

intervention services and special education; requires the schools to advise students of their rights one year prior to the age of majority; sets the age of majority for students in the DoDDS as 18, and for students in the DDESS as the age of majority for the State in which the DDESS is located; consolidates the former National Advisory Panel and the Domestic Advisory Panel into one and requires the majority of advisory panel members be persons with disabilities or the parents of children with disabilities.

#### **Executive Order 12866, "Regulatory Planning and Review"**

It has been determined that 32 CFR part 57 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

#### **Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104-4)**

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

#### **Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)**

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule pertains only to the provision of special education and early intervention by Department of Defense entities not by any other entity.

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

It has been certified that this rule does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

#### **Federalism (Executive Order 13132)**

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of government.

#### **List of Subjects in 32 CFR Part 57**

Education of individuals with disabilities, Elementary and secondary education, Government employees, Military personnel.

#### **PART 57—PROVISION OF EARLY INTERVENTION AND SPECIAL EDUCATION SERVICES TO ELIGIBLE DOD DEPENDENTS**

■ Accordingly, the interim rule revising 32 CFR part 57 published at 69 FR 32662 on June 10, 2004, is adopted as a final rule without change.

Dated: December 11, 2007.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, DoD.*

[FR Doc. E7-24353 Filed 12-18-07; 8:45 am]

**BILLING CODE 5001-06-P**

## **DEPARTMENT OF DEFENSE**

### **Office of the Secretary**

[DoD-2007-OS-0041; RIN 0790-AI21]

#### **32 CFR Part 285**

#### **DoD Freedom of Information Act (FOIA) Program**

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** The Department of Defense is updating current policies and procedures reflecting the DoD FOIA Program as prescribed by Executive Order 13392. The changes will ensure appropriate agency disclosure of information and offer consistency with the goals of section 552 of title 5, United States Code.

**DATES:** *Effective Date:* This rule is effective December 19, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Hogan, 703-696-4495.

**SUPPLEMENTARY INFORMATION:**

#### **Executive Order 12866, "Regulatory Planning and Review"**

On June 15, 2007, the Department of Defense published a proposed rule (72 FR 33180). No comments were received.

It has been certified that 32 CFR part 285 does not:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

#### **Section 202, Pub. L. 104-4, "Unfunded Mandates Reform Act"**

It has been certified that 32 CFR part 285 does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

#### **Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)**

It has been certified that 32 CFR part 285 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

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

It has been certified that 32 CFR part 285 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

#### **Executive Order 13132, "Federalism"**

It has been certified that 32 CFR part 285 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of Government.

#### **List of Subjects in 32 CFR Part 285**

Freedom of information.

Accordingly, 32 CFR part 285 is revised as follows.

#### **PART 285—DOD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM**

Sec

285.1 Purpose.

- 285.2 Applicability and scope.  
 285.3 Policy.  
 285.4 Responsibilities.  
 285.5 Information requirements.

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

#### § 285.1 Purpose.

This part:

(a) Updates policies and responsibilities for implementing the DoD FOIA Program in accordance with 5 U.S.C. 552 (commonly known as the "FOIA").

(b) Continues to authorize 32 CFR part 286 to implement the FOIA Program.

(c) Implements E.O. 13392 within the Department of Defense.

(d) Continues to delegate authorities and responsibilities for the effective administration of the FOIA Program consistent with DoD Directive 5105.53<sup>1</sup>.

#### § 285.2 Applicability.

This part applies to:

(a) The Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components").

(b) National Security Agency/Central Security Service records, unless the records are exempt according to 50 U.S.C. 402.

(c) Defense Intelligence Agency, National Reconnaissance Office, and National Geospatial-Intelligence Agency records, unless the records are exempt according to 50 U.S.C. 403-5e, 10 U.S.C. 424 and 455, or other applicable law.

#### § 295.3 Policy.

It is DoD policy to:

(a) Promote public trust by making the maximum amount of information available to the public, in both hard copy and electronic formats, on the operation and activities of the Department of Defense, consistent with the DoD responsibility to protect national security and other sensitive DoD information.

(b) Allow a requester to obtain records from the Department of Defense that are available through other public information services without invoking the FOIA.

(c) Make available, according to the procedures established by DoD 32 CFR part 286, DoD records requested by a

member of the public who explicitly or implicitly cites the FOIA.

(d) Answer promptly all other requests for DoD information and records under established procedures and practices.

(e) Release DoD records to the public unless those records are exempt from disclosure as outlined in 5 U.S.C. 552.

(f) Process requests by individuals for access to records about themselves contained in a Privacy Act system of records according to the procedures set forth in 32 CFR part 310 and this part, as amplified by DoD 32 CFR part 286.

