

schools identified under paragraph (a)(1)(ii) of this section, and to restore eligibility of covered schools identified under paragraph (a)(2) of this section.

§ 216.6 Information requirements.

The information requirements identified at § 216.5(b) and (c)(1) have been assigned Report Control Symbol DD-P&R-(AR)-2038 in accordance with DoD 8910.1-M².

Appendix A of Part 216—Military Recruiting Sample Letter of Inquiry

(Tailor letter to situation presented)

Dr. John Doe,

President, ABC University, Anywhere, USA
12345-9876.

Dear Dr. Doe: I understand that military recruiting personnel [have been unable to recruit or have been refused student-recruiting information³ at (subelement of) ABC University)] by a policy or practice of the school. Specifically, military recruiting personnel have reported [here state policy decisions or practices encountered]. [If preliminary information coming to the attention of a Military Service indicates that other Military Services' recruiting representatives have been similarly informed of the policy or experienced a similar practice affecting their ability for military recruiting purposes to have the access or information require, so state.]

Current Federal law (10 U.S.C. 983) denies the use of certain Federal funds through grants or contracts, to include payment on such contracts or grants previously obligated, (excluding any Federal funding to an institution of higher education, or to an individual, to be available solely for student financial assistance, related administrative costs, or costs associated with attendance) from appropriations of the Departments of Defense, Transportation, Labor, Health and Human Services, Education, and related agencies to institutions of higher education (including any subelements of such institutions) that have a policy or practice of denying military recruiting personnel access to campuses or access to students on campuses, in a manner that is at least equal in quality and scope (as explained in § 216.3 of Title 32, Code of Federal Regulations, Part 216), as it provides to nonmilitary recruiters, or access to student recruiting information. Implementing regulations are codified at Title 32, Code of Federal Regulations, Part 216.

This letter provides you an opportunity to clarify your institution's policy regarding military recruiting on the campus of [University]. In that regard, I request, within the next 30 days, a written policy statement of the institution with respect to access to campus and students by military recruiting personnel. Your response should highlight

any difference between access for military recruiters and access for recruiting by other potential employers.

Based on this information and any additional facts you can provide, Department of Defense officials will make a determination as to your institution's eligibility to receive funds by grant or contract. That decision may affect eligibility for funding from appropriations of the Departments of Defense, Transportation, Labor, Health and Human Services, Education, and related agencies. Should it be determined that [University] as an institution of higher education (or any subelement of the institution) is in violation of the aforementioned statutes and regulations, such funding would be stopped, and the institution of higher education (including any subelements of the institution) would remain ineligible to receive such funds until and unless the Department of Defense determines that the institution has ceased the offending policies and practices.

I regret that this action may have to be taken. Successful recruiting requires that Department of Defense recruiters have equal access to students on the campuses of colleges and universities [and student-recruiting information], and at the same time, have effective relationships with the officials and student bodies of those institutions. I hope it will be possible to identify and correct any policies or practices that inhibit military recruiting at your school. [My representative, (name), is] [I am] available to answer any of your questions by telephone at [telephone number]. I look forward to your reply.

Sincerely,

Appendix B of Part 216—ROTC Sample Letter of Inquiry

(Tailor letter to situation presented)

Dr. Jane Smith,

President, ABC University, Anywhere, USA
12345-9876.

Dear Dr. Smith: I understand that ABC University has [refused a request from a Military Department to establish a Senior ROTC unit at your institution] [refused to continue existing ROTC programs at your institution] [prevented students from participation at a Senior ROTC program at another institution] by a policy or practice of the University.

Current Federal law (10 U.S.C. 983) denies the use of certain Federal funds through grants or contracts, to include payment on such contracts or grants previously obligated, (excluding any Federal funding to an institution of higher education, or to an individual, to be available solely for student financial assistance, related administrative costs, or costs associated with attendance) from appropriations of the Departments of Defense, Transportation, Labor, Health and Human Services, Education, and related agencies to institutions of higher education (including any subelements of such institutions) that have a policy or practice of prohibiting or preventing the Secretary of Defense from maintaining, establishing, or efficiently operating a Senior ROTC unit. Implementing regulations are codified at

Title 32, Code of Federal Regulations, Part 216.

This letter provides you an opportunity to clarify your institution's policy regarding ROTC access on the campus of ABC University. In that regard, I request, within the next 30 days, a written statement of the institution with respect to [define the problem area(s)].

Based on this information, Department of Defense officials will make a determination as to your institution's eligibility to receive the above-referenced funds by grant or contract. That decision may affect eligibility for funding from appropriations of the Departments of Defense, Transportation, Labor, Health and Human Services, Education, and related agencies. Should it be determined that [University] as an institution of higher education (or any subelement of the institution) is in violation of the aforementioned statutes and regulations, such funding would be stopped, and the institution of higher education (including any subelements of the institution) would remain ineligible to receive such funds until and unless the Department of Defense determines that the institution has ceased the offending policies and practices.

I regret that this action may have to be taken. Successful officer procurement requires that the Department of Defense maintain a strong ROTC program. I hope it will be possible to [define the correction to the aforementioned problem area(s)]. [My representative, (name), is] [I am] available to answer any of your questions by telephone at [telephone number]. I look forward to your reply.

Sincerely,

Dated: March 20, 2008.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. E8-6536 Filed 3-27-08; 8:45 am]

BILLING CODE 5001-06-P

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

32 CFR Part 1701

Privacy Act Regulations

AGENCY: Office of the Director of National Intelligence.

ACTION: Final rule.

SUMMARY: This final regulation provides the public the guidelines under which the Office of the Director of National Intelligence (ODNI) will implement the Privacy Act of 1974, 5 U.S.C. 552a, as amended. Subpart A of the regulation describes agency policies for collecting and maintaining personally identifiable records and processes for administering requests for records under the Privacy Act. Subpart B of the regulation articulates agency policy for invoking exemptions under the Act, including retaining exemptions on records

² Copies may be obtained at <http://www.dtic.mil/whs/directives/>.

³ Student-recruiting information refers to a student's name, address, telephone listing, age (or year of birth), level of education (e.g., freshman, sophomore, or degree awarded for a recent graduate), and major(s).

received from other agencies where reasons for exemption remain valid. Subpart B also articulates the basis for exemptions that may be claimed with respect to records in each published system of records. Subpart C sets forth the agency routine uses applicable to more than one system of records.

DATES: *Effective Date:* March 28, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Hackett, Director, Information Management Office (703) 482-3610.

