

programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act, and 44 U.S.C. Chapter 35.

List of Subjects in 32 CFR part 311

Privacy.

Accordingly, 32 CFR part 311 is amended as follows:

1. The authority citation for 32 CFR part 311 continues to read as follows:

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

2. Section 311.7 is amended by adding paragraphs (c)(10)(i) through (c)(10)(iii) to read as follows:

§ 311.7 Procedures for exemptions.

* * * * *

(c) * * *

(10) *System identifier and name:* DFMP 26, Vietnamese Commando Compensation Files.

(i) *Exemption:* Information classified under E.O. 12958, as implemented by DoD 5200.1-R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) *Authority:* 5 U.S.C. 552a(k)(1).

(iii) *Reasons:* From subsection 5 U.S.C. 552a(d) because granting access to information that is properly classified pursuant to E.O. 12958, as implemented by DoD 5200.1-R, may cause damage to the national security.

Dated: June 19, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[GC Docket No. 97-143; FCC 97-198]

Implementation of the Electronic Freedom of Information Act Amendments of 1996

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This order proposes to amend the Commission's rules regarding implementation of the Electronic Freedom of Information Act Amendments of 1996 to comply with the changes mandated by the Electronic Freedom of Information Act Amendments of 1996. This proceeding will make it easier for the public to request access under the FOIA to the Commission's records.

DATES: Comments are due on or before July 25, 1997 and Reply comments are due on or before August 8, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Laurence H. Schecker, Office of General Counsel, (202) 418-1720.

SUPPLEMENTARY INFORMATION:

Adopted: June 5, 1997.

Released: June 19, 1997.

I. Introduction

1. In this NPRM, we propose to amend Part 0 of the Commission's Rules to implement the amendments to the Freedom of Information Act ("FOIA") that were enacted in the Electronic Freedom of Information Act Amendments of 1996 ("EFOIA").¹

2. The FOIA, which establishes a right of access to Federal agency records, was enacted 30 years ago, before the extensive use of computers to create and retain records in electronic formats. With the advent and widespread acceptance of new information technologies, questions increasingly arose about how electronic records should be handled under the FOIA. The EFOIA, signed into law on October 2, 1996, "bring[s] FOIA into the information and electronic age"² through amendments that directly address electronic records. The EFOIA also addresses procedural aspects of the

FOIA, including the time limits for processing FOIA requests.

3. Several of the Commission's FOIA rules must be revised to conform to the provisions of the EFOIA. We therefore initiate this proceeding to implement the EFOIA amendments.

II. Discussion

4. To implement the EFOIA amendments, we seek comment on the proposed revisions to our FOIA rules set forth below. The proposals are intended to conform our rules to express requirements of the EFOIA. In addition, as directed by the EFOIA, we propose new rules to provide for the expedited processing of FOIA requests.

5. *Form or Format Requests.* A significant change enacted in the EFOIA is the requirement that agencies honor requests that records be provided in specific formats, including electronic formats, so long as the records are "readily reproducible by the agency in that form or format."³ Prior to this amendment, agencies were under no obligation to accommodate a FOIA requester's preferences as to format.⁴ We propose to amend § 0.461(a) of our rules to reflect this new requirement.

6. *Time for Processing Initial FOIA Requests.* The EFOIA provides that, effective October 2, 1997, agencies will have 20 working days (rather than the current 10 working days) to respond to initial FOIA requests.⁵ To implement the statutory amendment, we propose to amend § 0.461(g) of our FOIA rules.⁶

7. The EFOIA further recognizes that in some circumstances, agencies may need more than 20 working days to process FOIA requests. Prior to the EFOIA's enactment, agencies were permitted to extend the time for responding to initial FOIA requests an additional 10 working days,⁷ and these provisions remain in effect. However, if an extension of more than 10 working days is sought, the EFOIA amendments require that an agency provide requesters with the opportunity both to limit the scope of their requests to enable processing within the 10 day statutory time limit for extensions, or to negotiate an alternate time frame for processing requests.⁸ We propose to

³ EFOIA 5, codified at 5 U.S.C. 552(a)(3)(B).

⁴ See H.R. Rep. No. 795, 104th Cong., 2d Sess. 21 (1996) (House Report), citing *Dismukes v. Department of the Interior*, 603 F. Supp. 760, 763 (D.D.C. 1984).

⁵ EFOIA § 8(b), codified at 5 U.S.C. 552(a)(6)(A)(i). See House Report at 26-27.

⁶ 47 CFR 0.461(g).

⁷ Former 5 U.S.C. 552(a)(3)(B); 47 CFR 0.461(g).

⁸ EFOIA § 7(b), codified at 5 U.S.C. 552(a)(6)(B).

If the requester refuses either option, or no agreement can be reached with the agency, a court must take this into account in considering whether

¹ Public Law 104-231, 110 Stat. 3048 (1996), codified at scattered subsections of 5 U.S.C. 552.

