This valuation shall be done not later than 150 days after the end of the plan year in which the plan terminates and each plan year thereafter except as provided in this paragraph. A plan year for which a valuation is performed is called a valuation year.

(1) If the value of nonforfeitable benefits for the plan is $25 million or less as determined for a valuation year, the plan sponsor may use the valuation for the next two plan years and, subject to paragraphs (a)(2) and (3) of this section, perform a new valuation pursuant to this paragraph for the third plan year after the previous valuation year.

(2) No valuation is required for a plan year for which the plan receives financial assistance from PBGC under section 4261 of ERISA.

(3) No valuation is required for the plan year in which the plan is closed out in accordance with subpart D of this part.

§ 4281.43 Notices of insolvency.

(a) The plan sponsor shall deliver to the PBGC, not later than 45 days after the plan terminates, a notice of insolvency.

(b) The notice of insolvency shall state:

(1) The name of the plan;
(2) The place where the plan is administered;
(3) The names and addresses of the plan's actuary and trustee (if any);
(4) The names and addresses of the plan's two principal beneficiaries;
(5) The amount of plan benefits that are nonforfeitable;
(6) The number of participants in the plan;
(7) Any other information required by the PBGC.

§ 4281.44 Contents of notices of insolvency.

(a) The notice of insolvency shall be signed by the plan sponsor or by another person authorized in writing by the plan sponsor.

(b) The notice of insolvency shall be delivered to the PBGC in the manner specified by the PBGC.

§ 4281.45 [Amended]

(a) A plan sponsor may use the valuation for the plan year in which the plan is closed out to satisfy the requirements of this paragraph for the third plan year after the previous valuation year.

(b) The plan sponsor may use the valuation for the plan year in which the plan terminates and for the next two plan years and, subject to paragraphs (a)(2) and (3) of this section, perform a new valuation pursuant to this paragraph for the third plan year after the previous valuation year.

(c) In the case of a plan that is terminated by a merger or transfer, the valuation year is the plan year in which the plan terminates and for the next two plan years.

(d) A plan sponsor may use the valuation for the plan year in which the plan terminates and for the next two plan years and, subject to paragraphs (a)(2) and (3) of this section, perform a new valuation pursuant to this paragraph for the third plan year after the previous valuation year.

(e) As paragraphs (b) and (c), respectively.

§ 4281.46 [Amended]

(a) A plan sponsor may not use the valuation for purposes other than those set forth in this paragraph.

(b) A plan sponsor may not use the valuation for any period other than the plan year in which the plan terminates and for the next two plan years.

(c) A plan sponsor may not use the valuation for purposes other than those set forth in this paragraph.

§ 4281.47 [Amended]

(a) A plan sponsor may not use the valuation for purposes other than those set forth in this paragraph.

(b) A plan sponsor may not use the valuation for any period other than the plan year in which the plan terminates and for the next two plan years.

(c) A plan sponsor may not use the valuation for purposes other than those set forth in this paragraph.

(d) A plan sponsor may not use the valuation for any period other than the plan year in which the plan terminates and for the next two plan years.

§ 4281.48 [Amended]

(a) A plan sponsor may not use the valuation for purposes other than those set forth in this paragraph.

(b) A plan sponsor may not use the valuation for any period other than the plan year in which the plan terminates and for the next two plan years.

(c) A plan sponsor may not use the valuation for purposes other than those set forth in this paragraph.

(d) A plan sponsor may not use the valuation for any period other than the plan year in which the plan terminates and for the next two plan years.

§ 4281.49 [Amended]

(a) A plan sponsor may not use the valuation for purposes other than those set forth in this paragraph.

(b) A plan sponsor may not use the valuation for any period other than the plan year in which the plan terminates and for the next two plan years.

(c) A plan sponsor may not use the valuation for purposes other than those set forth in this paragraph.

(d) A plan sponsor may not use the valuation for any period other than the plan year in which the plan terminates and for the next two plan years.

§ 4281.50 [Amended]

(a) A plan sponsor may not use the valuation for purposes other than those set forth in this paragraph.

(b) A plan sponsor may not use the valuation for any period other than the plan year in which the plan terminates and for the next two plan years.

(c) A plan sponsor may not use the valuation for purposes other than those set forth in this paragraph.

(d) A plan sponsor may not use the valuation for any period other than the plan year in which the plan terminates and for the next two plan years.

§ 4281.51 [Amended]

(a) A plan sponsor may not use the valuation for purposes other than those set forth in this paragraph.

