



[8610-01]

BROADCASTING BOARD OF GOVERNORS

22 CFR Part 502

Domestic Requests for Broadcasting Board of Governors Program Materials

AGENCY: Broadcasting Board of Governors.

ACTION: Interim final rule with request for comment.

SUMMARY: As directed by the National Defense Authorization Act for 2013 and amendments to the U.S. Information and Educational Exchange Act, the Broadcasting Board of Governors issues a rule which establishes procedures for responding to domestic requests for the Agency's program materials. The Agency may, upon request, provide members of the public, organizations, and media with program materials which the Agency disseminated abroad.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments must be submitted on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Please submit comments by e-mail to acabral@bbg.gov, or by postal mail or commercial delivery, addressed to April Cabral, Senior Policy Advisor, International Broadcasting Bureau Director's Office, Broadcasting Board of Governors,

330 Independence Avenue, S.W., Washington, DC 20237. Please state that your comment refers to Interim Final Revisions to 22 CFR Part 502.

Additional information about the Agency and its programs is available on the Internet at <http://www.bbg.gov>.

FOR FURTHER INFORMATION CONTACT: April Cabral, Senior Policy Advisor, International Broadcasting Bureau, Broadcasting Board of Governors, 330 Independence Avenue, S.W., Washington, DC 20237. Telephone number: (202) 203-4515.

SUPPLEMENTARY INFORMATION:

Background

The Broadcasting Board of Governors supervises all U.S. non-military international broadcasting activities in accordance with the broadcasting principles and standards in the U.S. International Broadcasting Act of 1994, including consistency with the broad foreign policy objectives of the United States. As stated in the U.S. International Broadcasting Act of 1994, it is the policy of the United States to promote freedom of opinion and expression and to open communication of information and ideas among the people of the world. 22 U.S.C. 6201. The Agency has adopted as its mission statement: to inform, engage, and connect people around the world in support of freedom and democracy.

Due to recent amendments to section 501 of the U.S. Information and Educational Exchange Act, the Agency may, upon request, provide members of the public,

organizations, and media with program materials which the Agency disseminated abroad. It is the Agency's policy to make its program materials available, upon request, whenever doing so is consistent with all statutory authorities, prohibitions, principles, and standards.

Administrative Procedures Act

There is good cause under 5 U.S.C. 553(b)(B) and (d)(3) to publish this rule at the time of implementation. Because one of the purposes of this rule and the law underlying this rule is to allow information dissemination outside of the Freedom of Information Act for BBG program materials, and because of the impending effective date of the law, the intent of the law would be frustrated if BBG could not begin implementing this rule and responding to domestic requests for program materials by July 2, 2013. The immediate implementation of this rule by the effective date of the law will advance the Congressional intent to allow the BBG to respond to domestic requests for program material and provide information about its activities to the media and to the public for the purposes of transparency of BBG operations. Moreover, this rule is not significant in nature and impact on the public, since the BBG makes all program materials available on its public websites at no cost. Accordingly, BBG finds that normal public rulemaking procedures are impracticable and unnecessary, and that there is good cause under 5 U.S.C. 553 (b)(B) and (d)(3) to exempt this rule from public rulemaking procedures and to implement this rule upon publication. Without prejudice to BBG's determination that there is good cause to exempt this rule from public rulemaking procedures, in the interests of transparency and public participation, BBG is publishing this rule as an interim final rule with a discretionary 60-day provision for public comment.

Furthermore, because this is a substantive rule that relieves restrictions imposed by previous versions of 22 U.S.C. 1461 and 1461-1a, the Agency may implement this rule at the time of publication under 5 U.S.C. 553(d)(1). This rule does not require or prompt the public to take any action; rather, it functions to relieve the prohibition that prevented the Agency from responding to requests for program materials from the U.S. public, U.S. media entities, or other U.S. organizations. This rule benefits the public, media, and other organizations by allowing them to request and access BBG program materials, which previously could not be disseminated within the U.S.

The BBG seeks public comment on all aspects of this interim final rule and will carefully review any comments it receives. The BBG will publish a response in the Federal Register to any significant, adverse comments it receives, along with any modifications to this rule, within 60 days after the deadline for public comment.

Regulatory Flexibility Act/Executive Order 13272: Small Business Impacts

Because this interim final rule is exempt from 5 U.S.C. 553 under 5 U.S.C. 553(b)(B), (d)(1), and (d)(3), and because no other law requires BBG to give notice of such rulemaking, this interim final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) or Executive Order 13272, section 3(b). In addition, this interim final rule will not have an impact on small businesses or other small entities, because, under this rule, BBG only responds to requests for program materials.

Executive Order 12866 and 13563

Because this interim final rule is exempt from 5 U.S.C. 553 under 5 U.S.C. 553(b)(B), (d)(1), and (d)(3), this interim final rule is exempt from the requirements of Executive Order 12866 and 13563. BBG has, nevertheless, reviewed the interim final

rule to ensure its consistency with the regulatory philosophy and principles set forth in those Executive Orders. This rule has been designated a non-significant regulatory action as defined by Executive Order 12866.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million in any year; and it will not significantly or uniquely affect small governments. Therefore, this rule contains no Federal mandates as defined in the Unfunded Mandates Reform Act of 1995, and this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804 for the purposes of Congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801-808). This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial, direct effect on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of the Government.

Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 13175—Consultation and Coordination with Indian Tribal Governments

The BBG has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

List of Subjects in 22 CFR Part 502

Broadcasting, Foreign relations, News media, Public affairs, Radio, Recordings, Smith-Mundt, Television.

Accordingly, the Broadcasting Board of Governors amends chapter V, title 22, Code of Federal Regulations by adding part 502 to read as follows:

PART 502 – DOMESTIC REQUESTS FOR BROADCASTING BOARD OF GOVERNORS PROGRAM MATERIALS

Sec.

502.1 Authority and scope.

502.2 Definitions.

502.3 Availability of program materials on public websites.

502.4 Media or organization one-time requests for broadcast quality agency program materials.

502.5 Media or organization requests for ongoing subscriptions to broadcast quality agency program materials.

502.6 Terms of use for accessing program materials available on agency websites.

502.7 Denial of requests.

502.8 Fees.

Authority: 22 U.S.C. 1461, 1461-1a

§ 502.1 Authority and scope.

(a) Authority for this part. This part is pursuant to Section 1078 of the National Defense Authorization Act for Fiscal Year 2013, Pub. L. 112-239, as codified in 22 U.S.C. §§ 1461, 1461-1a and the U.S. International Broadcasting Act, 22 U.S.C. 6201 et seq.

(b) Scope. This part applies to the public and all divisions of the Federal Government supervised by the Broadcasting Board of Governors under the U.S. International Broadcasting Act of 1994 (collectively “the Agency”). These regulations only cover the procedures for responding to domestic requests for Agency program materials.

(c) Summary.

(1) The Broadcasting Board of Governors supervises all U.S. non-military international broadcasting activities in accordance with the broadcasting principles and standards in the U.S. International Broadcasting Act of 1994, 22 U.S.C. 6201 et seq., including consistency with the broad foreign policy objectives of the United States.

(2) As stated in the U.S. International Broadcasting Act of 1994, it is the policy of the United States to promote freedom of opinion and expression and to open communication of information and ideas among the people of the world. The Agency has adopted as its mission statement “to inform, engage, and connect people around the world in support of freedom and democracy.”

(3) It is the Agency’s policy to make its program materials available, upon request, whenever doing so is consistent with all statutory authorities, prohibitions,

principles, and standards. However, the Agency reserves the right to deny requests for program materials under circumstances described in Section 502.7 of this regulation.

(4) Pursuant to section 501 of the U.S. Information and Educational Exchange Act, as amended, as codified in 22 U.S.C. 1461, the Agency may, upon request, provide members of the public, organizations, and media with program materials which the Agency disseminated abroad, in accordance with these regulations.

(5) Pursuant to Section 208 of Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, as amended, as codified at 22 U.S.C. 1461-1a, the Agency is prohibited from using appropriated funds to influence public opinion in the United States, however, the statute clarifies that the Agency may:

(i) Provide information about its operations, programs, or program materials to the media, the public, or Congress in accordance with applicable law;

(ii) Make program materials available in the United States, when appropriate, and in accordance with other applicable law.

§ 502.2 Definitions.

As used in this part:

(a) Media entity means any person or entity, that actively gathers information of potential interest to a segment of the public, turns gathered information into a distinct work, or distributes that work to an audience within the United States, and otherwise serves the purposes described in § 502.4.

(b) Organization means any corporation, trust, association, cooperative, or other group organized primarily for scientific, educational, service, charitable, or similar

purpose, including but not limited to institutions of higher education, and otherwise serves the purposes described in § 502.4.

(c) Program materials means radio broadcasts, television broadcasts, and Internet content that the Agency disseminates to audiences outside of the United States, pursuant to: The U.S. Information and Educational Exchange Act of 1948 (22 U.S.C. § 1461 et seq.); The U.S. International Broadcasting Act of 1994 (22 U.S.C. § 6201 et seq.); The Radio Broadcasting to Cuba Act (22 U.S.C. § 1465 et seq.); or The Television Broadcasting to Cuba Act (22 U.S.C. § 1465aa et seq.).

(d) Requestor means any private person or entity within the United States that requests program materials from the Agency.

§ 502.3 Availability of program materials on public websites.

(a) The Agency makes program materials available to Requestors through the Agency's news and information websites designed for foreign audiences. To access currently-available Agency program materials, please visit www.voanews.com and www.martinoticias.com. The homepages of these websites display a portion of the Agency's most recent news reporting. Additional program materials are available through the websites' search functions.

(b) Program materials are available on Agency websites after their dissemination abroad, and may be removed from Agency websites solely at the Agency's discretion. The Agency will remove program materials from Agency websites when a National Archives and Records Administration (NARA) records schedule goes into effect, or when required by licensing agreements with third-party copyright holders. Once these program

materials have been removed from Agency websites, they are no longer available from the Agency.

(1) When full programs are removed from the Agency's websites in accordance with a NARA records schedule, programs designated as permanent will be transferred to NARA. For information on how to request Agency program materials that have been transferred to NARA, see the Agency's records schedules and NARA's regulations at www.nara.gov.

(2) Programs designated as temporary under a NARA records schedule will not be retained by the Agency once they are removed from the Agency's websites and are no longer needed for the Agency's use.

(c) Segments incorporated into final programs, including music, interviews, reports, and other program elements, will not be transferred to NARA independently of full program recordings, and will not be available after they have been removed from Agency websites.

(d) Draft program materials, and any other program materials not selected for dissemination abroad, are not available.

(e) The Agency shall determine the method of making program materials available, as well as the file type, file format, resolution, and storage medium(s) that are available. Program materials are only available in the same form (i.e. radio or television file-type and file format) and language in which the Agency disseminated them abroad.

§ 502.4 Media or organization one-time requests for broadcast quality agency program materials.

Upon request, the Agency may provide a broadcast-quality copy of Agency program materials to Media entities, educational organizations, not-for-profit corporations, or other organizations, provided that the Agency determines that fulfilling such a request for a broadcast-quality copy of the materials would serve the Agency's statutory mission, and that providing the program material is consistent with the Agency Policy for domestic distribution which incorporates the Broadcasting principles and standards, as well as other requirements, found in 22 U.S.C. 1461, 1461-1a, 1462, 6201, 6202, 6203, 6204, 6205, 6206; Pub. L. 112-239, section 1078(b), 126 Stat. 1632, 1958; agreements with third-parties who hold a copyright in Agency program materials; and Terms of Use on Agency websites. Please see § 502.5 for information on ongoing subscriptions to broadcast quality Agency program materials. One-time requests for broadcast quality copies of Agency program materials should be directed to:

- (a) The Voice of America Office of Public Relations for broadcast-quality copies of Voice of America program materials; and
- (b) The TV Marti Division of the Office of Cuba Broadcasting for broadcast-quality copies of TV or Radio Marti program materials.

