



DEPARTMENT OF DEFENSE

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Office of the Secretary

32 CFR Part 238

[Docket ID: DOD-2012-OS-0075]

RIN 0790-AI90

DoD Assistance to Non-Government, Entertainment-Oriented Media Productions

AGENCY: Office of the Assistant to the Secretary of Defense for Public Affairs, DoD.

ACTION: Proposed rule.

SUMMARY: This rule establishes policy, assigns responsibilities, and prescribes procedures for DoD assistance to non-Government entertainment media productions such as feature motion pictures, episodic television programs, documentaries, and computer-based games. This rule provides for oversight of production assistance decisions at centralized and senior levels of DoD to ensure consistency of approach among DoD and Service components with respect to support for entertainment media productions, including documentaries.

DATES: Comments must be received by [insert date 60 days from date of publication].

ADDRESSES: You may submit comments, identified by docket number and or Regulatory Information Number (RIN) and title, by any of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd floor, East Tower, Suite 02G09, Alexandria VA 22350-3100.

Instructions: All submissions received must include the agency name and docket number or RIN for this Federal Register document. The general policy for comments and other submissions

from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Philip M. Strub, (703) 695-2936.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose

This rule is being published to seek comment on DOD's updated policy for support to entertainment-oriented media productions, including documentaries. The increased and higher-level oversight is required to eliminate inconsistencies and ambiguities in guidance for and supervision of DoD activities to ensure common standards are met in providing support, and that production support is appropriate. The rule also includes two DoD Production Assistance Memoranda (PAM) as samples. These memoranda explain the terms under which DoD provides assistance to production companies for projects that have been approved for DoD support. .

II. Summary of the Major Provisions of this Regulatory Action

(a) This rule includes documentaries within the category of non-government, entertainment-oriented media productions and requires approval of production assistance for such entertainment-oriented media productions at the DoD level vice the Service level.

(b) This rule includes two sample DoD Production Assistance Memoranda (PAMs), one for documentary productions and one for all other entertainment media productions. This rule also assigns the authority for signing both types of agreements to the Assistant to the Secretary of Defense for Public Affairs (ATSD(PA)), or the ATSD(PA)'s designee.

(c) This rule addresses how military personnel may appear in entertainment media. This rule requires the written permission of the Assistant to the Secretary of Defense for Public Affairs (or his/her designee) in order for active duty military personnel to serve as actors in significant roles and in roles beyond the scope of their normal duties.

III. Costs and Benefits of this Regulatory Action

First, the support and assistance to non-government entertainment media productions will be at no additional cost to the government and taxpayers. Once DoD has agreed with a production company to provide production assistance and the parties have signed a Production Assistance Memorandum, , operations, and maintenance, supply and equipment costs incurred by DoD (collectively) as a direct consequence of providing support will be reimbursed by the non-government entertainment production company. Additionally, the sample production assistance memoranda provide for the production company to indemnify and hold harmless the DoD for claims arising from the production company's possession or use of DoD property or other assistance in connection with the production. Support to non-government entertainment media may be provided based on a number of factors: whether the production presents a reasonably realistic depiction of the Military Services and the DoD, whether the production is informational and considered likely to contribute to public understanding of the Military Services and the DoD, or whether the production may benefit Military Service recruiting and retention programs.

Regulatory Procedures**Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”**

We have consulted with the Office of Management and Budget (OMB) and determined this NPRM meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by [Executive Order 13563](#), and was subject to OMB review.

Sec. 202, Pub. L. 104-4, “Unfunded Mandates Reform Act”

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately \$141 million. This document 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)

We certify this proposed rule will not have a significant economic impact on a substantial number of small entities because the entities who receive production assistance are those who affirmatively request it, and therefore, interact with DoD solely on a voluntary basis. .

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)

This proposed rule does not create any new or affect any existing collections, and therefore, does not require OMB approval under the Paperwork Reduction Act.

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 document will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 238

Entertainment; Media productions; Documentaries.

For the reasons set forth in the preamble, DoD proposes to add 32 CFR part 238 to read as follows:

PART 238—DoD ASSISTANCE TO NON-GOVERNMENT, ENTERTAINMENT-ORIENTED MEDIA PRODUCTIONS

Sec.

238.1 Purpose.

238.2 Applicability.

238.3 Policy.

238.4 Responsibilities.

238.5 Procedures.

Appendix A to Part 238 - Sample Production Assistance Memorandum

Appendix B to Part 238 – Sample Documentary Production Assistance Memorandum

Authority: 31 U.S.C. 9701.

§ 238.1 Purpose.

This part establishes policy, assigns responsibilities, and prescribes procedures for DoD assistance to non-Government entertainment media productions such as feature motion pictures, episodic television programs, documentaries, and electronic games.

§238.2 Applicability.

This part:

- (a) Applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the combatant commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (referred to collectively in this part as the “DoD Components”).
- (b) Does not apply to productions that are intended to inform the public of fast-breaking or developing news stories.

§ 238.3 Definitions.

Unless otherwise noted, this term and its definition are for the purposes of this part.

Assistance (as in “DoD Assistance to Non-Government, Entertainment-Oriented Media Productions”). The variety of support that the DoD can provide. The assistance ranges from supplying technical advice during script development, to allowing access to military installations for production.

§ 238.4 Policy.

