



OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

32 CFR Part 1701

Privacy Act of 1974: System of Records.

AGENCY: Office of the Director of National Intelligence

ACTION: Proposed Rulemaking

SUMMARY: The Office of the Director of National Intelligence (ODNI) proposes to: exempt a new system of records (Continuous Evaluation System) as well as systems of records of the Intelligence Community Office of Inspector General (ICIG) from the requirements of the Privacy Act to the extent that information in each system is subject to the Privacy Act's exemption provisions. The ODNI also proposes to add a new section which restores a list of all ODNI systems of records that are subject to Privacy Act exemption.

DATES: Submit comments on or before [INSERT DATE 30 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>

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

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Gaviria, Director, Information Management Division, (301-243-1054).

SUPPLEMENTARY INFORMATION: In compliance with the Privacy Act, 5 U.S.C. 552a(e)(4), ODNI has already described in the notice section of the Federal Register (83 FR 61395, document 18-25970), published on November 29, 2018, the following new system of records: Continuous Evaluation Records (ODNI/NCSC-003). This new system of records facilitates implementation of the National Counterintelligence and Security Center (NCSC) Continuous Evaluation system, which conducts ongoing automated checks of security-relevant databases to ensure that individuals who have been determined to be eligible for access to classified information or to hold a sensitive position remain eligible, as required by Executive Orders 12968 as amended (Access to Classified Information), and 13467 as amended (Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information). The system of records will contain biographic and personnel security-relevant records pertaining to

current Executive Branch employees, detailees, contractors, and other sponsored individuals (enrollees).

In its proposed rule, the ODNI intends to exempt the above new system of records, Continuous Evaluation Records (ODNI/NCSC-003), from certain provisions of the Privacy Act to prevent the compromise of classified information and to ensure the integrity of any law enforcement, counterintelligence, or administrative investigation that may be undertaken with respect to the subject of the record.

In addition, this ODNI proposed rule intends to restore the list of ODNI exempt systems of records to Part 32 of the CFR at § 1701.22, as redesignated. This list had been deleted by final action published at 80 FR 63427 (October 20, 2015). The restored list reflects the break-down of exempt systems of records by ODNI component.

Regulatory Flexibility Act

This proposed rule affects the manner in which ODNI collects and maintains information about individuals. 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 ODNI to comply with small entity requests for information and advice about compliance with statutes and regulations within 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.sga.gov/advo/law/law_lib.html.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that 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 rights and obligations of recipients thereof; and will not 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. 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 ODNI to examine the implications for the distribution of power and responsibilities among the various levels of government resulting from this proposed rule. 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

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 and Privacy Act

For the reasons set forth above, 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. 3002-3231; 5 U.S.C. 552a.

Subpart B – [AMENDED]

2. Revise Subpart B by:

(a) Removing §§ 1701.21 through 1701.23

(b) Redesignating § 1701.24 as § 1701.21 and revising it to read as follows:

§1701.21 Exemption of the Office of the Director of National Intelligence (ODNI) Systems of Records

- (a) ODNI exempts the systems of records listed in §1701.22 from the requirements of paragraphs (c)(3); (d)(1),(2),(3) and (4); (e)(1),and (e)(4)(G),(H) and (I); and (f) of the Privacy Act to the extent that information in the system is subject to exemption pursuant to paragraphs (k)(1), (k)(2) or (k)(5) of the Act as noted in the individual systems notices. ODNI also may derivatively preserve the exempt status of records it receives from source agencies when the reason for the exemption remains valid, as set forth in 32 CFR §1701.20.
- (b) Systems of records utilized by the Office of the Intelligence Community Inspector General (ICIG) are additionally exempted from the requirements of paragraphs (c)(4); (e)(2); (e)(3); (e)(5); (e)(8); (e)(12) and (g) of the Privacy Act to the extent that information in the system is subject to exemption pursuant to paragraphs (j)(2) of the Privacy Act.
- (c) Exemption of records in these systems from any or all of the enumerated requirements may be necessary for the following reasons:
 - (1) From paragraphs (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 ODNI or the recipient agency and could

result in release of properly classified national security or foreign policy information.

(2) From paragraphs (c)(4) (notice of amendment to record recipients) because the system is exempted from the access and amendment provisions of paragraphs (d).

(3) From paragraphs (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.

(4) From paragraphs (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 paragraphs (k)(1), records in this system may be exempted from the relevance requirement

pursuant to paragraphs (k)(2) and (k)(5) because it is not possible to determine in advance what exact information may assist in determining the qualifications and suitability of a candidate for position. Seemingly irrelevant details, when combined with other data, can provide a useful composite for determining whether a candidate should be appointed.

(5) From paragraphs (e)(2) (collection directly from the individual) because application of this provision would alert the subject of a counterterrorism investigation, study, or analysis to that fact, permitting the subject to frustrate or impede the activity.

Counterterrorism investigations necessarily rely on information obtained from third parties rather than information furnished by subjects themselves.