SUPPLEMENTARY INFORMATION: The ODNI was created by the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-458, 118 Stat. 3638 (Dec. 17, 2004). The first Director of National Intelligence, Ambassador John D. Negroponte, was sworn into Office on April 21, 2005 and the ODNI began operations on April 22, 2005. Because the majority of documents held by the ODNI at its inception were previously maintained by the Central Intelligence Agency (CIA) and because the ODNI did not have a Privacy staff upon stand-up, records were administered under the CIA's Privacy Act authorities and using CIA's administrative resources.

On January 2, 2008 (73 FR 113), the ODNI published its own Privacy Act regulation for public comment. The ODNI received no comments on its proposed regulation.

Therefore, under the authority of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-458, 118 Stat. 3638, the Office of the Director of National Intelligence hereby establishes Part 1701, Administration of Records Under the Privacy Act of 1974, to Chapter XVII of Title 32 of the Code of Federal Regulations.

In addition, on December 28, 2007, the ODNI published notices for the following twelve new Privacy Act systems of records: NCTC Access Authorization Records, NCTC Human Resources Management System, NCTC Telephone Directory, NCTC Knowledge Repository (SANCTUM), NCTC Online (NOL), NCTC Tacit Knowledge Management Records, NCTC Terrorism Analysis Records, NCTC Terrorist Identities Records, NCTC Partnership Management Records, ONCIX Counterintelligence Damage Assessment Records, OIG Experts Contact Records, OIG Human Resources Records and OIG Investigation and Interview Records. The ODNI received no comments regarding these systems of records notices. These systems of records notices are published at 72 **Federal Register** 73887-73904 (Dec. 28, 2007).

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/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 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 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

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 does not affect the human environment.

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

Records and Privacy Act.

■ For the reasons set forth in the preamble, ODNI adds part 1701 as follows:

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

Subpart A—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

Sec.

- 1701.1 Purpose, scope, applicability.
- 1701.2 Definitions.
- 1701.3 Contact for general information and requests.
- 1701.4 Privacy Act responsibilities/policy.
- 1701.5 Collection and maintenance of records.
- 1701.6 Disclosure of records/policy.
- 1701.7 Requests for notification of and access to records.
- 1701.8 Requests to amend or correct records.
- 1701.9 Requests for an accounting of record disclosures.
- 1701.10 ODNI responsibility for responding to access requests.
- 1701.11 ODNI responsibility for responding to requests for amendment or correction.
- 1701.12 ODNI responsibility for responding to requests for accounting.
- 1701.13 Special procedures for medical/psychiatric/psychological testing records.
- 1701.14 Appeals.
- 1701.15 Fees.
- 1701.16 Contractors.
- 1701.17 Standards of conduct.

Subpart B—Exemption of Records Systems Under the Privacy Act

- 1701.20 Exemption policies.
- 1701.21 Exemption of National Counterterrorism Center (NCTC) systems of records.
- 1701.22 Exemption of Office of the National Counterintelligence Executive (ONCIX) systems of records.
- 1701.23 Exemption of Office of Inspector General (OIG) systems of records.

Subpart C—Routine Uses Applicable to More Than One ODNI System of Records

- 1701.30 Policy and applicability.
- 1701.31 General routine uses.

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

Subpart A—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974**§ 1701.1 Purpose, scope, applicability.**

(a) *Purpose.* This subpart establishes the policies and procedures the Office of the Director of National Intelligence (ODNI) will follow in implementing the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, as amended. This subpart sets forth the procedures ODNI must follow in collecting and maintaining personal information from or about individuals, as well as procedures by which individuals may request to access or amend records about themselves and request an accounting of disclosures of those records by the ODNI. In addition, this subpart details parameters for disclosing personally identifiable information to persons other than the subject of a record.

(b) *Scope.* The provisions of this subpart apply to all records in systems of records maintained by ODNI directorates, centers, mission managers and other sub-organizations [hereinafter called “components”] that are retrieved by an individual’s name or personal identifier.

(c) *Applicability.* This subpart governs the following individuals and entities:

(1) All ODNI staff and components must comply with this subpart. The terms “staff” and “component” are defined in § 1701.2.

(2) Unless specifically exempted, this subpart also applies to advisory committees and councils within the meaning of the Federal Advisory Committee Act (FACA) which provide advice to: Any official or component of ODNI; or the President, and for which ODNI has been delegated responsibility for providing service.

(d) *Relation to Freedom of Information Act.* The ODNI shall provide a subject individual under this subpart all records which are otherwise accessible to such individual under the

provisions of the Freedom of Information Act, 5 U.S.C. 552.

§ 1701.2 Definitions.

For purposes of this subpart, the following terms have the meanings indicated:

Access means making a record available to a subject individual.

Act means the Privacy Act of 1974.

Agency means the ODNI or any of its components.

Component means any directorate, mission manager, or other sub-organization in the ODNI or reporting to the Director, that has been designated or established in the ODNI pursuant to Section 103 of the National Security Act of 1947, as amended, including the National Counterterrorism Center (NCTC), the National Counterproliferation Center (NCPC) and the Office of the National Counterintelligence Executive (ONCIX), or such other offices and officials as may be established by law or as the Director may establish or designate in the ODNI, for example, the Program Manager, Information Sharing Environment (ISE) and the Inspector General (IG).

Disclosure means making a record about an individual available to or releasing it to another party.

FOIA means the Freedom of Information Act.

Individual, when used in connection with the Privacy Act, means a living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. It does not include sole proprietorships, partnerships, or corporations.

Information means information about an individual and includes, but is not limited to, vital statistics; race, sex, or other physical characteristics; earnings information; professional fees paid to an individual and other financial information; benefit data or claims information; the Social Security number, employer identification number, or other individual identifier; address; phone number; medical information; and information about marital, family or other personal relationships.

Maintain means to establish, collect, use, or disseminate when used in connection with the term record; and, to have control over or responsibility for a system of records, when used in connection with the term system of records.

Notification means communication to an individual whether he is a subject individual.

Office of the Director of National Intelligence means any and all of the components of the ODNI.

Record means any item, collection, or grouping of information about an individual that is maintained by the ODNI including, but not limited to, information such as an individual’s education, financial transactions, medical history, and criminal or employment history that contains the individual’s name, or an identifying number, symbol, or any other identifier assigned to an individual. When used in this subpart, record means only a record that is in a system of records.

Routine use means the disclosure of a record outside ODNI, without the consent of the subject individual, for a purpose which is compatible with the purpose for which the record was collected. It does not include disclosure which the Privacy Act otherwise permits pursuant to subsection (b) of the Act.

Staff means any current or former regular or special employee, detailee, assignee, employee of a contracting organization, or independent contractor of the ODNI or any of its components.

Subject individual means the person to whom a record pertains (or “record subject”).

