

comets, planets, dwarf planets, and planetary moons), which would likely receive a Restricted Earth Return categorization (as defined in Appendix A) from the NASA Planetary Protection Office or the NASA Planetary Protection Subcommittee.

(4) Substantial modification of a NASA facility's master plan in a manner expected to result in significant effect(s) on the quality of the human environment.

(5) Substantial construction projects expected to result in significant effect(s) on the quality of the human environment, when such construction and its effects are not within the scope of an existing master plan and EIS.

#### **§ 1216.307 Programmatic EAs, and EISs, and tiering.**

NASA encourages the analysis of actions at the programmatic level for those programs similar in nature or broad in scope. Programmatic NEPA analyses may take place in the form of an EA or EIS. These documents allow "tiering" of NEPA documentation for subsequent or specific actions.

#### **§ 1216.308 Supplemental EAs and EISs.**

As detailed in CEQ regulations, supplemental documentation may be required for previous EAs or EISs (see 40 CFR 1502.9). If changed circumstances require preparation of a supplemental EA or EIS, such document will be prepared following the same general process as the original EA or EIS. No new scoping is required for a supplemental EIS; however, NASA may choose to conduct scoping.

#### **§ 1216.309 Mitigation and monitoring.**

When the analysis proceeds to an EA or EIS and mitigation measures are selected to avoid or reduce environmental impacts, such mitigation measures will be identified in the EA/FONSI or the EIS Record of Decision (ROD). NASA will implement mitigation measures (including adaptive management strategies, where appropriate) consistent with applicable FONSI and/or RODs and will monitor their implementation and effectiveness. The Responsible Official will ensure that funding requests for such mitigation measures are included in the program or project budget.

#### **§ 1216.310 Classified actions.**

(a) Classification does not relieve NASA of the requirement to assess, document, and consider the environmental impacts of a proposed action.

(b) When classified information can reasonably be separated from other information and a meaningful

environmental analysis can be produced, unclassified documents will be prepared and processed in accordance with these regulations. Classified portions will be kept separate and provided to properly cleared reviewers and decision makers in the form of a properly classified document that meets the requirements of these regulations to the extent permitted, given such classification.

#### **§ 1216.311 Emergency responses.**

(a) When the Responsible Official determines that an emergency exists that makes it necessary to take urgently needed actions before preparing a NEPA analysis and any required documentation, in accordance with the provisions in sections 305 and 307 of this subpart, then the following provisions apply:

(1) The Responsible Official may take urgently needed actions that are necessary to control the immediate impacts of the emergency needed to mitigate harm to life, property, or resources. When taking such actions, the Responsible Official shall, to the extent practical, mitigate foreseeable adverse environmental impacts.

(2) At the earliest practicable time, the Responsible Official shall also notify the SEO of the emergency situation and the action(s) taken. The SEO will determine the appropriate NEPA action associated with the urgent actions taken as a result of the emergency. If the urgent actions will reasonably result in significant environmental impacts, the SEO will consult with the CEQ to ensure compliance with 40 CFR 1506.11 as soon as is reasonable.

(b) If the Responsible Official proposes emergency actions which continue beyond the urgent actions taken as a result of the emergency, and these actions are not categorically excluded, the Responsible Official will consult with the SEO to determine the appropriate level of NEPA compliance. If continuation of the emergency actions will reasonably result in significant environmental impacts, the SEO will consult with the CEQ to ensure compliance with 40 CFR 1506.11 as soon as is reasonable.

#### **Appendix A to Subpart 1216.3**

##### **Acronyms and Definitions**

CatEx Categorical Exclusion  
CEQ Council on Environmental Quality  
CFR Code of Federal Regulations  
CWA Clean Water Act  
CZMA Coastal Zone Management Act  
DoI (U.S.) Department of the Interior  
EA Environmental Assessment  
EIS Environmental Impact Statement  
FONSI Finding of No Significant Impact  
FR Federal Register

GSA General Services Administration  
NEPA National Environmental Policy Act  
NHPA National Historic Preservation Act  
SEO Senior Environmental Official  
OGC Office of the General Counsel  
PPO Planetary Protection Office  
ROD Record of Decision  
U.S.C. United States Code

##### **Definitions**

1. A2 Mission Multiple—The A2 Mission Multiple is a calculated value based on the total amount of radioactive material being launched. This value is used in defining the level of review and approval required for launch.