§ 502.5 Media or organization requests for ongoing subscriptions to broadcast quality agency program materials

(a) Upon request, the Agency may make program materials available on an ongoing basis to Media entities, or other organizations, through a subscription agreement, provided that the Agency determines that entering into a subscription agreement to make program materials available on an ongoing basis would be consistent with the Agency's

mission and authorities. Requested, ongoing subscription agreements must be consistent with the Agency's Policy for domestic distribution which incorporates the Broadcasting principles and standards. And other requirements, found in 22 U.S.C. 1461, 1461-1a, 1462, 6201, 6202, 6203, 6204, 6205, 6206; Pub. L. 112-239, section 1078(b), 126 Stat. 1632, 1958; agreements with third-parties that hold a copyright in Agency program materials; and Terms of Use on Agency websites. Please see § 502.4 for information on one-time requests for broadcast quality Agency program materials.

(b) Media entities, or other organizations, may request ongoing subscriptions by filling out an application form found on the website for the Direct System, the Agency's professional distribution system.

§ 502.6 Terms of use for accessing program materials available on agency websites.

(a) By accessing Agency websites, Requestors agree to all the Terms of Use available on those websites.

(b) All Requestors are advised that Agency program materials may contain third-party copyrighted material, unless the Agency specifically informs the Requestor otherwise. Accordingly, and as further explained in the Terms of Use mentioned above, by using Agency websites to access program materials:

(1) The Requestor agrees that he or she is solely responsible for his or her use of program materials provided by the Agency and any copyrighted portion(s) of those materials;

(2) The Requestor agrees that he or she shall secure all necessary licenses from all persons or organizations that hold a copyright in any portion of requested program materials before making any use of those program materials, except uses of program

materials permitted by the Copyright Act of 1976, as amended. Permitted uses include: use of works for which copyright protections have lapsed or expired; use for private viewing, study, scholarship, or research purposes; or uses permitted under the fair use provisions of 17 U.S.C. 107.

§502.7 Denial of requests.

(a) The Agency reserves the right to deny any request for program materials made pursuant to these regulations for cause, including but not limited to the following circumstances:

(1) For a Requestor's failure to comply with the Terms of Use on Agency websites;

(2) For a Requestor's failure to secure necessary rights and licenses to use third-party copyrighted materials when the Requestor uses Agency program materials in any way not explicitly permitted by the Copyright Act of 1976, as amended;

(3) When the Agency's distribution of program materials is restricted by an agreement with a third-party that holds a copyright in a portion of Agency program materials;

(4) If providing the requested materials would be inconsistent with the Agency's statutory authorities, the broadcasting element's charter, or any applicable law or regulation.

(b) For more information on the criteria for accepting or denying requests, please see the Agency's policy for domestic distribution, available at www.bbg.gov.

§ 502.8 Fees.

(a) The Agency makes program material available at no cost on www.voanews.com and www.martinoticias.com.

(b) The Agency may collect a fee for reimbursement of the reasonable costs incurred to fulfill a request for Agency program materials, including ongoing subscriptions for Media entities and one-time requests for broadcast-quality copies of Agency program materials. Fees charged for ongoing subscriptions, if any, will be outlined in an agreement between the Media entity and the Agency.

(c) The Agency reserves the right to establish and change fees in accordance with applicable law and regulation.

DATED: June 13, 2013.

Richard M. Lobo,
Director, International Broadcasting Bureau

[FR Doc. 2013-14505 Filed 07/01/2013 at 8:45 am; Publication Date: 07/02/2013]