System of records means a group of records under ODNI’s control from which information about an individual is retrieved by the name of the individual or by an identifying number, symbol, or other particular assigned to the individual. Single records or groups of records which are not retrieved by a personal identifier are not part of a system of records.

§ 1701.3 Contact for general information and requests.

Privacy Act requests and appeals and inquiries regarding this subpart or about ODNI’s Privacy Act program must be submitted in writing to the Director, Information Management Office (D/IMO), Office of the Director of National Intelligence, Washington, DC 20511 (by mail or by facsimile at 703–482–2144) or to the contact designated in the specific Privacy Act System of Records Notice. Privacy Act requests with the required identification statement and signature pursuant to paragraphs (d) and (e) of § 1701.7 of this subpart must be filed in original form.

§ 1701.4 Privacy Act responsibilities/policy.

The ODNI will administer records about individuals consistent with statutory, administrative, and program responsibilities. Subject to exemptions authorized by the Act, ODNI will

collect, maintain and disclose records as required and will honor subjects' rights to view and amend records and to obtain an accounting of disclosures.

§ 1701.5 Collection and maintenance of records.

(a) ODNI will not maintain a record unless:

(1) It is relevant and necessary to accomplish an ODNI function required by statute or Executive Order;

(2) It is acquired to the greatest extent practicable from the subject individual when ODNI may use the record to make any determination about the individual;

(3) The individual providing the record is informed of the authority for providing the record (including whether providing the record is mandatory or voluntary), the principal purpose for maintaining the record, the routine uses for the record, and what effect refusing to provide the record may have;

(4) It is maintained with such accuracy, relevance, timeliness and completeness as is reasonably necessary to ensure fairness to the individual in the determination;

(b) Except as to disclosures made to an agency or made under the FOIA, ODNI will make reasonable efforts prior to disseminating a record about an individual, to ensure that the record is accurate, relevant, timely, and complete;

(c) ODNI will not maintain or develop a system of records that is not the subject of a current or planned public notice;

(d) ODNI will not adopt a routine use of information in a system without notice and invitation to comment published in the **Federal Register** at least 30 days prior to final adoption of the routine use;

(e) To the extent ODNI participates with a non-Federal agency in matching activities covered by section (8) of the Act, ODNI will publish notice of the matching program in the **Federal Register**;

(f) ODNI will not maintain a record which describes how an individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the subject individual, or unless pertinent to and within the scope of an authorized law enforcement activity;

(g) When required by the Act, ODNI will maintain an accounting of all disclosures of records by the ODNI to persons, organizations or agencies;

(h) Each ODNI component shall implement administrative, physical and technical controls to prevent unauthorized access to its systems of records, to prevent unauthorized disclosure of records, and to prevent

physical damage to or destruction of records;

(i) ODNI will establish rules and instructions for complying with the requirements of the Privacy Act, including notice of the penalties for non-compliance, applicable to all persons involved in the design, development, operation or maintenance of any system of records.

§ 1701.6 Disclosure of records/policy.

Consistent with 5 U.S.C. 552a(b), ODNI will not disclose any record which is contained in a system of records by any means (written, oral or electronic) without the consent of the subject individual unless disclosure without consent is made for reasons permitted under applicable law, including:

(a) Internal agency use on a need-to-know basis;

(b) Release under the Freedom of Information Act (FOIA) if not subject to protection under the FOIA exemptions;

(c) A specific "routine use" as described in the ODNI's published compilation of Routine Uses Applicable to More Than One ODNI System of Records or in specific published Privacy Act Systems of Records Notices (available at <http://www.dni.gov>);

(d) Release to the Bureau of the Census, the National Archives and Records Administration, or the Government Accountability Office, for the performance of those entities' statutory duties;

(e) Release in non-identifiable form to a recipient who has provided written assurance that the record will be used solely for statistical research or reporting;

(f) Compelling circumstances in which the health or safety of an individual is at risk;

(g) Release pursuant to the order of a court of competent jurisdiction or to a governmental entity for a specifically documented civil or criminal law enforcement activity;

(h) Release to either House of Congress or to any committee, subcommittee or joint committee thereof to the extent of matter within its jurisdiction;

(i) Release to a consumer reporting agency in accordance with section 3711(e) of Title 31.

§ 1701.7 Requests for notification of and access to records.

(a) *How to request.* Unless records are not subject to access (see paragraph (b) of this section), individuals seeking access to records about themselves may submit a request in writing to the D/IMO, as directed in Sec. 1701.3 of this

subpart, or to the contact designated in the specific Privacy Act System of Records Notice. To ensure proper routing and tracking, requesters should mark the envelope "Privacy Act Request."

(b) *Records not subject to access.* The following records are not subject to review by subject individuals:

(1) Records in ODNI systems of records that ODNI has exempted from access and correction under the Privacy Act, 5 U.S.C. 552a(j) or (k), by notice published in the **Federal Register**, or where those exemptions require that ODNI can neither confirm nor deny the existence or nonexistence of responsive records (see § 1701.10(c)(iii)).

(2) Records in ODNI systems of records that another agency has exempted from access and correction under the Privacy Act, 5 U.S.C. 552a(j) or (k), by notice published in the **Federal Register**, or where those exemptions require that ODNI can neither confirm nor deny the existence or nonexistence of responsive records (see § 1701.10(c)(iii)).

(c) *Description of records.* Individuals requesting access to records about themselves should, to the extent possible, describe the nature of the records, why and under what circumstances the requester believes ODNI maintains the records, the time period in which they may have been compiled and, ideally, the name or identifying number of each Privacy Act System of Records in which they might be included. The ODNI publishes notices in the **Federal Register** that describe its systems of records. The **Federal Register** compiles these notices biennially and makes them available in hard copy at large reference libraries and in electronic form at the Government Printing Office's World Wide Web site, <http://www.gpoaccess.gov>.

(d) *Verification of identity.* A written request for access to records about oneself must include full (legal) name, current address, date and place of birth, and citizenship status. Aliens lawfully admitted for permanent residence must provide their Alien Registration Number and the date that status was acquired. The D/IMO may request additional or clarifying information to ascertain identity. Access requests must be signed and the signature either notarized or submitted under 28 U.S.C. 1746, authorizing statements made under penalty of perjury as a substitute for notarization.

(e) *Verification of guardianship or representational relationship.* The parent or guardian of a minor, the guardian of an individual under judicial

disability, or an attorney retained to represent an individual shall provide, in addition to establishing the identity of the minor or individual represented as required in paragraph (d) of this section, evidence of such representation by submitting a certified copy of the minor's birth certificate, court order, or representational agreement which establishes the relationship and the requester's identity.

