

apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
50	12-1-97	01-1-98	4.50	4.00	4.00	4.00	7	8

Issued in Washington, D.C., on this 10th day of November 1997.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 285

[DoD 5400.7]

DoD Freedom of Information Act (FOIA) Program

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This revision conforms 32 CFR part 285, DoD Freedom of Information Act (FOIA) program, to the requirements of the Electronic Freedom of Information Act Amendments of 1996, as amended by Pub. L. 104-231.

EFFECTIVE DATE: September 29, 1997.

FOR FURTHER INFORMATION CONTACT:

Mr. C. Talbott, 703-697-1171.

SUPPLEMENTARY INFORMATION: On May 12, 1997 (62 FR 25875), the Department of Defense published a proposed rule for comment. No comments were received.

Executive Order 12866, Regulatory Planning and Review

It has been determined that this final rule (32 CFR part 285) 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.

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 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 this part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 285

Freedom of information.

Accordingly, 32 CFR part 285 is revised to read 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 the implementation of the DoD FOIA Program under 5 U.S.C. 552.

(b) Continues to delegate authorities and responsibilities for the effective administration of the FOIA program.

§ 285.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the

Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

(b) National Security Agency/Central Security Service records are subject to this part unless the records are exempt under section 6 of Pub. L. 86-36 (1959), codified at 50 U.S.C. 402 note. The records of the Defense Intelligence Agency, National Reconnaissance Office, and the National Imagery and Mapping Agency are also subject to this part unless the records are exempt under 10 U.S.C. 424.

§ 285.3 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 DoD responsibility to ensure national security.

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

(c) Make available, under the procedures established by 32 CFR part 286, those agency records that are requested by a member of the general public who explicitly or implicitly cites the FOIA.

(d) Answer promptly all other requests for information, agency records, objects, and articles under established procedures and practices.

(e) Release agency records to the public unless those records are exempt from mandatory disclosure as outlined in 5 U.S.C. 552. Make discretionary disclosures of exempt records or information whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption.

(f) Process requests by individuals for access to records about themselves contained in a Privacy Act system of records under procedures set forth in

DoD 5400.11-R,¹ and procedures outlined in this part amplified by 32 CFR part 286.

§ 285.4 Responsibilities.

(a) The Assistant Secretary of Defense for Public Affairs shall:

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

(2) Issue a DoD FOIA regulation and other discretionary instructions and guidance to ensure timely and reasonably uniform implementation of the FOIA in the Department of Defense.

(3) Internally administer the FOIA Program for OSD, the Chairman of the Joint Chiefs of Staff and, as an exception to DoD Directive 5100.3,² the Combatant Commands.

(4) 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.

(b) The General Counsel of the Department of Defense shall provide uniformity in the legal interpretation of this part.

(c) 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 Directive or by other issuances of the Assistant Secretary of Defense (Public Affairs). 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 5400.9.³

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

(3) Submit the report prescribed in subpart G of 32 CFR part 286.

(4) Make available for public inspection and copying in an appropriate facility or facilities, in accordance with rules published in the **Federal Register**, the records specified in 10 U.S.C. 552(a)(2), unless such records are published and copies are offered for sale. These records shall be made available to the public in hard copy, by computer telecommunications, or other electronic means.

(5) Maintain and make available for public inspection and copying current indices of all (a)(2) records as required by 10 U.S.C. 552(a)(2).

§ 285.5 Information requirements.

The reporting requirements in subpart G of 32 CFR part 286 have been assigned Report Control Symbol DD-PA(A) 1365.

Dated: November 5, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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BILLING CODE 5000-04-M

POSTAL SERVICE

39 CFR Part 111

Eligibility Requirements for Certain Nonprofit Standard Mail Rate Matter

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This notice adopts a proposed rule which was published in the **Federal Register** on September 8, 1997 (62 FR 47178-47179). It amends the regulations of the Postal Service governing the eligibility requirements for mail to be sent at the Nonprofit Standard Mail rates of postage. For the most part, this final rule adopts the proposal as it was published with changes suggested in comments received from interested parties.

EFFECTIVE DATE: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease, 202-268-5188.

SUPPLEMENTARY INFORMATION: The proposed rule discussed in detail the common practice of nonprofit organizations to offer premium items, such as tote bags, umbrellas, t-shirts, and coffee mugs when seeking contributions or membership dues payments from new members. As explained in the proposed rule, by statute, material that advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of any product or service, other than separately restricted travel, insurance, and financial instruments such as credit cards, is ineligible for the nonprofit rates of postage unless the sale of the product or the provision of such service is substantially related to the exercise or performance by the organization of one or more of the purposes used by the organization to qualify for mailing at the Nonprofit Standard Mail rates or other prescribed exceptions are met. 39 U.S.C. 3626(j)(1)(D).

The Postal Service promulgated standards implementing the statute effective October 1, 1995. Since that time, the Postal Service has consistently held that "backend premiums" such as those described above are to be considered advertising for the product offered as a premium. In addition, the Postal Service has generally concluded that "utilitarian" items such as coffee mugs, t-shirts, tote bags, umbrellas, and similar items are not normally related to an organization's qualifying purposes, thus disqualifying such advertisements from being mailed at the Nonprofit Standard Mail rates.

The proposed rule offered standards by which, if met, the Postal Service would not consider the announcement of the backend premium as an "advertisement." Specifically, the Postal Service proposed two tests. First, the requested contribution must be at least five (5) times the cost of the premium to exempt the announcement from being considered as an advertisement for the premium. The cost of the premium is its actual cost to the nonprofit organization. Second, the requested contribution must be at least three (3) times the represented value in the mailpiece, if any, of the premium. *Each* test must be met or the offer will be considered an advertisement.

The Postal Service received a total of 12 comments on the proposed rule. In one fashion or another, all of the commenters expressed their support for a test or threshold by which announcements of backend premiums would not be considered as advertisements, thereby eliminating the need for consideration of the substantially related test. Accordingly, after full consideration of the comments received, the Postal Service believes it is appropriate to adopt, with revision of the ratios, the proposed changes in eligibility requirements at this time.

Evaluation of Comments Received

Written comments were received from 12 organizations and associations representing nonprofit organizations. Of primary concern to 11 of the 12 commenters is the Postal Service's proposed test of requiring a contribution or dues payment to be at least five times the cost and three times the represented value of the premium to activate the exception from material being considered as an advertisement. Four commenters supported the proposal in its entirety including the five times cost and three times represented value criteria. On the other hand, two commenters requested a test of three times the cost and eliminating the represented value test. Other

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

² See footnote 1.

³ See footnote 1.