(b) A plan sponsor may not use the valuation for any period other than the plan year in which the plan terminates and for the next two plan years.

(c) A plan sponsor may not use the valuation for purposes other than those set forth in this paragraph.

(d) A plan sponsor may not use the valuation for any period other than the plan year in which the plan terminates and for the next two plan years.

§ 4281.52 [Amended]

(a) A plan sponsor may not use the valuation for purposes other than those set forth in this paragraph.

(b) A plan sponsor may not use the valuation for any period other than the plan year in which the plan terminates and for the next two plan years.

(c) A plan sponsor may not use the valuation for purposes other than those set forth in this paragraph.

(d) A plan sponsor may not use the valuation for any period other than the plan year in which the plan terminates and for the next two plan years.

§ 4281.53 [Amended]

(a) A plan sponsor may not use the valuation for purposes other than those set forth in this paragraph.

(b) A plan sponsor may not use the valuation for any period other than the plan year in which the plan terminates and for the next two plan years.

(c) A plan sponsor may not use the valuation for purposes other than those set forth in this paragraph.

(d) A plan sponsor may not use the valuation for any period other than the plan year in which the plan terminates and for the next two plan years.
impact on a substantial number of small entities.

Public Law 96–511, Paperwork Reduction Act (44 U.S.C. Chapter 35)

It has been determined that 32 CFR part 300 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Public Law 104–4, Unfunded Mandates Reform Act of 1995

It has been certified that 32 CFR part 300 does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

It has been certified that 32 CFR part 300 does not have substantial direct effects on the states, or on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

32 CFR part 300 is not subject to Executive Order 13045.

Public Comments

The proposed rule was published on October 15, 2012 at 77 FR 62469. A discussion of the comments and the changes made to the proposed rule as a result of those comments are provided as follows:

1. General Comments

Comments: Office of Government Information Services (OGIS) and Electronic Privacy Information Center (EPIC) commends DLA for the emphasis on customer service and electronic databases in the proposed rule.

Response: Although no response is required, DLA appreciates all comments.

2. Out-of-Scope Comments

Comments: Several respondents stated that DLA does not offer any changes to existing regulatory exemptions governing the Agency under the Freedom of Information Act (FOIA). DLA assumes the continuing viability of these exemptions. However, in Milner v. Department of the Navy, 131 S.Ct. 1259 (2011), the Supreme Court reversed the lower court interpretation of certain of the FOIA statutory exemptions, upon which the interpretation the exemptions regulations relied. The present Comment urges DLA and the Department of Defense (DoD) to revisit these regulatory exemptions and to recraft them both to comply with the Court’s Milner holding and to clarify the proper regulatory interpretation of the statutory exemptions.

EPIC makes a number of comments on the wording of 32 CFR part 286, DoD FOIA Program Regulation.

Response: The purpose of this rule is to implement 32 CFR part 286. Issues relating to the scope or coverage of 32 CFR part 286 are outside the scope of this final rule.

3. Specific Comments

§ 300.3 Definitions

Comment: EPIC suggests adding language to make clear that this section is intended to supplement 32 CFR part 286.

Response: The final rule opening paragraph has been revised to state that other definitions may be found in 32 CFR part 286, Subpart A.

Comment: OGIS suggests adding terms, including requester category and fee waiver, to the glossary. OGIS has found that even experienced requesters can still confuse those terms. Additionally, because DLA refers to both in § 300.3(f), this will ensure shared understanding.

Response: The final rule has been revised to include the requester category. The definition of fee waiver is unnecessary as DLA adopts Subpart F of 32 CFR part 286 which defines fee waiver.

(a) Administrative Appeal.

Comment: EPIC suggests adding language to state that failure to respond within the statutory time limit is appealable.

Response: The final rule definition has been revised.

(b) Adverse Determination.

Comment: EPIC suggests adding language to state that definition includes but is not limited to.

Response: The final rule definition has been revised.

(d) Consultation.

Comment: EPIC suggests amending the definition to clarify when consultation is necessary.

Response: The final rule has been revised.

(e) Defense Freedom of Information Program Office.

Comment: EPIC suggests changing the word Program to Policy.

Response: The final rule has been revised.

(g) DLA Component.

Comment: EPIC suggests modifying the current definition will result in limitless authority to any delegate within DLA to deny FOIA requests.

Response: DLA will not retain the current definition. Due to DLA reorganization of Components, including FOIA offices, not all components are authorized to receive and act independently on FOIA requests. To address EPIC’s comment, DLA incorporates language from the DoD FOIA Program Regulation directing DLA Components to limit the number of IDAs appointed and to balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA. Refer to definition (o) DLA FOIA Requester Service Center.

Comment: (l) FOIA Public Liaison.

OGIS applauds DLA for including FOIA Public Liaison in its Definitions section and suggests additional language to reflect the position’s statutorily enhanced role in the 2007 FOIA amendments that comes directly from 5 U.S.C. 552(l).

Response: The final rule has been revised to expand the definition of FOIA Public Liaison.

Comment: (m) FOIA Request. EPIC suggests retaining current DLA definition.

Response: The final rule definition is amended in part. The definition does not require advance payment but to state a willingness to pay fees should they be assessed. See current regulation at 1285.5(d). DLA does not deny a request if a willingness to pay fees is not indicated but before processing begins the requester is contacted to obtain a fee declaration.

§ 300.4 Policy

(a) General.

Comment: EPIC suggests that the proposed changes provide the agency with greater discretion to deny FOIA requests.

Response: DLA has amended this paragraph, since this regulation does not impact disclosures outside of FOIA (refer to DoD Directive 5230.09, Clearance of DoD Information for Public Release).

(c) Creating a Record.

Comment: EPIC suggests the regulations would significantly limit the circumstances under which DLA will process a FOIA request.

Response: DLA partially accommodates EPIC’s comment regarding agency burden and significant inference with business as usual.

(d) Consultations and Referrals.

Comment: OGIS suggests that in addition to the adoption of 32 CFR part 286, Subpart A, 286.4(i) and 286.22(e), Policy, that DLA offices notify requesters in writing of a referral, and
the part of the request that has been referred and the name of a contact at the other agency.

Response: The final rule implements this section of 32 CFR part 286, Subpart A, 286.4(i), which incorporates OGIS’s suggestion.

Comment: EPIC suggests DLA not adopt 32 CFR part 286, Subpart A, 286.4 unless it is revised.

Response: DLA adheres to DoD policies, to create uniformity across DoD which provides greater understanding of the DoD FOIA Program to requesters. Paragraph 300.7(d) contains the language recommended by EPIC in its comment (B).

§ 300.6 General
(a)(2) Requests from the public. Comment: EPIC states that the new language gives DLA unenhanced discretion whether to comply with time limits; unnecessarily delay the processing of FOIA requests; and contains a broken link. Response: Per 32 CFR 310.17(i), DLA is required by law to abide by the statutory time limit. DLA has revised this paragraph re-emphasize that requirement; and included a link to the homepage of DoD Issuances.

§ 300.7 FOIA Request Processing Procedures
(a) Receipt and Control. Comment: OGIS suggests including a new subsection that addresses acknowledgment of a request. Specifically OGIS suggests that DLA state that it will provide an acknowledgment letter confirming receipt of a request that includes the unique tracking number as well as a brief description of the subject of the request. This would help requesters as well as the agency keep track of multiple pending requests. Response: Per 5 U.S.C. 552(a)(7)(A), the final rule has been revised at § 300.7 (a)(4) to include acknowledgement of a FOIA request. (a)(2) Receipt and Control. Comment: EPIC states that the proposed language increases the burden on the requester to produce errorless requests and suggests addressing tolling the time limit due to defects. EPIC suggests that sentences be struck from this section. EPIC also states the proposed language outright bans referrals outside of DoD. Response: At the screening phase a request that is not perfected cannot be tolled. There is no ban of referrals outside of DoD, to the contrary, DLA refers records to the originating agency both inside and outside of DoD. The regulation is revised to address tolling and the language relating to misdirected requests is removed.

(b) Multi-track processing. Comment: EPIC believes that DLA is supplanting the statute with this section as it reduces the “unusual circumstances” provision of the agency. Response: Pursuant to the authority granted by 5 U.S.C. 552(a)[6](D), DLA’s establishment of multi-track processing complies with DoD regulation and assists both DLA and the requester in recognizing when the request is complex in nature due to “unusual circumstances,” and may require an additional ten days for processing. DLA’s focus on customer service ensures the requester is informed of its processes and the use of multi-track assists DLA and requesters in achieving better response times.

(d) Misdirected requests. Comment: EPIC recommends retaining the language in the current regulation. Response: DLA has amended this paragraph based on guidance in both the DOJ FOIA Guide and DoD regulation. DLA is not required to forward misdirected requests to outside DoD agencies.

§ 300.8 Initial Determinations
(a) Comment: OGIS suggests including additional information addressing the content of the denial letter. Specifically, OGIS suggests providing a brief description of the information DLA is withholding if it is possible without revealing exempt information. OGIS also recommends that DLA specifically address the new requirements in 5 U.S.C. 552(b) that agencies shall (1) indicate, if technically feasible, the precise amount of information deleted and the exemption under which the deletion is made at the place in the record where the deletion is made, and (2) indicate the exemption under which a deletion is made on the released portion of the record, unless including that indication would harm an interest protected by the exemption. Response: The final rule has been revised at § 300.8(c) to include the elements of an initial determination response letter.

(b) Comment: EPIC states that the proposed rule eliminates the mention of advising a requester when segregation was not reasonable when a release is denied in full.

Response: The final rule has been revised at § 300.9(c) to address EPIC’s comment. DLA does not deny records in full on the grounds of reasonable segregability. Full denials are based on FOIA exemptions and should be appealed on this basis.

§ 300.9 Appeals
Comment: EPIC suggests language adding the right to appeal if the requester receives no determination. This subsection changes the window of time in which requesters may file an appeal from sixty to thirty calendar days.

Response: DLA has revised the definition of an adverse determination (see § 300.3(b)) to include this language. The length of time to appeal is set by DoD, therefore, is outside the scope of DLA’s authority.

§ 300.10 Mediation Services
Comment: OGIS suggests renumbering the current § 300.10 as § 300.11 and inserting a new § 300.10 to inform requesters of the mediation services provided by OGIS to resolve disputes between FOIA requesters and DLA in accordance with FOIA and DoD policy. Response: DLA recognized the value of mediation and appreciates its role in the FOIA process, however, DoD has not established guidelines for using mediation services provided by OGIS to resolve disputes between FOIA requesters and the Agency, therefore this comment is not adopted.

§ 300.11 General
Comment: OGIS suggests that in addition to the adoption of 32 CFR part 286, Subpart F, Fee Schedule that DLA address fee estimates and administrative waiver of fees. Response: The purpose of this rule is to implement 32 CFR part 286 and DLA finds it unnecessary to duplicate information published by DoD.

List of Subjects in 32 CFR Parts 300 and 1285
Freedom of Information Act.
For the reasons stated in the preamble, DoD amends 32 CFR chapters I and XII as follows:

TITLE 32—NATIONAL DEFENSE
CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE
CHAPTER XII—DEFENSE LOGISTICS AGENCY
PART 1285 [REDESIGNATED AS PART 300 AND TRANSFERRED TO CHAPTER I]
2. Newly redesignated part 300 is revised to read as follows:

PART 300—DEFENSE LOGISTICS AGENCY FREEDOM OF INFORMATION ACT PROGRAM

Subpart A—General Provisions

Sec.
300.1 Purpose.
300.2 DLA FOIA regulatory precedence.
300.3 Definitions.
300.4 Policy.

Subpart B—Exemptions

Sec.
300.5 General.

Subpart C—FOIA Request Processing

Sec.
300.6 General.
300.7 FOIA request processing procedures.
300.8 Initial determinations.
300.9 Appeals.
300.10 Judicial actions.

Subpart D—Fees and Fee Waivers

Sec.
300.11 General.

Appendix A to Part 300—Access to DLA Records

Authority: 5 U.S.C. 552.

Subpart A—General Provisions

§300.1 Purpose.

This part provides policies and procedures for the Defense Logistics Agency (DLA) implementation of the Freedom of Information Act (FOIA) (5 U.S.C. 552). This part supplements and implements the Department of Defense (DoD) FOIA Program Directive (32 CFR part 285) and DoD FOIA Program Regulation (32 CFR part 286). This part applies to DLA Components and takes precedence over all DLA regulations that supplement the FOIA program.

§300.2 DLA FOIA regulatory precedence.

This part is published in accordance with the authority contained in 5 U.S.C. 552 and 32 CFR parts 285 and 286. It supplements 32 CFR part 286 to accommodate specific requirements of DLA’s FOIA Program. For all FOIA issues not covered by this part, the rules set forth in 32 CFR part 286 will govern.

§300.3 Definitions.

Definitions not included in this subpart may be found in 32 CFR part 286, subpart A. The following terms and meanings apply for the purposes of this part:

(a) Administrative appeal. A written request by a member of the public, made under the FOIA, to DLA’s Appellate Authority requesting reversal of an adverse determination. An appeal may be mailed, emailed to hq-foia@dla.mil, or faxed to 703–767–6091. Appeals are to be addressed to the Appellate Authority, Defense Logistics Agency, Suite 1644, 8725 John J. Kingman Road, Fort Belvoir, Virginia 22060–6221.

(b) Adverse determination. Adverse determinations include, but are not limited to decisions that: Withhold all or part of a requested record; deny a fee category claim by a requester; deny a request for waiver or reduction of fees; deny requesters challenge of fee estimates; denies a request for expedited processing; state that no records were located; do not provide a response within the statutory time limit; or what the requester believes is adverse in nature.

(c) Appellate authority. The General Counsel, DLA, who upon receipt of an administrative appeal, reviews the initial determination and may uphold, reverse or amend any adverse determination.

(d) Consultation. The process whereby a DoD Component receives a FOIA request for a record in which another DoD Component or Federal agency has a clear and substantial interest in the subject matter, the responsive record is sent to another DoD Component or Federal agency to obtain recommendations on the releasability of the document and is returned to the originator for further action.


(f) Direct costs. Expenditures made in searching for, reviewing, and duplicating documents in response to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay plus 16 percent of that rate to cover benefits) and the costs of operating duplicating machinery. Not included in direct costs are overhead expenses such as the cost of space, heating, or lighting the facility in which the records are stored.

(1) Search. This term includes all time spent looking, both manually and electronically, for records that are responsive to a FOIA request, such as:

(i) Searching for responsive emails or electronic documents located on individually-assigned computers or servers;
(ii) Time taken by a programmer to create a program to run a requested report from a database; or
(iii) Searching through hardcopy files to include records stored at a Federal Records Center. The term “search” also includes a page-by-page and line-by-line identification of a record to determine if it, or portions, are responsive to the request.

(g) Duplication. The process of making a copy of a document in response to a FOIA request. Copies can take the form of paper, microfiche, audovisual or machine-readable documentation (e.g., magnetic tape or compact disc), among others. Personnel time spent performing tasks to enable a computer system to output information in a particular digital form or format for a requester is considered search time. Search time is calculated according to 32 CFR part 286, subpart F.

(3) Review. The examination of documents located in response to a FOIA request to determine if any of the statutory exemptions permit withholding. Review also includes the time taken to redact documents, preparing them for release and reviewing submitter responses under Executive Order 12600. Review does not include the time spent resolving general legal or policy issues required for the application of exemptions.

(g) DLA component. DLA Components consist of Headquarters Organizations, Primary Level Field Activities, Defense Business Services, Regional Commands, and other Organizational entities. A description of DLA Components can be found at www.dla.mil.

(h) DLA FOIA Requester Service Center. DLA Office’s authorized to receive and process FOIA requests and where a FOIA requester can gain information concerning DLA’s FOIA Program, the status of the person’s FOIA request, or information about the agency’s FOIA response. Refer to Appendix A of this part for locations of FOIA Requester Service Centers or for additional information refer to DLA’s public Web site at www.dla.mil/FOIA-Privacy.

(i) Electronic records. Records (including email) created, stored, and retrieved by electronic means.

(j) Federal agency. This term is defined at 5 U.S.C. 551(1) and 5 U.S.C. 552(f)(1).

(k) FOIA officer. DLA employee who is responsible for processing FOIA requests and is a point of contact for the FOIA program. The FOIA Officer grants or denies requests for fee waivers or expedited processing and makes requester category determinations.

(1) FOIA Public Liaison. The member of DLA’s Headquarters FOIA staff to whom a FOIA requester can raise concerns about the service the requester received from a DLA FOIA Requester Service Center. The FOIA Public Liaison is available to assist in reducing delays,
increase understanding of the status of requests and assists with resolving disputes.

(m) FOIA request. A written request for DLA records that reasonably describes the record(s) sought, enabling a DLA employee familiar with the files to locate the record(s) with a reasonable amount of effort; indicates a willingness to pay processing fees or requests a fee waiver; and includes a postal mailing address and contact information. A willingness to pay fees is not required when, based upon the request, fees will not be assessed (e.g., an "other" requester requests a document that is certain to be less than 100 pages and will take less than two hours of search time). Written requests may be received by U.S. Postal Service or other commercial delivery means, by facsimile, or electronically. A FOIA request meeting these conditions, arriving at DLA’s FOIA Requester Service Center in possession of the requested records, is considered perfected or properly received at which time the statutory time limit for response begins. In no case shall the statutory time limit for processing a perfected request begin later than ten business days after receipt by any of DLA’s FOIA Requester Service Centers.

(n) Initial denial authority (IDA). By this regulation, the Director, DLA, delegates to Heads of DLA Components the authority to withhold information requested under the FOIA pursuant to one or more of the nine FOIA exemptions and to confirm that no records were located in response to a request. The designation of IDA may be further delegated by the Heads of DLA Components to their Deputies. DLA Components shall limit the number of IDAs appointed. In designating its IDAs, a DLA Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA. IDAs may also deny a fee category claim by a requester, deny a request for expedited processing, deny a request for a waiver or reduction of fees, or review a fee estimate, although these determinations are usually made by the FOIA Officer.

(o) Referral. The process of transferring records found in response to a FOIA request to another DLA or DoD Component, or any Federal agency for review and direct response to the requester. This process is used when documents located during a search are found to have originated or there is a substantial interest in the record with another DLA or DoD Component, or Federal agency.

(p) Requester category. One of three categories that agencies place requesters in for the purpose of determining fees for search, review and duplication. The three categories are:

1. Commercial;
2. Non-commercial scientific or educational institutions or news media; and
3. All others.

§ 300.4 Policy.


(a) General. As a matter of policy, DLA shall make discretionary disclosures of exempt records or information whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court. The public has a right to information concerning the activities of its Government. DLA policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people.

(b) Customer Service. Executive Order 13392, Improving Agency disclosure of Information, December 14, 2005, requires agencies to emphasize a new citizen-centered approach to the FOIA that is results-oriented. Because FOIA requesters are seeking a service from the Federal Government, all DLA Components shall respond courteously and professionally to FOIA requesters. Additionally, the Components shall provide the public with information about agency records that are already publicly available, as well as information about the status of a person’s FOIA request and an estimated date on which DLA’s Component will complete the request. Refer to Appendix A of this part for DLA FOIA Requester Service Center contact information.

(1) To meet the requirements of Executive Order 13392, each FOIA Requester Service Center shall have an Internet Web site that serves to educate the public on the FOIA process. At a minimum, each Web site shall have the address, telephone number, facsimile number, and electronic mail address to which FOIA requests can be sent; a link to DoD’s FOIA handbook; the name and contact information of DLA’s FOIA Officer and Public Liaison; and information on how a requester can obtain the status of a request. Additionally, each FOIA Requester Service Center Web site will have links to DLA’s Headquarters FOIA/Privacy Web site reading room.

(2) [Reserved]

(c) Creating a Record. (1) There is no obligation to create nor compile a record to satisfy an FOIA request. A DLA activity, however, may compile a new record when doing so would result in a more useful response to the requester or be less burdensome to the activity. Provided the requester does not object. The cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record.

(2) A record must exist and be in the possession and control of DLA at the time the search begins to be considered subject to this part and the FOIA.

(3) When processing FOIA requests for electronic data, if DLA’s Component has the capability to respond to the request, and the effort is reasonable and would be a business as usual approach, then the request should be processed. However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business as usual approach. For example: Processing a request that would cause a significant interference with the operation of DLA’s Component’s automated system or require a significant amount of programming effort.

(d) Consultations and Referrals. The rules published in part 32 CFR part 286, subpart A, §§ 286.4(i) and 286.22(e), apply to this rule.

(e) Forms. This part authorizes the use of forms developed by DoD and DLA for the express use of the FOIA Program. Refer to www.dla.mil for a list of all forms prescribed by this part.

Subpart B—Exemptions

§ 300.5 General.

Refer to the DoD FOIA Program regulations codified at 32 CFR part 286, subpart C, Exemptions.

Subpart C—FOIA Request Processing

§ 300.6 General.

DLA adopts and supplements the DoD FOIA Program regulations codified at 32 CFR part 286, subpart C, Exemptions.

(a) Requests from the public. (1) Individuals seeking DLA information should address their FOIA requests to one of the FOIA Requester Service Center addresses listed in Appendix A of this part.

(2) When personally identifying information in a record is requested by the subject of the record or the subject's representative, and the information is contained within a Privacy Act system of records, the request will be processed under both the FOIA and the Privacy Act. Due to the dual nature of the processing, the FOIA time limits will be used. DLA Components must comply with the provisions of 32 CFR 310.17(c) to confirm the identity of the requester.

(b) [Reserved]

§ 300.7 FOIA request processing procedures.

(a) Receipt and Control. Requests received after 5:00 p.m. EST will be considered received the following business day. Upon receipt of a request for records, the FOIA Officer must:

(1) Open a file in DLA’s specified control system designed to ensure accountability and compliance with the FOIA. The control system will include the data elements needed to compile the statistics required in the annual Department of Justice FOIA report or other reports required by another authority. Each request shall automatically be assigned a unique tracking number.

(2) Screen the request for defects in the description, the requester category, the fee declaration, and full postal address. The FOIA Officer will notify the requester of any such defects and provide assistance to help remedy the defects. The FOIA Officer will place the request on-hold until the request is perfected. When a DLA FOIA Requester Service Center receives a request for records that clearly belong to an agency outside of DoD, the requester shall be told these are not agency records and, if possible, provide the name of the agency that may hold the records. No referral of the request is made outside of DoD.

(3) Once a request is perfected, DLA may make one request for additional information unrelated to fees and toll the 20 working-day period while awaiting the information. Tolling the 20 working-day period is not limited for fee related issues.

(4) DLA will provide the requester with the FOIA tracking number and the track number, in which the FOIA was placed (see § 300.7(b)). Each DLA FOIA Requester Service Center has a telephone line to inform the requester of the status of their request (see Appendix A of this part).

(b) Multi-track Processing. DLA components shall process requests with all due diligence according to their order of receipt. A DLA component uses three processing tracks by distinguishing between simple, complex, and expedited requests based on the need to search and collect from multiple directorates/locations; the need to search for, appropriately examine a voluminous amount of records; and/or the need to consult with other DLA or DoD Components having functional responsibility. If a request for expedited processing is granted, the DLA may require the requester to pay the full amount owed, plus any applicable interest, before beginning to process a new or pending request from the requester (see OMB Fee Guidelines [http://www.dod.gov/pubs/foi/dfoipo/docs/OMBGuidelines_FOIAFees.pdf]). Interest will be at the rate prescribed in 31 U.S.C. 3717, and confirmed with the servicing Financial Operations Office.

(c) Payments in Arrears. Where a request has previously failed to pay a fee charge within thirty calendar days, DLA may require the requester to pay the full amount owed, plus any
essentially meaningless set of words and phrases, or even sentences which taken separately or together have minimal or no information content.

(c) If information is withheld in whole or part, DLA will provide in a response letter the exemption under which the withholding is made, a description of the type of information redacted, the name and title or position of the IDA and the administrative appeal rights. When information is withheld in full, DLA will provide an estimate of the volume withheld. This estimate should be in number of pages or in some other reasonable form of estimation. When information is withheld in part, DLA shall show the redacted amount of information and the exemption under which the redaction is made on the released portion of the record, unless including that indication would harm an interest protected by the exemption under which the redaction is made.

§ 300.9 Appeals.

When an IDA makes an adverse determination (see § 300.3(b)) the requester may appeal that decision in writing to the designated appellate authority (see § 300.3(a)). An appeal must be made in writing to DLA’s Appellate Authority and must be postmarked within the appeal time limits of the DoD FOIA Program Regulation at 32 CFR 286.24. The appeal should be accompanied by copies of the initial request and the denial letter.

§ 300.10 Judicial actions.


Subpart D—Fees and Fee Waivers

§ 300.11 General.

DLA adopts the rules and rates published in 32 CFR part 286, subpart F, Fee Schedule. In addition, DLA considers fees charged by a Federal Records Center to retrieve and re-file records a part of the direct costs charged to requesters.

APPENDIX A TO PART 300—GAINING ACCESS TO DLA RECORDS

(a) General. (1) The Defense Logistics Agency, established pursuant to authority vested in the Secretary of Defense, is an agency of DoD under the direction, authority, and control of the Assistant Secretary of Defense for Logistics and Materiel Readiness, and is subject to DoD policies, directives, and instructions.

(2) DLA is comprised of several Components and each DLA Component is responsible for maintaining its own records; therefore, FOIA requests should be addressed to the FOIA Requester Service Center that has custody of the record sought. (See paragraph (c) of this appendix.) DLA FOIA Officers will assist requesters in determining the correct DLA Requester Service Center to address requests. (See paragraph (c) of this appendix and DLA’s public Web site at www.dla.mil.)