(f) ODNI will permit access to or provide copies of records to individuals other than the record subject (or the subject's legal representative) only with the requester's written authorization.

§ 1701.8 Requests to amend or correct records.

(a) *How to request.* Unless the record is not subject to amendment or correction (see paragraph (b) of this section), individuals (or guardians or representatives acting on their behalf) may make a written amendment or correction request to the D/IMO, as directed in § 1701.3 of this subpart, or to the contact designated in a specific Privacy Act System of Records. Requesters seeking amendment or correction should identify the particular record or portion subject to the request, explain why an amendment or correction is necessary, and provide the desired replacement language. Requesters may submit documentation supporting the request to amend or correct. Requests for amendment or correction will lapse (but may be re-initiated with a new request) if all necessary information is not submitted within forty-five (45) days of the date of the original request. The identity verification procedures of paragraphs (d) and (e) of § 1701.7 of this subpart apply to amendment requests.

(b). (1) Records which are determinations of fact or evidence received (e.g., transcripts of testimony given under oath or written statements made under oath; transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings, which are the official record of those proceedings; pre-sentence records that originated with the courts) and

(2) Records in ODNI systems of records that ODNI or another agency has exempted from amendment and correction under Privacy Act, 5 U.S.C. 552a(j) or (k) by notice published in the **Federal Register**.

§ 1701.9 Requests for an accounting of record disclosures.

(a) *How to request.* Except where accountings of disclosures are not required to be kept (see paragraph (b) of this section), record subjects (or their

guardians or representatives) may request an accounting of disclosures that have been made to another person, organization, or agency as permitted by the Privacy Act at 5 U.S.C. 552a(b). This accounting contains the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. Requests for accounting should identify each record in question and must be made in writing to the D/IMO, as indicated in § 1701.3 of this subpart, or to the contact designated in a specific Privacy Act System of Records.

(b) *Accounting not required.* The ODNI is not required to provide accounting of disclosure in the following circumstances:

(1) Disclosures for which the Privacy Act does not require accounting, i.e., disclosures to employees within the agency and disclosures made under the FOIA;

(2) Disclosures made to law enforcement agencies for authorized law enforcement activities in response to written requests from the respective head of the law enforcement agency specifying the law enforcement activities for which the disclosures are sought; or

(3) Disclosures from systems of records that have been exempted from accounting requirements under the Privacy Act, 5 U.S.C. 552a(j) or (k), by notice published in the **Federal Register**.

§ 1701.10 ODNI responsibility for responding to access requests.

(a) *Acknowledgement of requests.* Upon receipt of a request providing all necessary information, the D/IMO shall acknowledge receipt to the requester and provide an assigned request number for further reference.

(b) *Tasking to component.* Upon receipt of a proper access request, the D/IMO shall provide a copy of the request to the point of contact (POC) in the ODNI component with which the records sought reside. The POC within the component shall determine whether responsive records exist and, if so, recommend to the D/IMO:

(1) Whether access should be denied in whole or part (and the legal basis for denial under the Privacy Act); or

(2) Whether coordination with or referral to another component or federal agency is appropriate.

(c) *Coordination and referrals*—(1) *Examination of records.* If a component POC receiving a request for access determines that an originating agency or other agency that has a substantial interest in the record is best able to

process the request (e.g., the record is governed by another agency's regulation, or another agency originally generated or classified the record), the POC shall forward to the D/IMO all records necessary for coordination with or referral to the other component or agency, as well as specific recommendations with respect to any denials.

(2) *Notice of referral.* Whenever the D/IMO refers all or any part of the responsibility for responding to a request to another agency, the D/IMO shall notify the requester of the referral.

(3) *Effect of certain exemptions.* (i) In processing a request, the ODNI shall decline to confirm or deny the existence or nonexistence of any responsive records whenever the fact of their existence or nonexistence:

(A) May reveal protected intelligence sources and collection methods (50 U.S.C. 403–1(i)); or

(B) Is classified and subject to an exemption appropriately invoked by ODNI or another agency under subsections (j) or (k) of the Privacy Act.

(ii) In such event, the ODNI will inform the requester in writing and advise the requestor of the right to file an administrative appeal of any adverse determination.

(d) *Time for response.* The D/IMO shall respond to a request for access promptly upon receipt of recommendations from the POC and determinations resulting from any necessary coordination with or referral to another agency. The D/IMO may determine to update a requester on the status of a request that remains outstanding longer than reasonably expected.

(e) *ODNI action on requests for access*—(1) *Grant of access.* Once the D/IMO determines to grant a request for access in whole or in part, the D/IMO shall notify the requester in writing and come to agreement with the requester about how to effect access, whether by on-site review or duplication of the records. If a requester is accompanied by another person, the requester shall be required to authorize in writing any discussion of the records in the presence of the other person.

(2) *Denial of access.* The D/IMO shall notify the requester in writing when an adverse determination is made denying a request for access in any respect. Adverse determinations, or denials, consist of a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the Privacy Act; or a determination that

the existence of a record can neither be confirmed nor denied. The notification letter shall state:

- (i) The reason(s) for the denial; and
- (ii) The procedure for appeal of the denial under § 1701.14 of this subpart.

§ 1701.11 ODNI responsibility for responding to requests for amendment or correction.

(a) *Acknowledgement of request.* The D/IMO shall acknowledge receipt of a request for amendment or correction of records in writing and provide an assigned request number for further reference.

(b) *Tasking of component.* Upon receipt of a proper request to amend or correct a record, the D/IMO shall forward the request to the POC in the component maintaining the record. The POC shall promptly evaluate the proposed amendment or correction in light of any supporting justification and recommend that the D/IMO grant or deny the request or, if the request involves a record subject to correction by an originating agency, refer the request to the other agency.

(c) *Action on request for amendment or correction.* (1) If the POC determines that the request for amendment or correction is justified, in whole or in part, the D/IMO shall promptly:

- (i) Make the amendment, in whole or in part, as requested and provide the requester a written description of the amendment or correction made; and
 - (ii) Provide written notice of the amendment or correction to all persons, organizations or agencies to which the record has been disclosed (if an accounting of the disclosure was made);
- (2) Where the D/IMO has referred an amendment request to another agency, the D/IMO, upon confirmation from that agency that the amendment has been effected, shall provide written notice of the amendment or correction to all persons, organizations or agencies to which ODNI previously disclosed the record.

(3) If the POC determines that the requester's records are accurate, relevant, timely and complete, and that no basis exists for amending or correcting the record, either in whole or in part, the D/IMO shall inform the requester in writing of:

- (i) The reason(s) for the denial; and
- (ii) The procedure for appeal of the denial under Sec. 1701.15 of this subpart.

