Privacy Act systems of records: Counterintelligence Trends Analyses Records (ODNI/NCSC-002) and Insider Threat Program Records (ODNI-22). These systems of records contain records that range from Unclassified to Top Secret. Accordingly, in conjunction with publication of these systems notices, and pursuant to exemption authority afforded the head of the agency by the Privacy Act, the ODNI initiated a rulemaking to exempt the systems in relevant part from provisions identified at subsection (k) of the Act (enumerated above). The proposed rulemaking also sought to amend the system of records entitled Information Technology Systems Activity and Access Records (ODNI-19), originally published at 76 FR 42742 (July 19, 2011), by adding subsection (k)(2) of the Privacy Act as a basis for exempting records covered by that system from the provisions noted. The affected systems notices and proposed exemption rule are published at 80 FR 30271 and 30187.

This final rule differs from the proposed rule in that it deletes from 32 CFR 1701.24 a list of ODNI Systems of Records Notices (SORNs). The proposed rule would have added the newly published SORNs to this listing. In lieu of revising the ODNI Privacy Act Regulation as SORNs are published or rescinded, ODNI will periodically publish a consolidated list of new, updated or deleted SORNs.

## **Public Comments**

None.

## **Final Rule: Implementation of exemption rule and systems notices**

Absent comment or objection from any member of the public, the ODNI has determined to issue the proposed exemption rule in final form and to implement the new and amended systems of records as described. The exemptions proposed are necessary and appropriate to protect intelligence equities undergirding ODNI's mission and functions and, narrowly applied, they do so consistent with privacy principles. By restrictively construing the exemptions to apply only to records that satisfy thresholds articulated in subsection (k), ODNI achieves the goal of balancing intelligence-related equities with fair information principles and values.

#### Regulatory Flexibility Act

This rule affects only the manner in which ODNI collects and maintains information about individuals. ODNI certifies that this rulemaking does not impact small entities and that analysis under the Regulatory flexibility Act, 5 U.S.C. 601-612, is not required.

#### 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 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/laws/law-lib.html>.

#### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 944 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 rule and therefore no analysis of burden is required.

#### Executive Order 12866, Regulatory Planning and Review

This rule is not a “significant regulatory action,” within the meaning of Executive Order 12866. This rule will not adversely affect the economy or a 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), Public Law 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 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 agencies to examine the implications for the distribution of power and responsibilities among the various levels of government resulting from their rules. ODNI concludes that this 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

This rulemaking will not have a significant effect on the human environment under the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 – 4347.

#### Energy Impact

This rulemaking is not a major regulatory action under the provisions of the Energy Policy and Conservation Act (EPCA), Public Law 94-163) as amended, 42 U.S.C. 6362.

List of Subjects in 32 CFR Part 1701

Administrative practice and procedure, Privacy.

For the reasons set forth above, ODNI amends 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.

Subpart B – [AMENDED]

2. Amend §1701.24 by revising paragraphs (a) 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 systems of records from the requirements of subsections (c)(3); (d)(1),(2),(3) and (4); (e)(1); (e)(4)(G),(H),(I); and (f) of the Privacy Act to the extent that records covered by the systems are subject to exemption pursuant subsection (k) of the Act.

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Dated: August 27, 2015.

Mark W. Ewing,

Chief Management Officer.

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