

(10) A statement that assures compliance with the applicable provisions of the Uniform Act. (42 U.S.C. 4601, *et seq.*)

(c) If the landowner tenders a right-of-entry or other right of possession document required by State law any time before the FHWA makes a determination that the STD is unable to acquire the rights-of-way with sufficient promptness, the STD is legally obligated to accept such tender and the FHWA may not proceed with Federal acquisition.

(d) If the STD obtains title to a parcel prior to the filing of the Declaration of Taking, it shall notify the FHWA and immediately furnish the appropriate U.S. Attorney with a disclaimer together with a request that the action against the landowner be dismissed (*ex parte*) from the proceeding and the estimated just compensation deposited into the registry of the court for the affected parcel be withdrawn after the appropriate motions are approved by the court.

(e) When the United States obtains a court order granting possession of the real property, the FHWA shall authorize the STD to take over supervision of the property. The authorization shall include, but need not be limited to, the following:

(1) The right to take possession of unoccupied properties;

(2) The right to give 90 days notice to owners to vacate occupied properties and the right to take possession of such properties when vacated;

(3) The right to permit continued occupancy of a property until it is required for construction and, in those instances where such occupancy is to be for a substantial period of time, the right to enter into rental agreements, as appropriate, to protect the public interest;

(4) The right to request assistance from the U.S. Attorney in obtaining physical possession where an owner declines to comply with the court order of possession;

(5) The right to clear improvements and other obstructions;

(6) Instructions that the U.S. Attorney be notified prior to actual clearing, so as to afford him an opportunity to view the lands and improvements, to obtain appropriate photographs, and to secure appraisals in connection with the preparation of the case for trial;

(7) The requirement for appropriate credits to the United States for any net salvage or net rentals obtained by the State, as in the case of right-of-way acquired by the State for Federal-aid projects; and

(8) Instructions that the authority granted to the STD is not intended to preclude the U.S. Attorney from taking action, before the STD has made arrangements for removal, to reach a settlement with the former owner which would include provision for removal.

(f) If the Federal Government initiates condemnation proceedings against the owner of real property in a Federal court and the final judgment is that the Federal agency cannot acquire the real property by condemnation, or the proceeding is abandoned, the court is required by law to award such a sum to the owner of the real property that in the opinion of the court provides reimbursement for the owner's reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings.

(g) As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of the compensation in a Federal condemnation, the FHWA shall reimburse the owner to the extent deemed fair and reasonable, the following costs:

(1) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States or the effective date of possession, whichever is the earlier.

(h) The lands or interests in lands, acquired under this section, will be conveyed to the State or the appropriate political subdivision thereof, upon agreement by the STD, or said subdivision to:

(1) Maintain control of access where applicable;

(2) Accept title thereto;

(3) Maintain the project constructed thereon;

(4) Abide by any conditions which may set forth in the deed; and

(5) Notify the FHWA at the appropriate time that all the conditions have been performed by the State.

(i) The deed from the United States to the State, or to the appropriate political subdivision thereof, shall include the conditions required by 49 CFR part 21. The deed shall be recorded by the grantee in the appropriate land record office, and the FHWA shall be advised of the recording date.

Issued on: December 13, 1999.

**Kenneth R. Wykle,**

*Federal Highway Administrator.*

[FR Doc. 99-32908 Filed 12-20-99; 8:45 am]

BILLING CODE 4910-22-P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 296

#### National Reconnaissance Office Freedom of Information Act Program Regulation

**AGENCY:** National Reconnaissance Office, DoD.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the National Reconnaissance Office (NRO) regulation governing the disclosure of information under the Freedom of Information Act. This part is reissued pursuant to the Department of Defense rule, which implements the Freedom of Information Act and it conforms to the Department's rule and schedule. As a component of the Department of Defense, the Department rules and schedules with respect to the Freedom of Information Act, as amended, will also be the policy of the NRO.

**EFFECTIVE DATE:** October 20, 1999.

**FOR FURTHER INFORMATION CONTACT:** Barbara Friemann, Chief, Information Access and Release Center, (703) 808-5029, Reading Room Appointments (703) 808-2474 or (703) 808-5500.