§ 1701.12 ODNI responsibility for responding to requests for accounting.

(a) *Acknowledgement of request.* Upon receipt of a request for accounting, the D/IMO shall

acknowledge receipt of the request in writing and provide an assigned request number for further reference.

(b) *Tasking of component.* Upon receipt of a request for accounting, the D/IMO shall forward the request to the POC in the component maintaining the record. The POC shall work with the component's information management officer and the systems administrator to generate the requested disclosure history.

(c) *Action on request for accounting.* The D/IMO will notify the requester when the accounting is available for on-site review or transmission in paper or electronic medium.

(d) *Notice of court-ordered disclosures.* The D/IMO shall make reasonable efforts to notify an individual whose record is disclosed pursuant to court order. Notice shall be made within a reasonable time after receipt of the order; however, when the order is not a matter of public record, the notice shall be made only after the order becomes public. Notice shall be sent to the individual's last known address and include a copy of the order and a description of the information disclosed. No notice shall be made regarding records disclosed from a criminal law enforcement system that has been exempted from the notice requirement.

(e) *Notice of emergency disclosures.* ODNI shall notify an individual whose record it discloses under compelling circumstances affecting health or safety. This notice shall be mailed to the individual's last known address and shall state the nature of the information disclosed; the person, organization, or agency to which it was disclosed; the date of disclosure; and the compelling circumstances justifying the disclosure. This provision shall not apply in circumstances involving classified records that have been exempted from disclosure pursuant to subsection (j) or (k) of the Privacy Act.

§ 1701.13 Special procedures for medical/psychiatric/psychological records.

Current and former ODNI employees, including current and former employees of ODNI contractors, and unsuccessful applicants for employment may seek access to their medical, psychiatric or psychological testing records by writing to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505, and provide identifying information as required by paragraphs (d) and (e) of § 1701.7 of this subpart. The Central Intelligence Agency's Privacy Act Regulations will govern administration of these types of

records, including appeals from adverse determinations.

§ 1701.14 Appeals.

(a) Individuals may appeal denials of requests for access, amendment, or accounting by submitting a written request for review to the Director, Information Management Office (D/IMO) at the Office of the Director of National Intelligence, Washington, DC 20511. The words "PRIVACY ACT APPEAL" should be written on the letter and the envelope. The appeal must be signed by the record subject or legal representative. No personal appearance or hearing on appeal will be allowed.

(b) The D/IMO must receive the appeal letter within 45 calendar days of the date the requester received the notice of denial. The postmark is conclusive as to timeliness. Copies of correspondence from ODNI denying the request to access or amend the record should be included with the appeal, if possible. At a minimum, the appeal letter should identify:

- (1) The records involved;
- (2) The date of the initial request for access to or amendment of the record;
- (3) The date of ODNI's denial of that request; and

(4) A statement of the reasons supporting the request for reversal of the initial decision. The statement should focus on information not previously available or legal arguments demonstrating that the ODNI's decision is improper.

(c) Following receipt of the appeal, the Director of Intelligence Staff (DIS) shall, in consultation with the Office of General Counsel, make a final determination in writing on the appeal.

(d) Where ODNI reverses an initial denial, the following procedures apply:

(1) If ODNI reverses an initial denial of access, the procedures in paragraph (e)(1) of § 1701.10 of this subpart will apply.

(2) If ODNI reverses its initial denial of a request to amend a record, the POC will ensure that the record is corrected as requested, and the D/IMO will inform the individual of the correction, as well as all persons, organizations and agencies to which ODNI had disclosed the record.

(3) If ODNI reverses its initial denial of a request for accounting, the POC will notify the requester when the accounting is available for on-site review or transmission in paper or electronic medium.

(e) If ODNI upholds its initial denial or reverses in part (*i.e.*, only partially granting the request), ODNI's notice of

final agency action will inform the requester of the following rights:

(1) Judicial review of the denial under 5 U.S.C. 552a(g)(1), as limited by 5 U.S.C. 552a(g)(5).

(2) Opportunity to file a statement of disagreement with the denial, citing the reasons for disagreeing with ODNI's final determination not to correct or amend a record. The requester's statement of disagreement should explain why he disputes the accuracy of the record.

(3) Inclusion in one's record of copies of the statement of disagreement and the final denial, which ODNI will provide to all subsequent recipients of the disputed record, as well as to all previous recipients of the record where an accounting was made of prior disclosures of the record.

§ 1701.15 Fees.

ODNI shall charge fees for duplication of records under the Privacy Act, 5 U.S.C. 552a, in the same way in which it will charge for duplication of records under § 1700.7(g). ODNI's regulation implementing the fee provision of the Freedom of Information Act, 5 U.S.C. 552.

§ 1701.16 Contractors.

(a) Any approved contract for the operation of a Privacy Act system of records to accomplish a function of the ODNI will contain the Privacy Act provisions prescribed by the Federal Acquisition Regulations (FAR) at 48 CFR part 24, requiring the contractor to comply with the Privacy Act and this subpart. The contracting component will be responsible for ensuring that the contractor complies with these contract requirements. This section does not apply to systems of records maintained by a contractor as a function of management discretion, e.g., the contractor's personnel records.

(b) Where the contract contains a provision requiring the contractor to comply with the Privacy Act and this subpart, the contractor and any employee of the contractor will be considered employees of the ODNI for purposes of the criminal penalties of the Act, 5 U.S.C. 552a(i).

§ 1701.17 Standards of conduct.

(a) *General.* ODNI will ensure that staff are aware of the provisions of the Privacy Act and of their responsibilities for protecting personal information that ODNI collects and maintains, consistent with Sec. 1701.5 and 1701.6 of this subpart.

(b) *Criminal penalties—(1) Unauthorized disclosure.* Criminal penalties may be imposed against any

ODNI staff who, by virtue of employment, has possession or access to ODNI records which contain information identifiable with an individual, the disclosure of which is prohibited by the Privacy Act or by these rules, and who, knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it.

(2) *Unauthorized maintenance.* Criminal penalties may be imposed against any ODNI staff who willfully maintains a system of records without meeting the requirements of subsection (e)(4) of the Privacy Act, 5 U.S.C. 552a. The D/IMO, the Civil Liberties Protection Officer, the General Counsel, and the Inspector General are authorized independently to conduct such surveys and inspect such records as necessary from time to time to ensure that these requirements are met.

(3) *Unauthorized requests.* Criminal penalties may be imposed upon any person who knowingly and willfully requests or obtains any record concerning an individual from the ODNI under false pretenses.

Subpart B—Exemption of Record Systems Under the Privacy Act

§ 1701.20 Exemption policies.