It is DoD policy that:

- (a) DoD assistance may be provided to an entertainment media production, to include fictional portrayals, when cooperation of the producers with the Department of Defense benefits the Department of Defense, or when such cooperation would be in the best interest of the Nation based on whether the production:
 - (1) Presents a reasonably realistic depiction of the Military Services and the Department of Defense, including Service members, civilian personnel, events, missions, assets, and policies;

- (2) Is informational and considered likely to contribute to public understanding of the Military Services and the Department of Defense; or
 - (3) May benefit Military Service recruiting and retention programs.
- (b) DoD assistance to an entertainment-oriented media production will not deviate from established DoD safety and environmental standards, nor will it impair the operational readiness of the Military Services. Diversion of equipment, personnel, and material resources will be kept to a minimum.
 - (c) The production company will reimburse the Government for any expenses incurred as a result of DoD assistance rendered in accordance with the procedures in this part.
 - (d) Official activities of Service personnel in assisting the production; use of official DoD property, facilities, and material; and employment of Service members in an off-duty, non-official status will be in accordance with the procedures in this part.
 - (e) Footage shot with DoD assistance and official DoD footage released for a specific production will not be reused for or sold to other productions without Department of Defense approval.

§ 238.5 Responsibilities.

- (a) The Assistant to the Secretary of Defense for Public Affairs (ATSD (PA)) will serve as the sole authority for approving DoD assistance, including DoD involvement in marketing and publicity, to non-Government entertainment-oriented media. The ATSD (PA) will make DoD commitments, in consultation with the Heads of the Military Components, only after:
 - (1) The script, treatment, or narrative description is found to qualify in accordance with the general principles in §238.4(a) of this part.
 - (2) The support requested is determined to be feasible.

(3) For episodic television, motion pictures, and other nondocumentary entertainment media productions, the producer has an acceptable public exhibition agreement with a recognized exhibition entity (i.e., studio or network), and the capability to complete the production (i.e., completion bond or other industry-recognized guarantor of completion, such as the commitment of a major studio or other source of financial commitment). For documentaries, the producer has indicated a clear capability to complete the production.

(b) The Heads of the Military Components will develop procedures for implementing this part and will ensure that the requirements of this part are met.

§ 238.6 Procedures.

(a) General. (1) The producer will be required to sign a written Production Assistance Memorandum (see Appendices A and B for sample memoranda), explaining the terms under which DoD's production assistance is provided, with the designee of the Assistant to the Secretary of Defense for Public Affairs, and may be required to post advance payment or a letter of credit issued by a recognized financial institution to cover the estimated costs before receiving DoD assistance.

(2) Official activities of Service members in assisting the production must be within the scope of normal military activities. On-duty service members and DoD civilians are prohibited from serving as actors, such as by speaking filmmaker-invented, or scripted dialogue, unless approved in writing by the (ATSD(PA)) or his or her designee. With the exception of assigned project officer(s) and technical advisor(s), Service members and DoD civilians will not be assigned to perform functions outside the scope of their normal duties.

(3) Official personnel services and DoD material will not be employed in such a manner as to compete directly with commercial and private enterprises. DoD assets may be provided when similar civilian assets are not reasonably available.

(4) The production company may hire Service members in an off-duty, non-official status to perform as extras or actors in minor roles, etc., provided there is no conflict with any existing Service regulation. In such cases, contractual arrangements are solely between those individuals and the production company; however, payment should be consistent with current industry standards. The producer is responsible for resolving any disputes with unions governing the hiring of non-union actors and extras. Service members accepting such employment will comply with the standards of conduct in DoD Directive 5500.07, “Standards of Conduct” (available at <http://www.dtic.mil/whs/directives/corres/pdf/550007p.pdf>). The Heads of the Components may assist the production company in publicizing the opportunity for employment and in identifying appropriate personnel.

(5) The production company will restore all Government property and facilities used in the production to the same or better condition as when they were made available for the company’s use. This includes cleaning the site and removing trash.

(6) The DoD project officer, described in paragraph (b)(3) of this section, may make DoD motion and still media archival materials available when a production qualifies for assistance in accordance with the general principles in §238.4(a) of this part.

(b) Specific procedures—(1) Script development and review. (i) Before a producer officially submits a project to the Office of the Assistant to the Secretary of Defense for Public Affairs (OATSD(PA)), the Military Components are authorized to assist entertainment-oriented media producers, scriptwriters, etc., in their efforts to develop a script that might ultimately qualify for

DoD assistance. Such activities could include guidance, suggestions, answers to research queries for technical research, and interviews with technical experts. However, the Military Departments providing such assistance are required to coordinate with and update OATSD (PA) of the status of such projects. Military Components will refrain from making commitments and rendering official DoD opinions until first coordinating through appropriate channels to obtain OATSD (PA) concurrence in such actions.

(ii) Production company officials requesting DoD assistance will submit a completed script (or a treatment or narrative description for documentaries), along with a list of desired support. If a definitive list is not available when the script is initially submitted, requirements should be stated in general terms at the outset. However, no DoD commitment will be made until the detailed list of support requested has been reviewed and deemed to be feasible.

(iii) OATSD (PA) will coordinate the review of scripts, treatment, or narrative description submitted for production assistance consideration. The coordinated review will include each Military Service depicted in the script. Although no commitment for assisting in the production is implied, OATSD (PA) may provide, or authorize the Military Services to provide, further guidance and suggestions for changes that might resolve problems that would prevent DoD assistance.

