seemingly endless administrative limbo while energy companies plow ahead seizing land and constructing the very pipeline that the procedurally handcuffed homeowners seek to stop.'' [2] Now that the *en banc* D.C. Circuit has heard oral argument on the legality of this Kafkaesque regime, the Commission is finally deciding to stop allowing developers to begin constructing a pipeline before the Commission's rehearing process is complete. That is a step in the right direction.

2. Nevertheless, I dissent in part from this final rule because it does nothing to address the concern, articulated clearly in Judge Millett's concurrence, that a pipeline developer should not be able to begin the process of condemning private land before the owners of that land can go to court to challenge the certificate. Eminent domain is among the most significant actions that a government may take with regard to an individual's private property.[3] And the harm to an individual from having his or her land condemned is one that may never be fully remedied, even in the event they receive their constitutionally required compensation.[4] Bearing those basic facts in mind, there is something fundamentally unfair about a regulatory regime that allows a private entity to start the process of condemning an individual's land before the landowner can go to court to contest the basis for that condemnation action.

3. That concern was central to Judge Millett's concurrence in *Allegheny Defense Project.* Throughout her opinion, she touched on the profound inequity of allowing a developer to condemn land and construct a pipeline while the opponents of that pipeline are stuck in ''administrative limbo'' before the Commission.[5] I see nothing in her opinion that suggests that the problem created by the Commission's abuse of tolling orders is limited to the actual construction of a pipeline. To the contrary, Judge Millett pointed repeatedly to the exercise of eminent domain prior to rehearing as an example of how the Commission's use of tolling orders ''runs roughshod over basic principles of fair process.'' [6]

4. And yet this final rule deals only with construction without making any effort to address the exercise of eminent domain during that period when the courthouse doors are closed to landowners seeking to challenge the certificate. That is a shame. And the failure to do anything in that regard is a striking contrast to the Commission's supposed concern for landowners. Rather than remaining silent on this situation, we ought to do everything in our power to address it and ensure that certificate holders are not permitted to go to court before landowners.

5. To that end, I believe that we should adopt a practice of presumptively staying § 7 certificates [7] pending Commission action on the merits of any timely filed requests for rehearing.[8] A practice along those lines would help protect landowners from an action seeking to condemn their property by delaying the issuance of the condition precedent for a condemnation action pursuant to the NGA.[9] Only then will we have addressed the most glaring due process shortcomings associated with the Commission's use of tolling orders in NGA certificate proceedings.

6. During my time at the Commission, I have had the opportunity to meet with many landowners who lost their property rights through eminent domain proceedings authorized by the NGA. It is heartbreaking to hear their stories of watching their land be condemned while the Commission sat on rehearing requests, leaving them helpless to challenge the certificate, even as it was used to seize their land. We should be doing everything in our power to prevent such a patently unfair result.

For these reasons, I respectfully concur in part and dissent in part.

Richard Glick, Commissioner.

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[2] *Allegheny Def. Project* v. *FERC,* 932 F.3d 940, 948 (D.C. Cir.) (Millett, J., concurring), *reh'g en banc granted, judgment vacated,* 943 F.3d 496 (D.C. Cir. 2019).

[3] *Cf. Dolan* v. *City of Tigard,* 512 U.S. 374, 384 (1994) (observing that government action that provides for ''public access [to private property] would deprive [the owner] of the right to exclude others, 'one of the most essential sticks in the bundle of rights that are commonly characterized as property.'") (quoting *Kaiser Aetna* v. *United States,* 444 U.S. 164, 176 (1979)); *Loretto* v. *Teleprompter Manhattan CATV Corp.,* 458 U.S. 419, 426 (1982) (''[W]e have long considered a physical intrusion by government to be a property restriction of an unusually serious character for purposes of the Takings Clause.''); *Hendler* v. *United States,* 952 F.2d 1364, 1374 (Fed. Cir. 1991) (''In the bundle of rights we call property, one of the most valued is the right to sole and exclusive possession—the right to *exclude* strangers, or for that matter friends, but especially the Government.'' (emphasis in the original)).