(a) *General.* The DNI has determined that invoking exemptions under the Privacy Act and continuing exemptions previously asserted by agencies whose records ODNI receives is necessary: to ensure against the release of classified information essential to the national defense or foreign relations; to protect intelligence sources and methods; and to maintain the integrity and effectiveness of intelligence, investigative and law enforcement processes. Accordingly, as authorized by the Privacy Act, 5 U.S.C. 552a, subsections (j) and (k), and in accordance with the rulemaking procedures of the Administrative Procedures Act, 5 U.S.C. 553, the ODNI shall:

(1) Exercise its authority pursuant to subsections (j) and (k) of the Privacy Act to exempt certain ODNI systems of records or portions of systems of records from various provisions of the Privacy Act; and

(2) Continue in effect and assert all exemptions claimed under Privacy Act subsections (j) and (k) by an originating agency from which the ODNI obtains records where the purposes underlying the original exemption remain valid and necessary to protect the contents of the record.

(b) *Related policies.* (1) The exemptions asserted apply to records only to the extent they meet the criteria of subsections (j) and (k) of the Privacy Act, whether claimed by the ODNI or the originator of the records.

(2) Discretion to supersede exemption: Where complying with a request for access or amendment would not appear to interfere with or adversely affect a counterterrorism or law enforcement interest, and unless prohibited by law, the D/IMO may exercise his discretion to waive the exemption. Discretionary waiver of an exemption with respect to a record will not obligate the ODNI to waive the exemption with respect to any other record in an exempted system of records. As a condition of such discretionary access, ODNI may impose any restrictions (e.g., concerning the location of file reviews) deemed necessary or advisable to protect the security of agency operations, information, personnel, or facilities.

(3) Records in ODNI systems also are subject to protection under 50 U.S.C. 403–1(i), the provision of the National Security Act of 1947 which requires the DNI to protect intelligence sources and methods from unauthorized disclosure.

§ 1701.21 Exemption of National Counterterrorism Center (NCTC) systems of records.

(a) The ODNI exempts the following 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 information in the system is subject to exemption pursuant to subsections (k)(1) and (k)(5) of the Act:

(1) NCTC Human Resources Management System (ODNI/NCTC–001).

(2) [Reserved]

(b) Exemptions from the particular subsections are justified 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 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 subsection (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.

(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.

(c) The ODNI exempts the following 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 information in the system is subject to exemption pursuant to subsection (k)(1) of the Act:

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

(2) NCTC Telephone Directory (ODNI/NCTC-003).

(3) NCTC Partnership Management Records (ODNI/NCTC-006).

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

(d) Exemptions from the particular subsections are justified 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 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.

(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.

(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.

(e) The ODNI exempts the following systems of records from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1); (e)(4)(G), (H), (I); and (f) of the Privacy Act, to the extent that information in the system is subject to exemption pursuant to subsections (k)(1) and (k)(2) of the Act:

(1) NCTC Knowledge Repository (SANCTUM) (ODNI/NCTC-004).

(2) NCTC Online (ODNI/NCTC-005).

(3) NCTC Terrorism Analysis Records (ODNI/NCTC-008).

(4) NCTC Terrorist Identities Records (ODNI/NCTC-009).

(f) Exemptions from the particular subsections are justified 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 investigative interest on the part of the ODNI as well as the recipient agency and could: Result in release of properly classified national security or foreign policy information; compromise ongoing efforts to investigate a known or suspected terrorist; reveal sensitive investigative or surveillance techniques; or identify a confidential source. With this information, the record subject could frustrate counterintelligence

measures; impede an investigation by destroying evidence or intimidating potential witnesses; endanger the physical safety of sources, witnesses, and law enforcement and intelligence personnel and their families; or evade apprehension or prosecution by law enforcement personnel.

(2) From subsections (d)(1), (2), (3) and (4) (record subject's right to access and amend records) because these provisions concern individual access to and amendment of counterterrorism, investigatory and intelligence records. Affording access and amendment rights could alert the record subject to the fact and nature of an investigation or the investigative interest of intelligence or law enforcement agencies; permit the subject to frustrate such investigation, surveillance or potential prosecution; compromise sensitive information classified in the interest of national security; identify a confidential source or disclose information which would reveal a sensitive investigative or intelligence technique; and endanger the health or safety of law enforcement personnel, confidential informants, and witnesses. In addition, affording subjects access and amendment rights would impose an impossible administrative burden to continuously reexamine investigations, analyses, and reports.

(3) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible for intelligence or law enforcement agencies to know in advance what information about an encounter with a known or suspected terrorist will be relevant for the purpose of conducting an operational response. Relevance and necessity are questions of judgment and timing, and only after information is evaluated can relevance and necessity be established. In addition, information in the system of records may relate to matters under the investigative jurisdiction of another agency, and may not readily be segregated. Furthermore, information in these systems of records, over time, aid in establishing patterns of criminal activity that can provide leads for other law enforcement agencies.

(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.

Additionally, exemption from this provision is necessary to protect the privacy and safety of witnesses and sources of information, including 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.

§ 1701.22 Exemption of Office of the National Counterintelligence Executive (ONCIX) system of records.

(a) The ODNI exempts the following system of records from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1); (e)(4)(G), (H), (I); and (f) of the Privacy Act, to the extent that information in the system is subject to exemption pursuant to subsections (k)(1) and (k)(2) of the Act:

(1) ONCIX Counterintelligence Damage Assessment Records (ODNI/ONCIX-001).

(2) [Reserved]

(b) Exemptions from the particular subsections are justified 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 investigative interest on the part of the ODNI as well as the recipient agency and could: result in release of properly classified national security or foreign policy information; compromise ongoing efforts to investigate a known or

suspected terrorist; reveal sensitive investigative or surveillance techniques; or identify a confidential source. With this information, the record subject could frustrate counterintelligence measures; impede an investigation by destroying evidence or intimidating potential witnesses; endanger the physical safety of sources, witnesses, and law enforcement and intelligence personnel and their families; or evade apprehension or prosecution by law enforcement personnel.

(2) From subsections (d)(1), (2), (3) and (4) (record subject's right to access and amend records) because these provisions concern individual access to and amendment of counterterrorism, investigatory and intelligence records. Affording access and amendment rights could alert the record subject to the fact and nature of an investigation or the investigative interest of intelligence or law enforcement agencies; permit the subject to frustrate such investigation, surveillance or potential prosecution; compromise sensitive information classified in the interest of national security; identify a confidential source or disclose information which would reveal a sensitive investigative or intelligence technique; and endanger the health or safety of law enforcement personnel, confidential informants, and witnesses. In addition, affording subjects access and amendment rights would impose an impossible administrative burden to continuously reexamine investigations, analyses, and reports.