**SUPPLEMENTARY INFORMATION:** The NRO published a final rule of this part on November 16, 1993 (58 FR 60382). This rule does not constitute a significant regulatory action within the meaning of Executive Order 12866. Neither the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612), nor the reporting or record-keeping requirements under the Paperwork Reduction Act of 1995 (Pub. L. 104-13) apply. It is hereby certified that this final rule does not exert a significant economic impact nor impose new requirements on a number of small entities. This determination is made based upon the fact that the rule merely codifies the procedural aspects of the NRO Freedom of Information Act Program, as amended by the "Electronic Freedom of Information Act Amendment of 1996". It includes guidance on how and from whom to request information pertaining to the NRO.

#### List of Subjects 32 CFR Part 296

Freedom of information.

Accordingly, 32 CFR part 296 is revised to read as follows:

**PART 296—NATIONAL  
RECONNAISSANCE OFFICE  
FREEDOM OF INFORMATION ACT  
PROGRAM REGULATION**

**Sec.**

- 296.1 Purpose.
- 296.2 Definitions.
- 296.3 Indexes.
- 296.4 Procedures for request of records.
- 296.5 Appeals.
- 296.6 Reading room.

**Authority:** 5 U.S.C. 552, as amended.

**§ 296.1 Purpose.**

The purpose of this part is to provide policies and procedures for the National Reconnaissance Office (NRO) implementation of the Freedom of Information Act (5 U.S.C. 552 as amended) (FOIA), and to promote uniformity in the NRO FOIA program.

**§ 296.2 Definitions.**

The terms used in this part, with the exception of the following, are defined in 32 CFR part 286:

(a) *Freedom of Information Act appellate authority.* The Chief of Staff, NRO.

(b) *Initial denial authority.* The Chief, Information Access & Release Center NRO.

**§ 296.3 Indexes.**

(a) The NRO does not originate final orders, opinions, statements of policy, interpretations, staff manuals or instructions that affect a member of the public of the type covered by the indexing requirement of 5 U.S.C. 552(a)(2). The Director, NRO, has therefore determined, pursuant to pertinent statutory and executive order requirements, that it is unnecessary and impracticable to publish an index of the type required by 5 U.S.C. 552(a)(2), except the index noted in paragraph (b) of this section.

(b) A general index of FOIA-processed (a)(2) records shall be made available to the public, both in hard copy and electronically by December 31, 1999.

**§ 296.4 Procedures for request of records.**

(a) *Requests.* Requests for access to records of the National Reconnaissance Office may be filed by mail or FAX addressed to the Chief, Information Access and Release Center, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715, FAX Number (703) 808-5082. Requests need not be made on any special form but must be by letter or FAX or other written statement identifying the request as a Freedom of Information Act request and setting forth sufficient information reasonably describing the requested record. All requests should

contain a willingness to pay assessable FOIA fees.

(b) *Date of acceptance.* The requestor shall be promptly informed by letter of the date of acceptance of the request. The search conducted pursuant to that request shall be for records in existence as of and through the acceptance date.

(c) *Determination and notification.* When the requested record has been located and identified, the Initial Denial Authority shall determine whether the record is one which, consistent with statutory requirements, executive orders and appropriate directives, may be released or may contain information that is exempt under the provisions of 5 U.S.C. 552. Normally, the Initial Denial Authority shall notify the requestor of the determination within 20 working days of the receipt of the request.

(d) *Multi-track processing.* The NRO has 3 queues in which requests may be processed when a significant number of pending requests prevents a response within 20 working days, all based on the date of receipt, first-in first-out, and the amount of work, time, and volume involved in processing the requests.

(See subparagraph C1.5.4.2. of DoD 5400.7-R<sup>1</sup>, Sept 1998). The queues are:

(1) *Simple.* Those requests which are easily handled and processed.

(2) *Complex.* Those requests which are complicated by multiple searches, co-ordinations, consultations, volume etc.

