



**3670-01**

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD**

**10 CFR Part 1703**

**Docket No. DNFSB-2017-0001**

**RIN 3155-AA00**

**Freedom of Information Act**

**AGENCY:** Defense Nuclear Facilities Safety Board.

**ACTION:** Final rule.

**SUMMARY:** The Freedom of Information Act (FOIA) Improvement Act of 2016 requires each Federal agency to issue regulations implementing its statutory provisions. In this final rule, the Defense Nuclear Facilities Safety Board amends its regulations to comply with the statutory direction.

**DATES:** This rule is effective on July 26, 2017.

**FOR FURTHER INFORMATION CONTACT:** James Biggins, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004-2901, (202) 694-7000.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Defense Nuclear Facilities Safety Board (DNFSB) implements the Freedom of Information Act through its regulations found at 10 CFR part 1703. This rule amends the DNFSB's regulations to incorporate certain changes made to the FOIA, 5 U.S.C. 552, by the FOIA Improvement Act of 2016 (Public Law 114-185, 130 Stat. 538 (2016)). The FOIA Improvement Act also requires agency regulations to address dispute resolution procedures and to provide notification to requestors about the availability of dispute resolution services. The FOIA Improvement Act requires the DNFSB to issue regulations which incorporate the changes made by the FOIA Improvement Act. This rule updates the DNFSB regulations in 10 CFR part 1703 to reflect those statutory changes.

The FOIA Improvement Act requires a change to the DNFSB's fee schedule, which will be updated in a separate notice. The fee schedule was last published in the Federal Register on August 28, 2015, 80 Fed. Reg. 52174. Pursuant to the FOIA Improvement Act, the DNFSB will not assess any search fees if it has failed to comply with any time limit for response to the request absent an extension of its time limit.

The FOIA Improvement Act requires agencies to designate a FOIA Public Liaison and also elevates the responsibility of the Chief FOIA Officer. Additionally the Act adds to the agency record reporting requirements. The DNFSB will provide this information through its FOIA electronic reading room. The Chief FOIA officer is the DNFSB Deputy General Manager, and will designate a FOIA Public Liaison. Information about how to contact the FOIA Public Liaison will be available through the DNFSB FOIA electronic reading room.

The DNFSB is issuing this rule as a final rule without the opportunity for public comment. The agency finds, for good cause, that allowing for notice and public comment is unnecessary. The changes made to the DNFSB implementing regulations reduce the burden on requestors, provide additional dispute resolution alternatives, and require the DNFSB to meet its response deadlines or waive the fees in whole or in part. The changes to the regulations are mandated by statute. The DNFSB has also reviewed public comments provided to other Federal agencies that have issued their regulations for public comment, and the DNFSB has used those comments to inform its regulations.

## **II. Regulatory Analysis**

### *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 601-612, agencies must consider the impact of their rulemakings on “small entities” (small businesses, small organizations, and local governments). The DNFSB has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This rule decreases the regulatory burden for requestors under FOIA, waives fees under certain circumstances, and provides additional dispute resolution options. Additionally, the agency received 21 FOIA requests in fiscal year 2016 and charged \$0.00 in fees. The DNFSB therefore determines and certifies that these amendments to its FOIA implementing regulations will not have a significant economic impact on a substantial number of small entities.

### *Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it

will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, as amended, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

*Paperwork Reduction Act*

The Paperwork Reduction Act (PRA) establishes certain requirements when an agency conducts or sponsors a “collection of information.” 44 U.S.C. 3501-3520. The amendments to the DNFSB regulations implementing FOIA are required by the FOIA Improvement Act of 2016. The amendments to the DNFSB regulations do not require or request information, but rather, explain the agency’s FOIA procedures. Submitting a request for agency records under FOIA is voluntary, so the information collected from requestors is not covered by the restrictions of the PRA.

*Executive Order 12988 and Executive Order 13132 – Federalism*

According to Executive Orders 12988 and 13132, agencies must state in clear language the preemptive effect, if any, of new regulations. The amendments to the agency’s FOIA implementing regulations affect only FOIA requests submitted to the agency, and therefore, have no effect on preemption of State, tribal, or local government laws or otherwise have federalism implications.

### *Congressional Review Act*

This rule will not result in and is not likely to result in (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. As such, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

### *Finding of No Significant Environmental Impact*

The proposed regulations amend the DNFSB procedures for processing FOIA requests. The procedural changes to the FOIA implementing regulations will not result in significant impacts affecting the quality of the human environment, unavoidable adverse environmental effects, rejection of reasonable alternatives to the proposed action, or irreversible or irretrievable commitments of environmental resources. The agency has not consulted with any other agencies in making this determination.