(3) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible to know in advance what information will be relevant to evaluate and mitigate damage to the national security. Relevance and necessity are questions of judgment and timing, and only after information is evaluated can relevance and necessity be established. In addition, information in the system of records may relate to matters under the investigative jurisdiction of another agency, and may not readily be segregated. Furthermore, information in these systems of records, over time, aid in establishing patterns of criminal activity that can provide leads for other law enforcement agencies.

(4) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subjects to 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. Additionally, exemption from this provision is necessary to protect the privacy and safety of witnesses and sources of information, including 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.

§ 1701.23 Exemption of Office of Inspector General (OIG) systems of records.

(a) The ODNI exempts the following 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 information in the system is subject to exemption pursuant subsections (k)(1) and (k)(5) of the Act:

(1) OIG Human Resources Records (ODNI/OIG-001).

(2) OIG Experts Contact Records (ODNI/OIG-002).

(b) Exemptions from the particular subsections are justified 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 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 under subsection (k)(1), records in this system may be exempted from access and amendment pursuant to subsection (k)(5) 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 subsection (k)(5) because it is not always 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.

(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 such a 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.

(c) The ODNI exempts the following system of records from the requirements of subsections (c)(3) and (4); (d)(1), (2), (3), (4); (e)(1), (2), (3), (5), (8) and (12); and (g) of the Privacy Act, to the extent that information in the system is subject to exemption pursuant to subsection (j)(2) of the Act. In addition, the following system of records is exempted from the requirements of subsections (c)(3); (d)(1), (2), (3) and (4); (e)(1); (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 subsections (k)(1) and (k)(2) of the Act.

(1) OIG Investigation and Interview Records (ODNI/OIG-003).

(2) [Reserved]

(d) Exemptions from the particular subsections are justified 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 investigative interest on the part of the ODNI as well as the recipient agency and could: result in release of properly classified national security or foreign policy information; compromise ongoing efforts to investigate a known or suspected terrorist; reveal sensitive investigative or surveillance techniques; or identify a confidential source. With this information, the record subject could frustrate counterintelligence measures; impede an investigation by destroying evidence or intimidating potential witnesses; endanger the physical safety of sources, witnesses, and law enforcement and intelligence personnel and their families; or evade apprehension or prosecution by law enforcement personnel.

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

(3) From subsections (d)(1), (2), (3) and (4) (record subject's right to access and amend records) because these provisions concern individual access to and amendment of counterterrorism, investigatory and intelligence records. Affording access and amendment rights could alert the record subject to the fact and nature of an investigation or the investigative interest of intelligence or law enforcement agencies; permit the subject to frustrate such investigation, surveillance or potential prosecution; compromise sensitive information classified in the interest of national security; identify a confidential source or disclose information which would reveal a sensitive investigative or intelligence technique; and endanger the health or safety of law enforcement personnel, confidential informants, and witnesses. In addition, affording subjects access and amendment rights would impose an impossible administrative burden to continuously reexamine investigations, analyses, and reports.

(4) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible to know in advance what information will be relevant for the purpose of conducting an investigation. Relevance and necessity are questions of judgment and timing, and only after information is evaluated can relevance and necessity be established. In addition, information in the system of records may relate to matters under the investigative jurisdiction of another agency, and may not readily be segregated. Furthermore, information in these systems of records, over time, aid in establishing patterns of criminal activity that can provide leads for other law enforcement agencies.

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

(7) 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.

(8) 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. Additionally, exemption from this provision is necessary to protect the privacy and safety of witnesses and sources of information, including 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 subsection (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 (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 subsection (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 subsection (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 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 the 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.

(13) From subsection (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.

Subpart C—Routine Uses Applicable to More Than One ODNI System of Records

§ 1701.30 Policy and applicability.

(a) ODNI proposes the following general routine uses to foster simplicity and economy and to avoid redundancy or error by duplication in multiple ODNI systems of records and in systems of records established hereafter by ODNI or by one of its components.

(b) These general routine uses may apply to every Privacy Act system of records maintained by ODNI and its components, unless specifically stated otherwise in the System of Records Notice for a particular system. Additional general routine uses may be identified as notices of systems of records are published.

(c) Routine uses specific to a particular System of Records are identified in the System of Records Notice for that system.

§ 1701.31 General routine uses.

(a) Except as noted on Standard Forms 85 and 86 and supplemental forms thereto (questionnaires for employment in, respectively, "non-sensitive" and "national security" positions within the Federal government), a record that on its face or in conjunction with other information indicates or relates to a violation or potential violation of law, whether civil, criminal, administrative or regulatory in nature, and whether arising by general

statute, particular program statute, regulation, rule or order issued pursuant thereto, may be disclosed as a routine use to an appropriate federal, state, territorial, tribal, local law enforcement authority, foreign government or international law enforcement authority, or to an appropriate regulatory body charged with investigating, enforcing, or prosecuting such violations.

(b) A record from a system of records maintained by the ODNI may be disclosed as a routine use, subject to appropriate protections for further disclosure, in the course of presenting information or evidence to a magistrate, special master, administrative law judge, or to the presiding official of an administrative board, panel or other administrative body.

(c) A record from a system of records maintained by the ODNI may be disclosed as a routine use to representatives of the Department of Justice or any other entity responsible for representing the interests of the ODNI in connection with potential or actual civil, criminal, administrative, judicial or legislative proceedings or hearings, for the purpose of representing or providing advice to: The ODNI; any staff of the ODNI in his or her official capacity; any staff of the ODNI in his or her individual capacity where the staff has submitted a request for representation by the United States or for reimbursement of expenses associated with retaining counsel; or the United States or another Federal agency, when the United States or the agency is a party to such proceeding and the record is relevant and necessary to such proceeding.

(d) A record from a system of records maintained by the ODNI may be disclosed as a routine use in a proceeding before a court or adjudicative body when any of the following is a party to litigation or has an interest in such litigation, and the ODNI, Office of General Counsel, determines that use of such records is relevant and necessary to the litigation: The ODNI; any staff of the ODNI in his or her official capacity; any staff of the ODNI in his or her individual capacity where the Department of Justice has agreed to represent the staff or has agreed to provide counsel at government expense; or the United States or another Federal agency, where the ODNI, Office of General Counsel, determines that litigation is likely to affect the ODNI.

(e) A record from a system of records maintained by the ODNI may be disclosed as a routine use to representatives of the Department of Justice and other U.S. Government entities, to the extent necessary to

obtain advice on any matter within the official responsibilities of such representatives and the responsibilities of the ODNI.