(3) *Expedited.* Expedited processing shall be granted to a requestor after the requestor asks for and demonstrates a compelling need for the information (paragraph C1.5.4.3. of DoD 5400.7-R)

(e) *Extension of response time.* In unusual circumstances when additional time is needed to respond, the Initial Denial Authority shall notify the requestor in writing of the reasons therefore, and an anticipated date, not to exceed 10 additional working days, on which a determination is expected to be dispatched. The Initial Denial Authority will normally send this notification within 20 working days from receipt of the request. Should it be determined that this 10 additional working days cannot be met, the requestor shall be notified and offered the opportunity to limit or narrow the scope of the request in order to facilitate faster processing, or to arrange an alternative time for processing the request (paragraph C1.5.2.6. of DoD 5400.7-R)

(f) *Fees.*

(1) *General.* As a component of the Department of Defense, the applicable

published Department rules and schedules with respect to the schedule of fees chargeable and waiver of fees will also be the policy of NRO. See 32 CFR 286.33.

(2) *Advance payments.* (i) Where a total fee to be assessed is estimated to exceed \$250, advance payment of the estimated fee will be required before processing of the request, except where assurances of full payment are received from a requestor with a history of prompt payment. Where a requestor has previously failed to pay a fee within 30 calendar days of the date of the billing, the requestor will be required to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, as well as make an advance payment of the full amount of any estimated fee before processing of a new or pending request continues.

(ii) For all other requests, advance payment, i.e., a payment made before work is commenced, will not be required. Payment for work already completed is not an advance payment. Responses will not be held pending receipt of fees from requestors with a history of prompt payment. Fees should be paid by certified check or postal money order forwarded to the Chief, Information Access and Release Center (IARC) and made payable to the Treasurer of the United States.

**§ 296.5 Appeals.**

Any person denied access to records, denied a fee waiver, involved in a dispute regarding fee estimates, or who considers a no record determination, or any determination to be adverse in nature, may, within 60 days after notification of such denial, file an appeal to the Freedom of Information Act Appellate Authority, National Reconnaissance Office. Such an appeal shall be in writing addressed to the Chief, Information Access and Release Center, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715, should reference the initial denial, and shall contain the basis for disagreement with the initial denial. The Freedom of Information Act Appellate Authority shall normally make a final determination on an appeal within 20 working days after receipt of the appeal.

**§ 296.6 Reading room.**

(a) The NRO shall provide a reading room equipped with hard copy and electronic records as required in the "Electronic Freedom of Information Act Amendments of 1996". The NRO Reading Room is located at 14675 Lee Road, Chantilly VA, 20151-1715 and is open weekdays only from 8:00 am until

<sup>1</sup> Copies may be obtained via internet at <http://web7.whs.osd.mil/corres/htm>.

4:00 p.m. Requestors must call for an appointment twenty-four (24) hours in advance so that optimum customer service can be provided. (703) 808-5029. Fees will be charged for duplication of hard copy records at \$.15 per page after the first 100 pages. Softcopy media provided to visitors is assessed as follows:

- (1) 5.25" Floppy diskette \$0.50
- (2) 3.5" Floppy diskette \$0.50
- (3) CD-R Media \$3.75
- (4) Video Tape \$4.00.

(b) The NRO FOIA Electronic Reading Room is located on the NRO Home Page: [www.nro.odci.gov](http://www.nro.odci.gov).

Dated: December 9, 1999.

**L.M. Bynum,**

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

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 299

RIN 0790-AG59

### National Security Agency/Central Security Service (NSA/CSS) Freedom of Information Act Program

**AGENCY:** National Security Agency/Central Security Service, Defense.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the National Security Agency/Central Security Services (NSA/CSS) regulation governing disclosure of information under the Freedom of Information Reform Act of 1986. As a component of the Department of Defense, the Departmental rules and schedules with respect to the Freedom of Information Reform Act will also be the policy of the NSA/CSS. The effect of the revised rule is to conform to the requirements of the Electronic Freedom of Information Act Amendments of 1996. It also incorporates guidance provided by the Department of Defense on implementation of this amended law.

**EFFECTIVE DATE:** August 31, 1999.

**FOR FURTHER INFORMATION CONTACT:** Barbara Paisley, FOIA Office, National Security Agency. (301) 688-6527.

**SUPPLEMENTARY INFORMATION:** This rule does not constitute a major rule within the meaning of Executive Order 12866. Neither the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), nor the reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (Pub.

L. 104-13) apply. It is hereby certified that this proposed rule does not exert a significant economic impact on a significant number of small entities. This determination is made based upon the fact that the rule merely updates the procedural aspects of the NSA/CSS Freedom of Information Act Program, which include guidance on how and from whom to request information pertaining to the NSA/CSS; imposes no new requirements, rights, or benefits on small entities; will have neither a beneficial nor an adverse affect on small entities, and is not a major rule under the Regulatory Flexibility Act.

### List of Subjects in 32 CFR Part 299

Freedom of information.

Accordingly, 32 CFR part 299 is revised to read as follows:

### PART 299—NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE (NSA/CSS) FREEDOM OF INFORMATION ACT PROGRAM

Sec.

- 299.1 Purpose.
- 299.2 Definitions.
- 299.3 Policy.
- 299.4 Responsibilities.
- 299.5 Procedures.
- 299.6 Fees.
- 299.7 Exempt records.

**Authority:** 5 U.S.C. 552.

#### § 299.1 Purpose.

(a) This part implements 5 U.S.C. 552, as amended, and DoD 5400.7-R,<sup>1</sup> assigns responsibility for responding to written requests made pursuant to 5 U.S.C. 552; and provides for the review required to determine the appropriateness of classification pursuant to DoD 5200.1-R.<sup>2</sup>

(b) This part applies to all NSA/CSS elements, field activities and personnel, and governs the release or denial of any information under the terms of the Freedom of Information Act (FOIA).

#### § 299.2 Definitions.

Terms used in this part, with the exception of the terms in § 299.4, are defined in DoD 5400.7-R. For ease of reference, however, some terms are defined in this section.

(a) FOIA request. (1) A written request for NSA/CSS records, that reasonably describes the records sought, made by any person, including a member of the public (U.S. or foreign citizen/entity), an organization or a business, but not including a Federal Agency or a fugitive from the law that either explicitly or

implicitly invokes 5 U.S.C. 552, as amended, DoD 5400.7-R, or NSA/CSS Freedom of Information Act Program, within the National Security Agency/Central Security Service. Requesters should also indicate a willingness to pay fees associated with the processing of their request or, in the alternative, why a waiver of fee may be appropriate.

(2) An FOIA request may be submitted by U.S. mail or its equivalent, by facsimile or electronically through the NSA FOIA Home Page on the World Wide Web (WWW) once the development of a Web-based procedure for submitting FOIA requests is completed. The Web-based system will consist of a form to be completed by the requester, requiring name and postal mailing address. The WWW address is <http://www.nsa.gov.8080/docs/efoia/>.

(3) When a request meeting the requirements stated in this section is received by the FOIA office and there is no remaining question about fees, that request is considered perfected.

(b) *Privacy Act (PA) request.* A request submitted by a U.S. citizen or an alien admitted for permanent residence for access to records on himself/herself which are contained in a PA system of records and/or seeking an amendment to his/her records. For purposes of this part, PA request refers to a request for copies of records. Regardless of whether the requester cites the FOIA, PA or neither law, the request will be processed under both this part and NSA/CSS Regulation 10-35, Implementation of the Privacy Act of 1974.<sup>3</sup>

(c) *Agency records.* (1) Products of data compilation, such as all books, papers, maps, and photographs, machine readable materials, including those in electronic form or format (including e-mails), or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in NSA/CSS's possession and control at the time the FOIA request is made. The term "records" does not include:

(i) objects or articles such as structures, furniture, vehicles and equipment, whatever their historical value or value as evidence;

(ii) Intangible records such as an individual's memory or oral communication; and

(iii) Personal records of an individual not subject to agency creation or

<sup>1</sup> Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

<sup>2</sup> See footnote 1 to this section.

<sup>3</sup> Copies may be obtained through a FOIA request to the National Security Agency, Ft. George G. Meade, MD 20755-6000.