2. Earth Return Mission (also known as a Sample Return)—A subcategory of missions that would collect extraterrestrial materials from solar system bodies and return them to Earth.

3. NASA Senior Environmental Official—The Senior NASA Headquarters Official responsible for providing executive and functional leadership for environmental compliance. As of January 1, 2011, the SEO is the Assistant Administrator for Strategic Infrastructure.

4. Restricted Earth Return—A subcategory of Earth Return Missions which requires additional measures to ensure that any potential indigenous life form would be contained so that it could not impact humans or Earth's environment.

5. Space Flight Projects/Programs—Those NASA actions that develop products intended for use in space and/or that support ground and space operations for products in space.

6. Unrestricted Earth Return—NASA Procedural Requirements define this as a subcategory of Earth Return Missions that would collect extraterrestrial materials from solar system bodies (deemed by scientific opinion to have no indigenous life forms) and return those samples to Earth. No planetary protection measures are required for the inbound (return to Earth) phase of the mission.

Dated: July 14, 2011.

**Charles F. Bolden, Jr.,**

*Administrator, National Aeronautics and Space Administration.*

[FR Doc. 2011-18279 Filed 7-20-11; 8:45 am]

##### **BILLING CODE P**

## **OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE**

### **32 CFR Part 1701**

#### **Privacy Act of 1974: Implementation**

**AGENCY:** Office of the Director of National Intelligence.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of the Director of National Intelligence (ODNI) proposes to exempt six new systems of records from certain provisions of the Privacy Act. In addition, the ODNI proposes to invoke a subsection of the Privacy Act

as an additional basis for exempting records in ODNI/OIG-003 (Office of Inspector General Investigation and Interview Records, published in the **Federal Register** on Dec. 28, 2007) from these provisions of the Act.

**DATES:** Submit comments on or before August 30, 2011.

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

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

Mail: Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511.

**FOR FURTHER INFORMATION CONTACT:** Mr. John F. Hackett, Director, Information Management Office, (703) 275-2215.

**SUPPLEMENTARY INFORMATION:** As required by the Privacy Act, 5 U.S.C. 552a(e)(4), the ODNI describes in the notice section of today's **Federal Register** the following new systems of records: Human Resources Records; Personnel Security Records; Freedom of Information Act, Privacy Act and Mandatory Declassification Review Request Records; IT Systems Activity and Access Records, Security Clearance Reciprocity Hotline Records; and IT Network Support, Administration and Analysis Records. For the reasons stated herein, ODNI seeks the ability in administering these records to invoke the exemptions permitted by subsection (k) of the Privacy Act as may be necessary to protect records of intelligence or investigative interest. The ODNI has previously established a rule that it will preserve the exempt status of records it receives when the reason for the exemption remains valid. See 32 CFR Part 1701.20(a)(2) at 73 FR 166531 (March 28, 2008).

### Regulatory Flexibility Act

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

### Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires 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](http://www.sba.gov/advo/law/law_lib.html).

### Paperwork Reduction Act

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

### Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" within the meaning of Executive Order 12866. This rule will not have an annual effect on the economy of \$100 million or more or otherwise adversely affect the economy or sector of the economy in a material way; will not create inconsistency with or interfere with other agency action; will not materially alter the budgetary impact of entitlements, grants, fees or loans or the rights 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 proposed rule imposes no Federal mandate on any State, local, or tribal government or on the private sector. Accordingly, no UMRA analysis of economic and regulatory alternatives is required.

### Executive Order 13132, Federalism

Executive Order 13132 requires ODNI to examine the implications for the distribution of power and responsibilities among the various levels of government resulting from this proposed rule. ODNI concludes that the proposed rule does not affect the rights, roles and responsibilities of the States, involves no preemption of State law and does not limit State policymaking discretion. This rule has no federalism implications as defined by the Executive Order.