(f) A record from a system of records maintained by the ODNI may be disclosed as a routine use to a Federal, state or local agency or other appropriate entities or individuals from which/whom information may be sought relevant to: A decision concerning the hiring or retention of an employee or other personnel action; the issuing or retention of a security clearance or special access, contract, grant, license, or other benefit; or the conduct of an authorized investigation or inquiry, to the extent necessary to identify the individual, inform the source of the nature and purpose of the inquiry, and identify the type of information requested.

(g) A record from a system of records maintained by the ODNI may be disclosed as a routine use to any Federal, state, local, tribal or other public authority, or to a legitimate agency of a foreign government or international authority to the extent the record is relevant and necessary to the other entity's decision regarding the hiring or retention of an employee or other personnel action; the issuing or retention of a security clearance or special access, contract, grant, license, or other benefit; or the conduct of an authorized inquiry or investigation.

(h) A record from a system of records maintained by the ODNI may be disclosed as a routine use to a Member of Congress or Congressional staffer in response to an inquiry from that Member of Congress or Congressional staffer made at the written request of the individual who is the subject of the record.

(i) A record from a system of records maintained by the ODNI may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation, as set forth in Office of Management and Budget Circular No. A-19, at any stage of the legislative coordination and clearance process as set forth in the Circular.

(j) A record from a system of records maintained by the ODNI may be disclosed as a routine use to any agency, organization, or individual for authorized audit operations, and for meeting related reporting requirements, including disclosure to the National Archives and Records Administration for records management inspections and such other purposes conducted under the authority of 44 U.S.C. 2904 and 2906, or successor provisions.

(k) A record from a system of records maintained by the ODNI may be disclosed as a routine use to individual members or staff of Congressional intelligence oversight committees in connection with the exercise of the committees' oversight and legislative functions.

(l) A record from a system of records maintained by the ODNI may be disclosed as a routine use pursuant to Executive Order to the President's Foreign Intelligence Advisory Board, the President's Intelligence Oversight Board, to any successor organizations, and to any intelligence oversight entity established by the President, when the Office of the General Counsel or the Office of the Inspector General determines that disclosure will assist such entities in performing their oversight functions and that such disclosure is otherwise lawful.

(m) A record from a system of records maintained by the ODNI may be disclosed as a routine use to contractors, grantees, experts, consultants, or others when access to the record is necessary to perform the function or service for which they have been engaged by the ODNI.

(n) A record from a system of records maintained by the ODNI may be disclosed as a routine use to a former staff of the ODNI for the purposes of responding to an official inquiry by a Federal, state, or local government entity or professional licensing authority or facilitating communications with a former staff of the ODNI that may be necessary for personnel-related or other official purposes when the ODNI requires information or consultation assistance, or both, from the former staff regarding a matter within that person's former area of responsibility.

(o) A record from a system of records maintained by the ODNI may be disclosed as a routine use to legitimate foreign, international or multinational security, investigatory, law enforcement or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in, formal agreements and arrangements to include those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

(p) A record from a system of records maintained by the ODNI may be disclosed as a routine use to any Federal agency when documents or other information obtained from that agency are used in compiling the record and the record is relevant to the official responsibilities of that agency, provided that disclosure of the recompiled or

enhanced record to the source agency is otherwise authorized and lawful.

(q) A record from a system of records maintained by the ODNI may be disclosed as a routine use to appropriate agencies, entities, and persons when: The security or confidentiality of information in the system of records has or may have been compromised; and the compromise may result in economic or material harm to individuals (e.g., identity theft or fraud), or harm to the security or integrity of the affected information or information technology systems or programs (whether or not belonging to the ODNI) that rely upon the compromised information; and disclosure is necessary to enable ODNI to address the cause(s) of the compromise and to prevent, minimize, or remedy potential harm resulting from the compromise.

(r) A record from a system of records maintained by the ODNI may be disclosed as a routine use to a Federal, state, local, tribal, territorial, foreign, or multinational agency or entity or to any other appropriate entity or individual for any of the following purposes: to provide notification of a serious terrorist threat for the purpose of guarding against or responding to such threat; to assist in coordination of terrorist threat awareness, assessment, analysis, or response; or to assist the recipient in performing authorized responsibilities relating to terrorism or counterterrorism.

(s) A record from a system of records maintained by the ODNI may be disclosed as a routine use for the purpose of conducting or supporting authorized counterintelligence activities as defined by section 401a(3) of the National Security Act of 1947, as amended, to elements of the Intelligence Community, as defined by section 401a(4) of the National Security Act of 1947, as amended; to the head of any Federal agency or department; to selected counterintelligence officers within the Federal government.

(t) A record from a system of records maintained by the ODNI may be disclosed as a routine use to a Federal, state, local, tribal, territorial, foreign, or multinational government agency or entity, or to other authorized entities or individuals, but only if such disclosure is undertaken in furtherance of responsibilities conferred by, and in a manner consistent with, the National Security Act of 1947, as amended; the Counterintelligence Enhancement Act of 2002, as amended; Executive Order 12333 or any successor order together with its implementing procedures approved by the Attorney General; and other provisions of law, Executive Order or directive relating to national

intelligence or otherwise applicable to the ODNI. This routine use is not intended to supplant the other routine uses published by the ODNI.

Dated: March 18, 2008.

Ronald L. Burgess, Jr.,
Lieutenant General, USA, Director of the Intelligence Staff.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2007-0647; FRL-8546-3]

Approval and Promulgation of State Implementation Plans; State of Utah; Interstate Transport of Pollution and Other Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the State of Utah on March 22 and September 17, 2007. The revisions address Interstate Transport Pollution requirements of Section 110(a)(2)(D)(i) of the Clean Air Act and a typographical error in Rule R307-130-4, "Options." The March 22, 2007 submittal adds "Section XXIII, Interstate Transport" to the Utah SIP, and Rule R307-110-36 to the Utah Administrative Code (UAC). The new Rule R307-110-36 incorporates by reference the Interstate Transport declaration into the State rules. The September 17, 2007 submittal amends UAC Rule R307-130-4, "Options," by removing from the text the word "not" which had been accidentally placed in this rule. This action is being taken under section 110 of the Clean Air Act.

DATES: This rule is effective on May 27, 2008 without further notice, unless EPA receives adverse comment by April 28, 2008. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2007-0647, by one of the following methods:

- www.regulations.gov. Follow the on-line instructions for submitting comments.
- *E-mail:* videtich.callie@epa.gov and mastrangelo.domenico@epa.gov.

- *Fax:* (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- *Mail:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

- *Hand Delivery:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2007-0647. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute.