

Public Law 95-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no additional information collection requirements on the public under the Paperwork Reduction Act of 1995.

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

It has been determined that this Privacy Act rulemaking for the Department of Defense 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 such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The 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 322

Privacy.

Accordingly, 32 CFR part 322 is amended as follows:

PART 322—[AMENDED]

■ 1. The authority citation for 32 CFR part 322 continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Section 322.7 is amended by redesignating paragraphs (r) and (s) as paragraphs (s) and (t) and adding a new paragraph (r) to read as follows:

§ 322.7 Exempt systems of records.

* * * * *

(r) GNSA 23.

(1) *System name:* NSA/CSS Operations Security Support and Program Files.

(2) *Exemption.* All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(4) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(4).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them

with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

Dated: April 8, 2011.

Patricia L. Toppings,

*OSD Federal Register Liaison Officer,
Department of Defense.*

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DEPARTMENT OF DEFENSE**Office of the Secretary**

[Docket ID: DoD-2011-OS-0003]

32 CFR Part 322**Privacy Act; Implementation**

AGENCY: National Security Agency/Central Security Service, DoD.

ACTION: Direct final rule with request for comments.

SUMMARY: The National Security Agency/Central Security Service is deleting an exemption rule and adding a new exemption rule. The exemption rule for GNSA 13, entitled "Archive Records" is being deleted in its entirety; a new exemption rule for GNSA 28, entitled "Freedom of Information Act, Privacy Act and Mandatory Declassification Review Records" is being added to exempt those records that have been previously claimed for the records in another Privacy Act system of records. To the extent that copies of exempt records from those other systems of records are entered into these case records, NSA/CSS hereby claims the same exemptions for the records as claimed in the original primary system of records of which they are a part.

This direct final rule makes nonsubstantive changes to the National Security Agency/Central Security Service Privacy Program rules. These changes will allow the Department to exempt records from certain portions of the Privacy Act. This will improve the efficiency and effectiveness of DoD's program by preserving the exempt status of the records when the purposes underlying the exemption for the original records are still valid and necessary to protect the contents of the records.

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 July 1, 2011 unless comments are received that would result in a contrary determination. Comments will be accepted on or before June 21, 2011.

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

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *Mail:* Federal Docket management System Office, Room 3C843, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301-1160.

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. Anne Hill at (301) 688-6527.

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 Privacy Act rules for the Department of Defense are not significant rules. The rules do 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 determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

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

It has been determined that Privacy Act rules for the Department of Defense impose no additional information collection requirements on the public under the Paperwork Reduction Act of 1995.

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

It has been determined that the Privacy Act rulemaking for the Department of Defense 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 such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules 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.

List of Subjects in 32 CFR Part 322

Privacy.

Accordingly, 32 CFR part 322 is amended as follows:

PART 322—NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE PROGRAM

■ 1. The authority citation for 32 CFR part 322.7 continues to read as follows:

Authority: Privacy Act of 1974, Pub. L. 93-579, Stat. 1896 (5 U.S.C. 552a).

■ 2. In § 322.7, remove and reserve paragraph (l) and add paragraph (u) to read as follows:

§ 322.7 Exempt systems of records.

* * * * *

(u) ID: GNSA 28 (General Exemption)
(1) *System name:* Freedom of Information Act, Privacy Act and Mandatory Declassification Review Records.

(2) *Exemption:* During the processing of letters and other correspondence to the National Security Agency/Central Security Service, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those "other" systems of records are entered into this system, the National Security Agency/Central Security Service hereby 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.

(3) *Authority:* 5 U.S.C. 552a(k)(2) through (k)(7).

(4) *Reasons:* During the course of a FOIA/Privacy Act and/or MDR action, exempt materials from other system of records may become part of the case records in this system of records. To the extent that copies of exempt records from those other systems of records are entered into these case records, NSA/CSS hereby claims the same exemptions for the records as claimed in the original primary system of records of which they are a part. 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: April 8, 2011.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

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DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Docket ID: USN-2010-0036]

Privacy Act of 1974; Implementation

AGENCY: Department of the Navy, DoD.
ACTION: Direct final rule with request for comments.

SUMMARY: The Department of the Navy is reinstating an exemption rule that was inadvertently deleted for system of records notice N03834-1, entitled "Special Intelligence Personnel Access File (April 28, 1999, 64 FR 22840)".

This direct final rule makes nonsubstantive changes to the Department of the Navy Privacy Program rules. These changes will allow the Department to exempt records from certain portions of the Privacy Act. This will improve the efficiency and effectiveness of DoD's program by