[4] *See Kimball Laundry Co.* v. *United States,* 338 U.S. 1, 5 (1949) (''The value of property springs from subjective needs and attitudes; its value to the owner may therefore differ widely from its value to the taker.''); *United Church of the Med. Ctr.* v. *Med. Ctr. Comm'n,* 689 F.2d 693, 701 (7th Cir. 1982) (''It is settled beyond the need for citation . . . that a given piece of property is considered to be unique, and its loss is always an irreparable injury.''); *accord Richardson* v. *City & Cty. of Honolulu,* 124 F.3d 1150, 1168 (9th Cir. 1997) (O'Scannlain, J., concurring in part and dissenting in part) (''Whether because of a sentimental attachment to his property or a conviction that the property is actually worth more than what the market will currently bear, a landlord might choose not to sell, even at the 'fair market value.'").

[5] *Allegheny Def. Project,* 932 F.3d at 948, 950, 952–53, 956 (Millett, J., concurring).

[6] *Id.* at 950 (Millett, J., concurring).

[7] Unlike § 7 of the NGA, § 3 does not convey eminent domain authority. *See Limiting Authorizations to Proceed with Construction Activities Pending Rehearing,* 171 FERC ¶ 61,201, P 5 (2020). Accordingly, I do not believe it is necessary to presumptively stay the Commission's § 3 determinations. I do, however, agree with my colleagues that it is appropriate to refrain from issuing any notices to proceed with construction under *both* § 3 and § 7 given the potential for irreparable harm due to construction pursuant to either provision of the NGA. *See id.* P 11.

[8] Under such an approach, the Commission could, in its discretion, lift the stay in response to a showing from the pipeline developer that it is necessary or appropriate to commence condemnation proceedings prior to the Commission acting on rehearing.

[9] Multiple courts have contemplated a stay having an effect along those lines. *See, e.g., Mountain Valley Pipeline, LLC* v. *An Easement to Construct, Operate & Maintain a 42-inch Gas Transmission Line,* No. 2:17–CV–04214, 2018 WL 1004745, at *5 (S.D.W. Va. Feb. 21, 2018) (''The landowners insist that the various challenges that Mountain Valley faces before FERC and the courts of appeals counsel against the granting of partial summary judgment. As explained earlier, a FERC order remains in effect unless FERC or a court of appeals issues a stay and no such stay has been issued here.'' (internal citations omitted)); *In re Algonquin Nat. Gas Pipeline Eminent Domain Cases,* No. 15–CV–5076, 2015 WL 10793423, at *7 (S.D.N.Y. Sept. 18, 2015) (''Here, various interested parties have filed Requests for Rehearing with FERC but, absent a stay by FERC, those Requests for Rehearing neither prohibit these proceedings from going forward nor affect Algonquin's substantive right to condemn or the need for immediate possession.''); *Tenn. Gas Pipeline Co.* v. *104 Acres of Land More or Less, in Providence Cty. of State of R.I.,* 749 F. Supp. 427, 431 (D.R.I. 1990) (''Because in this case the Commission's order has not been stayed, condemnation pursuant to that order may proceed.'').

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 319

[Docket ID: DOD–2019–OS–0040]

RIN 0790–AK65

Defense Intelligence Agency Privacy Program

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes DoD's regulation concerning the Defense Intelligence Agency (DIA) Privacy Program. On April 11, 2019, the Department of Defense published a revised DoD-level Privacy Program rule, which contains the necessary information for an agency-wide privacy program regulation under the Privacy

Act and now serves as the single Privacy Program rule for the Department. That revised Privacy Program rule also includes all DoD component exemption rules. Therefore, this part is now unnecessary and may be removed from the CFR.

DATES: This rule is effective on July 6, 2020.

FOR FURTHER INFORMATION CONTACT: James Schmidli, 202–231–6895.

