

side of the 007° bearing from the Tacoma Narrows Airport extending to 8 miles north of the airport, and within 4 miles each side of a 187° bearing from the airport extending to 7 miles south of the airport.

Issued in Seattle, Washington, on January 31, 2019.

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 75

[Docket ID: DOD-2011-OS-0127]

RIN 0790-A182

#### Exceptional Family Member Program (EFMP)

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

**ACTION:** Final rule.

**SUMMARY:** This part discusses procedures for identifying a family member with special needs and coordinating travel for family members of active duty Service members who meet the Department of Defense (DoD) criteria for the Exceptional Family Member Program (EFMP). It also describes procedures for processing DoD civilian employees who have family members with special needs for an overseas assignment and provides family support services to military families with special needs.

**DATES:** This final rule is effective on March 15, 2019.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Lombardi, 571-372-0862.

#### SUPPLEMENTARY INFORMATION:

##### Authority and Background

This rule implements 10 U.S.C. 1781c, which established the Office of Community Support for Military Families with Special Needs (OSN) within the Office of the Under Secretary of Defense for Personnel and Readiness. The purpose of the program is to enhance and improve DoD support around the world for military families with special needs (whether medical or educational) through developing policies, disseminating information, obtaining referrals for services and in obtaining services. By statute, the OSN is responsible for developing an EFMP policy that applies to members of the armed forces without regard to their

location and in a manner consistent with the needs of the armed forces while being responsive to the career development needs of members.

In addressing support for military families, the program provides the following:

- Procedures to identify members of the armed forces who are members of military families with special needs.
- Mechanisms to ensure timely and accurate evaluations of members of such families who have special needs.
- Procedures to facilitate the enrollment of such members of the armed forces and their families in programs of the military department for the support of military families with special needs.
- Procedures to ensure the coordination of DoD health care programs and support programs for military families with special needs, and the coordination of such programs with other Federal, State, local, and non-governmental health care programs and support programs intended to serve such families.
- Requirements for resources (including staffing) to ensure the availability through the DoD of appropriate numbers of case managers to provide individualized support for military families with special needs.
- Requirements regarding the development and continuous updating of an individualized services plan (medical and educational) for each military family with special needs.
- Requirements for record keeping, reporting, and continuous monitoring of available resources and family needs under individualized services support plans for military families with special needs, including the establishment and maintenance of a central or various regional databases for such purposes.

##### Public Comments

Following the publication of the proposed rule in December 11, 2015 (80 FR 76881-76889), 99 public comments were received and are discussed below. There has been some restructuring of the final rule as several sections of the proposed rule were determined to be better suited to internal DoD Guidance, which can be found in DoD Instruction 1315.19, "Exceptional Family Member Program," available at <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/131519p.pdf>.

##### Section 75.1 Purpose

Due to the restructuring of the rule, § 75.1 of the final rule includes new paragraphs (a) and (b). Other paragraphs in § 75.1 of the proposed rule were

removed and now appear in DoD Instruction 1315.19.

Several commenters requested Guard and Reserve components be eligible for enrollment in the EFMP automatically rather than allowing each Service to determine the conditions under which their Guard and Reserve members are eligible to enroll in the EFMP.

DoD declines to make this change because only active duty military undergo the assignment coordination process. Therefore, the Department does not require the Services to enroll their Guard and Reserve members in the program, but also does not prohibit the Services from doing so, in accordance with their respective missions and needs.

Many commenters requested changes to Service-specific EFMP policies or assignment coordination procedures associated with the EFMP program. Suggested changes included a request that Guard and Reserve components be eligible for EFMP services regardless of duty status, a request that a Service apply special codes to EFMP families in their data system, a request to cease frequent contact from the EFMP program, a request to mandate a uniform set of programming to be provided through each Service's EFMP program or at each installation, and a request to limit frequent changes to assigned EFMP coordinators.

Other suggestions included a request to allow people to examine their own family member profiles during the assignment coordination process, a request to allow families more of a voice in the assignment coordination process, a request for changes to the process when an assignment is denied, requests for information packets about the EFMP program and local resources at the time of enrollment and permanent change of station, requests for greater clarity on how health information and outcomes from previous duty stations are or are not considered during assignment coordination, a request that families be given an official reason for assignment location denials, a request for changes to the weight given to family needs during assignment coordination, and requests for a system to appeal assignment coordination decisions.

No changes were made to the final rule based on the above Service-specific comments. All Service EFMP policies must conform to this final rule and the associated DoD Instruction 1315.19. Beyond that, the Department believes the Services must have the flexibility to tailor their EFMP policies to meet the specific needs of their missions and communities. To request changes to Service-specific EFMP policies or

assignment coordination procedures, please contact your local EFMP office.

### Section 75.3 Definitions

Several commenters submitted requests for clarification, change, or inclusion of particular definitions. In addition, due to the restructuring of the rule, in § 75.3, the definitions of “CONUS,” “Medical case management,” “Non-clinical case management,” “Pinpoint location,” “Respite Care Services,” and “Services Plan” now appear only in DoD Instruction 1315.19. Four commenters requested that we clarify the meaning of “adverse” and “adversely.”

The Department does not believe it is necessary to clarify the meaning of these terms as they are used in DoD Instruction 1315.19 in the context of the factors that must be considered when stabilization is requested and in the context of overseas assignments for active duty Service members, as the Department interprets “adverse” and “adversely” to have the plain language meaning of the terms, which is “unfavorable” or “harmful,” and “unfavorably” or “harmfully.” For example, when used with respect to a stabilization decision under DoD Instruction 1315.19, the proper analysis will be whether stabilization will have an unfavorable or harmful effect on the mission requirements of the Military Service.

One commenter stated the definition for “assistive technology device” at § 75.3 was inconsistent with the Individuals with Disabilities Education Act (IDEA) definition of assistive technology in chapter 33 of Title 20, U.S. Code. Four commenters requested that changes to the definition be made to include information related to the evaluation and selection of such devices. The Department partially concurred with the comments. The definition of “assistive technology device” at § 75.3 is not limited to devices used by children who receive IDEA services. Instead, in accordance with the conditions that trigger EFMP enrollment, the term “assistive technology device” as used in § 75.5 in this final rule, is intended to cover all devices used by children and adults when the use of such device is required because of a chronic medical condition. To clarify the definition, we have removed the sentence that excluded surgically implanted medical devices, which was imported from the IDEA definition of assistive technology in the earlier version of the regulation. We decline to broaden the definition to incorporate evaluations and training in the use of assistive technology because

the need for those services does not trigger EFMP enrollment. Instead, the presence of a device used in connection with a chronic medical condition is the trigger for enrollment in the EFMP.

The definition of “assistive technology device” at § 75.3 now reads: “Any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.”

Four commenters requested that DoD adopt an agency-wide definition of “child with special medical needs” or adopt the National Institute of Child Health and Human Development (NICHD) definition of child and youth with special health care needs (CYSHCN) to ensure accurate data collection.

While we agree the use of standard definitions is important for the collection of accurate data, DoD declines to make this change. The NICHD definition of CYSHCN: “those who have or are at risk for a chronic physical, developmental, behavioral, or emotional condition and who also require health and related services of a type or amount beyond that required by children generally” is not, on its own, specific enough to ensure appropriate assignment coordination. In addition, since this rule sets policy only with respect to the EFMP program, the establishment of a DoD-wide definition will require coordination with all other DoD departments that interact with children with special medical needs to ensure that all necessary elements of a working definition are properly included. The development of a new definition is an in-depth process, and must be tailored to each program to meet the needs of their unique population, and coordination will not be completed by the time this rule publishes.

Two commenters requested that we define the term “CONUS.” However, as this term is currently defined in DoD Instruction 1315.19 as “the 48 contiguous states of the United States, excluding Alaska, Hawaii, and U.S. territories,” no change is made to the rule.

One respondent requested clarification of the term “expeditiously” as used in § 75.6(b)(4)(i) and (ii). These provisions require Department of Defense Education Activity (DoDEA) and the Military Medical Departments to evaluate and provide services to children eligible for enrollment in a DoDEA school on a space-required basis and to provide them with any required

IDEA services “expeditiously and regardless of cost.” The Department agrees that additional clarification is required so all IDEA activities happen within the specified timelines.

To that end, § 75.6(b)(4)(i) now reads: “The DoDEA and the Military Medical Department responsible for the provision of related services to support DoDEA at the duty station are required to evaluate school-aged children (ages 3 through 21 years, inclusive) eligible for enrollment in a DoDEA school on a space-required basis and provide them with the special education and related services included in their IEPs in accordance with 32 CFR part 57.” Section 75.6(b)(4)(ii) now reads: “The Military Departments are required to provide infants and toddlers (from birth up to 3 years of age, inclusive) eligible for enrollment in a DoDEA school on a space-required basis with the EIS identified in the IFSPs in accordance with 32 CFR part 57.”

One respondent requested clarification of the definition of “family care plan.” Two commenters requested that distinctions between Services Plans and family care plans be added.

The Department declines to add a definition of “family care plan” to this final rule as each Service defines such plans in accordance with its own policies. Most military families have a family care plan, which is not predicated on the presence of a disability in the family. A family care plan may cover issues such as child care in the case of parental deployment, parental wills and trusts, and any other instructions or provisions for dependents in case of a Service member’s death. Services Plans are part of the family support services offered through EFMP offices and are developed on an as-needed basis for families who have a family member with a disability in accordance with DoD Instruction 1315.19.

Four commenters requested additions to or clarifications of the definitions of “Individualized Education Program (IEP),” “Individualized Family Services Plan (IFSP),” and “Special education” at § 75.3. The requested additions were intended to describe a child’s rights under the IDEA, including the right to receive instruction while suspended or expelled, the requirement to provide specially designed instruction that meets the child’s educational needs that result from the disability, and other technical requirements under the IDEA. Three commenters also requested that we add a definition of “specially designed instruction” to clarify educational rights arising under the IDEA.

The Department does not agree that detailed descriptions of a child's rights under the IDEA or additional definitions related to the special education process are necessary or appropriately placed in this final rule. A child's services under the IDEA intersect with this final rule because the receipt of IDEA services is a trigger for EFMP enrollment under § 75.5(b). Children of active duty Service members and civilian employees appointed to an overseas location who are eligible for enrollment in a DoD school on a space-required basis will be identified as having special educational needs if they have, or are found eligible for, either an IFSP or an IEP under 32 CFR part 57 which is the DoD's implementing regulation for the IDEA. DoD has clarified the definitions of special education, IEP, and IFSP so that all IDEA definitions and terms used in the final rule refer to the DoD's IDEA regulation (identical to or refer to the definitions in 32 CFR part 57).

Therefore, the definitions of Early Intervention Services, Individualized Education Program, Individualized Family Service Plan, Related Services, and Special Education were revised in both the final rule and DoD Instruction 1315.19. These definitions now mirror definitions in 32 CFR part 57.

Four commenters requested that the term "non-clinical case management" be expanded to include coordination of medical services. Two commenters stated that if the definition of non-clinical case management is not expanded to include coordination of medical services, then the definition should be changed to exclude reference to medical services.

We do not believe that non-clinical case management includes medical services coordination. Medical case management is defined in DoD Instruction 1315.19, and it refers readers to the TRICARE Medical Management Guide for more information regarding medical case management. However, in response, this definition, contained only in DoD Instruction 1315.19, has been changed to read: "The provision of information and referral to families and individuals that assist them in making informed decisions and navigating resources to improve their quality of life such as educational, social, community, housing, legal, and financial services. This does not involve coordination and follow-up of medical treatments."

Five commenters suggested that the definition of "related services" at § 75.3 should be expanded to include interpreting services for children who are deaf and interpreting services for children who are English language learners. We do not agree that this

definition of related services should include interpreting services for children who are English language learners. The related services referred to in the rule arise in the IDEA. Eligibility for services under the IDEA is predicated on the presence of a disability and is not affected by a child's proficiency with English. Services provided under the IDEA are designed to address educational needs that arise from a disability. Children who receive educational services from the DoD and require both special education services and services for English language learners are protected by various Department of Defense Education Activity policies. The term "related services" refers to transportation and such developmental, corrective, and other supportive services required to assist a child with a disability to benefit from special education under the child's individualized education program. Special education services are provided by the Department pursuant to 32 CFR part 57, which explicitly includes interpreting services for children who are deaf or hard of hearing in its definition of related services. To ensure uniform understanding and application of definitions related to special education, as indicated above, we have changed the definition of "related services" so that it refers to the definition in 32 CFR part 57. Thus, the definition of "related services" at § 75.3 of the final rule has been revised to mirror the definition that is in 32 CFR part 57 in both the final rule and in DoD Instruction 1315.19.

Six commenters discussed the use of terms such as "special needs" versus "handicapped" or "disability." One commenter requested that we clarify that the term "person with special needs" may, but does not have to, refer to a person with a disability. Two commenters requested that we adopt the definition of disability used in Section 504 of the Rehabilitation Act of 1973, codified at 29 U.S.C. 705. One commenter stated that, if there is no distinction between the terms "disability" and "special needs" for purposes of this rule, we should use only one term throughout.

The Department has made no changes to the rule or the instruction based on these comments because DoD has received no evidence indicating this clarification of such matters is necessary. The final rule includes a number of specific conditions falling within the umbrella of "special needs" at § 75.5 related to medical diagnosis, medical history, medications, specialty care requirements, chronic need for adaptive equipment, assistive

technology or certain environmental considerations, and educational needs. Should any of the listed conditions be met, then enrollment in EFMP is triggered. The enumerated conditions are those that, in the Department's experience, require careful coordination during the assignment coordination process. While distinguishing disability from medical or other conditions is important in certain contexts, for EFMP purposes, it is not relevant whether a condition is or is not considered to be a disability. We decline to use only the term "disability" or "special needs" because one enrollment trigger for children, the receipt of IDEA special education services on an IEP, is predicated on the presence of a disability that impacts a student's ability to benefit from his or her education. Therefore, in the case of enrollment of a child who receives IDEA services, "special needs" would be an inaccurate term. We decline to use the term "disability" exclusively because the statute that authorizes this final rule, 10 U.S.C. 1781c, uses the term "special needs," and we believe that this term is necessary to capture Congress' full intent.

#### Section 75.4 Policy

Due to the restructuring of the rule, certain paragraphs of § 75.4 (Policy) in the final rule have been removed from the final rule and now appear only in DoD Instruction 1315.19.

One commenter recommended we incorporate language from 10 U.S.C. 1781c(e)(3), regarding the assignment of Service members into the rule. The Department agrees the requested language clarifies the relationship between assignment or stabilization requests, the needs of the armed forces, and the career development of active duty Service members, and have added the requested language.

*Change:* Changes were made to DoD Instruction 1315.19, which now reads: "the assignment or stabilization requests of members of the armed forces who are members of military families with special needs, shall be addressed in a manner consistent with the needs of the armed forces and responsive to the career development of members of the armed forces on active duty."

Several commenters discussed the issue of homesteading, or stabilization of duty stations. Comments included a request to make EFMP status a priority when negotiating orders, prioritizing stabilization requests of families in which a member is diagnosed with autism, and a request that all Services implement stabilization in the same way.

The Department agrees stabilization can be important for families. DoD Instruction 1315.19 permits the Services to stabilize families in Alaska, Hawaii, or a CONUS location for a minimum of four years so long as stabilization does not have an adverse effect on the mission of the Military Service or the career development of the Service member. However, we decline to list specific disabilities or medical conditions that automatically require stabilization or require specific prioritization of EFMP status because many disabilities and medical conditions manifest in a range of severity or intensity of need, which means that individual analysis of the family member's needs and circumstances is always necessary. The Military Services are best positioned to perform the necessary analysis in conjunction with an understanding of their current and future missions, populations, and resources; therefore, each Military Service is the most appropriate arbiter of its own stabilization process.

One respondent stated stabilization should not adversely impact career advancement or promotion. Two commenters stated that Service members are erroneously told that they may not reenlist if they request stabilization.

While no changes were made to the final rule, the Department agrees stabilization or requests for stabilization to accommodate a family member with special needs must not adversely impact the career of the Service member who has requested it. DoD Instruction 1315.19 allows for stabilization in cases where the Service member initiates the request, the family member has a documented need for stabilization per Service-specific guidance, stabilization does not have an adverse impact to the mission requirements of the Military Service, and the career of the Service member has been considered and is not affected adversely. We believe that stabilization that is granted under these conditions will not adversely impact the career of the requesting Service member.

Two commenters requested that we add language to the rule so EFMP programs can be utilized by a member of any of the Services whether assigned to an installation run by his or her own Service or another Service. No changes were made to the final rule as the final rule already includes a statement describing the duty of the EFMP to provide family support services regardless of Service affiliation. In addition, DoD Instruction 1315.19 states it is DoD policy that the EFMP provides family support services, including non-

clinical case management, to military families with special needs regardless of the sponsor's Service affiliation or enrollment status in the EFMP.

#### Section 75.5 Responsibilities

Due to the restructuring of the rule, what was § 75.5 (Responsibilities) in the proposed rule has been removed from the final rule and now appears in DoD Instruction 1315.19. What was § 75.6 (DoD Criteria for Identifying Family Members with Special Needs) in the proposed rule has been renumbered to § 75.5 in the final rule.

Two commenters erroneously claimed that the proposed rule did not comply with 10 U.S.C. 1781c because certain statutory duties of the OSN were given to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) and the Assistant Secretary of Defense for Manpower and Reserve Affairs (ASD(M&RA)). No change was made to the final rule as 10 U.S.C. 1781c(a) establishes the OSN as an office in the Office of Military Family Readiness Policy, which is within the Office of the USD(P&R). Furthermore, DoD Instruction 1315.19 states the USD(P&R) provides for the OSN, pursuant to 10 U.S.C. 1781c, and submits an annual report to Congress on the activities of the OSN on behalf of the Secretary of Defense in accordance with 10 U.S.C. 1781c (g). Contrary to the commenter's claim that this does not comply with the statute, the duties assigned to the USD(P&R) under DoD Instruction 1315.19 directly reflect statutory duties assigned to the USD(P&R) and/or the Secretary of Defense and are appropriately assigned to the USD(P&R).

The commenters also claimed that responsibilities assigned to the ASD(M&RA) in DoD Instruction 1315.19 are not in compliance with the statute. The Department disagrees. DoD Instruction 1315.19 requires the ASD(M&RA) to consult with the Secretaries of the Military Departments, as appropriate, to ensure the development, implementation, and monitoring of an effective EFMP across DoD. DoD Instruction 1315.19 also requires the ASD(M&RA) to resolve disputes among the DoD Components regarding the implementation of procedures in § 75.5 through § 75.6 of the final rule. These responsibilities are assigned to the ASD(M&RA) because, given the current organizational structure of the DoD, such assignment provides for the most efficient means of ensuring the effective operation of the EFMP within the DoD.

Two commenters requested that the annual data reports from the Military Services to the ASD(M&RA) required at

what was § 75.5(e)(18) of the proposed rule, now DoD Instruction 1315.19, be made public reports. No change was made to the rule as aggregate data received through the reports required by DoD Instruction 1315.19 is made public through the Annual Report to the Congressional Defense Committees on the Activities of the Office of Special Needs.

Two commenters requested a revision of what was § 75.5(d)(4)(iii) of the proposed rule now in DoD Instruction 1315.19, which allows the Director, DoDEA, to request reimbursement from the sending Military Department when there is a failure to coordinate an overseas assignment with DoDEA that results in the assignment of the Service member to a location where DoDEA incurs expenses (e.g. by hiring additional staff) beyond normal operations to provide special education pursuant to the child's IEP because, as written, it could be interpreted to mean that command sponsorship should be denied if educational services are not available.

The Department does not agree that the language could be interpreted to allow denial of command sponsorship and has made no change to the final rule. The language in DoD Instruction 1315.19 describes DoDEA's authority to seek reimbursement where it incurs additional expenses resulting from a Service's failure to coordinate a Service member's overseas move. This is an internal check in the system that ensures coordination procedures are observed. Three commenters requested clarification on what was in § 75.5(d)(2) of the proposed rule, now in DoD Instruction 1315.19, regarding the responsibility of the Director, DoDEA, to make recommendations to the Military Services and other DoD components on the availability of special education services. The commenters suggested adding language to clarify several items, including the nature of the Director's recommendations, whether the Director's responsibilities included making recommendations on all public schools and charter schools, and whether the recommendations referred to are for both CONUS and OCONUS locations.

No change was made to the final rule as the Department does not believe that the Director, DoDEA, requires additional regulatory clarification on the scope of this duty at this time. The Director is only able to make recommendations regarding educational services in locations where DoDEA is responsible for the provision of educational services. For example, if a DoDEA school closes, DoDEA must inform the

military departments that educational services, including special educational services, are no longer available at that school.

Two commenters discussed what was in § 75.5(e)(4) of the proposed rule, now in DoD Instruction 1315.19, regarding the responsibility of the Secretaries of the Military Departments to ensure family members of active duty Service members who are identified with a medical condition meeting the criteria at what was § 75.6 of the proposed rule (now § 75.5 of the final rule) be referred to Service-specific points of contact for enrollment in the EFMP, and stated that the requirement to have the Service-specific EFMP point of contact enroll the Service member compounds the problems with access to services for families on joint bases or on installations managed by Services other than that to which a member belongs.

No change is made to the final rule as enrollment in the EFMP is currently a Service-specific function connected to each Service's assignment coordination process. The Services currently conduct independent assignment coordination activities in keeping with the needs of their missions and communities.

Four commenters discussed the need for better communication among EFMP staff and better communication and coordination between medical staff at Military Treatment Facilities (MTFs) and EFMP staff. One respondent suggested making all bases aware of the EFMP. Three commenters requested more effective public communication about EFMP programming.

While no change is made to the final rule, the Department does agree that communication about the EFMP and between MTFs and EFMP Family Support Programs is important to ensure families' special medical and educational needs are fully considered through the assignment coordination process and to help families access needed services in a timely manner. We believe the rule adequately addresses this need, as DoD Instruction 1315.19 includes provisions that are intended to increase communication and coordination among the three components of each EFMP program, as well as between MTFs and EFMP Family Support Programs.

Specifically, DoD Instruction 1315.19 requires the Secretaries of the Military Departments to promote collaboration among the components of their respective EFMP programs, ensure MTFs contact Service-specific EFMP points-of-contact at the point that a family member of an active duty Service member is identified with a medical condition that meets the EFMP

enrollment criteria (located at § 75.5 in the final rule), and ensure Military Treatment Facility personnel are trained on EFMP policies and procedures. In addition, DoD Instruction 1315.19 requires the Secretaries of the Military Departments to provide information on the EFMP to all active duty Service members and their families, regardless of location, and civilian employees or selectees who have applied for government employment in overseas locations.

Seven commenters submitted suggestions about EFMP family support staff qualifications, suggesting that specialized staff should be hired to address specific disabilities or medical conditions, and stating that staff training on disability topics, DoD resources, the disability community, local services, and respite care was needed and should include family members with special needs in order to aid staff in providing effective help to families. While no change is made to the final rule, the Department agrees that, to provide effective support, EFMP staff must have knowledge of areas of importance to families with special needs. However, the Military Departments' hiring practices are beyond the scope of this final rule, so we decline to create rules requiring that specialized EFMP family support staff be hired to address specific disabilities or medical conditions. To ensure ongoing training and development of expertise, DoD Instruction 1315.19 requires the Secretaries of the Military Departments to ensure annual training is conducted on EFMP policies and procedures as well as topics such as Medicaid, Supplemental Security Income, and TRICARE benefits.

One commenter requested we add additional language at what was § 75.5(e) of the proposed rule, now in DoD Instruction 1315.19, to strengthen the requirements for the Military Departments to provide guidance, develop programs, and establish services relating to the EFMP. The Department does not have evidence that additional language is necessary at this time, so no change has been made to the final rule. It should be noted that DoD Instruction 1315.19 explicitly assigns responsibility for several EFMP-related responsibilities, including the requirements to provide guidance on implementation and to establish EFMP services, to the Secretaries of the Military Departments. We will evaluate the necessity for additional language based on implementation of the final rule by the Military Departments and their Services. Seven commenters were concerned with the paperwork involved

with enrollment in EFMP. Commenters recommended enrollment in EFMP be standardized, either requiring physicians at MTFs to submit the paperwork to initiate EFMP enrollment, or allowing school-provided paperwork to serve as adequate documentation of disability for enrollment purposes.

The Department appreciates the commenters' attention to the demands placed on Service members, but makes no changes to the final rule because enrollment paperwork is already standardized across the DoD through completion of DD Forms 2792,<sup>1</sup> documenting special medical needs and DD Form 2792-1,<sup>2</sup> documenting special educational needs.

In an effort to decrease the paperwork burden on families, enrollment in EFMP is initiated and substantially completed by the MTF and the Service-specific EFMP point of contact. When a family member of an active duty Service member is identified within an MTF with a medical condition that meets the EFMP enrollment criteria at § 75.5 of the final rule, the MTF must initiate the EFMP enrollment process by referring the Service member to the Service-specific EFMP point of contact who ensures the DD Form 2792, "Family Member Medical Summary" is completed.

For families who receive medical care outside of the Military Treatment Facility, DoD Instruction 1315.19 requires that, under the authority of the ASD(HA), all medical care providers are made aware of the mandatory enrollment requirements of the EFMP when a family member is identified with a medical condition meeting the criteria at § 75.5 in the final rule. Physicians are part of the EFMP enrollment process in so far as they determine that a medical condition exists that requires enrollment, contact the Service-specific EFMP point of contact to initiate enrollment procedures, and complete the DD Form 2792, "Family Member Medical Summary." We are not able to dictate how physicians outside of the MTFs manage non-medical paperwork, and therefore believe that Service-specific EFMP points of contact are the most appropriate personnel to manage the EFMP enrollment process.

Also, the Department is not able to accept school paperwork as sole documentation of eligibility for EFMP because the information collected and recorded by schools varies by state and

<sup>1</sup> Available online at <http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2792.pdf>.

<sup>2</sup> Available online at <http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2792-1.pdf>.

within each state. To ensure that all required information is collected for each family, a standard DoD form is necessary.

#### **Section 75.6 DoD Criteria for Identifying Family Members With Special Needs**

Due to the restructuring of the rule, what was § 75.6 (DoD Criteria for Identifying Family Members with Special Needs) in the proposed rule has been renumbered to § 75.5 in the final rule.

Several commenters suggested that the criteria for enrollment in the EFMP be changed so that fewer conditions would trigger enrollment, that enrollment for adults or any individual with a well-controlled medical condition or positive health prognosis be made optional, or that parents be able to determine whether their children need to be enrolled in the program. One commenter erroneously stated that EFMP enrollment is supposed to be voluntary. One commenter requested that families be given the opportunity to make their own decisions about whether to go to a duty station or not, and asked that they be allowed to waive their access to a compassionate reassignment should the duty station not have adequate services and support for the family member with special needs. No changes were made to the final rule. DoD Instruction 1315.19 states enrollment for EFMP is mandatory for active duty Service members whose families include a member with special needs. Also, we do not agree that changes to the enrollment criteria or mandatory enrollment requirement for the EFMP are feasible. The criteria at § 75.5 that automatically trigger enrollment in EFMP capture those conditions that, whether well-controlled or untreated, and whether manifested by a child or an adult, must be considered when assignments are coordinated because they may require medication that is not legally available or importable in every overseas location, may require specialized care that is not available in certain locations, or may be adversely impacted by the environmental conditions at particular locations. We do not agree that allowing families to waive their access to a compassionate reassignment is sound policy because it could put family members who need reassignment in danger of having to stay in a location without adequate or necessary medical resources.

#### **Section 75.7 Coordinating Assignments of Active Duty Service Members Who Have a Family Member With Special Needs**

Due to the restructuring of the rule, what was § 75.7 (Coordinating Assignments of Active Duty Service Members Who Have A Family Member with Special Needs) in the proposed rule has been removed and now appears in DoD Instruction 1315.19.

One commenter stated that Service members were denied critical assignments due to common medical needs of family members. Three commenters stated that active duty careers were hurt by having a family member enrolled in EFMP. While no changes were made to the final rule, DoD Instruction 1315.19 was modified to now read: “active duty Service members may not be denied consideration for an essential (as defined by the military personnel assignment system) duty assignment overseas solely because of the special needs of a family member.”

DoD Instruction 1315.19 also states active duty Service members may not be denied consideration for an essential (as defined by the military personnel assignment system) duty assignment overseas solely because they have children who are or may be eligible for EIS or special education services in accordance with 32 CFR part 57. We agree, however, that this extends to cover the Service person in the event that they have an adult family member with special medical needs, and therefore have clarified the language in DoD Instruction 1315.19 to state that active duty Service members may not be denied consideration for an essential (as defined by the military personnel assignment system) duty assignment overseas solely because they have a family member with special needs.

One respondent requested that we add a process for disenrollment from the EFMP program. No changes were made to the final rule based on this comment because the Department does not believe this is necessary. DoD Instruction 1315.19 requires the Military Services to establish procedures to update the status of family member(s) with special needs when conditions occur, change, or no longer exist, and when Service-specific policy requires. This should be sufficient to ensure disenrollment of individuals who no longer meet the enrollment criteria at § 75.5 in the final rule.

Two commenters requested changes to what was § 75.7(c)(1)(iii) of the proposed rule, now in DoD Instruction 1315.19, which states that the Military

Personnel Activities will remove active duty Service members who have family members with special medical and educational needs from overseas orders if no suitable overseas assignment location can be found and there is no adverse impact on the military mission or on the active duty Service member's career. The commenters requested that this requirement only apply to medical needs, not educational needs when considering a Service member for overseas orders.

No changes were made to the final rule given that DoD Instruction 1315.19 states that, in cases where both the special medical and special educational needs of family members cannot be met, the Military Personnel Activities will remove the Service member from overseas orders, barring any adverse impact on the military mission or service person's career.

Two commenters discussed the language which appeared at what was § 75.7(e) of the proposed rule, now in DoD Instruction 1315.19, requiring active duty Service members to complete DD Forms 2792 and 2792-1 when they become aware that a family member may meet the criteria at what was § 75.6 in the proposed rule, now § 75.5 in the final rule. The commenters recommended informing Service members that removing their children from special education in order to get a targeted assignment and then referring the child for special education services once the new duty station is reached is punishable under the UCMJ. No change was made to the final rule and the Department does not agree that additional clarification is required. DoD Instruction 1315.19 states that a Service member who fails or refuses to provide the required information for a family member or who knowingly provides false information about any dependent may be subject to disciplinary actions in accordance with Article 92 or Article 107, in violation of 10 U.S.C. chapter 47, also known as The Uniform Code of Military Justice. We believe that this sufficiently covers the situation described by the commenters.

#### **Section 75.9 Provision of Family Support Services**

Due to the restructuring of the rule, what was § 75.9 (Provision of Family Support Services) in the proposed rule has been removed and now appears in DoD Instruction 1315.19.

Two commenters discussed § 75.9 in the proposed rule, which now appears in DoD Instruction 1315.19. The commenters emphasized the importance of case management and requested that the rule include more detail on case

management resource requirements and responsibilities, including case management access standards and requirements for development and updating of Services Plans. No change was made to the final rule, and we do not agree more detail is required.

DoD Instruction 1315.19 currently requires Services Plans to include identification of the family's current needs, the services they receive, the support they require, and documentation of the support provided to the family and follow-on contacts, including case notes. We believe that these requirements establish an appropriate baseline for Services Plans.

In the realm of respite care services, several commenters questioned the differences in respite care hours provided by each Service, suggested that all respite care contracts be locally based, commented on difficulties enrolling in specific respite care programs and difficulties locating quality care providers, and requested that families be given the option to select their own respite care providers and utilize respite care services in the home or at activities/appointments, that respite care providers provide transportation and homemaking services, and that respite care services be established at youth centers or other locations outside of the home.

While no changes were made to the final rule, DoD has modified DoD Instruction 1315.19 to read: "family support services may include respite care for family members who meet the eligibility criteria, regardless of age, according to Service-specific eligibility and guidance." We believe the definition of respite care services is internal to the Department, and decisions on whether to offer respite care programs, as well as specifics as to who may be a respite care provider, hours of service provided, and location of service provision, are matters of policy to be determined by each Service. Questions or comments regarding specific respite care programming or benefits should be directed to the local EFMP Family Support Office.

#### **Section 75.10 OSN**

Due to the restructuring of the rule, what was § 75.10 (Office of Community Support for Military Families with Special Needs), now appears in DoD Instruction 1315.19.

One respondent requested that we add a section to the rule reflecting the description of the Director of the OSN at 10 U.S.C. 1781c(c). No change was made to the final rule as we do not agree that this level of specificity is required, given that statutory requirements guide

the Department's implementation of the duties of the OSN.

Six commenters recommended the rule explicitly reference the responsibilities of the OSN under 10 U.S.C. 1781c. Two commenters recommended adding language from the statute delineating the OSN's responsibility to monitor programs of the military departments for the assignment and support of members of the armed forces who are members of military families with special needs. One commenter recommended adding language from the statute delineating the OSN's responsibility to monitor the availability and accessibility of programs provided by other Federal, State, local, and non-governmental agencies to military families with special needs. Four commenters recommended adding language from the statute delineating OSN's responsibility to conduct periodic reviews of best practices in the provision of medical and educational services for children with special needs.

While no change has been made to the final rule, DoD Instruction 1315.19 now explicitly states that the OSN "conducts periodic reviews of best practices in the provision of services for military families with special needs," and "collaborates with the Military Departments to standardize EFMP components as appropriate." In addition, we believe that, by monitoring the implementation of DoD Instruction 1315.19, the OSN will ensure the issuance is implemented with fidelity by all of the Services and will ensure compliance with the issuance. Relevant language has been added to DoD Instruction 1315.19, which now states that OSN has the responsibility for "implementation of this part through data review and program monitoring."

Six commenters requested that the rule establish uniform benchmarks and performance goals for the identification, enrollment, and assignment coordination components of the EFMP, and implement a process for ensuring the compliance of each Service with the final rule. OSN and the Military Departments are working to standardize various aspects of the EFMP across DoD, particularly in the areas of identification/enrollment and assignment coordination, as well as the provision of family support. Wording about the standardization process has been added to DoD Instruction 1315.19 but not the final rule. In addition, we believe OSN's monitoring of the implementation of DoD Instruction 1315.19 as required by language added to DoD Instruction 1315.19 will ensure compliance with the issuance.

Five commenters requested that the Advisory Panel on Community Support for Military Families with Special Needs be included in the rule. While no changes were made to the final rule, relevant language has been added to DoD Instruction 1315.19, which now indicates that the OSN "convenes the Advisory Panel on Community Support for Military Families with Special Needs in accordance with 10 U.S.C. 1781c."

Six commenters requested the development of data systems to evaluate the outcomes of DoD programs for children and establish a common set of EFMP data evaluation systems across the DoD. While no change was made to the final rule, the Department agrees with the necessity to establish an EFMP data system to implement and record a set of standardized EFMP-related metrics across the Department. To that end, DoD Instruction 1315.19 was modified to direct the OSN to develop and implement a web-based data management system to support the EFMP with the Military Departments and directs the ASD(HA) to participate in the development and deployment of the system.

Many commenters submitted comments noting differences and inconsistencies in their experiences with EFMP policies, procedures, and programs between different installations, and across the Services. Commenters requested that paperwork, services, and programming be made consistent, and that families at joint bases and sister-Service locations have the same level of access to EFMP that they would at installations operated by their own Service. While the Services have flexibility to implement EFMP programs in the manner they deem most supportive to their unique missions and most effective for meeting their families' needs, we agree that, to the extent practicable, consistency in EFMP policies, procedures, and programs are of benefit to enrolled families. While no changes were made to the final rule, changes were made to DoD Instruction 1315.19 which now indicates that the OSN "collaborates with the Military Departments to standardize EFMP components as appropriate." We have also added language to DoD Instruction 1315.19 clarifying that, in addition to discovering gaps in available services for families with special needs, the OSN is responsible for coordinating with the Military Departments and other DoD entities to ensure standardization of EFMP policies and procedures as appropriate.



### General Comments on the Proposed Rule

Three commenters asked about the inclusion of specialized programs for adult family members with special needs. No changes were made to the rule because it does not mandate separate services for adult and child EFMP enrollees and incorporates adult and child dependent family members with special needs in all aspects of the EFMP program, with one exception. Specifically, in accordance with § 75.5(b) of this final rule, children with disabilities ages birth to 21 are eligible for enrollment in the EFMP on the basis of having early intervention or special educational needs if they have or are eligible to have an IFSP or an IEP under 32 CFR part 57. Otherwise, both adults and children are eligible for enrollment when meeting the criteria at § 75.5(a)(1) through (5) in this final rule. Also, nothing in the rule prohibits the Services from offering specialized EFMP services for children or adults as necessary to meet the needs of their families. Please contact your local EFMP Family Support Office to determine what EFMP services are available locally for adults, or to request services that address the concerns of adults with special needs. Online resources for adults with special needs are available at Military OneSource (<http://www.militaryonesource.mil/>).

Two commenters requested EFMP materials in multiple languages. As language access requirements are outside the scope of this rule, no change was made to the rule or DoD Instruction 1315.19. However, the DoD does provide EFMP resources in multiple languages. There are multiple online resources in eight languages on the Military OneSource website at <http://www.militaryonesource.mil/>.

One commenter requested training videos on the EFMP and specific EFMP topics, such as required medical and educational DD Forms, special needs programs, case management, and medical travel. This comment did not request a change to the regulation or DoD instruction, but we provide the following information in response: We currently have multiple informational and training videos on a variety of EFMP-related topics including, but not limited to, online learning and videos explaining the EFMP and providing an overview of early intervention services (provided by the medical departments), as well as a number of webinars. They are available at: <http://www.militaryonesource.mil/>.

Three commenters requested additional sections to the rule regarding

two programs: Military Department Support for Local Centers to Assist Military Children with Special Needs, and the Foundation for Support of Military Families with Special Needs. No change is being made to the rule or DoD Instruction 1315.19 at this time. While the Secretary of Defense was given the authority to establish these programs in Section 563 of the National Defense Authorization Act for Fiscal Year 2010, as amended (published as a note to 10 U.S.C. 1781c), neither program has been established. Should the Secretary choose to establish either or both of these programs, any necessary rule-making associated with the programs will happen at that time.

One commenter requested that the Overarching Coordinating Committee for Military Families with Special Needs be included in the rule. No changes were made to the final rule. Changes were made, however, to DoD Instruction 1315.19 to express that the OSN “convenes an Overarching Coordinating Committee meeting at least once a year to review the implementation of this part.”

One commenter requested the EFMP program establish summer camps, after school programs, social clubs, or sports teams to support children with disabilities and their siblings. No change is made in the rule or DoD Instruction 1315.19, as nothing prohibits the Services from offering these services. Several installation EFMP family support offices currently sponsor activities for children with disabilities and their family members on a regular basis, including sports events, social, educational, and cultural activities. Please contact your local EFMP family support office to request or suggest events and activities.

One organization requested we add language to facilitate collaboration between that organization and EFMP programs, and to give families information on the organization’s programs in their state. No change is made to the rule or DoD Instruction 1315.19, as we decline to regulate EFMP office relationships with non-DoD organizations or require that families receive materials and services prepared by outside organizations.

The Department received several comments that complimented or thanked the Department for a range of issues including the provision of services to family members with special needs, and the inclusion of mental health issues. The Department appreciates the many comments received in support of the EFMP.

One commenter requested we establish a process for receiving

complaints about EFMP services. No change is made to the rule, which does not require a complaint process. The rule, however, does not prohibit the Services from establishing complaint processes for their EFMP programs. DoD Instruction 1315.19 gives the Secretaries of the Military Departments and the Assistant Secretary of Defense for Manpower and Reserve Affairs the responsibility for ensuring that each EFMP program is effectively implemented and monitored. We believe the ongoing review by the OSN of each Military Services’ implementation of the rule will determine if a DoD-level complaint process is needed. The Department may reconsider this issue at a later date.

Several commenters recommended DoD centralize the EFMP rather than allowing each Service to implement their own EFMP program. Commenters cited uniformity of procedures and services provided by EFMP offices, and equitable conditions and services for families as reasons for requesting a centralized EFMP. No changes are made to the rule as it sets baseline requirements for enrollment criteria for the EFMP, assignment coordination, family support services, data systems, and assigns responsibility for various aspects of the EFMP program. We decline to make rules restricting the Services from developing their own EFMP programs because the Services must have the flexibility to design programs that meet the needs of their unique missions and families.

### Comments Beyond the Scope of This Rule

Many commenters had questions or submitted suggested changes about medical services provided by the Military Departments and TRICARE medical policy. Questions, concerns, and suggestions included a request for an updated database for finding medical providers in new locations, resources available in case of the death of an EFMP member, waiting lists for specialty care providers, continuity of medical care, customer service concerns, pre-enrollment and appointments with new care providers when moving to a new region, TRICARE ECHO enrollment procedures, the collection of data on the efficacy of TRICARE wellness programs, lapses in medical services after moving, vaccination schedules, and transfer of medical records.

This rule does not regulate TRICARE programs, policies, or procedures. All TRICARE related inquiries should be directed to the TRICARE website at <http://www.tricare.mil/>.



Also, this rule does not regulate the provision of medical services by the Military Medical Departments, and all questions about medical services provided by the Military Medical Departments should be directed to the local installation MTF.

Four commenters submitted comments requesting specific services for veterans, such as access to certain military medical facilities or EFMP family support services for veterans and their families. One respondent requested that DoD ensure public schools serving military children provide a Free Appropriate Public Education. One respondent requested that medical services for high-risk pregnancies, autism, asthma, and mental health be made available at every location where family members are able to accompany Service members. One respondent recommended that DoD provide educational attorneys in every state to assist military families with special education mediation and due process hearings. One respondent requested that ABA therapists be placed in every school. Two commenters discussed service-specific housing policies. One commenter discussed the Army's compassionate reassignment procedures. One commenter recommended designating staff or a help line to help families navigate the forms and processes followed to establish dependency status with the Defense Finance and Accounting Services.

It should be noted that the regulation of veterans affairs and the regulation of educational services provided by non-DoD public schools is not within the authority of the Secretary of Defense and individuals should contact a local veterans' affairs office to discuss concerns. While DoD regulates the provision of educational services by DoDEA, it does not have the authority to regulate educational services provided by State and local governments. To address concerns with non-DoD schools, please contact the local school district administration. The allocation of medical resources, legal staffing, and school staffing within the DoD is beyond the scope of this regulation. Local Military Treatment Facilities can discuss medical resourcing, and local DoDEA schools can discuss school-based services in DoD schools.

#### Administrative Changes

After the proposed rule was published in the **Federal Register** and the public comments were adjudicated, four administrative edits were made. The edits pertained to the Definitions section (§ 75.3) of the rule and were

made in order to align with the definitions contained in an associated rule, 32 CFR part 57. These edits were not made as a result of public comments. Specifically, the administrative changes updated the definitions of Early Intervention Services (EIS), Individualized Education Program (IEP), Related Services, and Special Education to be consistent with 32 CFR part 57.

#### Internal Comments

Section 75.4(b) of the proposed rule was amended to read "assignment process" in the final rule due to an internal DoD comment received. This amendment was made because the special needs of the family member must be taken into account during the assignment process. If the Service Member is not identified as having a family member with a special need, there is no need for coordination during the assignment process.

#### Expected Impact of the Final Rule

The Department of Defense and the Military Services, which are responsible for providing services to military families with special needs, receive their funding for the Exceptional Family Member Program from the defense-wide Operations and Maintenance (O&M) appropriation. The approximate cost for the Exceptional Family Member Program for FY2016 was \$48,300,000. There is no change to program eligibility or reporting requirements based on this final rule.

#### Regulatory Procedures

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

Executive Orders 13563 and 12866 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. This final rule has been designated a "significant regulatory action," although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

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

This final rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because this rule is related to agency organization, management or personnel.

*Executive Order 13132, "Federalism"*

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

*Sec. 202, Public Law 104-4, "Unfunded Mandates Reform Act"*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of \$100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately \$141 million. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

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

The Department of Defense certifies 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. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

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

It has been determined that 32 CFR part 75 does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. These reporting requirements have been approved by the Office of Management and Budget and assigned OMB Control Number 0704-0411, titled Exceptional Family Member Program.

*System of Record Notices (SORN) and Privacy Impact Assessments (PIA)*

The applicable SORNs and PIAs for the Exceptional Family Member Program are:

1. DMDC 02 DoD. The system name is the Defense Enrollment Eligibility Reporting Systems (DEERS) (available at

<http://dpcl.d.defense.gov/Privacy/SORNSIndex/DOD-wide-SORN-Article-View/Article/627618/dmdc-02-dod/>.

The Privacy Impact Assessment (PIA) for this program is available at [https://www.dmdc.osd.mil/documents/PIA\\_DEERS.pdf](https://www.dmdc.osd.mil/documents/PIA_DEERS.pdf).

This system collects demographic information on DoD beneficiaries, including Service members and dependents, to provide a database for determining eligibility for DoD entitlements and privileges and support DoD health care management programs through the Defense Health Agency. This demographic information is used to verify Service affiliation for the EFMP.

2. EDHA 07 DoD. The system name is the Military Health Information System (available at <http://dpcl.d.defense.gov/Privacy/SORNSIndex/DOD-wide-SORN-Article-View/Article/570672/edha-07/>).

The Privacy Impact Assessment (PIA) for this program is available at <https://health.mil/Reference-Center/Forms/2016/06/23/MHSMMDR>.

The Military Health Information System collects information regarding medical care at Military Treatment Facilities (MTFs), including beneficiary eligibility and enrollment in health programs within the DoD, medical records, and diagnosis procedures, to support benefits determinations for DoD healthcare programs. This medical information is used to determine the needs of military families during the Identification/Enrollment and Assignment Coordination components of the EFMP.

3. EDHA 16 DoD. The system name is the Special Needs Program Management Information System (SNPMIS) Records (available at <http://dpcl.d.defense.gov/Privacy/SORNSIndex/DODwideSORN-ArticleView/tabid/6797/Article/570679/edha-16-dod.aspx>).

The Privacy Impact Assessment (PIA) for this program is available at [https://health.mil/Reference-Center/Forms/2015/12/01/PIA-Summary-for-Special-Needs-Program-Management-Information-System\\_SNPMIS](https://health.mil/Reference-Center/Forms/2015/12/01/PIA-Summary-for-Special-Needs-Program-Management-Information-System_SNPMIS).

The Special Needs Program Management Information System (SNPMIS) provides access to a comprehensive program of therapy, medical support, and social services for young Department of Defense (DoD) Military Health System (MHS) beneficiaries with special needs. SNPMIS is the Military Health System (MHS) automated information system designed to ensure the DoD meets the unique information requirements associated with implementation of the Individuals with Disabilities Education Act (IDEA). SNPMIS captures records

referral, evaluation, eligibility, and service plan data for children with special needs who are eligible for MHS services under IDEA. This system is a distributed data collection application with database servers distributed at various Military Treatment Facilities (MTFs) located within the Continental United States (CONUS) and Outside the Continental United States (OCONUS). SNPMIS is currently used in 45 EDIS clinics at Army, Navy, and Air Force installations worldwide.

4. DPR 34 DoD. The system name is the Defense Civilian Personnel Data System (available at <http://dpcl.d.defense.gov/Privacy/SORNSIndex/DOD-wide-SORN-Article-View/Article/570697/dpr-34-dod/>).

The Privacy Impact Assessment (PIA) for this program is available at <http://www.dhra.mil/webfiles/docs/Privacy/PIA/DHRA.XX.DCPAS.DCPDS.4.12.2013.pdf>.

The Defense Civilian Personnel Data System collects personnel information on civilian employees to provide support to the DoD civilian workforce. This personnel information is used to document staff processing of EFMP paperwork.

5. DoDEA 26. The system name is the DoDEA Educational Records system (available at <http://dpcl.d.defense.gov/Privacy/SORNSIndex/DOD-wide-SORN-Article-View/Article/570573/dodea-26/>).

The Privacy Impact Assessment (PIA) for this program is available at [http://www.dodea.edu/upload/pia\\_SIRs\\_AIRs.pdf](http://www.dodea.edu/upload/pia_SIRs_AIRs.pdf).

The DoDEA Educational Records system maintains student educational records to inform the management, funding, and tracking of DoD schools. This information is used to determine the educational needs of children during the Identification/Enrollment and Assignment Coordination components of the EFMP.

6. DoDEA 29. The system name is the DoDEA Non-DoD Schools Program system (available at <http://dpcl.d.defense.gov/Privacy/SORNSIndex/DOD-wide-SORN-Article-View/Article/570576/dodea-29/>).

The Privacy Impact Assessment (PIA) for this program is available at [http://www.dodea.edu/upload/pia\\_SIRs\\_AIRs.pdf](http://www.dodea.edu/upload/pia_SIRs_AIRs.pdf).

The DoDEA Non-DoD Schools Program system maintains the educational records for all students who receive non-DoD schooling funded by the DoD to track obligations and invoices for transportation, tuition, and tutoring payments and to determine eligibility and enrollment by grade. This information is used to determine the educational needs of children during

the Identification/Enrollment and Assignment Coordination components of the EFMP.

*Executive Order 13132, "Federalism"*

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final 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.

#### List of Subjects in 32 CFR Part 75

Children, Family health, Special needs.

■ Accordingly, 32 CFR part 75 is added to read as follows:

### PART 75—EXCEPTIONAL FAMILY MEMBER PROGRAM (EFMP)

#### Subpart A—General

Sec.

- 75.1 Purpose.
- 75.2 Applicability.
- 75.3 Definitions.

#### Subpart B—Policy

- 75.4 Policy.

#### Subpart C—Procedures

- 75.5 DoD criteria for identifying family members with special needs.
- 75.6 Civilian employees on overseas assignment.

**Authority:** 10 U.S.C. 1781c.

#### Subpart A—General

##### § 75.1 Purpose.

This part:

- (a) Provides guidance and prescribes procedures for:
  - (1) Identifying a family member with special needs who is eligible for services as defined in this part.
  - (2) Processing DoD civilian employees who have family members with special needs for an overseas assignment.
- (b) Does not create any rights or remedies in addition to those already otherwise existing in law or regulation, and may not be relied upon by any person, organization, or other entity to allege a denial of such rights or remedies.

##### § 75.2 Applicability.

This part applies to:

- (a) Service members who have family members with special needs as described in this part.
- (b) All DoD civilian employees in overseas locations and selectees for overseas positions who have family

members with special needs as described in this part.

### § 75.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purpose of this part.

*Assistive technology device.* Any item, piece of equipment, or product system, whether acquired commercially off the shelf modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

*Assistive technology service.* Any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.

*CONUS.* The 48 contiguous states of the United States, excluding Alaska, Hawaii, and U.S. territories or other overseas insular areas of the United States.

*Early Intervention Services (EIS).* Developmental services for infants and toddlers with disabilities, as defined in 32 CFR part 57, that are provided under the supervision of a Military Department, including evaluation, IFSP development and revision, and service coordination provided at no cost to the child's parents.

*Evaluations.* Medical, psychological, and educational assessments required to define a medical or educational condition suspected after a screening procedure.

*Family member.* A dependent as defined by 37 U.S.C. 401, to include a spouse and certain children of a Service member, who is eligible to receive a DoD identification card, medical care in a DoD Military Treatment Facility, and command sponsorship or DoD-sponsored travel. To the extent authorized by law and in accordance with Service implementing guidance, the term may also include other nondependent family members of a Service member. For the purposes of § 75.6 of this part only, this definition also includes the dependents of a civilian employee on an overseas assignment, or being considered for an overseas assignment, who are, or will be, eligible to receive a DoD identification card during that overseas assignment. To the extent authorized by law and in accordance with Service implementing guidance, the term may also include other nondependent family members of a civilian employee on an overseas assignment, or being considered for an overseas assignment.

*Family member travel.* Refers to family member permanent change of station authorization that is requested by a Service member or civilian

employee for the purposes of § 75.6 of this part only.

*Family support services.* Encompasses the non-clinical case management delivery of information and referral for families with special needs, including the development and maintenance of an individualized Services Plan (SP).

*Individualized Education Program (IEP).* A written document that is developed, reviewed, and revised at a meeting of the Case Study Committee, identifying the required components of the individualized education program for a child with a disability.

*Individualized Family Service Plan (IFSP).* A written document identifying the specially designed services for an infant or toddler with a disability and the family of such infant or toddler.

*Overseas.* Any location outside of the 48 contiguous United States including Alaska, Hawaii, and all U.S. Territories or other overseas insular areas of the United States.

*Related services.* Transportation and such developmental, corrective, and other supportive services required to assist a child with a disability to benefit from special education under the child's IEP. The term includes services or consults in the areas of speech-language pathology, audiology services, interpreting services, psychological services, physical and occupational therapy, recreation (including therapeutic recreation), social work services, school nurse services designed to enable a child with a disability to receive a Free Appropriate Public Education (FAPE) as described in the child's IEP, early identification and assessment of disabilities in children, counseling services (including rehabilitation counseling), orientation and mobility services, and medical services for diagnostic or evaluative purposes.

*Related services assigned to the military medical departments overseas.* Services provided by Educational and Developmental Intervention Services to Department of Defense Dependent School students for the development or implementation of an IEP, which are necessary for the student to benefit from special education. Those services may include medical services for diagnostic or evaluative purposes, social work, community health nursing, nutrition, occupational therapy, physical therapy, audiology, ophthalmology, and psychological testing and therapy.

*Responsible military department.* The Military Department responsible for providing EIS or related services in the geographic areas assigned under 32 CFR part 57.

*Special education.* Specially designed instruction (including instruction in physical education) provided at no cost to the parent to meet the unique needs of a child with a disability, conducted in the classroom, in the home, in hospitals and institutions, and in other settings.

*Special needs.* Includes special medical and educational needs of family members who meet the DoD criteria for enrollment in the EFMP as found in § 75.5 of this part.

*Specialty care.* Specialized health care required for health maintenance and provided by a physician whose training focused primarily in a specific field, such as neurology, cardiology, rheumatology, dermatology, oncology, orthopedics, or ophthalmology.

## Subpart B—Policy

### § 75.4 Policy.

It is DoD policy that:

(a) The EFMP identifies family members with special needs, enrolls sponsors in the program, and participates in the coordination of assignments for active duty Service members in order for the special needs of family members to be considered during the assignment process.

(b) Active duty Service members whose families include a member with special needs must enroll in the EFMP to ensure their family member's special needs are considered during the assignment process.

(c) The special needs of a civilian employee's family member will not be considered in the selection of a civilian for an overseas position.

## Subpart C—Procedures

### § 75.5 DoD criteria for identifying family members with special needs.

(a) *Special medical needs.* Individuals who meet one or more of the criteria in this section will be identified as a family member with special medical needs:

(1) Potentially life-threatening conditions or chronic (duration of 6 months or longer) medical or physical conditions requiring follow-up care from a primary care manager (to include pediatricians) more than once a year or specialty care.

(2) Current and chronic (duration of 6 months or longer) mental health conditions (such as bi-polar, conduct, major affective, thought, or personality disorders); inpatient or intensive (greater than one visit monthly for more than 6 months) outpatient mental health service within the last 5 years; or intensive mental health services required at the present time. This

includes medical care from any provider, including a primary care manager.

(3) A diagnosis of asthma or other respiratory-related diagnosis with chronic recurring symptoms that involves one or more of the following:

- (i) Scheduled use of inhaled or oral anti-inflammatory agents or bronchodilators.
- (ii) History of emergency room use or clinic visits for acute asthma exacerbations or other respiratory-related diagnosis within the last year.
- (iii) History of one or more hospitalizations for asthma, or other respiratory-related diagnosis within the past 5 years.

(4) A diagnosis of attention deficit disorder or attention deficit hyperactivity disorder that involves one or more of the following:

- (i) Includes a co-morbid psychological diagnosis.
- (ii) Requires multiple medications, psycho-pharmaceuticals (other than stimulants) or does not respond to normal doses of medication.
- (iii) Requires management and treatment by a mental health provider (e.g., psychiatrist, psychologist, social worker or psychiatric nurse practitioner).
- (iv) Requires the involvement of a specialty consultant, other than a primary care manager, more than twice a year on a chronic basis.
- (v) Requires modifications of the educational curriculum or the use of behavioral management staff.

(5) A chronic condition that requires:

- (i) Adaptive equipment (such as an apnea home monitor, home nebulizer, wheelchair, custom-fit splints/braces/orthotics (not over-the-counter), hearing aids, home oxygen therapy, home ventilator, etc.).
- (ii) Assistive technology devices (such as communication devices) or services.
- (iii) Environmental or architectural considerations (such as medically required limited numbers of steps, wheelchair accessibility, or housing modifications and air conditioning).

(b) *Special educational needs.* Family members of active duty Service members (regardless of location) and civilian employees appointed to an overseas location eligible for enrollment in a DoDEA school on a space-required basis will be identified as having special educational needs if they have, or are found eligible for, either an IFSP or an IEP under 32 CFR part 57.

#### **§ 75.6 Civilian employees on overseas assignment.**

(a) *Vocabulary.* Section 75.3 provides definitions of “family member” that apply only to this section.

(b) *Employee rights.* (1) The DoD Components must select civilian employees for specific positions based on job requirement and merit factors in accordance with 5 U.S.C. 2302, and 29 U.S.C. 791 through 794d. Selection for an overseas position must not be influenced by the special needs of a civilian employee’s family member(s), or any other prohibited factor.

(2) The civilian employee or selectee will be given comprehensive medical, dental, and educational information about the overseas community where the position is located to help the employee make an informed choice about accepting the position.

(3) Refer to the Joint Travel Regulations (available at <https://www.defensetravel.dod.mil/Docs/perdiem/JTR.pdf>) for PCS travel and transportation allowances for eligible civilian employees and their family members.

(4) Civilian employees or selectees assigned to positions overseas are generally responsible for obtaining medical and dental services and paying for such services, except services provided pursuant to 32 CFR part 57. Their family members may have access to the MHS on a space-available, reimbursable basis only, except for services pursuant to 32 CFR part 57.

(i) DoDEA and the Military Medical Department responsible for the provision of related services to support DoDEA at the duty station are required to evaluate school-aged children (ages 3 through 21 years, inclusive) eligible for enrollment in a DoDEA school on a space-required basis and provide them with the special education and related services included in their IEPs in accordance with 32 CFR part 57.

(ii) The Military Departments are required to provide infants and toddlers (from birth up to 3 years of age, inclusive) eligible for enrollment in a DoDEA school on a space-required basis with the EIS identified in the IFSPs in accordance with 32 CFR part 57.

(c) *Processing a civilian employee for an overseas position.* (1) When recruiting for an overseas position, DoD human resources representatives will:

(i) Provide information on the requirements of this part related to civilian employees or applicants for employment, including employee rights provided in DoD Instruction 1315.19.

(ii) Provide information on the availability of medical and educational services, including a point of contact for the applicant to ask about specific special needs. This information must be contained in any document used for recruitment for overseas positions.

(iii) Include the following statements in recruitment information:

(A) If an employee brings a child to an overseas location and that child is entitled to attend a DoD school on a space-required basis in accordance with DoDEA Regulation 1342.13 (available at [http://www.dodea.edu/aboutDoDEA/upload/1342\\_13.pdf](http://www.dodea.edu/aboutDoDEA/upload/1342_13.pdf)), DoDEA and the Military Department responsible for providing related services will ensure that the child, if eligible for special education, receives a free appropriate public education, including special education and related services pursuant to 32 CFR part 57.

(B) If an employee brings an infant or toddler (up to 3 years of age) to an overseas location, and that infant or toddler, but for the child’s age, is entitled to attend the DoDEA on a space-required basis in accordance with DoDEA Regulation 1342.13, then the Military Department responsible for EIS will provide the infant or toddler with the required EIS in accordance with the eligibility criteria consistent with 32 CFR part 57.

(C) If an employee brings a family member to an overseas location who requires medical or dental care, then the employee will be responsible for obtaining and paying for such care. Access for civilian employees and their families to military medical and dental treatment facilities is on a space-available and reimbursable basis only.

(2) When the gaining human resources representatives process a civilian for an overseas position where family member travel is authorized at government expense, then they must ask the selectee to determine whether a family member has special needs, using the criteria provided in § 75.5 of this part. All selectees must be asked only after they have been notified of their selection in accordance with 29 U.S.C. 791 through 794d, and 29 CFR 1630.14. If the selectee indicates that a family member has special needs:

(i) The DoD civilian human resources representatives may not coerce or pressure the selectee to decline the job offer in light of that information.

(ii) The selectee may voluntarily forward to the civilian human resources representative completed DD Forms 2792 or 2792–1 for each family member with special needs to provide information on the availability of medical and educational services. DD Form 2792–1 must be submitted if the selectee intends to enroll his or her child in a school funded by the DoD or a school in which DoD is responsible for paying the tuition for a space-required family member.

(3) The gaining human resources activity will coordinate with the appropriate military medical and educational personnel on availability of services and inform the selectee in writing of the availability of medical, educational, and early intervention resources and services to allow the civilian employee to make an informed choice whether to accept the position. The notice will include:

(i) Comprehensive medical, dental, and educational information on the overseas community where the position is located.

(ii) A description of the local DoDEA facility and programs, specifying the programs for children with special education needs.

(iii) A description of the local EIS available for infants and toddlers with disabilities.

(iv) A statement indicating that the lack of EIS or special education resources (including related services assigned to the military medical departments) cannot serve as a basis for the denial of family travel at government expense and required services will be provided even if a local program is not currently established in accordance with 32 CFR part 57.

(d) *Use of EFMP Family Support Services.* Civilian employees may utilize EFMP family support services on a space-available basis.

Dated: February 7, 2019.

**Aaron T. Siegel,**

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

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## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Parts 201 and 202

[Docket No. 2017-15]

#### Group Registration of Unpublished Works

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Copyright Office is modernizing its practices and procedures to increase the efficiency and quality of the registration process. As part of this effort, this final rule establishes a new group registration option for a limited number of unpublished works, replacing the prior accommodation for “unpublished collections.” The new group registration

option will allow the Office to examine each work for copyrightable authorship, create a more robust record of the claim, and improve the overall efficiency of the registration process. In addition, the final rule makes certain technical amendments to the regulations governing the group registration option for photographs.

**DATES:** Effective March 15, 2019.

**FOR FURTHER INFORMATION CONTACT:**

Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice by email at [rkas@copyright.gov](mailto:rkas@copyright.gov); Erik Bertin, Deputy Director of Registration Policy and Practice by email at [ebertin@copyright.gov](mailto:ebertin@copyright.gov); or Mark Gray, Attorney-Advisor, by email at [mgray@copyright.gov](mailto:mgray@copyright.gov); all can be reached by telephone at 202-707-8040.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Copyright Act authorizes the Register of Copyrights to specify by regulation the administrative classes of works available for the purpose of seeking a registration and the nature of the deposits required for each class. The Register also has discretion to allow groups of related works to be registered with one application and one filing fee, a procedure known as “group registration.”<sup>1</sup> Pursuant to this authority, the Register has issued regulations permitting the Copyright Office to issue group registrations for certain limited categories of works, provided that certain conditions have been met.<sup>2</sup>

On October 12, 2017, the Office issued a notice of proposed rulemaking (NPRM) proposing to create a new group registration option for unpublished works, labeled “GRUW,” to replace a longstanding registration accommodation known as the “unpublished collection” option.<sup>3</sup> Applicants have been able to use the unpublished collection option to register an unlimited number of unpublished works with one application and filing fee.<sup>4</sup> The regulation governing the existing option, however, was based on longstanding Office practices, and it was not specifically adopted under the Office’s authority to issue group registrations under section 408(c)(1) of the Copyright Act.

The NPRM explained the rationale for replacing the unpublished collection option with a new group registration

option and described key aspects of the proposal. First, applicants would be required to use a new online application specifically designed for registering groups of unpublished works, in lieu of the Standard Application or a paper application. Second, applicants would be required to upload an electronic copy or phonorecord of each work, in lieu of providing a physical deposit. Third, the filing fee for this option would be \$55, the same fee that currently applies to individual works claims submitted on the Standard Application. Fourth, applicants could include no more than five works in each claim, with a limited exception to allow applicants to register up to five sound recordings together with the musical work, dramatic work, or literary work embodied in each recording. Fifth, the author and claimant for each work in the group must be the same. Sixth, the works must be registered in the same administrative class, and the authorship statement for each work must be exactly the same. Seventh, the proposed rule confirmed that a registration for a group of unpublished works will cover each work in the group and each one would be registered as a separate work. Finally, it clarified that applicants could not assert a claim in the selection, coordination, or arrangement of the works within the group, and that the group as a whole will not be considered a compilation, a collective work, or a derivative work.

The Office received 113 comments in response to the NPRM, discussed in more detail below. The majority of comments were submitted by individuals, including photographers, illustrators, graphic designers, and other visual artists. The Office also received comments from (1) Author Services, Inc., representing the literary, theatrical, and musical works of the late L. Ron Hubbard; (2) the law firm of Browning-Smith, which represents artists, sculptors, and illustrators; (3) the Copyright Alliance; (4) the Graphic Artists Guild, Inc.; (5) the Kernochan Center for Law, Media and the Arts at Columbia Law School (“Kernochan Center”); (6) Science Fiction and Fantasy Writers of America, Inc. (“SFWA”), American Society of Journalists and Authors (“ASJA”), and The National Writers Union (“NWU”) (collectively the “SFWA Commenters”); (7) NWU, ASJA, SFWA, and the Textbook & Academic Authors Association (collectively the “NWU Commenters”); and (8) The Authors Guild, Inc., SFWA, The Association of Garden Communicators, Society of Children’s Book Writers and Illustrators,

<sup>1</sup> See 17 U.S.C. 408(c)(1).

<sup>2</sup> See generally 37 CFR 202.3(b)(5), 202.4.

<sup>3</sup> See 82 FR 47415 (Oct. 12, 2017).

<sup>4</sup> 37 CFR 202.3(b)(4)(i)(B).