(2) Production assistance notification. Upon reviewing the recommendations of the Military Components concerned, the ATSD (PA) will determine whether a given production meets the DoD criteria for support and if the support requested is feasible. If both requirements are satisfied, the ATSD (PA) will notify in writing the production company concerned, advising it that the Department of Defense has approved DoD production assistance and identifying the DoD project officer tasked with representing the Department of Defense throughout the

production process. On a case-by-case basis, the ATSD (PA) may choose to delegate the responsibility of signing the Production Assistance Memorandum on behalf of DoD to the designated DoD project officer or other DoD official responsible for coordinating production assistance. If so, this decision would be included in the notification letter. If production assistance is approved for only a portion of the proposed project, the written notification shall clearly describe the portion(s) approved. If assistance is not approved, ATSD (PA) or the ATSD (PA)'s designee will send a letter to the production company stating reasons for disapproval.

(3) Role of the DoD project officer. (i) When production assistance has been approved, the Military Components will assign a project officer (commissioned, non-commissioned, or civilian) who will be designated by OATSD (PA) as the principal DoD liaison to the production company. The DoD project officer will at a minimum:

(A) Act as liaison between the production company and the Secretaries of the Military Departments and maintain contact with OATSD (PA) through appropriate channels. In this regard, the project officer will serve as the central coordinator for billing the producer and monitoring payments to the Government. (See paragraph (d) of this section for billing procedures.)

(B) Advise the production company on technical aspects and arrange for information necessary to ensure reasonably accurate and authentic portrayals of the Department of Defense.

(C) Maintain liaison with units and commands providing assistance to ensure timely arrangements consistent with the approved support.

(D) Coordinate with installations or commands that intend to provide support to the production to ensure that no material assistance is provided before a Production Assistance Memorandum is signed by both DoD and the production company.

(E) When DoD assistance to the production requires the production company to reimburse the Government for additional expenses, develop an estimate of expenses based on the assistance requested, and ensure that these are reflected in the Production Assistance Memorandum.

(F) Coordinate with each installation or command providing assets to the production to ensure the production company receives accurate and prompt statements of charges assessed by the Government and that the Government receives sufficient payment for any additional expenses incurred to support the production.

(G) For project officers assigned to a documentary or a non-documentary television series, maintain close liaison with the producer(s) and writers in developing story outlines. All story ideas considered for further development by the production company should be submitted to OATSD (PA) to provide the earliest opportunity for appraisal.

(ii) When considered to be in the best interest of the Department of Defense, the assigned project officer may provide “on-scene” assistance to the production company. Military or civilian technical advisor(s) may also be required. In such cases:

(A) Assignment will be at no additional cost to the Government. The production company will assume payment of such items as travel (air, rental car, reimbursement for fuel, etc.) and per diem (lodging, food and incidentals).

(B) Assignment should be for the length of time required to meet preproduction requirements through completion of photography. When feasible, assignment may be extended to cover post-production stages and site clean-up.

(iii) Additional project officer responsibilities, when considered to be in the best interest of the Department of Defense, will include:

(A) Supervising the use of DoD equipment, facilities, and personnel.

(B) Attending pertinent preproduction and production conferences, being available during rehearsals to provide technical advice, and being present during filming of all scenes pertinent to the Department of Defense.

(C) Ensuring proper selection of locations, appropriate uniforms, awards and decorations, height and weight standards, grooming standards, insignia, and set dressing applicable to the military aspects of the production. This applies to active duty members as well as paid civilian actors.

(D) Arranging for appropriate technical advisers to be present when highly specialized military technical expertise is required.

(E) Ensuring that the production adheres to the agreed-upon script and list of support to be provided.

(F) Authorizing minor deviations from the approved script or list of support to be provided, so long as such deviations are feasible, consistent with the safety standards, and in keeping with the approved story line. All other deviations shall be referred for approval to OATSD (PA) through appropriate channels.

(G) In accordance with the Production Assistance Memorandum, providing notice of non-compliance, and when necessary, suspending assistance when action by the production company is contrary to stipulations governing the project and suspension is in the best interest of the Department of Defense until the matter is resolved locally or by referral to OATSD (PA).

(H) Attending the approval screening of the production, unless the Military Department concerned, OATSD (PA), and the production company mutually agree otherwise.

(I) Determining whether the production company will need to obtain the written consent of DoD personnel who may be recorded, photographed, or filmed by the production company, including when the production company uses the personally identifying information (PII) of DoD

personnel. The likeness of DoD personnel in any imagery is included in the meaning of PII. If the recording or imagery captures medical treatment being performed on DoD personnel, the project officer shall require the production company to gain written consent from such DoD personnel. In the case of DoD personnel who are deceased or incapacitated, the project officer shall require the production company to gain written consent from the next of kin of the deceased or incapacitated DoD personnel.

(c) Production company procedures—(1) Review of productions. When DoD assistance has been provided to a non-documentary production, the production company must arrange for an official DoD screening in Washington, D.C., or at another location agreeable to OATSD (PA), before the production is publicly exhibited. This review should be early, but at a stage in editing when changes can be accommodated, to allow the Department of Defense to confirm military sequences conform to the agreed upon script. For documentary productions, the production company will provide to the DoD project officer and the DoD designee(s) responsible for coordinating production assistance a digital video (DVD) of military-themed photography and the roughly edited version of the production at a stage in editing when changes can be accommodated. In addition to confirming that the military sequences conform to the agreed upon script, treatment, or narrative, this review will also serve to preclude release or disclosure of sensitive, security-related, or classified information; and to ensure that the privacy of DoD personnel is not violated. Should DoD determine that material in the production compromises any of the preceding concerns, DoD will alert the production company of the material, and the production company will remove the material from the production.

(2) Credit titles. The production company will place a credit in the end titles immediately above the “Special Thanks” section (if any) that states “Special Thanks to the United States Department

of Defense,” with no less than one clear line above and one clear line below such credit acknowledging the DoD assistance provided. Such acknowledgment(s) will be in keeping with industry customs and practices, and will be of the same size and font used for other similar credits in the end titles.

(3) Requests for promotional assistance. Pursuant to DoD Directive 5122.05, “Assistant Secretary of Defense for Public Affairs” (available at <http://www.dtic.mil/whs/directives/corres/pdf/512205p.pdf>), the ATSD(PA) is the final authority for military participation in public events, including participation in promotional events for entertainment media productions. The production company will forward requests for promotional assistance to OATSD(PA) in sufficient detail to permit a complete evaluation.

(4) Publicity photos and promotional material. The production company will provide DoD with copies of all promotional and marketing materials (e.g., electronic press kits, one-sheets, and television advertisements) for internal information and historical purposes in documenting DoD assistance to the production.

(5) Copies of completed production. The production company will provide, in a format to be specified in the Production Assistance Memorandum, copies of the completed production to DoD for briefings and for historical purposes.

(d) Billing procedures. Pursuant to 31 U.S.C. 9701, production companies will reimburse the Government for additional expenses incurred as a result of DoD assistance.

(1) Each installation or Military Component will provide the production company with individual statements of charges assessed for providing assets to assist in the production. Unless agreed otherwise, statements should be presented to the production company within 45 days

from the last day of the month in which filming and/or photography is completed to ensure prompt and complete accounting of charges for DoD assistance.

(2) The production company will be billed for only those expenses that are considered to be additional expenses to the Government. In accordance with paragraph (b)(3)(i)(A) of this section, the assigned project officer will serve as the central coordinator for submitting statements to the producer and monitoring receipt of payment to the Government. Items for which the costs may be reimbursed to the Government include:

- (i) Petroleum, oil, and lubricants for equipment used.
- (ii) Depot maintenance for equipment used.
- (iii) Cost incurred in diverting or moving equipment.
- (iv) Lost or damaged equipment.
- (v) Expendable supplies.
- (vi) Travel and per diem (unless paid directly to the Service member when authorized under 31 U.S.C. 1353).
- (vii) Civilian overtime.
- (viii) Commercial power or other utilities for facilities kept open beyond normal duty hours or when the production company's consumption of utilities is significant, based on average usage rates.
- (ix) Should the production company not comply with requested clean-up required by production, project officer will require production company to hire a cleaning company. Should the production company not provide for the necessary clean-up, it shall reimburse the Government for any additional expenses incurred by the Government in performing such clean-up.

(3) The production company will be required to reimburse the Government for all flying hours related to production assistance, including takeoffs, landings, and ferrying aircraft from military locations to filming sites, except when such missions coincide with and can be considered legitimate operational and training missions. The production company will be required to reimburse the Government for all steaming days related to production assistance, including all costs (tugs, harbor pilots and port costs) required to move ships from military locations to filming sites, except when such missions coincide with and can be considered legitimate operational and training missions. These reimbursements will be calculated at the current DoD User Rates.

(4) In cases where provision of support provides a significant benefit to DoD, the production company will not be required to reimburse the Government for military or civilian manpower (except for civilian overtime) when such personnel are officially assigned to assist in the production. However, this limitation does not apply to Reserve Component personnel assigned in an official capacity, because such members are called to active duty at additional cost to the Government to perform the assigned mission. Reimbursement for Reserve Component personnel in an official capacity will be at composite standard pay and reimbursement rates for military personnel published annually by the Under Secretary of Defense (Comptroller)/ DoD Chief Financial Officer.

(5) Normal training and operational missions that would occur regardless of DoD assistance to a particular production are not considered to be chargeable to the production company.

(6) Beyond actual operational expenses, imputed rental charges ordinarily will not be levied for use of structures or equipment.

(7) The production company will provide proof of adequate industry standard liability insurance,

naming DoD as an additional insured entity prior to the commencement of production involving DoD. The production company will maintain, at its sole expense, insurance in such amounts and under such terms and conditions as may be required by DoD to protect its interests in the property involved.

Appendix A to Part 238—Sample Production Assistance Memorandum

U.S. DEPARTMENT OF DEFENSE
PRODUCTION ASSISTANCE MEMORANDUM
DoD-[enter number]-[enter year]

The United States Department of Defense (DoD), acting on behalf of the United States of America, hereby expresses its intent, subject to the provisions herein, to provide to [enter name of production entity], hereinafter referred to as the “production company,” the assistance itemized in this Production Assistance Memorandum (Memorandum) in conjunction with the production of a [enter type of production; e.g., feature motion picture, television series] known at this time as [enter title of production or episode]. This Memorandum expresses the terms under which DoD intends to provide assistance. This Memorandum does not authorize the obligation of any United States funding, nor should it be construed as a contract, grant, cooperative agreement, other transaction, or any other form of procurement agreement.

LIST OF MILITARY RESOURCES REQUESTED TO BE PROVIDED IN SUPPORT OF PRODUCTION [or “see Attachment 1”] The DoD will make reasonable efforts to provide the assistance requested in the request for production assistance, to the extent approved by DoD, and subject to the limitations contained herein.

This Memorandum is subject to revocation due to non-compliance with the terms herein, with the possible consequence of a temporary suspension or permanent withdrawal of the use of some or all of the military resources identified to assist this project. In the event of dispute, the production company will be given a written notice of non-compliance by the DoD project officer. The production company will have a 72-hour cure period after receipt of written notice of non-compliance. DoD may temporarily suspend support until the non-compliance has been cured or the 72-hour cure period has expired. After the cure period has expired, DoD may permanently withdraw its support for the production. If such Memorandum is either suspended or terminated, the sole right of the Production Company to appeal such decision is to the DoD designee responsible for coordinating production assistance for entertainment media operations (“DoD Director of Entertainment Media”). The requirements in Department of Defense Instruction 5410.16 shall apply to this Memorandum.

It is understood between DoD and the production company that:

1. The DoD project officer, [enter name of project officer], is the official DoD representative responsible for ensuring that the terms of this Memorandum are met. The DoD project officer or his or her designee will be present each day the U.S. military is being portrayed, photographed, or otherwise involved in any aspect of [enter title of production]. The DoD project officer is the military technical advisor, and all military coordination must go through him or her. The production company will consult with the DoD project officer in all phases of pre-production, production, and post-production that involves or depicts the U.S. military.

2. The production company will cast actors, extras, doubles, and stunt personnel portraying Service members who conform to individual Military Service regulations governing age, height and weight, uniform, grooming, appearance, and conduct standards. DoD reserves the right to suspend support in the event that disagreement regarding the military aspects of these portrayals cannot be resolved in negotiation between the production company and DoD within the 72-hour cure period. The DoD project officer will provide written guidance specific to each Military Service being portrayed.
3. DoD has approved production assistance as in the best interest of DoD, based on the [enter date] version of the script to the extent agreed upon by DoD [, and as further described by _____]. The production company must obtain, in advance, DoD concurrence for any subsequent changes proposed to the military depictions made to either the picture or the sound portions of the production before these changes are undertaken.
4. The operational capability and readiness of the Military Components will not be impaired. Unforeseen contingencies affecting national security or other emergency circumstances such as disaster relief may temporarily or permanently preclude the use of military resources. In these circumstances, DoD will not be liable, financially or otherwise, for any resulting negative impact or prejudice to the production caused by the premature withdrawal or change in support to the production company.
5. There will be no deviation from established DoD safety and conduct standards. The DoD project officer or his or her designee will coordinate such standards and compliance therewith. DoD will provide the production company advance notice of such safety or conduct standards upon request.
6. All DoD property or facilities damaged, used, or altered by the production company in connection with the production will be restored by the production company to the same or better condition, cleaned and free of trash, normal wear and tear excepted, as when they were made available for the production company's use.
7. The production company will reimburse the U.S. Government for any additional expenses incurred as a result of the assistance rendered for the production of [enter title of production]. The estimated amount will be detailed and included (e.g., "see Attachment 2," etc.). Unless otherwise agreed upon, the production company agrees to post advance payment or a letter of credit in the amount estimated to comprise the total additional DoD expenses or deposit such funds that may be reasonably necessary. The payment or letter of credit will be submitted to the military component(s) designated to provide the assistance, or to another DoD agency, as deemed appropriate by DoD.
 - a. DoD agrees to provide statements of charges assessed by each installation or DoD component providing assets to assist in the production within 45 days from the last day of the month in which filming is completed.

b. The production company will be charged for only those expenses that are considered to be additional costs to DoD in excess of those that would otherwise have been incurred, including, but not limited to fuel, resultant depot maintenance, expendable supplies, travel and per diem, civilian overtime, and lost or damaged equipment.

c. If the final aggregate of such costs and charges is less than previously anticipated, DoD agrees to remit the exact amount of the difference of any funds posted within 45 days from the last day of the month in which filming is completed.

8. The production company will be charged for the travel, lodging, per diem, and incidental expenses for the DoD project officer, the DoD Director of Entertainment Media or his or her designee, and any other assigned military technical and safety advisor(s) whose presence may be required by DoD. For each of these individuals, the production company will provide:

a. Round-trip air transportation and ground transfers to the production location(s) at which there is a military portrayal or involvement, at times deemed appropriate by the DoD project officer and DoD Director of Entertainment Media.

b. A full-size vehicle (with fuel and with loss, damage, and collision automobile insurance paid for by the production company) for his or her personal use during the filming, including for his or her stay at the production location(s). If parking at the location(s) is not available, transportation to and from the lodging location to the production site will be provided.

c. Hotel accommodations equivalent to those provided to the production company's crew.

d. A dedicated, on-location trailer room or other comparable work space with full Internet access, desk, seating, and en-suite toilet.

9. By approving DoD production assistance for [enter title of production], DoD hereby provides a general release to the production company for the use of any and all photography and sound recordings of any and all Service members, equipment, and real estate, subject to the limitations in this Memorandum (e.g. Paragraphs 12-13).

10. As a condition of DoD assistance, the production company will:

a. Indemnify and hold harmless DoD, its agencies, officers, and employees against any claims (including claims for personal injury and death, damage to property, and attorneys' fees) arising from the production company's possession or use of DoD property or other assistance in connection with this production of [enter title of production], to include pre-production, post-production, and DoD-provided orientation or training. This provision will not in any event require production company to indemnify or hold harmless DoD, its agencies, officers and or employees from or against any claims arising from defects in DoD property or negligence on the part of DoD, its agencies, officers, or employees.

b. Provide proof of adequate industry standard liability insurance, naming DoD as an additional insured entity prior to the commencement of production involving DoD. The production company will maintain, at its sole expense, insurance in such amounts and under such terms and conditions as may be required by DoD to protect its interests in the property involved.

c. Not carry onto DoD property any non-prescription narcotic, hallucinogenic, or other controlled substance; or alcoholic beverage without prior coordination with the DoD project officer or his or her designee.

d. Not carry onto DoD property any real or prop firearms, weapons, explosives, or any special effects devices or equipment that cause or simulate explosions, flashes, flares, fire, loud noises, etc., without the prior approval of the DoD project officer and the supporting installation.

e. Allow DoD public affairs personnel access to the production site(s) to conduct still and motion photography of DoD personnel and assets that are directly supporting the filming, and to allow DoD the use of production company-generated publicity and marketing materials, such as production stills and electronic press kits. These materials may be used to show DoD viewers how DoD is assisting in the production; such materials may be viewed by the general public if posted on an open DoD web site or released on "The Pentagon Channel" or other publicly-accessible media source. Therefore, no DoD personnel will photograph actual filming, talent, or sets without the prior approval of the production company.

11. The production company will provide the DoD project officer with whatever internal communications equipment it is supplying to production company crew members to communicate on the set during production of military-themed sequences. The production company will also supply the DoD project officer with earphones to monitor military-themed dialogue and other sound recording during these periods.

12. The production company will screen for the DoD project officer and the DoD Director of Entertainment Media, or their designees, the roughly edited version of the production at a stage in editing when changes can be accommodated to allow DoD to confirm the military sequences conforms to the agreed script treatment, or narrative description; to preclude release or disclosure of sensitive, security-related, or classified information; and to ensure that the privacy of DoD personnel is not violated. Should DoD determine that material in the production compromises any of the preceding concerns, DoD will alert the production company of the material, and the production company will remove the material from the production. The production company will bear the travel, lodging, per diem, and incidental expenses incurred in transporting the DoD project officer and the DoD Director of Entertainment Media, or their designees, to the location where the screening is held.

13. No photography or sound recordings made with DoD assistance and no DoD photography and sound recordings released for this production will be reused or sold for use in other productions without DoD approval. The foregoing will not prohibit the production

company from exploiting the production in any and all ancillary markets, now known or hereafter devised (including, without limitation, television, web content, home video and theme parks) or from using clips in promotional material relative thereto.

14. The production company will also provide an official DoD screening of the completed production in Washington, D.C., prior to public exhibition. An alternative screening location may be authorized by DoD, in negotiation with the production company. In this case, the production company will pay the travel and lodging expenses incidental to the attendance at the screening of the DoD project officer and the Director of Entertainment Media or their designees.

15. The production company will place a credit in the end titles immediately above the "Special Thanks" section (if any), substantially in the form of "Special Thanks to the United States Department of Defense," with no less than one clear line above and one clear line below such credit acknowledging the DoD assistance provided. Such acknowledgment(s) will be in keeping with industry customs and practices, and will be of the same size and font used for other similar credits in the end titles.

16. The production company will provide DoD with five copies of all promotional and marketing materials (e.g., electronic press kits, one-sheets, and television advertisements) for internal information and historical purposes in documenting DoD assistance to the production.

17. The production company will provide a minimum of ten digital video (DVD) copies of the completed production to DoD for internal briefings and for historical purposes, by overnight shipment to arrive the day following the first domestic airing or commercial distribution of the production. DoD will not exhibit these DVDs publicly or copy them; however, DoD is allowed to use short clips from them in official presentations by Service members and DoD civilian personnel who were directly involved in providing DoD assistance, for the sole purpose of illustrating DoD support to the production. However, DoD is prohibited from making these clips available to any other party for any other purpose.

18. Official activities of DoD personnel in assisting the production must be within the scope of normal military activities, with the exception of the DoD project officer and assigned official technical advisor(s), whose activities must be consistent with their authorized additional duties. DoD personnel in an off-duty, non-official status may be hired by the production company to perform as actors, extras, etc., provided there is no conflict with existing Service or Department regulations. In such cases, these conditions apply:

a. Contractual agreements are solely between those individuals and the production company; however, they should be consistent with industry standards.

b. The DoD project officer will ensure that DoD personnel will comply with standards of conduct regulations in accepting employment.

c. The production company is responsible for any disputes with unions governing the hiring of non-union actors or extras.

19. The production company may make donations or gifts in-kind to morale, welfare, and recreation programs of the military unit(s) involved; however, donations of this kind are not at all required, and are not in any manner a consideration in the determination of whether or not a production should receive DoD assistance. These donations must be coordinated through the DoD project officer and must comply with law and DoD policies.

20. The undersigned parties warrant that they have the authority to enter into this Memorandum and that the consent of no other party is necessary to effectuate the full and complete satisfaction of the provisions contained herein.

21. This Memorandum consists of [enter number] pages including [enter number of attachment(s)]. Each page will be initialed by the undersigned DoD and production company representatives.

FOR THE DEPARTMENT OF DEFENSE

FOR [ENTER PRODUCTION COMPANY]

Signature and Date

Signature and Date

Name of DoD Representative:

Name of Production Company Representative:

Title and Address

Title and Address

Appendix B to Part 238—Sample Production Assistance Memorandum

U.S. DEPARTMENT OF DEFENSE
DOCUMENTARY PRODUCTION ASSISTANCE MEMORANDUM
DoD-[enter number]-[enter year]

The United States Department of Defense (DoD), acting on behalf of the United States of America, hereby expresses its intent, subject to the provisions herein, to provide to [enter name of production entity], hereinafter referred to as the “production company,” the assistance itemized in this Production Assistance Memorandum (Memorandum) in conjunction with the production of a documentary known at this time as [enter title of the production]. This Memorandum expresses the terms under which DoD intends to provide assistance. This Memorandum does not authorize the obligation of any United States funding, nor should it be construed as a contract, grant, cooperative agreement, other transaction, or any other form of procurement agreement.

LIST OF MILITARY RESOURCES REQUESTED TO BE PROVIDED IN SUPPORT OF PRODUCTION [or “see Attachment 1”] The DoD will make reasonable efforts to provide the assistance requested in the request for DoD documentary assistance, to the extent approved by DoD, and subject to the limitations contained herein.

This Memorandum is subject to revocation due to non-compliance with the terms herein, with the possible consequence of a temporary suspension or permanent withdrawal of the use of some or all of the military resources identified to assist this project. In the event of dispute, the production company will be given a written notice of non-compliance by the DoD project officer. The production company will have a 72-hour cure period after receipt of written notice of non-compliance. DoD may temporarily suspend support until the non-compliance has been cured or the 72-hour cure period has expired. After the cure period has expired, DoD may permanently withdraw its support for the production. If such Memorandum is either suspended or terminated, the sole right of the Production Company to appeal such decision is to the DoD designee responsible for coordinating assistance for documentary productions. The requirements in Department of Defense Instruction 5410.16 shall apply to this Memorandum.

It is understood between DoD and the production company that:

1. The DoD project officer, [enter name of project officer and contact information], is the official DoD representative responsible for ensuring that the terms of this Memorandum are met. The DoD project officer is the military technical advisor, and all military coordination must go through him or her. The production company will consult with the DoD project officer in all phases of pre-production, production, and post-production that involves or depicts the U.S. military. The local unit/installation public affairs officer, or a designated official, may serve as the official onsite DoD representative for this project and will act as the interface between the film crew and military units providing both filming and logistical support.

2. DoD has approved production assistance as in the best interest of DoD, based on the [enter date] version of the script, treatment, or narrative description to the extent agreed upon by DoD [and as further described by _____]. The production company must obtain, in advance, DoD concurrence for any subsequent changes proposed to the military depictions made to either the picture or the sound portions of the production before these changes are undertaken.
3. The operational capability and readiness of the Military Components will not be impaired. Unforeseen contingencies affecting national security or other emergency circumstances such as disaster relief may temporarily or permanently preclude the use of military resources. In these circumstances, DoD will not be liable, financially or otherwise, for any resulting negative impact or prejudice to the production caused by the premature withdrawal or change in support to the production company.
4. There will be no deviation from established DoD safety and conduct standards. The DoD project officer, or his or her designee, will coordinate such standards and compliance therewith. DoD will provide the production company advance notice of such safety or conduct standards upon request.
5. All DoD property or facilities damaged, used or altered by the production company in connection with the production will be restored by the production company to the same or better condition, cleaned and free of trash, normal wear and tear excepted, as when they were made available for the production company's use.
6. The production company will reimburse the U.S. Government for any additional expenses incurred as a result of the assistance rendered for the production of [enter title of production] . The estimated amount will be detailed and included in this Memorandum or as an attachment to it.
7. The production company will be charged for only those expenses that are considered to be additional costs to DoD in excess of those that would otherwise have been incurred, including, but not limited to fuel, resultant depot maintenance, expendable supplies, travel and per diem, civilian overtime, and lost or damaged equipment.
8. The production company will be charged for the travel, lodging, per diem, and incidental expenses for the DoD project officer, the DoD documentary officer, or his or her designee, and any other assigned military technical and safety advisor(s) whose presence may be required by DoD. For each of these individuals, the production company will provide:
 - a. Round-trip air transportation and ground transfers to the production location(s) at which there is a military portrayal or involvement, at times deemed appropriate by the DoD project officer and the DoD documentary officer.
 - b. Hotel accommodations equivalent to those provided to the production company's crew.

9. By approving DoD production assistance for [enter title of production], DoD hereby provides a general release to the production company for the use of any and all photography and sound recordings of any and all Service members, equipment, and real estate, subject to the limitations in this Memorandum (e.g., including, but not limited to, Paragraphs 11-14).

