

### A. Trimming of the Data Set

9. The Commission calculated the proposed index level by trimming the data set to the middle 50 percent of all oil pipelines, consistent with the Commission's practice in the 2010 and 2015 index reviews.<sup>22</sup> We encourage commenters to address whether the Commission should continue to trim the data set to the middle 50 or adopt an alternative approach to data trimming, such as returning to the Commission's prior practice of considering the middle 80<sup>23</sup> or any other approach. Commenters should explain why any such alternative approach is superior to the middle 50 and how it would appropriately address outliers and spurious data that could bias the results in either direction.

### B. Cost-of-Service Policy Changes

10. As discussed above, the Commission uses the Kahn Methodology to measure changes in pipeline costs using page 700 data from the prior five-year period. Accordingly, the Commission's proposal incorporates the effects of the income tax policy change on industry-wide oil pipeline costs because this policy change is reflected in pipelines' page 700 data. The Commission's proposal does not include the effects of the ROE policy change because page 700 data reflecting that policy change has yet to be filed. However, as explained in the ROE Policy Statement, the Commission will afford pipelines an opportunity to file this data for consideration in this five-year index review.<sup>24</sup> As discussed above, interested persons may address whether, and if so how, the Commission should reflect the effects of cost-of-service policy changes (including the income tax policy change<sup>25</sup> and the ROE policy change<sup>26</sup>) in the calculation of the index level.

11. However, this proceeding is not the appropriate forum to litigate the merits of the policy changes themselves. Litigating the merits of cost-of-service policy changes in the five-year index review is inappropriate for several reasons. First, the index adjusts for and the effects of subsequent changes to the Commission's cost-of-service policies which could be incorporated into the

index level in the next five-year index review. Second, litigating policy changes in the five-year index review would be impractical because, whereas the Commission's policies are continually evolving, the five-year index review is based upon a snapshot of pipeline cost changes during the applicable review period. Third, litigating policy changes would improperly complicate and prolong the five-year index review by introducing complex cost-of-service issues that can require years to resolve.<sup>27</sup> The Commission must complete this five-year index review in order to establish the index level in sufficient time for it to be used by pipelines in the index filings to be effective July 1, 2021. Finally, cost-of-service rate proceedings, where participants and the Commission have a full opportunity to develop an evidentiary record, are a more appropriate forum for litigating policy changes than the generic, industry-wide proceeding on the five-year index review.

### III. Comment Procedures

12. Initial Comments are due on or before August 17, 2020 and Reply Comments are due on or before September 11, 2020. Comments must refer to Docket No. RM20-14-000, and must include the name of the commenter, the organization they represent, if applicable, and their address.

13. We encourage comments to be filed electronically via the eFiling link on the Commission's website at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. All supporting workpapers must be submitted with formulas and in a spreadsheet format acceptable under the Commission's eFiling rules. Commenters filing electronically do not need to make a paper filing.

14. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

15. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters

are not required to serve copies of their comments on other commenters.

### IV. Document Availability

16. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020.

17. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

18. User assistance is available for eLibrary and the Commission's website during normal business hours. For assistance, please contact the Commission's Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

By direction of the Commission.

Issued: June 18, 2020.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2020-13623 Filed 7-1-20; 8:45 am]

**BILLING CODE 6717-01-P**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 286

[Docket ID: DOD-2019-OS-0069]

RIN 0790-AK54

### DoD Freedom of Information Act (FOIA) Program; Amendment

**AGENCY:** Department of Defense.

**ACTION:** Proposed rule; amendment.

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**SUMMARY:** The Department of Defense (DoD) is proposing to amend its Freedom of Information Act (FOIA) regulation, which last published in the **Federal Register** as a final rule on

<sup>22</sup> 2015 Index Review, 153 FERC ¶ 61,312 at PP 42-44; 2010 Index Review, 133 FERC ¶ 61,228 at PP 60-63.

<sup>23</sup> See, e.g., 2005 Index Review, 114 FERC ¶ 61,293.

<sup>24</sup> ROE Policy Statement, 171 FERC ¶ 61,155 at P 93.

<sup>25</sup> Income Tax Policy Statement, 162 FERC ¶ 61,227 at P 8.

<sup>26</sup> ROE Policy Statement, 171 FERC ¶ 61,155 at P 2.

<sup>27</sup> See, e.g., *SFPP, L.P.*, Opinion No. 511-C, 162 FERC ¶ 61,228, at PP 4-7 (2018) (noting that the litigation culminating in the 2018 income tax policy change began in 2008).

