

DEPARTMENT OF DEFENSE**Office of the Secretary****32 CFR Part 285**

[DOD Directive 5400.7]

RIN 0790-AG98

DOD Freedom of Information Act (FOIA) Program

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule reflects administrative changes as a result of DOD reorganization. The rule also provides guidance to DOD on implementation of the amended law.

EFFECTIVE DATE: June 17, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. D. Maier, 703-697-1160.

SUPPLEMENTARY INFORMATION:**Executive Order 12866, "Regulatory Planning and Review"**

It has been determined that 32 CFR part 285 is not a significant regulatory action. The rule 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 sector 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 the recipients thereof; or

(4) Raise novel legacy 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 32 CFR part 285 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 million or more in any one year.

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

It has been determined 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 implements the Freedom of Information Act (5 U.S.C. 552), a statute

concerning the release of Federal Government records, and does not economically impact Federal Government relations with the private sector.

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 any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 44)

Federalism (Executive Order 13132)

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 amended to read as follows:

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

1. The authority citation for 32 CFR part 285 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Section 285.1 is revised to read as follows:

§ 285.1 Reissuance and purpose.

This part:

(a) Reissues 32 CFR part 285 to update policies and responsibilities for the implementation of the DOD FOIA Program under 5 U.S.C. 552.

(b) Continues to authorize, consistent with 5 U.S.C. 552, the publication of 32 CFR part 286, the single DOD Regulation on the FOIA Program.

(c) Continues to delegate authorities and responsibilities for the effective administration of the FOIA Program.

3. Section 285.3 is amended by revising paragraph (e) to read as follows:

§ 285.3 Policy.

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

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4. Section 285.4 is amended by revising paragraph (a), removing paragraph (a)(4), redesignating paragraphs (b) and (c) as paragraphs (c)

and (d), adding a new paragraph (b), and revising newly redesignated (d)(1) as follows:

§ 285.4 Responsibilities.

(a) The Director, Washington Headquarters Service shall:

- (1) * * *
- (2) * * *
- (3) * * *

(b) The Director, Administration and Management shall, as the designee of the Secretary of Defense, serve as the sole appellate authority for appeals to decisions of respective Initial Denial Authorities within OSD, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, and the DOD Field Activities.

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(d) The Heads of the DOD Components shall:

(1) Publish in the **Federal Register** any instructions necessary for the internal administration of this part within a DOD Component that are not prescribed by this part or by other issuances of the Director, Washington Headquarters Services. For the guidance of the public, the information specified in 5 U.S.C. 552(a)(1) shall be published in accordance with DOD Directive 5025.1.

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5. Section 285.5 is revised to read as follows:

§ 285.5 Information requirements.

The reporting requirements in subpart G of 32 CFR part 286 have been assigned Report Control Symbol DD-DA&M(a) 1365.

Dated: February 6, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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AMERICAN BATTLE MONUMENTS COMMISSION**36 CFR Part 404****Revision of the Freedom of Information Act Regulations and Implementation of the Electronic Freedom of Information Act Amendments of 1996**

AGENCY: American Battle Monuments Commission.

ACTION: Final rule.

SUMMARY: The American Battle Monuments Commission is revising its regulations for responding to public requests for access to records or information under the Freedom of