10. As a condition of DoD assistance, the production company will:

a. Indemnify and hold harmless the DoD, its agencies, officers, and employees against any claims (including claims for personal injury and death, damage to property, and attorneys' fees) arising from the production company's possession or use of DoD property or other assistance in connection with this production of [enter title of production]. This provision will not in any event require production company to indemnify or hold harmless the DoD, its agencies, officers, or employees from or against any claims arising from defects in DoD property or negligence on the part of DoD, its agencies, officers, or employees.

b. Provide proof of adequate industry standard liability insurance, naming DoD as an additional insured entity prior to the commencement of production involving DoD. The production company will maintain, at its sole expense, insurance in such amounts and under such terms and conditions as may be required by DoD to protect its interests in the property involved.

c. Not carry onto DoD property any non-prescription narcotic, hallucinogenic, or other controlled substance or alcoholic beverage without prior coordination with the DoD project officer or his or her designee.

d. Not carry onto DoD property any real or prop firearms, weapons, explosives, or any special effects devices or equipment that cause or simulate explosions, flashes, flares, fire, loud noises, etc., without the prior approval of the DoD project officer and the supporting installation.

e. Allow DoD public affairs personnel access to the production site(s) to conduct still and motion photography of DoD personnel and assets that are directly supporting the filming, and to allow DoD the use of production company-generated publicity and marketing materials. These materials are may be used to show DoD viewers how DoD is assisting in the production; such materials may be viewed by the general public if posted on an open DoD web site or on "The Pentagon Channel" or other publicly-accessible media source. Therefore, no DoD personnel will photograph actual filming without the prior approval of the production company.

11. The production company will screen for the DoD project officer, and the DoD documentary officer, or their designees, the roughly edited version of the production at a stage in editing when changes can be accommodated to allow DoD to confirm the military sequences conforms to the agreed-upon script, treatment, or narrative description; to preclude release or disclosure of sensitive, security-related, or classified information; and to ensure that the privacy of DoD personnel is not violated. Should DoD determine that material in the production compromises any of the preceding concerns, DoD will alert the production company of the material, and the production company will remove the material from the production.

12. If the recording or imagery to be used in the production captures medical treatment being performed on DoD personnel, the project officer shall require the production company to gain written consent from such DoD personnel. In the case of DoD personnel who are deceased or incapacitated, the project officer shall require the production company to gain written consent from the next of kin of the deceased or incapacitated DoD personnel.

13. All Department of Defense uniformed and civilian personnel who are photographed or sound recorded by the documentary production company are considered to be on duty and are precluded from receiving any compensation from the production company or any other party as a result of their appearance in the production or subsequent authorized productions, or as a result of the use of their name, likeness, life story or other rights for any purpose. Military personnel in an off-duty, non-official status may be hired by the production company to perform as actors, extras, etc., provided there is no conflict with existing Service regulations. In such cases, these conditions apply:

a. Contractual agreements are solely between those individuals and the production company; however, they should be consistent with industry standards.

b. The DoD project officer will ensure that DoD personnel will comply with standards of conduct regulations in accepting employment.

c. The production company is responsible for any disputes with unions governing the hiring of non-union actors or extras.

14. No photography or sound recordings made with DoD assistance and no DoD photography and sound recordings released for this production will be reused or sold for use in other productions without DoD approval. The foregoing will not prohibit the production company from exploiting the production in any and all ancillary markets, now known or hereafter devised (including, without limitation, television, web content, home video and theme parks) or from using clips in promotional material relative thereto.

15. The production company will identify any and all re-enactments in the production by placing the word "RE-ENACTMENT" on the screen, in a legible format and of a legible size, for either the duration of the re-enactment or at the beginning of the re-enactment for a period of not less than 3 seconds and reappearing every subsequent 10 seconds for a period of 3 seconds until complete. This activity will occur for every instance of a re-enactment in the production.

16. The production company will place a credit in the end titles immediately above the "Special Thanks" section (if any) substantially in the form of "Special Thanks to the United States Department of Defense," with no less than one clear line above and one clear line below such credit acknowledging the DoD assistance provided. Such acknowledgment(s) will be in keeping with industry customs and practices, and will be of the same size and font used for other similar credits in the end titles.

17. The production company will provide a minimum of five digital video (DVD) copies of the completed production within seven working days of initial broadcast to DoD, for internal briefings and for historical purposes. DoD will not exhibit these DVDs publicly or copy them; however, DoD is allowed to use short clips from them in official presentations by Service members and DoD civilian personnel who were directly involved in providing DoD assistance, for the sole purpose of illustrating DoD support to the production. However, DoD is prohibited from making these clips available to any other party for any other purpose.

18. The undersigned parties warrant that they have the authority to agree to the terms of this Memorandum and that the consent of no other party is necessary to effectuate the full and complete satisfaction of the provisions contained herein.

19. This Memorandum consists of [enter number] pages including [enter number of attachment(s)]. Each page will be initialed by the undersigned DoD and production company representatives.

FOR THE DEPARTMENT OF DEFENSE

FOR [ENTER PRODUCTION COMPANY]

Signature and Date

Signature and Date

Name of DoD Representative:

Name of Production Company Representative:

Title and Address

Title and Address

Dated: September 11, 2014.

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