### **III. Section by Section Analysis**

#### *Section 1703.103 Requests for board records available through the public reading room.*

Paragraph (a) is revised to identify the transition from a physical public reading room to an electronic public reading room. The FOIA Improvement Act mandates that certain records previously made available to the public through a public reading room, now be available for public inspection in an electronic format. The DNFSB has been in

the practice for several years to make its FOIA records publicly available in an electronic format on its public website (<https://www.dnfsb.gov>). The DNFSB FOIA records will be available through its electronic reading room on its website (<https://www.dnfsb.gov/foia-reading-room>).

*Section 1703.104 Board records exempt from public disclosure.*

The Board is removing this section as unnecessary. The Board will apply the exemptions allowed by the FOIA, as amended, in determining whether to withhold a document from disclosure pursuant to a FOIA request. The re-statement of the FOIA exemptions in its regulation does not expand or narrow the scope of the exemptions and is unnecessary for either implementation or interpretation.

*Section 1703.107 Fees for record requests.*

The Board is amending this section to make explicit the waiver of fees if the Board does not meet its response deadlines under the FOIA Improvement Act.

*Section 1703.109 Procedure for appeal or denial of requests for board records and denial of requests for fee waiver or reduction.*

The Board is amending this section to provide notice of availability of assistance from the agency FOIA Public Liaison and the Office of Government Information Services. The DNFSB will work with the Office of Government Information Services on any issue referred to them for alternative dispute resolution. The FOIA Improvement Act provides the right of a requestor to seek assistance with the FOIA request or to seek dispute resolution services. The section is also being amended to allow an appeal from an adverse decision on access within 90 days of the denial.

## List of Subjects in 10 CFR Part 1703

Freedom of information

For the reasons stated in the preamble, the Defense Nuclear Facilities Safety Board amends 10 CFR Chapter 17, part 1703 as follows:

### **PART 1703 -- PUBLIC INFORMATION AND REQUESTS**

1. The authority citation for part 1703 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 552; 31 U.S.C. 9701; 42 U.S.C. 2286b.

2. Amend section 1703.103 by revising the section heading and paragraphs (a) and (b) introductory text to read as follows:

#### **§ 1703.103 Requests for agency records available through the electronic reading room.**

(a) The DNFSB will maintain an electronic reading room on its public website at *<https://www.dnfsb.gov/foia-reading-room>*. Records may be obtained by accessing and downloading them from the electronic reading room. The electronic reading room is intended to provide easy accessibility to a substantial collection of the agency's records. The agency considers the records available through its electronic reading room to have been placed in the public domain.

(b) The public records of the agency that are available in the electronic reading room or through links from the electronic reading room include:

\* \* \* \* \*

#### **§ 1703.104 [Removed and Reserved]**

3. Remove and reserve § 1703.104.

4. Amend § 1703.107 by adding paragraph (b)(2)(iv) to read as follows:

**§ 1703.107 Fees for record requests.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iv) The Board will not assess any fees if it has failed to meet its deadlines in § 1703.108.

\* \* \* \* \*

5. Amend §1703.109 by revising paragraph (a) to read as follows:

**§ 1703.109 Procedure for appeal of denial of requests for board records and denial of requests for fee waiver or reduction.**

(a)(1) A person whose request for access to records in whole or in part may appeal that determination to the General Counsel within 90 days of the determination. A person denied a fee waiver or reduction may appeal that determination to the General Counsel within 30 days. The person may also seek assistance from the FOIA Public Liaison of the agency. Appeals filed pursuant to this section must be in writing, directed to the General Counsel at the address indicated in §1703.105(b)(2), and clearly marked “Freedom of Information Act Appeal.” Such an appeal received by the Board not addressed and marked as indicated in this paragraph will be so addressed and marked by Board personnel as soon as it is properly identified and then will be forwarded to the General Counsel.

(2) The General Counsel shall make a determination with respect to any appeal within 20 working days after the receipt of such appeal. If, on appeal, the denial of the request for records or fee reduction is in whole or in part upheld, the General Counsel shall notify the person making such request of the provisions for judicial review of that determination.

(3) The requestor may request that the FOIA Public Liaison refer the denial to be reviewed through dispute resolution services or may request the Office of Government Information Services within the National Archives and Records Administration to review the denial.

\* \* \* \* \*

Dated: June 27, 2017

**Sean Sullivan**

Chairman.

[FR Doc. 2017-13863 Filed: 6/30/2017 8:45 am; Publication Date: 7/3/2017]