(g) Provide FOIA requesters with citizen-centered ways to learn about the FOIA process, about DoD records that are publicly available, and about the status of a FOIA request and appropriate information about the DoD response.

#### § 285.4 Responsibilities.

(a) The Director, Administration and Management (DA&M) shall:

(1) Serve as the DoD Chief FOIA Officer in accordance with E.O. 13392.

(2) Direct and oversee the DoD FOIA Program to ensure compliance with the policies and procedures that govern administration of the program.

(3) Designate the FOIA Public Liaisons for the Department of Defense in accordance E.O. 13392. The FOIA Public Liaisons for OSD, the Office of the Chairman of the Joint Chiefs of Staff, and the Combatant Commands shall be appointed from the Defense Freedom of Information Policy Office (DFOIPO).

(4) Prepare and submit to the Attorney General the DoD Annual Freedom of Information Act Report as required by 5 U.S.C. 552 and other reports as required by E.O. 13392.

(5) Serve as the appellate authority for appeals to the decisions of the respective Initial Denial Authorities within OSD, the Office of the Chairman of the Joint Chiefs of Staff, the DoD Field Activities (listed in DoD 32 CFR part 286), and the Combatant Commands. The DA&M may delegate this responsibility to an appropriate member of the DA&M or Washington Headquarters Services (WHS) staff.

(6) Prepare and maintain a DoD issuance and other discretionary information to ensure timely and reasonably uniform implementation of the FOIA in the Department of Defense.

(b) The Director, WHS, under the authority, direction, and control of the DA&M, shall administer the FOIA Program, inclusive of training, for OSD and the Office of the Chairman of the Joint Chiefs of Staff.

(c) The General Counsel of the Department of Defense shall:

(1) Provide uniformity in the legal interpretation of this part.

(2) Ensure affected OSD legal advisors, public affairs officers, and legislative affairs officers are aware of releases through litigation channels that may be of significant public, media, or Congressional interest or of interest to senior DoD officials.

(3) Establish procedures to centralize processing of FOIA litigation documents when deemed necessary.

(d) The Under Secretary of Defense for Intelligence shall establish uniform procedures regarding the declassification of national security information made pursuant to requests invoking the FOIA.

(e) The Heads of the DoD Components shall:

(1) Internally administer the DoD FOIA Program; publish any instructions necessary for the administration of this part within their Components that are not prescribed by this part or by other DA&M issuances in the **Federal Register**.

(2) Serve as, or appoint another Component official as, the FOIA appellate authority for the Component.

(3) Establish one or more FOIA Requester Service Centers as prescribed by E.O. 13392.

(4) Submit names of personnel to the DA&M for designation as FOIA Public Liaisons.

(5) Ensure their respective chains of command, affected legal advisors, public affairs officers, and legislative affairs officers are aware of releases through the FOIA, inclusive of releases through litigation channels, that may be of significant public, media, or Congressional interest or of interest to senior DoD officials.

(6) Conduct training on the provisions of this part, 5 U.S.C. 552, and DoD 32 CFR part 286 for officials and employees who implement the FOIA.

(7) Submit to DFOIPO inputs to the DoD FOIA Annual Report prescribed in DoD 32 CFR part 286 and E.O. 13392.

(8) Make the records specified in 5 U.S.C. 552(a)(2) unless such records are published and copies are offered for sale, available for public inspection and copying in an appropriate facility or facilities according to rules published in the **Federal Register**. These records shall be made available to the public in both hard copy and electronic formats.

(9) Maintain and make current indices of all records available for public inspection and copying as required by 5 U.S.C. 552(a)(2).

#### § 285.5 Information requirements.

Reporting requirements are in DoD 32 CFR part 286 and have been assigned Report Control Symbol DD-DA&M(A)1365 in accordance with DoD 8910.1-M.

<sup>1</sup>Copies of DoD Directives, Instructions, and Publications may be obtained at <http://www.dtic.mil/whs/directives/>.

Dated: December 11, 2007.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison  
Officer, DoD.*

[FR Doc. E7-24355 Filed 12-18-07; 8:45 am]

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## LIBRARY OF CONGRESS

### Copyright Royalty Board

#### 37 CFR Part 382

[Docket No. 2006-1 CRB DSTRA]

#### Adjustment of Rates and Terms for Preexisting Subscription and Satellite Digital Audio Radio Services

**AGENCY:** Copyright Royalty Board,  
Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Royalty Judges are publishing final regulations setting the royalty rates and terms for the use of sound recordings and the making of ephemeral phonorecords by preexisting subscription services for the period 2008-2012.

**DATES:** *Effective Date:* January 1, 2008.

*Applicability Date:* The regulations apply to the license period January 1, 2008, through December 31, 2012.