### Environmental Impact

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

### Energy Impact

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

### List of Subjects in 32 CFR Part 1701

Records and Privacy Act.

For the reasons set forth above, ODNI proposes to amend 32 CFR part 1701 as follows:

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

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

**Authority:** 50 U.S.C. 401-441; 5 U.S.C. 552a.

### Subpart B—[Amended]

2. Amend § 1701.24 by revising paragraph (a) introductory text, and adding paragraphs (a)(15) through (a)(20), and (b)(7) through (b)(12), to read as follows:

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

(a) The ODNI may invoke its authority to exempt the following systems of records from the requirements of subsections (c)(3); (d)(1), (2), (3) and (4); (e)(1); (e)(4)(G), (H), (I); and (f) of the Privacy Act to the extent that information in the system is subject to exemption pursuant subsections (k)(1), (k)(2) or (k)(5) of the Act as noted in the individual new systems notices and in the existing system notice entitled Office of Inspector General Investigation and Interview Records (ODNI/OIG-003), published at 72 FR 37902 (December 28, 2007).

\* \* \* \* \*

(15) Human Resources Records (ODNI-16).

(16) Personnel Security Records (ODNI-17).

(17) Freedom of Information Act, Privacy Act and Mandatory Declassification Review Requests Records (ODNI-18).

(18) IT Systems Activity and Access Records (ODNI-19).

(19) Security Clearance Reciprocity Hotline Records (ODNI-20).

(20) IT Network Support, Administration and Analysis Records (ODNI-21).

(b) \* \* \*

(7) From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an intelligence or investigative interest on the part of the ODNI or recipient agency and could result in release of properly classified national security or foreign policy information.

(8) 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.

(9) 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.

(10) 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.

(11) 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.

(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 subsection (d) provisions regarding access and amendment of records by record subjects. Nevertheless, the ODNI has published agency rules concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the ODNI may determine it appropriate to satisfy a record subject's access request.

Dated: July 14, 2011.

**Mark W. Ewing,**

*Chief Management Officer.*

[FR Doc. 2011-18187 Filed 7-20-11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Part 1

[Docket No. PTO-P-2011-0030]

**RIN 0651-AC58**

#### Revision of the Materiality to Patentability Standard for the Duty To Disclose Information in Patent Applications

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The United States Patent and Trademark Office (Office or PTO) is proposing to revise the standard for materiality for the duty to disclose information in patent applications and reexamination proceedings in light of the decision by the U.S. Court of

Appeals for the Federal Circuit (Federal Circuit or Court) in *Therasense, Inc. v. Becton, Dickinson & Co.* Specifically, the Office is proposing to revise the materiality standard for the duty to disclose to match the materiality standard, as defined in *Therasense*, for the inequitable conduct doctrine. While *Therasense* does not require the Office to harmonize the materiality standards underlying the duty of disclosure and the inequitable conduct doctrine, the Office believes that there are important reasons to do so. The materiality standard set forth in *Therasense* should reduce the frequency with which applicants and practitioners are being charged with inequitable conduct, consequently reducing the incentive to submit information disclosure statements containing marginally relevant information and enabling applicants to be more forthcoming and helpful to the Office. At the same time, it should also continue to prevent fraud on the Office and other egregious forms of misconduct. Additionally, harmonization of the materiality standards is simpler for the patent system as a whole.

**DATES:** The Office solicits comments from the public on this proposed rule change. Written comments must be received on or before September 19, 2011 to ensure consideration. No public hearing will be held.

**ADDRESSES:** Comments concerning this notice should be sent by electronic mail message over the Internet addressed to [AC58.comments@uspto.gov](mailto:AC58.comments@uspto.gov). Comments may also be submitted by mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, marked to the attention of Hiram H. Bernstein, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy. Although comments may be submitted by mail, the Office prefers to receive comments via the Internet.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (<http://www.regulations.gov>) for additional instructions on providing comments via the Federal eRulemaking Portal. The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the Internet (<http://www.uspto.gov>). Because comments will be made available for public inspection,