(3) On DLA’s public Web site is an index to assist in locating DLA records by category, organization, keyword search, or by contract prefix. The index is titled “Index of Information at DLA FOIA Service Centers” at www.dla.mil/FOIA-Privacy/servindex/pages/category.aspx.

(b) Requestor Requirements. (1) Requesters are responsible for submitting a perfected request as defined in § 300.3(m), FOIA Request.

(2) Addressing Requests. Address requests to DLA's FOIA Requester Service Center most likely to hold the records (see paragraph (c) of this appendix for the contact information of DLA FOIA Requester Service Centers designated to receive FOIA requests). If DLA’s FOIA Requester Service Center is indeterminable, address requests to DLA Headquarters FOIA Requester Service Center for proper routing.

(3) Availability of DLA Publications. Many unrestricted DLA regulations, manuals, and handbooks are available online. Visit DLA’s FOIA/Privacy Web site for more information at http://www.dla.mil/foia-privacy/.

(c) Locations of DLA FOIA Requester Service Centers. Refer to the FOIA/Privacy Web page at http://www.dla.mil/FOIA-Privacy/pages/foiaopscs.aspx for current points of contact at each of the DLA’s FOIA Requester Service Centers.

(1) Defense Logistics Agency Headquarters, ATTN: DCO, 8725 John J. Kingman Rd., Ste 1644, Fort Belvoir, VA 22060–6221, Fax: 703–767–6091, Email: hq-foia@dlamil—Responsible for broad functional areas, such as Office of the Director, General Counsel, Small Business Programs, DLA Office of Inspector General, Legislative Affairs, Equal Employment Opportunity Office, Installation Support, Human Resources, Logistics Operations, Information Operations, Acquisition, and Financial Operations. This FOIA Requester Service Center also processes FOIA requests for the following locations: (i) DLA Transaction Service, Wright Patterson AFB, Ohio—Editing/routing of logistics transactions, network interoperability and eBusiness services.

(ii) DLA Strategic Materials, Fort Belvoir, Va.—Manages the strategic and critical raw material stockpile that supports national defense needs.

(iii) DLA Europe & Africa, Kaiserslautern, Germany—Focal point for U.S. European Command’s and U.S. Africa Command’s theater of operations.

(iv) DLA Pacific, Camp Smith, Hawaii—Focal point for U.S. Pacific Command’s theater of operations.

(v) DLA Central, MacDill AFB, Fla.—Focal point for U.S. Central Command’s theater of operations.

(2) DLA Energy, 8725 John J. Kingman Rd., Ste 3729, Fort Belvoir, VA 22060–6222, Fax: 703–767–5022, Email: dioenergy.foiao@dlamil—Fuel, energy support and services, and bulk petroleum.

(3) DLA Land and Maritime, ATTN: GC, 3990 E. Broad Street, Columbus, OH 43218–3990, Fax: 614–692–4385, Email: dscs.foia@dla.mil—Maritime and land weapons system supply chains.

(4) DLA Aviation, 8000 Jefferson Davis Highway, Richmond, VA 23297–5000, Fax: 804–279–4137, Email: foia.docsvcs@dla.mil—Aviation supply chain.

(5) DLA Troop Support, 700 Robbins Avenue, Bldg 36, Philadelphia, PA 19111–5096, Fax: 215–737–2151, Email: DLTroopSupportFOIArequest@dla.mil—Subsistence, clothing, and textiles, medical, repair, and construction and equipment supply chains.

(6) DLA Distribution, ATTN: DDC-GC, Mission Drive, Bldg 81, New Cumberland, PA 17070–5000, Fax: 717–770–5685, Email: ddc-foiao@dla.mil—Worldwide network of 25 distribution depots and nine map support offices.

(7) DLA Disposition Services and DLA Logistics Information Service, 74 Washington Avenue North, Battle Creek, MI 49017–3084, Fax: 269–961–4534, Email: dmsdfoiao@dla.mil—Disposition Services: Reutilization, transfer, demilitarization, and environmental disposal and reuse.

(ii) Logistics Information Service: Manages a wide range of logistics information and identification systems.

(8) DLA Document Services, 5450 Carlisle Pike, Bldg 9, P.O. Box 2020, Mechanicsburg, PA 17055–0788, Fax: 717–605–3999, Email: foia.docsvcs@dla.mil—Automated document production, printing services, digital conversion and document storage.

Dated: May 21, 2014.

Aaron Siegel,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, 237, 242, and 252

RIN 0750–AI01


AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to align it with revisions to the DoD Instruction on operational contract support.