**FOR FURTHER INFORMATION CONTACT:** Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney-Advisor, by telephone at (202) 707-7658 or e-mail at [crb@loc.gov](mailto:crb@loc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 106(6) of the Copyright Act, title 17 of the United States Code, gives a copyright owner of sound recordings an exclusive right to perform the copyrighted works publicly by means of a digital audio transmission. This right is limited by section 114(d), which allows certain non-interactive digital audio services, including preexisting subscription services, to make digital transmissions of a sound recording under a compulsory license, provided the services pay a reasonable royalty fee and comply with the terms of the license. Moreover, these services may make any necessary ephemeral reproductions to facilitate the digital transmission of the sound recording under a second license set forth in section 112(e) of the Copyright Act. The terms and rates for this statutory license have been adjusted periodically by the Librarian of Congress and appear in 37 CFR Part 260. However, the Copyright Royalty and Distribution Reform Act of 2004, Public Law 108-419, transferred

jurisdiction over these rates and terms to the Copyright Royalty Judges ("Judges"). 17 U.S.C. 801(b)(1). The current rates applicable to preexisting subscription services expire on December 31, 2007.

On January 9, 2006, pursuant to 17 U.S.C. 803(b)(1)(A)(i)(V), the Copyright Royalty Judges published a notice in the **Federal Register** announcing the commencement of the proceeding to determine rates and terms of royalty payments under sections 114 and 112 for the activities of preexisting subscription services<sup>1</sup> and requesting interested parties to submit their petitions to participate. 71 FR 1455 (January 9, 2006). Petitions to participate in the proceeding were received from SoundExchange, Inc. and Music Choice.

The Judges set the schedule for the proceeding, including the dates for the filing of written direct statements as well as the dates for oral testimony. Subsequent to the filing of their written direct statements, but prior to the oral presentation of witnesses, SoundExchange and Music Choice informed the Judges that they had reached a full settlement and stated that the settlement agreement would be submitted to the Judges "for approval and adoption pursuant to 17 U.S.C. 801(b)(7)(A)." Notice of Settlement at 1-2 (filed June 12, 2007). The settlement agreement, including the proposed rates and terms, was filed on October 12, 2007.

Section 801(b)(7)(A) allows for the adoption of rates and terms negotiated by "some or all of the participants in a proceeding at any time during the proceeding" provided they are submitted to the Copyright Royalty Judges for approval. This section provides that in such event:

(i) The Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and

<sup>1</sup> The Notice also commenced and requested Petitions to Participate for the proceeding to determine rates and terms for preexisting satellite digital audio radio services ("SDARS"), as required under section 804(b)(3)(B). Unlike the preexisting subscription services, the SDARS did not reach a settlement regarding rates and terms governing their activities under sections 112 and 114 and proceeded to a full hearing before the Judges. Today's final rule applies only to preexisting subscription services.

(ii) The Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant described in clause (i) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.

17 U.S.C. 801(b)(7)(A). Accordingly, on October 31, 2007, the Judges published a Notice of Proposed Rulemaking ("NPRM") requesting comment on the proposed rates and terms, with certain modifications, submitted to the Judges. 72 FR 61585. Comments were due by November 30, 2007. In response to the NPRM, the Judges received only one comment, which was submitted by SoundExchange, supporting the adoption of the proposed regulations.

Having received no objections from a party that would be bound by the proposed rates and terms and that would be willing to participate in further proceedings, the Copyright Royalty Judges, by this notice, are adopting final regulations which set the rates and terms for the activities of preexisting subscription services under sections 114 and 112 for the license period 2008-2012.<sup>2</sup>

#### Effective Date

The final regulations adopted today are effective on January 1, 2008, which is less than 30 days from publication of the notice of the final rule. Section 553 of the Administrative Procedure Act, 5 U.S.C., provides that final rules shall not be effective less than 30 days from their publication unless, *inter alia*, the agency finds good cause, a description of which must be published with the rule. 5 U.S.C. 553(d)(3). Good cause exists in this case.

The final rules adopted today are the product of negotiations between representatives of the copyright owners of sound recordings and the preexisting subscription services performing those sound recordings. All interested parties affected by these rates and terms already have had the opportunity to participate in the process, and any additional interested parties were afforded further opportunity to participate when the Copyright Royalty Judges published them as proposed rules in the **Federal**

<sup>2</sup> As noted in the NPRM, Part 382 will also contain the rates and terms governing the SDARS' activities under sections 112 and 114. See 72 FR 61586 n.1. Consequently, the heading for Part 382 is revised to reflect the inclusion of those rates and terms. In addition, the rates and terms adopted today will appear as Subpart A while the rates and terms for the SDARS will appear in Subpart B. The SDARS' rates and terms will be published in a separate document.