(6) From paragraphs (e)(3) (provide Privacy Act Statement to subjects furnishing information) because the system is exempted from paragraphs (e)(2) requirement to collect information directly from the subject.

(7) From paragraphs (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 paragraphs (d) provisions regarding access and amendment, and from the paragraphs (f) requirement

to promulgate agency rules for notification, access, and amendment. Nevertheless, 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.

(8) From paragraphs (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.

(9) From paragraphs (e)(5) (maintain timely, accurate, complete and up-to-date records) because many of the records in the system are derived from other domestic and foreign agency record systems over which ODNI exercises no control. In addition, in collecting information for counterterrorism, intelligence, and law enforcement purposes, it is not possible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time and the development of additional facts and circumstances, seemingly irrelevant or dated information may

acquire significance. The restrictions imposed by paragraphs (e)(5) would limit the ability of intelligence analysts to exercise judgment in conducting investigations and impede development of intelligence necessary for effective counterterrorism and law enforcement efforts.

(10) From paragraphs (e)(8) (notice of compelled disclosures) because requiring individual notice of legally compelled disclosure poses an impossible administrative burden and could alert subjects of counterterrorism, law enforcement, or intelligence investigations to the previously unknown fact of those investigations.

(11) From paragraphs (e)(12) (public notice of matching activity) because, to the extent such activities are not otherwise excluded from the matching requirements of the Privacy Act, publishing advance notice in the Federal Register would frustrate the ability of intelligence analysts to act quickly in furtherance of analytical efforts.

(12) From paragraphs (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 paragraphs (d) provisions regarding access and amendment of records by record subjects. Nevertheless, 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, ODNI may determine it appropriate to satisfy a record subject's access request.

(13) From paragraphs (g) (civil remedies) to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

(c) inserting a new § 1701.22 entitled "List of ODNI Systems of Records That Are Subject to Exemption"

ODNI Systems of Records Subject to Exemption

Manuscript, Presentation, and Resume Review Records (ODNI-01) (k)(1)

Executive Secretary Action Management System Records (ODNI-02) (k)(1)

Public Affairs Office Records (ODNI-03) (k)(1)

Office of Legislative Affairs Records (ODNI-04) (k)(1)

ODNI Guest Speaker Records (ODNI-05) (k)(1)

Office of General Counsel Records (ODNI-06) (k)(1),(2),(5)

Intelligence Community Customer Registry (ODNI-09) (k)(1)

Office of Intelligence Community Equal Employment Opportunity and Diversity Records (ODNI-10) (k)(1),(2), (5)

Office of Protocol Records (ODNI-11) (k)(1)

Intelligence Community Security Clearance and Access Approval Repository (ODNI-12) (k)(1),(2),(5)

Security Clearance Reform Research and Oversight Records (ODNI-13) (k)(1),(2),(5)

Civil Liberties and Privacy Office Complaint Records (ODNI-14) (k)(1),(2),(5)

Mission Outreach and Collaboration Records (ODNI-15) (k)(1)

ODNI Human Resource Records (ODNI-16) (k)(1)

ODNI Personnel Security Records (ODNI-17) (k)(1),(2),(5)

ODNI Freedom of Information Act, Privacy Act, and Mandatory Declassification Review Request Records (ODNI-18) (k)(1),(2),(5)

ODNI Information Technology Systems Activity and Access Records (ODNI-19) (k)(1),(2),(5)

ODNI Security Clearance Reciprocity Hotline Records (ODNI-20) (k)(1),(5)

ODNI Information Technology Network Support, Administration and Analysis Records (ODNI-21) (k)(1)

Insider Threat Program Records (ODNI-22) (k)(1),(2),(5)

ODNI/National Counterintelligence and Security Center (NCSC) Systems of Records:

Damage Assessment Records (ODNI/NCIX-001) (k)(1),(2)

Counterintelligence Trends Analyses Records (ODNI/NCSC-002) (k)(1),(2)

Continuous Evaluation Records (ODNI/NCSC-003) (k)(1),(2),(5)

ODNI/National Counterterrorism Center (NCTC) Systems of Records:

NCTC Access Authorization Records (ODNI/NCTC-002) (k)(1)

NCTC Telephone Directory (ODNI/NCTC-003) (k)(1)

NCTC Knowledge Repository (ODNI/NCTC-004) (k)(1),(2)

NCTC Current (ODNI/NCTC-005) (k)(1),(2)

NCTC Partnership Management Records (ODNI/NCTC-006) (k)(1)

NCTC Tacit Knowledge Management Records (ODNI/NCTC-007)

NCTC Terrorism Analysis Records (ODNI/NCTC-008) (k)(1),(2)

Terrorist Identities Records (ODNI/NCTC-009) (k)(1),(2)

ODNI/Office of the Intelligence Community Inspector General (ICIG) Systems of

Records:

OIG Human Resources Records (ODNI/OIG-001) (k)(1),(5)

OIG Experts Contact Records (ODNI/OIG-002) (k)(1),(5)

OIG Investigation and Interview Records (ODNI/OIG-003) (j)(2);(k)(1),(2),(5)

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