SUPPLEMENTARY INFORMATION: DoD now has a single DoD-level Privacy Program rule at 32 CFR part 310 (84 FR 14728) that contains all the codified information required for the Department. The DIA Privacy Act Program regulation at 32 CFR part 319, last updated on November 20, 2013 (78 FR 69551), is no longer required and can be removed.

It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest because it is based on the removal of policies and procedures that are either now reflected in another CFR part, 32 CFR 310, or are publicly available on the Department's website. To the extent that DIA internal guidance concerning the implementation of the Privacy Act within DIA is necessary, it will continue to be published in Defense Intelligence Agency Instruction 5400.001, Privacy and Civil Liberties Program, *http://www.dia.mil/FOIA/FOIA-Electronic-Reading-Room/FileId/216384/* (May 19, 2014).

This rule is one of 20 separate component Privacy rules. With the finalization of the DoD-level Privacy rule at 32 CFR part 310, the Department eliminated the need for this component Privacy rule, thereby reducing costs to the public as explained in the preamble of the DoD-level Privacy rule published on April 11, 2019, at 84 FR 14728–14811.

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review.'' Therefore, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs'' does not apply.

List of Subjects in 32 CFR Part 319

Privacy.

PART 319—[REMOVED]

Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 319 is removed.

Dated: June 12, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–13110 Filed 7–2–20; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 320

[Docket ID: DOD–2019–OS–0082]

RIN 0790–AK66

National Geospatial-Intelligence Agency (NGA) Privacy Program

AGENCY: National Geospatial-Intelligence Agency, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes DoD's regulation concerning the National Geospatial-Intelligence Agency (NGA) Privacy Program. On April 11, 2019, the Department of Defense published a revised DoD-level Privacy Program rule, which contains the necessary information for an agency-wide privacy program regulation under the Privacy Act and now serves as the single Privacy Program rule for the Department. That revised Privacy Program rule also includes all DoD component exemption rules. Therefore, this part is now unnecessary and may be removed from the CFR.

DATES: This rule is effective on July 6, 2020.

FOR FURTHER INFORMATION CONTACT: Terrance Reeves, 571–558–7641.

SUPPLEMENTARY INFORMATION: DoD now has a single DoD-level Privacy Program rule at 32 CFR part 310 (84 FR 14728) that contains all the codified information required for the Department. NGA Program regulation at 32 CFR part 320, last updated on January 14, 2004 (69 FR 2066), is no longer required and can be removed.

It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest because it is based on the removal of policies and procedures that are either now reflected in another CFR part, 32 CFR 310, or are publicly available on the Department's website. To the extent that NGA internal guidance concerning the implementation of the Privacy Act within the National Geospatial-Intelligence Agency is necessary, it will be issued in an internal document.

This rule is one of 20 separate component Privacy rules. With the finalization of the DoD-level Privacy rule at 32 CFR part 310, the Department is eliminating the need for this separate component Privacy rules and reducing costs to the public as explained in the preamble of the DoD-level Privacy rule published at 84 FR 14728.

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review.'' Therefore, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs'' does not apply.

List of Subjects in 32 CFR Part 320

Privacy.

PART 320—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 320 is removed.

Dated: June 12, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–13114 Filed 7–2–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 322

[Docket ID: DOD–2020–OS–0030]

RIN 0790–AK68

National Security Agency/Central Security Services Privacy Act Program

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

ACTION: Final rule.

SUMMARY: This final rule removes the Department of Defense (DoD) regulation concerning the National Security Agency/Central Security Services (NSA/CSS) Privacy Program. On April 11, 2019, the DoD published a revised DoD-level Privacy Program rule, which contains the necessary information for an agency-wide privacy program regulation under the Privacy Act and now serves as the single Privacy Program rule for the Department. That revised Privacy Program rule also includes all DoD component exemption rules. Therefore, this part is now unnecessary and may be removed from the Code of Federal Regulations (CFR).

DATES: This rule is effective on July 6, 2020.

FOR FURTHER INFORMATION CONTACT: Mrs. Deneen Farrell, 301–688–6311.