February 6, 2018, to update certain administrative aspects of the Department's implementation of the FOIA, including adding an additional FOIA Requester Service Center. DoD is also proposing to clarify, by adopting the standards set forth in the Department of Justice's (DOJ) Template for Agency FOIA Regulations, that the decision to participate in FOIA alternative dispute resolution services is voluntary on the part of the requestor and DoD.

**DATES:** Comments must be received by August 31, 2020.

**ADDRESSES:** You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by any of the following methods:

*Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Mail:* DoD cannot receive written comments at this time due to the COVID-19 pandemic. Comments should be sent electronically to the docket listed above.

*Instructions:* All submissions received must include the agency name and docket number or RIN for this document. The general policy is for submissions to be made available for public viewing at <http://www.regulations.gov> without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Melissa Walker at 571-372-0462.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

Under the FOIA, 5 U.S.C. 552, agencies are afforded a certain amount of discretion in administratively implementing the Act. For example, agencies can designate which of their Components are authorized to receive FOIA requests. In this proposed amendment, DoD is adding the United States Cyber Command (USCYBERCOM) as an authorized FOIA Requester Service Center. Since the service center has already been implemented, DoD is seeking to align the rule with the action. DoD also seeks to update the list of those Components serviced by the Office of the Secretary of Defense and Joint Staff FOIA Requester Service Center.

Further, this proposed amendment seeks to clarify language concerning DoD's participation in FOIA "Dispute Resolution," found in § 286.4. This proposed amendment, which adopts the standard set forth in DOJ's Template for Agency FOIA Regulations, clarifies that DoD possesses the discretion to

determine whether to participate in FOIA alternative dispute resolution when it is requested by a requester.

The amendments become effective once this rule is published as a final rule. The Department does not anticipate any cost associated with this proposed amendment.

**Summary of the Revisions Implemented by This Rule**

DoD is proposing to make amendments to update the listed designated FOIA Requester Service Centers and to correct language concerning FOIA alternative dispute resolution.

**Authority**

According to the FOIA, 5 U.S.C. 552, an agency may, in its published administrative rules and regulations, designate those components that can receive FOIA requests. Additionally, the FOIA requires agencies to establish FOIA Public Liaisons, which are responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

**Regulatory History**

On February 6, 2018 (83 FR 5196-5197), the Department of Defense published a final rule that revised Department of Defense (DoD) Freedom of Information Act (FOIA) regulation to implement the FOIA and incorporate the provisions of the Openness Promotes Effectiveness in our National Government Act of 2007 and the FOIA Improvement Act of 2016.

**Regulatory Impact Analysis**

We developed this rule after considering numerous statutes and Executive Orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes or E.O.s.

**Costs**

The Department does not anticipate any costs associated with this rule change. Prior to establishing its own FOIA Requester Service Center, USCYBERCOM's FOIA requests were serviced by the United States Strategic Command FOIA Requester Service Center. Since FOIA requests concerning USCYBERCOM previously existed, the cost associated with processing the request is unchanged and would be realigned from USSTRATCOM to the new FOIA Requester Service Center.

**Benefits**

The benefit of USCYBERCOM establishing its own FOIA Requester Service Center is that FOIA action officers would have a direct and deeper knowledge of USCYBERCOM records, allowing for requests to be more readily completed within statutory timelines.

This amendment also clarifies that DoD possesses the discretion to determine whether to participate in FOIA alternative dispute resolution when it is requested by a requester. This clarification is necessary to ensure that requesters understand FOIA alternative dispute resolution is voluntary on the part of both parties and the Agency, as one of the parties to the mediation, may choose not to mediate a given FOIA dispute on a case-by-case basis. Furthermore, adding this language clarifies that the alternative dispute resolution process is governed by the National Archives and Records Administration, the Office of Government Information Service (OGIS) as mandated by the Freedom of Information Act.

**Executive Orders**

*Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that this rule is not a significant regulatory action.

*Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs"*

This rule has been deemed not significant under Executive Order (E.O.) 12866, "Regulatory Planning and Review," therefore, the requirements of E.O. 13771, "Reducing Regulation and Controlling Regulatory Costs" do not apply.

*Congressional Review Act*

This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*Public Law 104-4, "Unfunded Mandates Reform Act" (2 U.S.C. Ch. 25)*

This proposed rule is not subject to the Unfunded Mandates Reform Act because it does not contain a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 M or more in any one year.

*Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. Ch. 6)*

It has been certified that this proposed rule is not subject to the Regulatory Flexibility Act because it does not have a significant economic impact on a substantial number of small entities. The rule will implement the procedures for processing FOIA requests within the Department of Defense, which do not create such an impact.

*Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Ch. 35)*

This proposed rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

*Executive Order 13132, "Federalism"*

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. This proposed rule will not have a substantial effect on state and local governments, or otherwise have federalism implications.

**List of Subjects in 32 CFR Part 286**

Freedom of information.

Accordingly, 32 CFR part 286 is proposed to be amended to read as follows:

**PART 286—DOD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM**

■ 1. The authority citation for part 286 continues to read as follows:

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

**§ 286.3 [Amended]**

■ 2. Amend § 286.3 by:

■ a. In paragraph (a):

■ i. Adding the words "United States Cyber Command," after the words "United States Central Command."

■ ii. Removing the words "Defense Security Service" and adding in its place the words "Defense Counterintelligence and Security Agency."

■ b. In paragraph (b):

■ i. Adding the words "Defense Digital Service," after the words "Defense Advanced Research Projects Agency."

■ ii. Adding the words "Defense Innovation Unit," after the words "Defense Equal Opportunity Management Institute."

■ iii. Adding the words "Space Development Agency," after the words "Pentagon Force Protection Agency."

■ iv. Removing the words "Joint Improvised-Threat Defeat Agency."

■ 3. Amend § 286.4 by revising paragraph (b) to read as follows:

**§ 286.4 FOIA Public Liaisons and the Office of Government Information Services.**

\* \* \* \* \*

(b) Engaging in dispute resolution services provided by OGIS. These dispute resolution processes are voluntary processes. If a DoD Component agrees to participate in the dispute resolution services provided by the Office of Government Information Services (OGIS), it will actively engage as a partner to the process in an attempt to resolve the dispute.

**§ 286.11 [Amended]**

■ 4. Amend § 286.11 by:

■ a. In paragraph (b)(1), removing the words "Defense Security Service" and adding in its place the words "Defense Counterintelligence and Security Agency."

■ b. In paragraph (b)(2), adding the words "United States Cyber Command," after the words "United States Central Command."

Dated: June 19, 2020.

**Aaron T. Siegel,**

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

[FR Doc. 2020-13608 Filed 7-1-20; 8:45 am]

**BILLING CODE 5001-06-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 86 and 600**

**[EPA-HQ-OAR-2016-0604; FRL-10010-95-OAR]**

**RIN 2060-AT21**

**Public Hearing for Vehicle Test Procedure Adjustments for Tier 3 Certification Test Fuel**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notification of public hearing.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing a virtual public hearing to be held July 13, 2020, on its proposed Vehicle Test Procedure

Adjustments for Tier 3 Certification Test Fuel rule, which was published on May 13, 2020. EPA is proposing adjustment factors to apply to vehicle GHG and fuel economy test results for the GHG and CAFE programs and the Fuel Economy and Environment Label as EPA separately implements changes in light-duty vehicle gasoline test fuel properties.

**DATES:** EPA will hold a virtual public hearing on July 13, 2020. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

**ADDRESSES:** The virtual public hearing will be held on July 13, 2020. The hearing will begin at 1 p.m. Eastern Time (ET) and end when all parties who wish to speak have had an opportunity to do so. All hearing attendees (including even those who do not intend to provide testimony) should notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** by July 8, 2020. Additional information regarding the hearing appears below under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Tad Wysor, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734-214-4332; email address: [ASD-Registration@epa.gov](mailto:ASD-Registration@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA is proposing adjustment factors to apply to vehicle GHG and fuel economy test results for the GHG and CAFE programs and the Fuel Economy and Environment Label as EPA separately implements changes in light-duty vehicle gasoline test fuel properties under the Tier 3 Motor Vehicle Emission and Fuel Standards (Tier 3 final rule at 79 FR 23414, April 28, 2014).

*Participation in virtual public hearing.* Please note that EPA is deviating from its typical approach because the President has declared a national emergency. Because of current CDC recommendations, as well as state and local orders for social distancing to limit the spread of COVID-19, EPA cannot hold in-person public meetings at this time.

The virtual public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposal (which is available at <https://www.epa.gov/regulations-emissions-vehicles-and-engines/vehicle-test-procedure-adjustments-tier-3-certification>). EPA may ask clarifying questions during the oral presentations but will not respond to the