² President Clinton's Statement on Signing H.R. 3802, The Electronic Freedom of Information Act Amendments (October 2, 1996).

amend § 0.461(g) of our FOIA rules to reflect these changes.⁹

8. *Expedited Processing.* The EFOIA requires agencies to promulgate through a notice and comment rulemaking regulations to consider requests for "expedited processing" of initial FOIA requests.¹⁰ Such requests must be granted whenever a "compelling need" is shown and may be granted in other cases as determined by the agency.¹¹ "Compelling need" is defined in the EFOIA as (1) involving "an imminent threat to the life or physical safety of an individual";¹² or (2) in the case of a request made by "a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity."¹³ When a request for expedited processing is made, an agency must notify the requester of its decision whether or not to grant the request for expedition within 10 calendar days.¹⁴ If expedited processing is granted, an agency must process the request as soon as practicable.¹⁵ If the request is denied, an agency must grant expedited consideration of appeals of such a denial.¹⁶

9. To implement the expedited processing requirements of the EFOIA amendments, we propose to amend section 0.461 of our FOIA rules by adding a new paragraph (h). Our proposal for the most part tracks the language of the statute. The proposed rules place on the requester the burden of demonstrating a compelling need.¹⁷ As required by 5 U.S.C. 552(a)(6)(E)(ii)(II), the rules also must provide for administrative appeals of a

to afford an agency additional time to process the request. EFOIA 7, *codified at* 5 U.S.C. 552(a)(6)(B)(ii) and 552(a)(6)(C).

⁹ 47 CFR 0.461(g).

¹⁰ EFOIA 8(a), *codified at* 5 U.S.C. 552(a)(6)(E).

¹¹ EFOIA 8(a), *codified at* 5 U.S.C. 552(a)(2)(E)(i).

¹² 5 U.S.C. 552(a)(6)(E)(v)(I). The House Report at 26 explains that "A threat to an individual's life or physical safety qualifying for expedited access should be imminent. A reasonable person should be able to appreciate that a delay in obtaining the requested information poses such a threat."

¹³ 5 U.S.C. 552(a)(6)(E)(v)(II). According to the House Report at 26, to qualify for expedited processing, the dissemination of information must be the "main activity" of the requester. The "urgency to inform" standard requires that the information requested pertain to "a matter of current exigency to the American public" and that delay would compromise a significant recognized interest, but, by itself, the public's right to know is not enough.

¹⁴ 5 U.S.C. 552(a)(2)(E)(ii)(I).

¹⁵ 5 U.S.C. 552(a)(6)(E)(iii).

¹⁶ 5 U.S.C. 552(a)(6)(E)(ii)(II).

¹⁷ See House Report at 25 (requester bears the burden of showing expedition is appropriate).

denial of a request for expedited processing. We propose to allow for the filing of an application for review within five working days of the denial of a request for expedited processing. The Commission will act expeditiously on such applications.

10. *Miscellaneous Revisions.* The EFOIA requires that the Commission make available a guide for requesting records or information from the Commission.¹⁸ The Commission's Public Service Division of the Office of Public Affairs has long published annually a guide to finding information at the FCC.¹⁹ We propose to amend § 0.443 of our rules to reflect the availability of this important resource tool for the public. We also propose to amend our rules to reflect the availability of Commission records and information on the Internet.

III. Procedural Matters

11. *Ex Parte.* This is a permit-but-disclose rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See 47 CFR 1.1202, 1.1203, and 1.1206(a).

12. *Regulatory Flexibility Act Certification.* Section 603 of the Regulatory Flexibility Act, as amended ("RFA"),²⁰ requires an initial regulatory flexibility analysis in notice and comment rulemaking proceedings unless we certify that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."²¹ The purpose of this Notice is to implement the amendments to the FOIA enacted through the EFOIA. In particular, the proposed rules concern time limits for processing FOIA requests, requests for expedited processing, and requests that records be produced in specific formats. The proposed rules for the most part simply adopt the language of the EFOIA amendments. There is no reason to believe that the revised rules will impose any costs on FOIA requesters beyond those costs incurred under our former rules. Accordingly, we certify, pursuant to section 605(b) of the RFA, that the proposed rules will not have a significant economic impact on a substantial number of small entities.

¹⁸ EFOIA § 11, *codified at* 5 U.S.C. 552(g). See House Report at 29-30.

¹⁹ *Information Seekers Guide: How to Find Information at the FCC*, Public Service Division, Office of Public Affairs, FCC (January 1997).

²⁰ 5 U.S.C. 603.

²¹ 5 U.S.C. 605(b).

The Secretary shall send a copy of this certification to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this certification will also be published in the **Federal Register**.

13. *Filing Comments.* Pursuant to the procedures set forth in 47 CFR 1.415 and 1.419, interested parties may file comments on or before July 25, 1997, and reply comments on or before August 8, 1997 after publication of this proposed rule in the **Federal Register**. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, DC 20554. Parties should also submit one copy of any documents filed in this docket with ITS, 2100 M Street, N.W., Suite 140, Washington, DC 20037. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

14. *Contact Persons.* For further information concerning this proceeding contact Laurence H. Schecker or Linda P. Armstrong, Office of General Counsel, at (202) 418-1720.

IV. Ordering Clause

15. Accordingly, *it is ordered* that pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 154(j), and the Electronic Freedom of Information Act Amendments of 1996, Public Law 104-231, 110 Stat. 3048 (1996), a Notice of Proposed Rulemaking is hereby adopted.

List of Subjects in 47 CFR Part 0

Freedom of information.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

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